



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

FAO-2098-2024

Date of decision: 03.05.2024

Surendra Pal Singh

....Appellant

Versus

Rajveer Kaur

....Respondent

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

Present: Mr. Jasraj Singh, Advocate for the appellant

SUDHIR SINGH, J.

Present appeal is directed against the judgment dated 01.02.2024 passed by the Family Court, Hoshiarpur (Camp at Mukerian), whereby the petition filed by the appellant under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred as 'the Act') for restitution of conjugal rights, has been dismissed.

2. The brief facts of the case are that the appellant-husband had filed the aforesaid petition, inter alia, stating therein that the marriage of the appellant with the respondent (Rajveer Kaur) was solemnized on 30.11.2009 as per the Hindu rites and ceremonies; that the parties cohabited together as husband & wife and out of the said wedlock, one male child, namely, Ishmeet Singh, was born on 07.05.2011; that the appellant-husband, was in Merchant Navy and would come home after two-three months and used to stay for one month only; that one of the sisters of the respondent-wife was married abroad (USA) in the year 2016 and after returning from there in



2018, she had influenced the respondent-wife also to permanently settle in USA, which led to a marital discord between the parties and that the respondent-wife had threatened to leave the company of the appellant and settle at USA. It was further averred that the relations between the parties got soar and the respondent-wife had left her matrimonial home without any notice and started living at her parental house and that the said fact had completely disrupted the family life of the appellant-husband. It was further asserted that efforts for reconciliation were made, but to no avail. The appellant-husband had thus sought a decree of restitution of conjugal rights.

3. Upon notice, the respondent-wife appeared through her attorney and had filed her written statement. The factum of marriage and birth of a male child was admitted. However, it was alleged by the respondent-wife that the behavior of the appellant-husband towards her had been cruel and the appellant-husband and his family members had demanded more dowry in the form of cash and jewellery. It was further alleged by the respondent-wife that the appellant-husband had demanded a sum of Rs. 10 lakh from her and under the influence of liquor, he used to give her beatings. It was further pleaded by the respondent-wife that she wanted to live with the appellant-husband.

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

“1. Whether the respondent has left the society of the petitioner with reasonable and probable cause?
OPR



2. Whether the petitioner (herein the appellant) was entitled to a decree of restitution of conjugal rights, as prayed for? OPP

3. Relief.”

5. In evidence, the petitioner examined one Amarjeet Singh as PW-1, Balwinder Singh as PW-2 and he himself appeared as PW-3, besides tendering certain documents including the copy of sale deed dated 23.07.2018 (Ex. A-1). The respondent-wife in her evidence, examined her attorney Mangat Singh as RW-1 besides tendering into evidence Ex-RX/A, a copy of the complaint pending in the Court of Judicial Magistrate 1st Class, Mukerian.

6. The learned Family Court, dismissed the petition filed by the husband by recording the following reasons:-

i) The respondent filed a complaint on 28.06.2019 while living in the marital home, leading to a compromise. On 01.07.2019, the respondent retrieved her belongings with the help of the police and after that the respondent left her marital home, indicating significant reasons prompting her decision for separate living.

ii) The evidence of the appellant-husband does not inspire any confidence and it was not proved on record that the appellant-husband was ready for conjugal rights. It is proved on record that the appellant-husband had maltreated the respondent-wife compelling her to leave the matrimonial home.

iii) Though the respondent had taken a stand that she was ready to live with the appellant-husband, yet she cannot be compelled to do so, owing to the conduct of the appellant-husband.



iv) The contention of the appellant-husband that the respondent wanted to settle at USA did not find favour with the Family Court as no evidence was brought on record to this effect. Still further, the appellant-husband did not bring on record any evidence to the effect that he had given sufficient maintenance to the respondent-wife after their separation in the year 2019.

v) The sale deed (Ex. A-1) produced by the appellant-husband pertained to the year 2018 and dispute between the parties arose in 2019 onwards and therefore, the said sale deed has no bearing on the case in hand.

vi) The respondent-wife through RW-1 has categorically deposed that she had been subjected to maltreatment and harassment and therefore, she was compelled to file a complaint under Sections 498, 406, 420 read with Section 34 IPC. Though the said complaint was filed after filing of the petition under Section 9 of the Act, yet the fact remains that the private complaint was filed only after the police did not take any action on the complaint filed by the respondent-wife.

7. The question that arises for consideration before this Court is whether the impugned judgment of the trial court, requires any interference by this Court.

8. Learned counsel appearing on behalf of the appellant-husband submits that the respondent's departure from the petitioner lacked justification and once the respondent-wife herself had taken a stand that she was ready to join the company of the appellant-husband, the learned Family Court was not justified in dismissing the petition filed by the appellant-



husband. It is further contended that the respondent-wife did not lead any evidence in support of her stand of leaving the matrimonial home and the learned Family Court has solely relied upon the testimony of RW-1 Mangat Singh, attorney of the respondent-wife, in this regard. The emphasis is on the legal principles that the burden of proof lay on the respondent-wife to prove that she had left the matrimonial home under the compelling circumstances and having failed to do so, the learned Family Court fell in error of law and fact, to deny the appellant-husband, a decree of restitution of conjugal rights.

9. After carefully considering the arguments advanced by the counsel for the appellant, we find that the present appeal is devoid of any merit for the reasons recorded hereinafter.

10. In the cases pertaining to the restitution of conjugal rights, the Court is to see whether grant of such decree would facilitate re-union of the parties and it would lead to harmonious relationship between them. No doubt, a party seeking such relief has to prove before the Court that the other party has left his/her company without any justifiable reason, but at the same time, a duty is cast upon the Court to see the actual reasons behind the separation of the parties. There cannot be any straight-jacket formula to grant the decree for restitution of conjugal rights without getting into the circumstances, which has led a marital discord between the parties.

11. In the instant case, it has been proved on record that on account of the alleged maltreatment and harassment caused to the respondent-wife, she had to leave her marital house and



had to file a complaint for the matrimonial offences. Such course of filing a private complaint was adopted by her, as the police did not take any action on the complaint filed by her. It was further found by learned Family Court that the appellant-husband had failed to prove that the respondent-wife had left his company in order to settle at USA. Rather, it was observed by the learned Family Court that the appellant-husband did not lead any evidence to prove that he had given sufficient maintenance to the respondent-wife.

12. It may further be noticed that the appellant-husband had tried to establish that the respondent-wife had a plot in her name. However, the sale deed as regards the said plot pertained to the year 2018 and the dispute between the parties arose in the year 2019 onwards and the said sale deed was found to have no bearing upon the case in hand.

13. We find that the findings recorded by the trial Court in denying the decree for conjugal rights, do not call for any interference. As noticed above, the Court while granting such a decree, has to keep in mind all the attending and cumulative circumstances. If the respondent-wife had to initiate the proceedings for the matrimonial offences, one can certainly come to the conclusion that the relations between the parties were not cordial. The argument of learned counsel for the appellant-husband that once the respondent-wife had expressed her willingness to join his company, there was no occasion to deny the decree prayed for, is devoid of any merit. The trial Court has rightly found that grant of decree of conjugal rights will provide a

further tool to the husband to cause harassment to the respondent-wife. Still further, in the instant case, it cannot be said that the respondent-wife had left the company of the appellant-husband voluntarily. As notice above, she had been compelled to leave the matrimonial house. The appellant-husband has failed to prove on record that the respondent-wife had left the matrimonial home without any justified cause. Therefore, the view taken by the learned Family Court on the basis of the cumulative facts and circumstances of the case does not call for any interference by this Court.

14. No other point has been urged.
15. In view of the above, finding no merit in the present appeal, the same is hereby dismissed.
16. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh)
Judge

(Harsh Bunger)
Judge

03.05.2024
ds/Himanshu

- Whether speaking/reasoned: Yes/No
- Whether reportable: Yes/No