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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-2060-2024 (O&M)
Date of Decision: 13.05.2024

VIKRAM @ BIKRAM

...Appellant

Versus

PRIYANKA

...Respondent

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

Present:- Ms. Inderpal Kaur, Advocate for
Mr. Rajinder Singh Malik, Advocate for appellant.

SUDHIR SINGH, J.

The challenge in the present appeal is to the judgment and decree dated 05.03.2024 passed by learned Family Court, Sonipat (Camp Court at Gohana), whereby the petition under Section 13 of Hindu Marriage Act, 1955 (hereinafter referred as 'the Act') filed by the appellant-husband, was dismissed.

2. The appellant-husband had filed the aforesaid petition, *inter alia*, averring therein that the marriage between the parties were solemnized on 15.11.2008 according to Hindu rites and that two female children namely Vanshika (aged 8 years) and Anshika (aged 5 years) were born out of the said wedlock. It was further asserted that the behavior of the respondent-wife had been very cruel right from the very beginning of the marriage and she always used to abuse and



humiliate the appellant-husband and threaten him and his family members to implicate them in false criminal cases. It was further alleged that the appellant-husband was employed in the Border Security Force and whenever he would come on leave, the respondent-wife used to pay no attention or respect to him. It was further alleged that the respondent-wife was having illicit relations with his younger brother and she would always avoid the appellant-husband uttering that he was no match for her. It was further alleged that on 17.12.2013, the respondent-wife had left the company of the appellant-husband and since then she had been living separately and while leaving the matrimonial home, she had left behind the minor daughters. It was, thus, alleged that the marriage had become a complete deadlock and there was no chances of reconciliation.

3. Upon notice, the respondent-wife entered appearance and filed her written statement, terming the allegations contained in the petition as false and concocted. It was asserted that the appellant-husband and his family members had never respected the respondent-wife and they would misbehave with her. It was further stated that while coming on leave from Boarder Security Force, the appellant-husband used to spend his entire leave period at Raipur, Chhatisgarh. The alleged illicit relations with the brother of the appellant-husband were denied being baseless and rather, it was stated that the appellant-husband was having illicit relations with one Sandhya. It was further asserted that the respondent-wife was living in the matrimonial home with her mother-in-law and daughters and there was no question of her leaving the same.



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

1. Whether the petitioner is entitled for a decree of divorce on the grounds of cruelty and desertion, as alleged? OPP

2. Relief.

5. In evidence, the appellant-husband examined himself as PW-1 but did not lead any documentary evidence. On the other hand the respondent-wife appeared as RW-1 and examined her mother-in-law (Smt. Bimla) as RW-2. No documentary evidence was, however, led by her.

6. The learned Family Court, after taking into consideration the rival submissions of the parties and the evidence on record, dismissed the divorce petition holding that the appellant-husband has failed to prove cruelty on the part of the respondent-wife.

7. Learned counsel for the appellant has vehemently contended that while passing the impugned judgment and decree, the learned Family Court fell in error of law and fact in ignoring the material evidence on record. It is further contended that the evidence led by the appellant-husband has clearly proved on record that the respondent-wife had treated him with cruelty and had also deserted him. Still further, it is argued that once it was asserted that the respondent-wife was having illicit relations with the younger brother of the appellant and there being no counter to the said assertion in the form of any evidence, except the bald denial on behalf of the



respondent-wife, the learned Family Court was not justified in dismissing the petition filed by the appellant-husband.

8. Learned counsel for the appellant has further argued that in her written statement the respondent-wife had levelled totally false and frivolous allegations of the appellant's having been illicit relations with one Sandhya and a perusal of the impugned judgment would clearly shows that the said self serving statement was not proved by the respondent-wife and, thus, in this manner she has treated the appellant-husband with cruelty.

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

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

11. The appellant-husband has sought a decree for divorce on the ground of cruelty and desertion. Apart from the allegations of misbehavior and frequently leaving the matrimonial home, the appellant-husband had levelled the allegations of the respondent-wife having illicit relations with his younger brother. A perusal of the impugned judgment would show that in his deposition before the learned Family Court, the appellant-husband was not able to give any specific date or instance regarding the illicit relations of his brother with the respondent-wife. It was found by the learned Family Court that the allegations levelled by the appellant-husband were vague and general in nature. The deposition of the appellant-husband was found



to be only a self serving statement. It was held by the learned Family Court as under:-

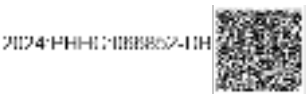
“30. From the facts of the case in hand as well as evidence brought on record, it can be thus safely concluded that petitioner has not been able to establish, cruelty on part of the respondent-wife. The allegations as contained in the petition are vague and general allegation that she had treated him with cruelty. There is one specific averment that she was maintaining unacceptable relationship with younger brother of petitioner. However, to substantiate this fact, petitioner has appeared into witness box as PW-1. Except his self-serving statement, there is no evidence on record of the case to establish this fact. Though such a fact is very difficult to be proved, yet in the given circumstances of the case in hand wherein mother of the petitioner has stepped into witness box as RW-2 to depose that it is the petitioner, who has treated his wife Priyanka with cruelty, version of petitioner is not found to be probable. Testimony of his mother (RW-2) is very important in this backdrop. She is living with respondent Priyanka, in joint family with her other family members. She has categorically deposed that no such incidents of cruelty ever occurred. There is no dispute amongst her children. She has categorically deposed that in-fact, respondent never treated the petitioner with cruelty. Testimony of RW-2, who is the mother of petitioner, is sufficient and clinching evidence to establish that the version of respondent is more probable. She has come with a plea that petitioner is maintaining extra marital relations with Sandhya



and to put veil over his illicit relations with Sandhya, now he is blaming respondent.”

12. On the other hand, RW2-Smt. Bimla, who is none else but mother of the appellant-husband, in her testimony deposed that her son i.e. appellant was not maintaining his wife and children and that she had an apprehension that he was having a second wife. It was further deposed by her that the respondent-wife did not treat the appellant-husband with any cruelty and rather it was the appellant-husband, who had done so towards respondent-wife and the children. The appellant-husband in his testimony had also admitted the fact that he used to spend the entire vacations at Chhatisgarh itself. It was, thus, found by learned Family Court that the appellant-husband, cannot be allowed to take benefit of his own wrongs. Under the head of desertion, it was found by learned Family Court that on the basis of the testimony of the respondent-wife and her mother-in-law (Smt. Bimla) i.e. RW-1 and RW-2 respectively, it was proved on record that the respondent-wife was still residing at her matrimonial home with her daughters and mother-in-law in a joint family and rather, it was the appellant-husband, who had stopped visiting his village Khandrai and had deserted the respondent-wife and the children.

13. In the cases of cruelty and desertion, a spouse who is alleging such acts on the part of another spouse must prove the same by way of preponderance of evidence. However, in the instant case the appellant-husband has not been able to prove either of the two. Rather on both the counts, it was found by learned Family Court that



it is the appellant-husband, who has treated the respondent-wife with cruelty and deserted her and their minor children.

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

15. No other point has been urged.

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

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

[SUDHIR SINGH]
JUDGE

[HARSH BUNGER]
JUDGE

13.05.2024
Himanshu

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