

2024.PHHG:115334-DB



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

FAO-3506-2024 (O&M)

Date of decision: 03.09.2024

TIKKA SINGH

...Appellant

Versus

JASBIR KAUR

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Ms. Renu Dhull, Advocate for appellant.

SUDHIR SINGH, J.

The present appeal is directed against the judgment and decree dated 01.05.2024 passed by learned Principal District Judge, Family Court, Kaithal (hereinafter referred as to Family Court), whereby the petition under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1956 (hereinafter referred as 'the Act') filed by the appellant-husband, has been dismissed.

2. The aforesaid petition had been filed by the appellant-husband, inter alia, averring therein that his marriage with respondent-wife was solemnized on 17.04.2015, according to Sikh Rites at Yamunanagar and the said marriage was registered on 17.04.2015. Out of the said wedlock a female child was born on 26.11.2018, who

was living under the care and custody of his parents at Patiala. It was further asserted that during the stay of the parties at Yamunanagar, the respondent-wife had started maltreating the appellant-husband and his family members and that she did not take care of the baby child and used to beat her badly. It was further pointed out that the reputation of the appellant-husband, who was a religious teacher (Granthi), had been seriously affected due to the said behavior of the respondent-wife. It was further contended that the parties had been living separately since 01.01.2019. The said acts on the part of the respondent-wife had been turned to be cruelty by the appellant-husband and, accordingly, a divorce was sought.

3. Upon notice, the respondent-wife did not appear and she was proceeded against *ex-parte* vide order dated 06.01.2023.

4. In *ex-parte* evidence, the appellant-husband had examined his father as PW-1. He himself had appeared as PW-2 besides examining PW-3 Khush Pal Singh and PW-4 Lady Constable Nanno. The appellant-husband had led documentary evidence in the form of Ex.P1 to P-4 and Mark-A to Mark-G.

5. On the basis of the *ex-parte* evidence led by the appellant-husband and after taking into consideration the contentions raised on his behalf, the learned Family Court has dismissed the petition filed by the appellant-husband, as noticed above.

6. Learned counsel appearing for the appellant-husband has vehemently argued that by way of evidence, the appellant-husband has proved on record the cruelty on the part of the respondent-wife.

More so, as the respondent-wife was proceeded *ex-parte* and she did not lead any evidence, the evidence led by the appellant-husband remained un rebutted and that under such circumstances, the approach of the learned Family Court in dismissing the petition filed by the appellant is legally unsustainable.

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

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

9. Indisputably, the respondent-wife was proceeded as *ex-parte* and there was no representation on her behalf nor any evidence was on record for and on her behalf. It was found by learned Family Court that in his examination-in-chief, the appellant-husband had tendered affidavit Ex.PW2/A wherein in para No.8, he had levelled the allegations of adultery against the respondent-wife. It was found that the said assertions were beyond the pleadings and that there was no documentary or acceptable evidence on record to sustain the allegation of adultery. It was further found that though the respondent-wife was proceeded as *ex-parte*, yet the appellant cannot take advantage of the weakness of the case of the respondent-wife and he is to prove the ground of cruelty against the respondent-wife as stipulated under Section 13(1) of the Act.

10. In **K. Srinivas Rao v. D.A. Deepa**, 2013(2) RCR (Civil) 232; Hon'ble Apex Court observed as under:-

“14. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse...”

In **Ramchander v. Ananta**, (2015) 11 SCC 539, it has been held that cruelty has not been defined in the Act and the same is to be taken as the behavior by one spouse towards the other. The cruelty can be physical or mental, but such cruelty must be proved. It was held as under:-

“ 10. The expression “cruelty” has not been defined in the Hindu Marriage Act. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behavior by one spouse towards the other, which causes a reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Cruelty can be physical or mental. In the present case there

is no allegation of physical cruelty alleged by the plaintiff. What is alleged is mental cruelty and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. It is settled law that the instances of cruelty are not to be taken in isolation but to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the plaintiff has been subjected to mental cruelty due to conduct of the other spouse. In the decision in Samar Ghosh case (Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511) this Court set out illustrative cases where inference of “mental cruelty” can be drawn and they are only illustrative and not exhaustive”.

11. If the facts and circumstances of the present case are examined on the basis of principals laid down by Hon’ble Supreme Court in the aforesaid judgments, we come to an inescapable conclusion that the appellant-husband has miserably failed to prove the ground of cruelty against the respondent-wife. It has been proved on record that the averments made by the appellant-husband in his petition were trivial in nature. We are also of the considered opinion that the said averments are only minor wear and tear of a matrimonial life and cannot be treated as cruelty. Thus, we do not find any

illegality or perversity in the findings recorded by the learned Family Court.

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

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

03.09.2024
Himanshu

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