



114

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1635-2024 (O&M)
Date of Decision: 08.05.2024

KUSUM LATA @ PINKY ...Appellant

Versus

SURAJ BHAN ...Respondent

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

Present:- Ms. Prabhnoor Kaur, Advocate for
Mr. S.S. Grewal, Advocate, for the appellant.

SUDHIR SINGH, J.

The challenge in the present appeal is to the judgment and decree dated 19.01.2024 passed by learned Family Court, Sonipat, whereby the petition under Section 13 of Hindu Marriage Act, 1955 (hereinafter referred as 'the Act') filed by the respondent-husband on the grounds of cruelty and desertion, has been allowed.

2. The respondent-husband had filed the aforesaid petition, *inter-alia*, stating therein that his marriage with the appellant-wife was solemnized on 28.02.1999 as per Hindu rites and out of the said wedlock two children, namely, Yash Kumar and Khusbu @ Deepu were born. It was further asserted that right from the beginning of the marriage the appellant-wife had started misbehaving with the respondent-husband and his family members, besides neglecting her



household duties. It was further asserted that the appellant-wife had insisted on moving to Delhi from Haryana and that she had filed a complaint in the Women Police Station Pritampura, New Delhi when the aforesaid demand of hers was not acceded to by the respondent-husband. It was further the case of the respondent-husband that after compromise the aforesaid complaint, through the mediation by the Sarpanch, the appellant-wife returned home but had left again. It was further stated that the respondent-husband had filed a petition under Section 9 of the Act for Restitution of Conjugal Rights on 05.09.2005, but the same was dismissed in default. The respondent-husband further contended that afterwards, the appellant-wife resumed living with him but again started misbehaving and threatening to commit suicide. It was further pointed out that the earlier divorce petition filed by the respondent-husband on 21.08.2009, was dismissed on 27.02.2012. It was further stated that the appellant-wife got registered a criminal case under Section 498-A IPC against the respondent-husband and his family members in Police Station Alipur, Delhi, besides filing a petition under Section 125 Cr.P.C. It was further stated that the appellant-wife had never permitted the respondent-husband to establish physical relations with her and, thus, the marriage between the parties had become completely dead and there were no chances for reconciliation.

3. Upon notice, the respondent-wife entered appearance and filed her written statement, denying the allegations of cruelty. The factum of earlier divorce petition filed by the respondent-husband and its dismissal was admitted and so was the factum of registration of



FIR No.181, under Sections 498-A, 406 read with Section 34 of IPC against the respondent-husband and his family members. She had further admitted the factum of filing petition under Section 125 Cr.P.C., but it was stated that all the disputes were settled and she had withdrawn all the cases and that the FIR aforesaid was quashed by the Delhi High Court. It was further contended by the appellant-wife that despite the aforesaid settlement, she was kicked out of the matrimonial home and that the respondent-husband cannot be allowed to take benefit of his own wrongs.

4. On the basis of pleading of the parties filing issues were framed by learned Family Court:-

“1. Whether the petitioner is entitled to a decree of divorce on the grounds mentioned in the petition? OPP

2. Relief.

5. In evidence, the respondent-husband appeared as PW-1 and also examined PW-2 Suresh, besides leading documentary evidence Ex. P-1 to P-7. On the other hand no evidence was produced by the appellant-wife.

6. The learned Family Court after taking into consideration the rival submissions of the parties and the evidence on record, decreed the petition filed by the respondent-husband and dissolved the marriage between the parties by decree of divorce.

7. Learned counsel appearing for the appellant-wife vehemently submits that the allegations levelled by the respondent-husband in his petition before the learned Family Court, were nothing but minor wear and tear of a married life. It is further contended that



no cogent and convincing evidence was produced on record to substantiate the ground of cruelty and desertion. It is further contended that the appellant-wife has always been and is still ready and willing to reside with the respondent-husband and that it was the respondent-husband, who had deserted the appellant-wife and committed cruelty upon her. It is yet further contended that earlier the respondent-husband had filed a petition under Section 9 of the Act, which was dismissed in default and was never got restored by him and that he had also filed a divorce petition, which too was dismissed on 21.08.2009. Still further it is argued that upon settlement of the disputes between the parties, the appellant-wife had withdrawn all the cases and the FIR got registered by her was also quashed by the Delhi High Court on that basis. It is the contention of the learned counsel for the appellant that having obtained the desired relief of getting all the cases settled in his favour, the respondent-husband chose a novel method to file the petition for divorce by taking advantage of his own wrongs, but while passing the impugned judgment and decree, the learned Family Court has completely brushed aside the said factual aspects of the matter.

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

9. The question that requires consideration by this Court is whether the appellant-wife was able to counter or disprove the pleadings and the evidence led by the respondent-husband before the Family Court, while seeking the decree of divorce.



10. At the outset, it may be noticed that though the appellant-wife had denied the allegations of cruelty and desertion in her written statement, yet she did not lead any evidence in support thereof and, thus, the pleadings of the written statement remained unsubstantiated. Thus, the learned Family Court drew an adverse inference against the appellant-wife. Under the head of desertion, on the basis of uncontroverted evidence of the respondent-husband (testimony of PW-1 and PW-2), it was found by the learned Family Court that despite the settlement between the parties on 27.06.2015, the appellant-wife again left her matrimonial home on 13.07.2015 and since then she did not return. It was further found that in the span of four years (i.e from the date of her leaving the matrimonial house till the date of filing the divorce petition by the respondent-husband), no effort, whatsoever, was made by the appellant-wife to join the company of the respondent-husband. Thus, it was found that having deserted the respondent-husband for more than two years and showing no intention to come back, the appellant-wife had deserted the respondent-husband.

11. Under the head of cruelty, again the testimony of PW-1 (respondent-husband) and PW-2 (Suresh) was made the basis to return a finding that the appellant-wife had treated the respondent-husband with cruelty. It was found that the testimony of the aforesaid two witnesses remained unrebutted. It was further found that Ex. P-6 was an undertaking given by the appellant-wife on 27.06.2015 at the time of an amicable settlement between the parties. In that undertaking, it was undertaken by her that in case she treated husband with physical



or mental cruelty, in that eventuality, the respondent-husband will have a right to seek divorce. It was accordingly, found that the marriage between the parties had failed and keeping such marriage alive, would result in cruelty to both.

12. The learned Family Court has granted the decree of divorce on the basis of un-rebutted and uncontroverted pleadings and evidence of the respondent-husband. A perusal of the impugned judgment shows that there was no evidence on record on behalf of the appellant-wife and as such the learned Family Court, while taking into consideration the evidence led by the respondent-husband, granted the decree of divorce. In this regard the learned Family Court has placed reliance upon various judicial pronouncements of the Hon'ble Apex Court; this Court and that of the other High Courts, wherein it has been held that if a party does not produce any evidence in support of its case, an adverse influence can be drawn against such party.

13. Learned counsel appearing for the appellant-wife could not show any law to the contrary and, therefore, we do not find any perversity or illegality in the impugned judgment and decree passed by learned Family Court.

14. In view of the above, findings no merits in the appeal, the same is hereby dismissed.

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

16. At this stage, learned counsel for the appellant-wife submits that while granting the decree of divorce, the learned Family Court did not grant any permanent alimony to the appellant-wife.

17. We make it clear that right of the appellant-wife to raise the plea for permanent alimony is reserved in her favour. She shall be at liberty to move an appropriate application, in accordance with law, before the learned Family Court, seeking grant of permanent alimony.

18. Before parting with the order, we would like to put our words of appreciation for the efforts put in by Ms. Prabhnoor Kaur, learned counsel for the appellant, while efficiently assisting the Court, arguing the appeal and also being honest about the facts of the case.

[SUDHIR SINGH]
JUDGE

[HARSH BUNGER]
JUDGE

08.05.2024
Himanshu

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