



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-2567-2024 (O&M)
Date of deision: 24.05.2024

Smt. TULSA RANI ...Appellant

Versus

SURESH KUMAR ...Respondent

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

Present:- Mr. Nafees Ahmed Khan, Advocate for appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated dated 27.03.2024 passed by learned Family Court, Nuh (Camp Court at Ferozepur Jhirka), whereby the petition under Section 13 of Hindu Marriage Act (hereinafter referred as ‘the Act’) filed by the respondent-husband, has been allowed and the marriage between the parties has been dissolved by decree of divorce on the ground of cruelty.

2. The respondent-husband had filed the aforesaid petition, *inter alia*, averring therein that his marriage with the appellant-wife was solemnized on 10.02.2008, and out of the said wedlock a daughter, namely, Divya was born on 20.03.2012. It was further stated that the respondent-husband got the appellant-wife admitted at Gori



Devi College, Anwar affiliated to Makhan Lal Chaturvedi University, Bhopal for BCA degree and had spent about Rs.1,00,000/- on her education. It was further averred that on 25.07.2011, the appellant-wife went to her parental house and despite the efforts made by the respondent-husband, she did not return to her matrimonial home. It is further the case of the respondent-husband that he had filed a petition under Section 9 of the Act and the same was allowed by learned Civil Judge (Sr. Divn.), Kurukshetra on 08.10.2015 and thereafter, an execution petition was filed on 10.11.2015, but the appellant-wife refused to honour the decree. Accordingly, it was stated that there had been no resumption of cohabitation between the parties since passing of the decree under Section 9 of the Act and the respondent-wife had filed a complaint under Section 12 of the Protection of the Women from the Domestic Violence Act, 2005, against the respondent-husband. It was further stated that the respondent-wife had failed to perform her matrimonial obligations.

3. Upon notice, the appellant-wife appeared but did not file her written statement and ultimately, her defence was struck off by the learned Family Court, vide order dated 25.05.2022.

4. In evidence, the respondent-husband appeared as PW-1 and also examined Om Parkash as PW-2, besides leading documentary evidence in the form of Ex. P-1 i.e. certified copy of the judgment dated 08.10.2015 passed by Civil Judge (Sr. Divn.),



Kurukshetra. On the other hand, no evidence was led by the appellant-wife.

6. The learned Family Court after taking into consideration the rival contentions and the evidence on record, allowed the petition filed by the respondent-husband and dissolved the marriage between the parties by a decree of divorce, as noticed above.

7. Learned counsel appearing for the appellant-wife has vehemently contended that though the appellant-wife could not file her written statement, yet the mere fact that the appellant-wife did not join the company of the respondent-husband pursuant to the decree for Restitution of Conjugal Rights, is not a ground to dissolve the marriage between the parties. While referring to the averments made by the respondent-husband in his petition before the learned Family Court, it is contended that there was no grave act pleaded or proved by the respondent-husband, which could have been made the basis for granting the decree of divorce.

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

9. The issue that arises for consideration before this Court is whether the impugned judgment and decree passed by learned Family Court, requires any interference.

10. Admittedly, no written statement was filed by the appellant-wife before the learned Family Court and her defence was



struck off vide order dated 25.05.2022 and as a sequel to that, no evidence was led by the appellant-wife. The learned Family Court, referred to the decree dated 08.10.2015, passed by learned Civil Judge (Sr. Divn.), Kurukshetra, under Section 9 of the Act and the execution petition filed for complying with the said decree. On the basis of said document, it was found that despite there being a decree under Section 9 of the Act, against the appellant-wife, she did not join the company of the respondent-husband. The divorce petition filed in the year 2017 was transferred to Sessions Division, Nuh in the year 2019. Thus, it was found that the respondent-husband had a right to seek divorce after passing of one year from the decree dated 08.10.2015 passed under Section 9 of the Act. It was also found that as no reply was filed by the appellant-wife before the learned Family Court, she seemed to be not interested to live with the respondent-husband.

11. It is not disputed by the learned counsel for the appellant-wife that there was no defence or evidence put up/led by her before the learned Family Court. In the absence of such defence, the learned Family Court has based its finding on the decree dated 08.10.2015 passed by learned Civil Judge (Sr. Divn.), Kurukshetra. It was specifically pleaded by the respondent-husband that in execution of the said decree, the appellant-wife refused to join his company. In the absence of any evidence led by the appellant-wife, we find that the finding recorded by the learned Family Court does not suffer from any illegality or perversity.

12. No other point has been urged.
13. In view of the above, we do not find any merits in the present appeal and the same is hereby, dismissed.
14. Pending all application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[HARSH BUNGER]
JUDGE

24.05.2024
Himanshu

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