

2024:PHHC:063400-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-1252-2024 (O&M)
Reserved on: 18.04.2024
Pronounced on: 07.05.2024

Tejinder SinghAppellant

Versus
Rajinder KaurRespondent

**CORAM: HON’BLE MR. JUSTICE SUDHIR SINGH
HON’BLE MR. JUSTICE HARSH BUNGER**

Present: Mr. Prateek Pandit, Advocate for the appellant

SUDHIR SINGH, J.

Present appeal is directed against the judgment and decree dated 19.09.2023 passed by the Family Court, Kapurthala, whereby the divorce petition filed by the appellant-husband under Section 13 of the Hindu Marriage Act (hereinafter referred as ‘the Act’) on the grounds of cruelty and desertion, has been dismissed.

2. The appellant-husband filed the aforesaid petition for divorce before the trial Court, *inter-alia*, averring that the marriage between the appellant and the respondent-wife was solemnized on 23.03.2008 as per Sikh rites. One male child was born out of the said wedlock. The appellant-husband had been residing in Italy before the marriage and after a few days of the marriage, he went back to the said country. The appellant-husband further averred that it was agreed upon between the parties that he would take the respondent-wife to Italy with him.

However, the respondent-wife started creating trouble at her matrimonial home and when she was pregnant she had left the matrimonial home and started residing with her parents without informing the appellant and his family members. The attitude of the respondent-wife became very cold towards the appellant's family and she had stopped receiving any calls from them. Moreover, when the male child was born, the respondent-wife did not allow the appellant's parents to meet the new born baby. It was further averred that when the appellant-husband again came to India, the respondent-wife again started residing in her matrimonial home with an understanding that he should take her along with the child to Italy with him. She had clearly told the appellant-husband that either he should take her to Italy or give her divorce. After a few days, the appellant-husband went back to Italy and consequently, the respondent-wife again left the matrimonial home and never came back after that. It was further averred that the appellant-husband came to know through some distant relative that the respondent-wife has gone abroad and her parents had refused to disclose her whereabouts.

3. The notice of the petition was issued to the respondent-wife through publication but she failed to appear either through a counsel or in person. Accordingly, she was proceeded against as ex-parte.

4. In his ex-parte evidence, the appellant-husband himself appeared as PW1 and also examined Randhir Singh as

PW-2 and Gurbax Singh, Numberdar as PW3 besides producing documentary evidence Ex.P1 to P4.

5. The learned Family Court, after considering the pleadings and contentions raised by the appellant as also the evidence led by him, has dismissed the petition, while recording the following findings:-

- i) The evidence led by the appellant-husband proves otherwise and it was the appellant-husband, who had treated the respondent-wife with cruelty. Admittedly, before marriage, the appellant-husband had been residing abroad (Italy) and that he had solemnized marriage with the respondent-wife with the promise to take her to Italy. The respondent-wife gave birth to a male child on 17.02.2009 and the appellant-husband came back after two years i.e. in February, 2011; he took back the respondent-wife and the minor child to his home, but subsequently, he left for Italy and had never turned up thereafter.
- ii) The appellant-husband came to India like a guest for a few days only and rather than fulfilling his marital obligations, he has had unreasonable and untenable expectations from the respondent-wife. Nowhere from the entire pleadings or evidence, it can be inferred that the respondent-wife was at a fault.
- iii) The parties had matrimonial bonding only for some time as the appellant himself left for abroad just after a few days of the marriage and that he did

not visit India even on the birth of his son. Though the appellant came to India in February, 2011, yet he again left for Italy after a few days. Neither he took the respondent-wife and their child abroad as per his promise nor sent any money to give them gracious living standard.

iv) The appellant-husband had failed to perform his matrimonial obligations and no evidence was produced on record to show that he had ever sent them any maintenance amount.

v) There had been a long separation between the parties and the appellant-husband having promised to take the respondent-wife and child abroad, did not honour the same and it amounted to mental cruelty towards the respondent-wife.

vi) The appellant-husband failed to examine any witness to prove that when his parents went to see the child, the respondent-wife did not allow them to meet him.

6. The sole question that arises for consideration before this Court is whether the appellant-husband has successfully proved the grounds of cruelty and desertion for grant of divorce.

7. Learned counsel appearing on behalf of the appellant-husband submits that the respondent-wife was proceeded ex-parte and was no counter to the pleadings raised and evidence led by the appellant-husband and in such a situation, when the case set up by the appellant-husband went

unrebutted, it was incumbent upon the Family Court to grant the decree of divorce. It is further submitted that the learned Family Court could not substitute its opinion and bind parties together if the opposite party fails to appear and prove its stance. He has placed his reliance on a Division Bench judgment of this Court in Malkit Kaur Vs. Mohan Singh, 2012(16) RCR (Criminal) 828. Reliance is also placed upon another Division Bench judgment of this court in Amarjit Singh vs. Garmmeet Kaur, 2015(45) RCR (Civil) 649 to contend that where the plea of desertion remains uncontroverted either by way of a written statement or cross-examination, the same cannot be rejected by the Court.

8. After carefully considering the arguments advanced by the counsel of the appellant and having gone through the impugned judgment, it becomes necessary to address the significant issue raised. Despite the respondent-wife having been proceeded as ex-parte during the proceedings, it is crucial to emphasise that no adverse inference can be automatically drawn against her regarding the allegations of cruelty and desertion. In order to reach a logical conclusion, the Court can always consider the veracity of the allegations raised and examine the same on the basis of evidence led. In the instant case, it was the pleaded case of the appellant-husband that he had promised to take the respondent-wife to Italy after marriage and again after the birth of the child in 2009, he visited India in 2011 and at that time as well, he had promised to take her to Italy. But nothing of the sort was done. Still further, we find no illegality or

perversity in the finding recorded by the Family Court that the appellant-husband could not show anything from the record that he had paid any maintenance amount to the respondent-wife or their minor child. The lack of provision made by the respondent-husband for the respondent's and the minor child's maintenance, including subsistence and day-to-day needs, raises serious concerns about his conduct in the wedlock. The failure to fulfill basic financial responsibilities, contributes to the characterization of cruelty and desertion on the part of the appellant. Thus, by the common prudence, it can safely be concluded that the appellant-husband by filing the petition for divorce wanted to take the benefit of his own wrongs. Having himself failed to perform his matrimonial obligations, the appellant-husband cannot be allowed to plead that the trial Court ought to have granted him divorce because, the respondent-wife had been proceeded ex-parte.

9. Moreover, the burden of proof rests entirely on the party that pleads cruelty and desertion. In the instant case, the appellant-husband has failed to substantiate the case with cogent and convincing evidence. The appellant has failed to demonstrate adherence to the respondent's wishes and also regarding his obligations towards both the respondent and the child. Specifically, the appellant neglected to make adequate arrangements for the respondent's travel to Italy with him, disregarding her desires and welfare of the child.

10. In Narayan Ganesh Dastane Vs. Sucheta Narayan Dastane, 1975 AIR 1534, the Hon'ble Apex Court, has held that

it is upon the party alleging cruelty to prove the said fact. In Adhyatma Bhattar Alwar vs. Adhyatma Bhattar Sri Devi, 2002 AIR (SC) 88, it was held that the party alleging desertion must prove that the other spouse was living separately; there was an *animus deserendi* (firm intention to leave the matrimonial home) on the part of the spouse and that the element of permanence requires that the both the ingredients should continue during the entire statutory period.

11. Thus, we find that the findings recorded by the learned trial Court do not suffer from any patent illegality or perversity. It could not be shown that any evidence has been misread or not taken into consideration by the trial Court.

12. No other point has been urged.

13. In view of the above, we do not find any merits in the present appeal and the same is hereby, dismissed.

14. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh)
Judge

(Harsh Bunger)
Judge

07.05.2024
ds/Mahavir

-	<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
-	<i>Whether reportable:</i>	<i>Yes/No</i>