

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-161-2005 (O & M)
Reserved on: 06.08.2024
Pronounced on: 14.08.2024

Yash Pal

.....Appellant

Versus

Kaushal Rani

....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present by: Mr. Akash Singla, Advocate for the appellant.

Respondent in person.

SURESHWAR THAKUR, J.

1. One Yash Pal/appellant-husband herein, filed a Hindu Marriage petition bearing HMA No.82 on 07.10.2003, before the learned Family Court, Gurgaon, wherebys he espoused for the rendition of a decree, thus dissolving his marital ties with his wife, one Kaushal Rani. The said petition was filed under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the HMA').

2. Through a decision made, on 11.04.2005, on the petition (supra), the relief (supra) became declined. The relevant paragraphs of the judgment become extracted hereinafter.

“25. The following conclusions can be culled out from the above discussion:

i) The two independent witnesses (PW1 Devi Dayal and PW2 Pran Nath) produced by the petitioner had categorically averred that the root cause to the

differences between the parties was the insistence on the part of the respondent to get the (parental) house of the petitioner transferred in her own name. That averment made by them is beyond the scope of pleadings. The evidence adduced by the petitioner on the following facts (as already noticed otherwise in para no.14 of this Judgment) is beyond the scope of pleadings:-

a) That the respondent brought ashes from the cremation ground and placed the same at the doorsteps of (parental) house of the petitioner.

b) That the respondent held out a threat that she had performed magic on account of which petitioner's family would be destroyed.

c) That the respondent went over to petitioner's mother's house and pelted stones at the house.

ii) The petitioner has not been able to prove that the respondent had treated him with mental cruelty because the evidence adduced by him (in the course of statements of PW1 Devi Dayal and PW2 Pran Nath) on the relevant points is contradictory inter se. That aspect stands noticed in para no.18 of this Judgment.

26. In the light of the above discussion, it is apparent that the petitioner has not been able to prove that the respondent had treated him with cruelty. The issue stands disposed of against the petitioner and in favour of the respondent.

Issue No.2

27. In view of the finding recorded under issue no.1 (paras no.22 to 25) this issue shall stand disposed of against the respondent and in favour of the petitioner.

Issue No.3

28. In view of the finding recorded under issue no.1,

this issue shall stand disposed of against the respondent and in favour of the petitioner.

Relief

29. For the reasons recorded above, there is no merit in the petition. It shall stand dismissed. xxx”

3. The passing of the verdict (supra), thus led the appellant-husband to make an appeal thereagainst, through his instituting the instant appeal before this Court.

FACTS OF THE CASE

4. The appellant was married to respondent as per Hindu rites and ceremonies on 09.05.1997. Out of their wed-lock one son was born on 11.01.1998.

5. The Hindu Marriage Petition claiming therein the rendition of a decree of dissolution of marital ties became instituted with the hereinafter averments.

6. That the respondent used filthy language against the appellant and his mother. Respondent asked the appellant to leave his parental home and to start living with the respondent, in some independent accommodation, and, for that the respondent repeatedly misbehaved with the appellant and his family members. After the birth of a son, the respondent never allowed the appellant to enter house nor allowed him to meet their child. In her plaint Ex.P-8 (suit for maintenance) she has levelled false allegations against him questioning his character by saying that the appellant is a gambler, drunkard and is a womanizer wherebys the levelling of such serious allegations, and that too without any basis, tantamounts to perpetration of cruelty, upon the appellant. The respondent has filed multiple false complaints against the

appellant and his family members, thus lowering their image in society. The respondent also filed a false complaint on 09.09.2003 against the appellant and his family members with the police station, Women Cell, Sector 15, Gurgaon.

7. The said Hindu Marriage Petition was contested by the respondent through hers instituting her reply wherein she denied the averments (supra), as became embodied in the petition.

8. On the contentious pleadings of the parties at lis, the hereinafter issues were framed.

“1. Whether the petitioner is entitled to a decree of divorce on the plea of cruelty and desertion as alleged in the petition? OPP

2. Whether the petition is barred by Order 23 Rule 4 CPC as alleged in preliminary objection No.1? OPR.

3. Whether the petition is not maintainable for the reasons indicated in preliminary objection No.3? OPR”

4. Relief.

9. Though in support of the said averments, the appellant depended upon the testifications of PW-1 and PW-2, thus to prove the factum that post the month of February 1998 rather the respondent departing from her matrimonial home. Moreover, though it appears from a reading of testification of PW-1, that the marital discord which erupted amongst the contesting litigants, became engendered from the reluctance of the present appellant, to accede to the respondent's request, to transfer the title of his house in her favour. Moreover, though the echoing (supra), as occurs in the examination-in-chief of PW-1 became attempted to be ripped apart, through suggestions being made to

the said witness thus during the course of his cross-examination. However, the said suggestions became denied.

10. Even PW-2 in his examination-in-chief testified that after the birth of a male child the respondent proceeded to her parental home and did not thereafter return to her matrimonial home, thus to resume co-habitation with the appellant. Strikingly there is a suggestion to PW-2 during his cross-examination that the marital dispute erupted between the parties barely after 15-20 days of both solemnizing marriage.

11. Conspicuously the parties at contest have failed to resume cohabitation since the year 1997.

Finding of this Court

12. The learned trial Judge concerned, appears to discard the above striking suggestion, as became meted to PW-2 during the latters cross-examination. Though therebys it was *ex facie* clear, that the eruption of marital discord amongst both, thus commenced barely after 15-20 days, elapsing since both solemnizing the marriage, therefores when both since the year 1997 uptill now have failed to resume cohabitation. Moreover, when the respondent in the instant appeal also failed to file a petition under Section 9 of the Hindu Marriage Act, seeking therebys the rendition of a decree for restitution of conjugal rights. In sequel, the said omission bolsters an inference, qua irrespective of any lapse on the part of the present appellant, to retrieve the respondent to her matrimonial home, that rather an animus deserendi thus etching in the mind of the respondent. Resultantly therebys the petition for segregating the marital ties amongst the parties, but was required to be allowed, rather than the same being dismissed.

13. Furthermore, complaints became addressed by the respondent to the Superintendent (Women Cell), Gurgaon, on 09.09.2003, alleging therein that despite the respondent complying with the present appellant's demands for dowry, yet on requests becoming made upon him, to return the respondents' *istri dhan*, yet the present appellant failing to accede to the respondent's request. Resultantly, thereby there was abysmal failure of trust, between both, whereas trust amongst the marital partners is the pillar of matrimonial harmony.

14. Subsequently, since no action was drawn on the said complaint, thereupon the present respondent made correspondence(s) with the Senior Superintendent of Police, Gurgaon, on 24.09.2003, relating to want of action by the Superintendent, Women Cell, Gurgaon. Prior thereto complaints dated 31.10.1998 and 23.06.1999 became addressed to the Police Agency(ies) concerned, with allegations therein about misbehaviour of the family members of the present appellant. The above addressed complaints do palpably exemplify the innate mens rea of the present respondent to somehow the other wreak vendetta and vengeance against the present appellant. The effect thereof, is that, immense havoc becomes caused to the matrimonial harmony of the married couple, whereby there is but a concomitant trauma caused to the present appellant.

15. In sequel, there was but as a natural corollary thereto, rather wreaking of cruelty upon the present appellant, at the instance of the respondent. In addition, thereby there is complete impossibility of both resuming cohabitation and any effort to ensure re-cohabitation of the

marital ties rather would but be a futile effort, as matrimonial harmony is ensured, only through a healthy salubrious ambience becoming ensured in the matrimonial home. Since the matrimonial home is bereft of a hospitable climate, thus for inmating therein both the contesting litigants, therebys there is no alternative, than to sever their marital ties, through a decree in the said regard becoming passed.

16. Moreover, during the pendency of the main appeal before this Court, certain documents have also been filed by the present respondent. The said documents have been appended with miscellaneous application bearing No.CM-6243-CII-2024, wherebys the applicant-respondent, seeks the leave of the Court, to adduce the said documents, into evidence, thus on the ground that the said documents are just and essential for deciding the lis.

17. Imperatively, when the documents (supra), became depended by the present respondent and with allegations therein against the present appellant, and, his family members. Therefore, when the documents (supra) are relied upon by the respondent, besides when therebys the contents thereof are admitted, especially when the appellant also does not deny the contents of the said documents. Resultantly, the said documents are declared to be just and essential for deciding the issue relating to whether therebys, the respondent has taken to suo motu prove the issue relating to hers perpetrating cruelty and desertion upon the appellant. Preeminently also when an issue in the said regard has been struck.

18. Paramountly when the documents appertain to a period prior to the makings of a dismissal verdict on the Hindu Marriage

Petition. Therefore, when some of the documents may *prima facie*, result in a conclusion that they as such do support the grounds of desertion and cruelty, as taken by the present appellant in the Hindu Marriage Petition. Resultantly, with the manifestations, occurring in the said documents, thus relied upon by the respondent, when do work against the respondent Furthermore, when with utmost candor there are speakings therein, qua therebys rather than, the appellant discharging the burden of proving the issue relating to the respondent deserting him or treating him with cruelty, thus the respondent discharging the said burden. Therefore, the dependence made upon the said documents by the respondent, but *per se* establishes the grounds of desertion and cruelty, as taken by the appellant.

19. In aftermath, given the omission (supra), of the present respondent, to file a petition for restitution of conjugal rights whereby a decree in the said regard may hence become rendered and upon the same being disobeyed, thereupon this Court may have concluded that the present respondent, has made consistent endeavours to resume her matrimonial ties with the present appellant. Contrarily, when neither the above petition for restitution of conjugal rights was filed by the present nor any decree in the said regard became passed. Therefore, there appears to be complete irretrievable breakdown of the marital ties between the parties, whereby there is complete impermissibility of both reuniting at the matrimonial home. As such, for lack of conjugal ambience in the matrimonial home, it would be both unbefitting and insagacious, for this Court to, after a prolonged duration since their living apart, since the year 1997, to affirm the declining decree as

became passed by the Family Court concerned.

CONCLUSION

20. In view of above referred to facts of the present case in the ultimate analysis, in our view, wisdom lies in accepting the practical realities of life and making a decision that ultimately serves the best interests of both the parties and their son. Accordingly, we set aside the impugned judgment and decree dated 11.04.2005 passed by Learned Family Court concerned, and dissolve the marital ties between the parties.

PARENTAL OBLIGATION QUA WELFARE OF CHILD

21. A perusal of the record further shows that parties have a son born from this wedlock, on 11.01.1998, who is currently approximately 26 years old. Both the parents are duty bound to co-equally share thus expenses towards his upkeep and grooming. Since the son is throughout residing with the respondent/wife and is brought up by her only. Therefore, the appellant/husband is directed to ensure qua his meteing all the expenses towards his upkeep and grooming, to a status alike the present appellant, as therebys love and affection shall be ensured to become groomed amongst the father and son. Moreover, neither party shall impose any condition or exert pressure qua his visiting one or the other party. The appellant/husband is expected not to dis-inherit his son. Furthermore, he is expected to bear all the expenses towards his marriage. After the marriage of the son, both the parents shall be duty bound to look to the needs of their only son and to shower love and affection upon him.

22. Since the respondent-wife is already a recipient of

maintenance amount as become adjudged through a decree becoming passed in a suit filed by her under the Hindu Adoption and Maintenance Act, therebys when the respondent is not adequately financially resourced, resultantlly for ensuring her rehabilitation, this Court deems it fit, and, appropriate to award her a sum of Rs.15 lacs as permanent alimony.

23. Disposed of accordingly.
24. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)

JUDGE

(SUDEEPTI SHARMA)

JUDGE

14th.08.2024

[Ithlesh](#)

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