



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-2338-2024 (O&M)
Date of Decision: 15.05.2024

GURPREET SINGH

...Appellant

Versus

AMARPREET KAUR

...Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER

Present:- Mr. Ramneek Singh Baweja , Advocate for appellant.

SUDHIR SINGH, J.

CM-8745-CII-2024

For the reasons given in the application, the same is allowed and delay of 7 days in re-filing the appeal is condoned, subject to all just exceptions.

FAO-2338-2024

The present appeal is directed against the judgment dated 14.02.2024 passed by learned Family Court, Patiala, whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred as 'the Act'), filed by the appellant, on the grounds of cruelty and desertion, has been dismissed.

2. The appellant-husband had filed the aforesaid petition, *inter-alia*, averring therein that his marriage with the respondent-wife was solemnized on 05.05.2002, according to Sikh rites and that out of



the said wedlock one female child was born, who was in the custody of the respondent-wife. It was further asserted that the respondent-wife was an arrogant and quarrelsome lady; that she had never attended any relative or guest, who used to visit the house of the petitioner occasionally; that there had been frequent interference in the matrimonial life of the parties from the side of the respondent-wife; that she used to misbehave with the appellant-husband; that ultimately, she left the matrimonial home in October, 2006 and since then she had been residing at her parental house at Khanna. It was further alleged that many Panchayats had been convened, but in vain and that in the month of September, 2008 the appellant-husband went to Australia for study purposes and he had made a request to the respondent-wife to reside with his mother in the matrimonial home, but the respondent-wife had refused to accede to his request. It was further averred that in May, 2016, when the appellant-husband returned from Australia, he contacted respondent-wife and asked her to come back, but she did not show any interest in the said proposal. It was further alleged that respondent-wife had issued threats to the appellant-husband that in case she was compelled to live in the matrimonial home, she would commit suicide. It was, thus, contended that having remained away from the company of the appellant-husband for more than 11 years, the respondent-wife had deserted him.

3. Upon notice, the respondent-wife appeared and filed her written statement denying the allegations of cruelty and desertion. It was further pointed out that while in Australia, the appellant-husband



had applied for divorce in the Federal Magistrate Court of Australia vide File No.(P) ADC3959/2012 and as per the order dated 18.12.2012, passed by the said Court, the marriage was to be terminated on 19.01.2013 and that the said order sent through post on 23.01.2013, was received by the respondent-wife after ten days. It was further stated that after the appellant returned from Australia, efforts for reconciliation were made, and the respondent-wife went to her matrimonial home along with her minor daughter (Gurleen Kaur) on 06.08.2017. It was further asserted that thereafter also, the appellant did not mend his ways and the respondent-wife was forced to leave the matrimonial home along with her minor daughter on 31.08.2017. It was yet further stated that during her stay at the matrimonial home, the minor daughter was admitted in Dayanand Public School, Nabha by the appellant-husband even when she was already studying in Lala Sarkaru Mal Sarvhitkari Senior Secondary School, Khanna in 9th Class and the fees upto November 2017, had already been paid. It was further pointed out by the respondent-wife that she was given regular beatings by the appellant-husband and her life was ruined. It was further averred that the appellant had not come to the Court with clean hands and that the divorce petition was not maintainable.

4. On the basis of the pleadings of the parties, the following issues were framed by learned Family Court:-

- “ 1. Whether the respondent has treated the petitioner with cruelty, if so at its effect? OPP.
2. Whether the respondent has deserted the petitioner without any cause and excuse? OPP.
3. Relief.



4. Whether the petitioner has not come to the Court with clean hands and has concealed the true and material facts from the Court? OPR.

5. Relief.”

5. In evidence, the appellant-husband examined himself as PW-1, besides examining PW-2 Kesar Singh and PW-3 Hira Lal Sharma. On the other hand the respondent-wife examined herself as RW-1, Hardeep Singh as RW-2; Taranbir Singh as RW-3 and Balwinder Singh as RW-4.

6. The learned Family Court after considering the rival contention of the parties and the evidence on record, dismissed the petition filed by the appellant-husband, as noticed above.

7. Learned counsel appearing for the appellant-husband has vehemently contended that while passing the impugned judgment, the learned Family Court fell in error of law and fact inasmuch as, the evidence on record has not been taken into consideration in its proper perspective and the acts of cruelty and desertion have totally been brushed aside. It is further argued that once it was the pleaded case of the appellant-husband that the respondent-wife had deserted him for more than 12 years and there had been no specific counter to it from the side of the respondent-wife, it was incumbent upon the learned Family Court to grant the decree of divorce in favour of the appellant-husband. It is further argued that the learned Family Court has wrongly and illegally observed that the allegations levelled by the appellant-husband in the petition are general in nature.



8. We have heard learned counsel for the appellant and have also gone through the impugned judgment passed by learned Family Court.

9. The only question that requires consideration by this Court is whether the impugned judgment passed by learned Family Court requires any interference.

10. We find from the impugned judgment that the allegations levelled by the appellant-husband were found to be general in nature as much as allegations were as regards the respondent-wife being an arrogant and quarrelsome lady and not doing household works. It was further found that the factum of divorce having been obtained by the appellant-husband from the Federal Magistrate Court of Australia was not denied by the appellant-husband in his cross-examination and the said fact was sufficient enough to hold that it was the appellant-husband, who had caused mental agony to the respondent-wife. The Family Court, has observed as under:-

“20. The petitioner himself stated that he has got divorce on 19.01.2013 at Australia (In Federal Court of Australia). The conduct of the husband dis-entitles him from seeking the relief in the present proceedings. The evidence and the circumstances as projected in this case would prove the fact that it is the petitioner who himself left the company of the respondent without any cogent reason and there is no cruelty on the part of the respondent. As such, issue No.1 is decided against the petitioner and in favour of the respondent.”



11. Under the head of desertion, it was found by the learned Family Court that in the month of September, 2008, the appellant went to Australia for study purposes and he returned back in May, 2016 and immediately thereafter he contacted the respondent-wife by visiting her parental house but the reconciliation efforts had failed. In his cross-examination, the appellant-husband had admitted that no efforts were made by him to bring back the respondent-wife and the minor child, after they left the matrimonial home on 31.08.2017. Still further, it was found that no petition for Restitution of Conjugal Rights was filed by the appellant-husband. It was further found that the respondent-wife and the minor child left the matrimonial home on 26.10.2017 and the two years' period was to be counted from there. Thus, it was found by learned Family Court that the divorce petition was filed prior to the period of two years

12. We find that the conduct of the appellant-husband in obtaining a divorce from the Federal Court in Australia, has rather caused mental agony to the respondent-wife. It is the case of the appellant-husband that after obtaining the aforesaid divorce, he had visited India and made efforts for reconciliation, but it does not stand to common prudence that on the one hand, the appellant-husband had obtained divorce, though from a Foreign Court, and on the other, he had been making efforts for reconciliation. Even if the respondent-wife left her matrimonial home in 2017, she cannot be said to have done the same without any justified cause, especially when the appellant-husband himself obtained a divorce from the Federal Court at Australia.



13.

We find that the findings recorded by the learned Family Court are perfectly legal. It could not be pointed out that any evidence has been misread or not taken into consideration by the learned Family Court.
14.

No other point has been urged.
15.

In view of the above, we do not find any merit in the present appeal and the same is hereby, dismissed.
16.

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

[SUDHIR SINGH]
JUDGE

[HARSH BUNGER]
JUDGE

15.05.2024
Himanshu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No