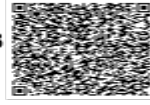


2024:PHHC:076117-DB



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

FAO-2580-2024 (O&M)

Date of Decision: 27.05.2024

RAMEHAR @ RAM MEHAR

...Appellant

Versus

SWETA @ SHWETA

...Respondent

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

Present:- Ms. Priya Singla, Advocate for appellant.

SUDHIR SINGH, J.

CM-9714-CII-2024

For the reasons given in the application, the same is allowed and the delay of 21 days in re-filing the appeal is condoned.

CM-9715-CII-2024

For the reasons given in the application, the same is allowed and the delay of 122 days in filing the appeal is condoned, subject to all just exceptions.

FAO-2580-2024

The present appeal is directed against the judgment dated 18.08.2023 passed by learned Family Court, Kaithal, whereby the petition filed by the appellant-husband under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred as 'the Act') for restitution of conjugal rights, has been dismissed.

2. The aforesaid petition had been filed by the appellant-husband, *inter alia*, stating therein that his marriage with the respondent-wife was solemnized on 05.04.2015, according to Hindu rites and no issue was born out of the said wedlock. It was further stated that the respondent-wife had been living with the appellant-husband happily till March 2018, but, thereafter, she changed her attitude towards the appellant-husband and his family members; the appellant-husband tolerated all this with the hope that the respondent-wife would change her behavior but due to instigation of her mother, she continue behaving like that. It was further stated that on 19.04.2018, in the absence of the appellant-husband, the respondent-wife left the matrimonial home and also took away ornaments and cash amount of Rs.50,000/- without the consent of the appellant-husband. It is the case of the appellant-husband that the very next day, the appellant-husband went to bring back the respondent-wife from her parental house but her parents refused to send her with him and even in the Panchayat convened, thereafter, the respondents parents refused to send her to matrimonial home and rather had threatened the appellant-husband that he along with his family members would be implicated in false criminal cases. It was thus contended that the appellant-husband his ready and willing to keep the respondent-wife but she did not want to join his company and that do without any reason.

3. Upon notice, the respondent-wife appeared and filed her written statement, controverting the averments made in the petition. It was asserted that the appellant and his family members had demanded

a motorcycle and her share of the land from her mother. It was further stated that the appellant and his family members used to treat the respondent-wife with cruelty and the behavior of the appellant and his family members towards the respondent-wife became cruel for non-fulfillment of their demands of dowry. It was further stated that the respondent had filed an application for maintenance wherein an interim maintenance of Rs.2500/- per month from 17.05.2018, was granted but the appellant-husband did not pay any amount of maintenance and as a matter of fact the petition under Section 9 of the Act was filed by the appellant-husband with a view to avoid his liability to pay the maintenance amount.

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

- “1. Whether the petitioner is entitled for a decree of Restitution of Conjugal Rights on the grounds taken in the petition? OPP
2. Whether the petition is not maintainable? OPR
3. Relief.”

5. In evidence, the appellant-husband examined himself as PW-1 and one Rohtash as PW-2 besides tendered into evidence documents Mark-A to Mark-F. On the other hand, the respondent-wife examined herself as RW-1 and tendered into evidence Ex. R1 to Ex.RW.

6. The learned Family Court after taking into consideration the rival contentions and the evidence on record, dismissed the petition filed by the appellant-husband holding therein that the respondent-wife had not voluntarily withdrawn from the society of a

husband and rather it was due to the act and conduct of the appellant-husband that she had been forced to leave the matrimonial home under painful circumstances.

7. Learned counsel appearing for the appellant-husband vehemently argues that it was the pleaded case of the appellant-husband that he wanted to live in the company of the respondent-wife and therefore, he has every intention to maintain her. It is further argued that from the written statement filed by the respondent-wife coupled with the evidence on record, it could not be proved that she had left the company of the appellant-husband for any justified reason. It is further argued that so far as the allegations of the respondent-wife regarding the non-payment of the maintenance amount are concerned, the appellant-husband is doing his level best to make the payments as per his capacity. Reference has been made to various Zimni orders passed in the execution Annexure A-3 to A-6 to show that the amount of maintenance has been paid from time to time. It is thus argued that these material aspects have totally been ignored and/or not taken into consideration by the learned Family Court while dismissing the petition under Section 9 of the Act.

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

9. The only question that requires consideration by this Court is whether the judgment and decree passed by the Family Court requires any interference by this Court in the present appeal.

10. A perusal of the impugned order would show that the allegations levelled by the husband against the respondent-wife were not proved by leading any cogent and convincing evidence and that he has failed to establish that the respondent-wife have withdrawn from the company without any reasonable cause. On the other hand, it was found that the respondent-wife was fully justified in not joining the matrimonial home for torture and harassment on account of demand of dowry and as a matter of fact the evidence on record indicated that the respondent-wife had been forced by the appellant-husband leave her matrimonial home and therefore, the husband cannot take benefit of his own wrong(s). It was further found that the filing of the petition under Section 9 of the Act was a counter-blast to the maintenance petition under Section 125 Cr.P.C. and due to the said treatment meted out to her, she had already filed a divorce petition against the appellant-husband. It was accordingly found that the respondent-wife was able to substantiate her version and provide a cogent explanation and reason for withdrawing from the company of the appellant-husband.

11. In the case in hand, as would emerge from the impugned order, the respondent-wife has initiated the proceedings under Section 125 Cr.P.C. for grant of maintenance. Subsequently, the appellant-husband had filed the petition under Section 9 of the Act. In the maintenance proceedings, the trial Court has awarded a maintenance amount of Rs.2500/- per month to the respondent-wife. Though it is the case of the appellant-husband that he has been making payment of the interim maintenance, yet the said fact alone cannot be a ground to

call upon the respondent-wife to join his company, particularly, when she has filed the divorce petition against the appellant-husband.

12. Learned counsel for the appellant-husband has not been able to point out that the petition filed by the appellant-husband is not a counter blast to the proceedings under Section 125 Cr.P.C.

13. Be that as it may, the fact remains that a divorce petition is stated to be pending between the parties. In such circumstances, we do not find that the order passed by the learned Family Court dismissed the petition under Section 9 of the Act suffers from any illegality or perversity on the impugned orders passed by the learned family Court.

14. No other point has been urged.

15. In view of the above, findings no merit in the present appeal, the same is hereby dismissed.

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

[SUDHIR SINGH]
JUDGE

[HARSH BUNGER]
JUDGE

27.05.2024
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No