



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-M-287-2018(O&M)
Reserved on 01.08.2024
Pronounced on: August 21, 2024

Sanjeev KumarAppellant

Vs.

SumanRespondent

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

Present: Mr. Robin Dutt, Advocate alongwith
the appellant-husband.

Mr. Vikram Singh, Advocate alongwith
the respondent-wife

SUDEEPTI SHARMA J.

1. The present appeal is filed by the appellant-husband against the judgment and decree dated 07.09.2018 vide which the divorce petition filed by the appellant-husband under Section 13 of the Hindu Marriage Act, 1955 (for short 'HMA') for dissolution of their marriage was dismissed.

BRIEF FACTS OF THE CASE

2. The brief facts of the case as mentioned in the divorce petition are that the marriage of the appellant-husband was solemnized with the respondent-wife on 09.05.2005 at Shiv Colony, Mandi Adampur, District Hisar, Haryana according to Hindu rites and ceremonies. Out of the said wedlock, one girl child namely Vanshika was born. At the time of marriage, both the appellant-husband and respondent-wife were employed as JBT teachers. After six months of marriage, the respondent-wife was transferred



FAO-M-287-2018(O&M)

from Hisar to Panchkula and thereafter, the appellant-husband and respondent-wife resided at House No.1123 Sector 4, Panchkula. As per the record, the appellant-husband filed the divorce petition on the ground of cruelty and there are allegations and counter allegations by both the parties.

3. Learned trial Court dismissed the divorce petition filed by the appellant-husband under Section 13 of HMA and the relevant para of the same is reproduced as under:-

“36. Institution of marriage is sacrosanct under the Hindu law and the marriage between the parties is not liable to be dissolved by decree of divorce on the ground of alleged minor wear and tear between the husband and wife. The party who seeks decree of divorce is duty bound to prove by leading cogent and convincing evidence, either, oral or documentary that he/she had been subjected to cruelty by his/her partner and the marriage has been broken down irretrievably. In the case in hand, except the alleged minor wear and tear, no substantial circumstance or piece of evidence has come before this court to reach at the conclusion that the respondent used to treat the petitioner with physical as well as mental cruelty. The allegations of the petitioner are vague being not proved by convincing and clinching evidence and he on absolutely flimsy grounds is trying to get marriage dissolved by getting decree of divorce when out of the said wedlock, there is a female child. Therefore, it is not a fit case to grant decree of divorce on the ground of cruelty. Thus, this issue is decided against the petitioner.

37. In view of my findings on aforesaid issues, the petition under Section 13 of the Hindu Marriage Act, 1955 filed by the petitioner fails and the same is hereby dismissed with costs. ”

SUBMISSIONS OF THE COUNSELS

4. Learned counsel for the appellant-husband submits that the learned trial Court did not appreciate the evidence led by him to prove the



FAO-M-287-2018(O&M)

dismissed the divorce petition.

5. *Per contra*, learned counsel for the respondent-wife submits that the learned trial Court has rightly dismissed the divorce petition filed by the appellant-husband on the ground of cruelty since the husband could not prove the cruelty as alleged by him.

6. We have heard learned counsel for the parties and perused the whole record.

7. There is no denial to the fact that the parties are residing separately since 2011.

8. Further, despite the dismissal of the divorce petition on the ground of cruelty, under Section 13 of the Hindu Marriage Act, 1955 on 07.09.2018, the parties are still residing separately.

9. There is no denial to the fact that FIR No.187 dated 14.06.2013 under Section 498-A, 323 and 34 IPC was lodged against the appellant-husband and his parents by the respondent-wife.

10. A perusal of the record shows that a petition under Section 12, 18, 19, 20, 21 and 22 of the Protection of Women from Domestic Violence Act, was filed by the respondent-wife against the husband and his family members which was dismissed by Sub Divisional Judicial Magistrate, Dabwali vide the order dated 01.02.2018.

11. A perusal of the record further shows that civil suit for mandatory injunction was filed by father of the appellant-husband against the respondent-wife for vacating his house, which was decided by learned Additional Civil Judge (Sr. Division) Dabwali vide judgment dated 10.07.2014.

12. Further, the appeal filed by the respondent-wife against judgment



FAO-M-287-2018(O&M)

dated 10.07.2014 was dismissed vide judgment dated 16.08.2014.

13. Civil Suit filed by the respondent-wife against father of the appellant-husband for mandatory injunction directing the defendant (father of the appellant-husband) to release new electricity connection at the premises of complainant (respondent-wife), was also dismissed vide judgment dated 24.09.2013.

14. Suit for mandatory injunction filed by father of the appellant-husband against the respondent-wife was decreed in his favour vide the judgment dated 24.04.2015 by learned Civil Judge (Sr. Division), Panchkula.

15. A perusal of the record shows that (zimni order dated 14.01.2014) reconciliation efforts could not be made since the parties did not appear and the matter was adjourned to 10.02.2014. On 10.02.2014, reconciliation efforts could not again be made as respondent did not appear and did not even file the reply. Then the case was adjourned to 25.02.2014. A perusal of the order dated 25.02.2014 shows that written statement was filed and issues were framed but no efforts for reconciliation of the parties were made, before proceeding further.

16. As per *zimni* order dated 06.12.2014, the file was put up before the learned Additional District Judge, Sirsa during the *Lok Adalat* in compliance of order of learned District Judge, Sirsa dated 05.12.2014 but compromise could not be effected since none appeared.

17. Section 23(2) of HMA reads that before proceeding to grant any relief under the HMA it shall be the duty of the Court in the first instance, in every case where it is possible so to do consistently with the matter and circumstance of the case, to make every endeavour to bring about the reconciliation between the parties.



FAO-M-287-2018(O&M)

18. In compliance of Section 23(2) of HMA, this Court directed the parties to appear and the daughter born out of the wedlock was also requested to appear before this Court. Every endeavour was made to settle the dispute between the parties so that they can live together but the conduct of the parties showed that there is no possibility of their staying/living together under one roof.

19. Respondent-wife stated that she does not want any alimony and wants to settle down the matter with appellant-husband and does not want decree of divorce.

20. There is no dispute regarding the fact of institution of different cases against the appellant-husband as well as his family members. Though under Section 13 of HMA, different grounds for dissolution of marriage are mentioned and the decree of divorce can be granted, if any of the parties are able to prove the same against the other by leading cogent and convincing evidence etc. But the factual and practical aspect of such kind of cases is that the Courts can not force the parties to live together, despite the dismissal of Section 13 of HMA petition for decree of divorce filed by any of the parties and despite the fact of their not being able to prove the ground on which they were asking for dissolution of marriage. In litigation under the HMA, practically speaking, there cannot be any win or loose situation. The only win-win situation is that the parties amicably settle down their status mutually. Even if the divorce petition under Section 13 of HMA for grant of decree of divorce is dismissed or for that matter petition under Section 9 of HMA for restitution of conjugal rights is allowed, practically speaking there cannot be any execution in such kind of matters. Since the parties to the litigation are not the properties for which execution can be filed to retrieve it to the other



FAO-M-287-2018(O&M)

party. Emotions are attached to the parties for which they cannot be forced to live together. Once the conduct and the effort to live together during the period of their separation and gravity of allegations made against each other is observed, that would actually be the weights and measures to decide the matrimonial cases under the HMA.

21. A perusal of record of the present case shows that the respondent-wife has lodged FIR against the appellant-husband and his family members. The case was filed by the father of the appellant-husband for eviction of the respondent-wife from his self-acquired property, which was decided in favour of the father of the appellant-husband. This shows severity of the animosity and the extent of conflict between the parties which can not be resolved. In the present case, when this Court tried to reconcile the parties, the grievance of the appellant-husband was that the respondent-wife lodged FIR against him and his family members. She had also lodged the petition under Protection of Women from Domestic Violence Act also and had forcefully occupied the self-acquired property of the father of the appellant-husband. As a result, he was not ready to settle down the dispute, feeling emotionally devastated.

22. The respondent-wife on the other hand was ready and willing to join the company of the appellant-husband to settle down the dispute. But the conduct of the wife, when asked regarding lodging of the FIR and efforts made her by to resolve the matter by apologizing for the same during the period of litigation, did not show any positive response. While interacting with the parties, this Court found that no effort has been made by any of them to resolve the issue between them or to amicable settle down the dispute between them.

**SETTLED LAW**

23. Hon'ble the Supreme Court in **Naveen Kohli v. Neelu Kohli**,

2006 AIR Supreme Court 1675, held as under:-

"24. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions and their culture and human values to which they attach importance. Each case has to be decided on its own merits.

28. This Court in the case of Savitri Pandey v. Prem Chandra Pandey, 2002(1) RCR (Civil) 719 : (2002)2 SCC 73, stated that mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other

31. In Chetan Dass v. Kamla Devi, 2001(2) RCR (Civil) 641 : (2001)4 SCC 250, this Court observed that the matrimonial matters have to be basically decided on its facts. In the words of the Court : "Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of "irretrievably broken marriage" as a straitjacket formula for grant of relief of



divorce. This aspect has to be considered in the background of the other facts and circumstances of the case."

32. In Sandhya Rani v. Kalyanram Narayanan, (1994) Supp. 2 SCC 588, this Court reiterated and took the view that since the parties are living separately for the last more than three years, we have no doubt in our mind that the marriage between the parties has irretrievably broken down. There is no chance whatsoever of their coming together. Therefore, the Court granted the decree of divorce.

33. In the case of Chandrakala Menon v. Vipin Menon, (1993)2 SCC 6, the parties had been living separately for so many years. This Court came to the conclusion that there is no scope of settlement between them because, according to the observation of this Court, the marriage has irretrievably broken down and there is no chance of their coming together. This Court granted decree of divorce

41. The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However, insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

42. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed



from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court.

43. In Durga P. Tripathy v. Arundhati Tripathy, 2005(3) RCR (Civil) 819 : (2005)7 SCC 353, this Court further observed that Marriages are made in heaven. Both parties have crossed the point of no return. A workable solution is certainly not possible. Parties cannot at this stage reconcile themselves and live together forgetting their past as a bad dream. We, therefore, have no other option except to allow the appeal and set aside the judgment of the High Court and affirming the order of the Family Court granting decree for divorce.

50. On May 22, 1969, the General Assembly of the Church of Scotland accepted the Report of their Moral and Social Welfare Board, which suggested the substitution of breakdown in place of matrimonial offences. It would be of interest to quote what they said in their basis proposals : "Matrimonial offences are often the outcome rather than the cause of the deteriorating marriage. An accusatorial principle of divorce tends to encourage matrimonial offences, increase bitterness and widen the rift that is already there. Separation for a continuous period of at least two years consequent upon a decision of at least one of the parties not to live with the other should act as the sole evidence of marriage breakdown." Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.



52. *We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases do not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.*

53. *Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.*

54. *Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist.”*

24. **Constitution Bench of Hon’ble the Supreme Court in Shilpa Sailesh v. Varun Sreenivasan, 2024(1), observed as under:-**

“33. *Having said so, we wish to clearly state that grant of divorce on the ground of irretrievable breakdown of marriage by this Court is not a matter of right, but a discretion which is to be exercised with great care and caution, keeping in mind several factors ensuring that ‘complete justice’ is done to both parties. It is obvious that this Court should be fully convinced and satisfied that the marriage is totally unworkable, emotionally dead and beyond salvation and, therefore, dissolution of marriage is the right solution and the only way forward. That the marriage has irretrievably broken down is to be factually determined and firmly established. For this, several factors are to be considered such as the period of time the parties had cohabited after marriage; when the parties had last cohabited; the nature of allegations made by the parties against each other and their family members; the orders passed in the legal proceedings from time to time,*



cumulative impact on the personal relationship; whether, and how many attempts were made to settle the disputes by intervention of the court or through mediation, and when the last attempt was made, etc. The period of separation should be sufficiently long, and anything above six years or more will be a relevant factor. But these facts have to be evaluated keeping in view the economic and social status of the parties, including their educational qualifications, whether the parties have any children, their age, educational qualification, and whether the other spouse and children are dependent, in which event how and in what manner the party seeking divorce intends to take care and provide for the spouse or the children. Question of custody and welfare of minor children, provision for fair and adequate alimony for the wife, and economic rights of the children and other pending matters, if any, are relevant considerations. We would not like to codify the factors so as to curtail exercise of jurisdiction under Article 142(1) of the Constitution of India, which is situation specific. Some of the factors mentioned can be taken as illustrative, and worthy of consideration.”

25. In **Rakesh Raman v. Kavita 2023 AIR Supreme Court 2144**, the Hon’ble Apex Court held as under:-

“18. We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1)(ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a ‘marriage’ would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a



dissolution of this marriage would affect only the two parties as there is no child out of the wedlock.”

26. In view of latest law laid down by Hon’ble the Supreme Court, every effort should be made by the Courts to save the marriage of the parties but where the Courts find that there is no possibility of their reconciliation since the parties are emotionally hurt and broken down then by announcing the judgment and directing them to live together by not granting the decree of dissolution of marriage would amount to forcing them to live together under one roof. Further it would amount to inviting emotional break down of both of them.

27. In the present case, the parties have been separated since 2011 and for the last 13 years, neither of them has made any effort to resume their relations or to cohabit.

28. In matrimonial cases seeking a decree of divorce on any other grounds, it is often difficult to practically prove the allegations made by the parties *inter se*. Courts should not decide such cases solely on the basis of proof of allegations or the evidence presented, as is done in criminal cases. After all even if the allegations are proved to be correct beyond reasonable doubt, these are not the criminal cases where the offence is punishable.

29. In matrimonial matters, the only possible outcomes are either the granting of a decree of divorce or the dismissal of the petition for such a decree. In either case, no execution or punishment can be imposed, as no court can compel the parties to live together under one roof or to cohabit.

30. Therefore, in view of law laid down by Hon'ble Supreme Court in matrimonial matters under the Hindu Marriage Act, 1955, we do not find any possibility of any kind of settlement between the parties whereby they can



be forced to live together.

31. In view of the same, the present appeal is allowed. The judgment and decree dated 07.09.2018 passed by learned Additional, District Judge, Panchkula, is set aside and the petition filed by the appellant-husband succeeds. The decree of divorce under section 13 of HMA for dissolution of marriage of parties is granted and marriage between the parties stands dissolved. Decree Sheet be prepared accordingly.

PERMANENT ALIMONY

32. When this Court called for the parties to interact regarding reconciliation, the wife was not ready and willing to receive any alimony and was adamant for not granting the decree of divorce to the appellant-husband. We could observe that inspite of lodging of different cases against the appellant- husband and his family members, there was no effort made by her since last 13 years to resolve the dispute between both of them. If she really wanted to save her matrimonial home, she would have made an effort to resolve the issue. A perusal of the record also shows that when the parties were called for mediation, none appeared. Just by saying that she wants to stay with her husband without any practical efforts made by her would be meaningless. Otherwise also a perusal of the record shows that she is working woman and is employed as JBT teacher, therefore, we find that she does not deserve any permanent alimony.

33. So far as the minor daughter is concerned, a statement is made by the appellant-husband on 01.08.2024 before this Court on Oath which is reproduced as under:-

“Stated that I am ready and willing to, within 15 days from today, draw an FDR in the name of my minor daughter, for an amount of Rs.15 lacs, and, also undertake that I shall regularly deposit a sum of



FAO-M-287-2018(O&M)

Rs.10,000/- per mensem towards her maintenance in the account of my minor daughter. I also assure that I shall bear all the expenses towards her marriage and she will not be deprived from inheriting my estate.”

34. As per the above mentioned statement, the appellant-husband is directed to draw an FDR in the name of his minor daughter amounting to Rs.15 lacs from the date of pronouncement of this judgment. He is further directed to deposit a sum of Rs.10,000/- per month towards her maintenance in her account. He is further directed to bear all the expenses towards her marriage including educational expenses and he shall not disinherit her from his estate at any point of time.

35. All the pending applications, if any, also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

August 21, 2024
sonia arora

Whether speaking/reasoned:	Speaking
Whether reportable:	Yes