

2024 PHHC 119109-DB



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

FAO-4224-2024 (O&M)

Date of decision: 05.09.2024

CHARU

...Appellant

Versus

PRADEEP RATHY

...Respondent

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

Present:- Mr. Pawan Kumar Mutneja, Sr. Advocate with
Mr. Abhishek Joon, Advocate and
Ms. Swerna Mutneja, Advocate for appellant.

SUDHIR SINGH, J.

CM-15459-CII-2024

For the reasons given in the application, the same is allowed and the delay of 139 days in filing the appeal is condoned, subject to all just exceptions.

FAO-4224-2024

The present appeal is directed against the judgment and decree dated 08.01.2024 passed by learned Additional Principal Judge, Family Court, Gurugram, whererby the petition under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 (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.

2. The respondent-husband had filed the aforesaid petition, *inter alia*, averring therein that the marriage between the parties was solemnized on 29.04.2004, according to Hindu rites and that out of the said wedlock, one child, namely, Namish, was born on 26.02.2005. The parents of the appellant-wife had started interfering in the matrimonial life of the parties and when the respondent-husband tried to make her understand, the appellant-wife became abusive and quarrelsome. The respondent-husband joined job at Chandigarh in March, 2006, and thereafter, the parties had shifted to Bombay and lived there till April, 2013. It was further averred that the father of the respondent-husband was suffering from cancer and the family members of the respondent-husband asked the appellant-wife to settle at Faridabad so as to look after the parents of the respondent-husband in an effective manner, but the appellant-wife refused from doing so. The appellant-wife left the company of the respondent-husband on 11.03.2014, while taking their son along and that she had also taken her all the valuable gifts, jewellery and other items. It was further pointed out that the appellant-wife deserted the respondent-husband without his consent and by doing so she had withdrawn from all the matrimonial obligations.

3. Upon notice, the appellant-wife entered appearance and filed her written statement. The factum of marriage and the birth of the male child was admitted. However, it was further pleaded that the

behavior of the respondent-husband was not good and he used to harass her on the instigation of his mother; that he would throw the utensils on her face; that the parents of the respondent-husband used to torture her physically and mentally during the period she stayed at Faridabad from 30.04.2004 to June, 2006 and that during the pregnancy of the appellant-wife, her condition worsened due to stress and blood pressure. The appellant-wife requested her parents to take her with them to Gurugram. After the delivery of the child in May, 2005, the parents of the appellant-wife sent her along with minor child with the respondent-husband. They stayed together from July, 2006 to June, 2007 at Chandigarh and thereafter, shifted to Mumbai and lived there upto 2013 and from April, 2013 to March 2014, the parties remained at Noida. After the death of the father of the respondent-husband, the appellant-wife had asked the respondent-husband that his mother could stay with them. On 11.03.2014, the appellant-wife along with her son shifted to her parental home i.e. House No.867, Sector 7, Gurugram and the respondent-husband would come and stay there from Friday evening till Monday morning and from Monday evening to Thursday, he used to stay with his mother and look after her. The appellant-wife and her parents went to the respondent-husband and tried their level best to reconcile the matter, but the respondent-husband refused to keep the appellant-wife and their son. It was further averred that all valuable items, including gold and silver jewellery, were with the respondent-husband and the appellant-wife and her minor child had been residing at her parental house since 11.03.2014 with the consent of the respondent-husband and he was

bearing all the expenses of their son, including school fees etc. It was further asserted that the respondent-husband was a qualified person having an MBA degree and getting a salary of Rs.24 lacs per annum. It was further averred that the appellant-wife was an educated lady and had done MBA, B.Ed and M.A. and she was serving as a teacher in Sherwood Convent School, Gurugram and earning Rs.15,000/- per month. It was further averred that the respondent-husband was pressurizing the appellant-wife to transfer her parental house in his name. Still further, it was further averred that the appellant-wife was ready and willing to live with the respondent-husband and his mother. Rest of the allegations were denied.

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

- “1. Whether the marriage between the parties is liable to be dissolved by passing a decree of divorce on the grounds as mentioned in the petition? OPP
2. Whether the petitioner is estopped by his own act and conduct from filing the present petition? OPR
3. Relief.”

5. In evidence, the respondent-husband examined himself as PW-1, besides leading documentary evidence Ex.P1, EX.P2 and Mark-A. The appellant-wife examined herself as RW-1 and had tendered into evidence Ex.R1 to Ex.R6.

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

7. Learned Senior counsel appearing for the appellant-wife has vehemently argued that while passing the impugned judgment and decree, the learned Family Court has failed to take into consideration that it was the respondent-husband, who had been harassing and causing mental torture to the appellant-wife. It is further argued that it was with the consent of the respondent-husband that the appellant-wife along with minor son was residing at her parental house and the respondent-husband used to regularly visit them on weekends. It is yet further submitted that the respondent-husband had been bearing all the expenses of the child, including school fee and, thus, the allegations of cruelty and desertion levelled by the respondent-husband against the appellant-wife, were untenable in the eyes of law. Learned Senior counsel has further argued that the appellant-wife has always been ready and will to live in the company of the respondent-husband, but it was the respondent-husband, who had no desire to rehabilitate her in the matrimonial home and that the learned Family Court has failed to appreciate that the respondent-husband, could not be allowed to take benefit of his own wrongs.

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

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

10. The learned Family Court has found that soon after filing the divorce petition by the respondent-husband, the appellant-wife had

initiated various proceedings i.e. registration of an FIR and filing of a petition under the Protection of the Women from Domestic Violence Act, 2005 and a petition under Section 125 Cr.P.C. against the respondent-husband and his family members. It was, thus, found that if she had met any harassment at the hands of the respondent-husband and his family members, she would not have waited for 15 long years for lodging the FIR and for initiating other proceedings, against them. It was further found that the e-mails exchanged between the parties would make it clear that the appellant-wife did not leave her matrimonial home with the consent of the respondent-husband. It was, thus, found that having left the company of the respondent-husband without any reasonable cause, the appellant-wife had caused mental cruelty to the respondent-husband as well as his family members. It was yet further found that if the separation is counted from December 2015, then also a period of more than 2.5 years had elapsed at the time of filing of the divorce petition and, thus, the ground of desertion was also available to the respondent-husband. Yet further, the learned Family Court has found that though the appellant-wife in her written statement had pleaded that she had started residing at her parental house along with her minor son with the consent of the respondent-husband, yet from the documents and evidence placed on record, nowhere it was proved that the consent of the respondent-husband was obtained. It was further found that the appellant-wife had never alleged that she had been thrown out of the matrimonial home.

11. It was also found by the learned Family Court that in cross-examination the counsel for appellant-wife had also given a

suggestion to the respondent-husband that he was having relations with other women, but no evidence to that effect was led. It is further borne out from the judgment of the learned Family Court that the proceedings in the FIR got registered by the appellant-wife, have been stayed by this Court.

12. 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”.

13. Still further in **Malathi Ravi v. B.V. Ravi**, (2014) 7 SCC 640, it has been held by the Hon’ble Supreme Court that desertion in its essence means the intentional permanent forsaking and abandonment of one spouse by the other without the consent of the other spouse. It was held as under:-

“ 20. In the said Savitri Pandey’s case (2002) 2 SCC 73, reference was also made to Lachman Utamchand Kirpalani case (AIR 1964 SC 40) wherein it has been held that desertion in its essence means the intentional permanent forsaking and abandonment of one spouse by the other without that other’s consent and without reasonable cause. For the offence of desertion so far as separation, and (2) the intention to bring cohabitation permanently to an end (animus deserandi). Similarly two elements are essential so far as the deserted spouse is concerned.: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation.”

14. We find that the appellant-wife could not establish on record by way of cogent and convincing evidence that she had left the matrimonial home with the consent of the respondent-husband. Rather, it was her stand that the respondent-husband had been on visiting terms to her parental house, where she was residing with her minor child, but she could not prove the same by way of any evidence. If the respondent-husband had been doing as such, there was no requirement for registration of an FIR by the appellant-wife against the respondent-husband and for filing other litigation. Thus, the findings recorded by the learned Family Court, cannot be found fault with.

15. In view of the above, we do not find any illegality or perversity in the findings recorded by the learned Family Court.

16. No other point has been urged.

17. In view of the above, finding no merit in the present appeal, the same is hereby dismissed.

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

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

05.09.2024
Himanshu

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