

2024:PHHC:118003-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-4276-2024 (O&M)
Date of decision: 09.09.2024

KULDEEP SINGH
Versus
...Appellant

URMEELA
...Respondent

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

Present:- Mr. Chetan Bansal, Advocate for appellant.

SUDHIR SINGH, J.

CM-15646-CII-2024

For the reasons given in the application, the same is allowed and the delay of 50 days in filing the appeal is condoned, subject to all just exceptions.

FAO-4276-2024

Challenge in the present appeal is to judgment and decree dated 08.05.2024, passed by the learned Principal Judge, Family Court, Sirsa (hereinafter referred as to Family Court), whereby the petition under Section 13 of the Hindu Marriage Act, 1956 (hereinafter referred as 'the Act') filed by the appellant-husband was dismissed.

2. The appellant-husband had filed the aforesaid petition, *inter alia*, averring that his marriage with the respondent-wife was solemnized on 28.05.2006 according to Hindu rites and it was a very simple marriage. After the marriage, the parties lived together at Hisar, but no issue was born out of the said wedlock. It was further pointed out that after one month of the marriage, the behavior of the respondent-wife changed and she started quarreling with him and refused from doing the routine household chores and further started neglecting the appellant-husband and his family members. Still further, it was alleged that the respondent-wife had pressurized him to take a separate accommodation, but the appellant-husband tried to make her understand that he did have limited financial resources and he was not able to meet out the rental expenses. However, the respondent-wife did not change her behavior and finally, she left the company of the appellant-husband and went to her parental house by taking along all valuable items. Still further, it was alleged that the respondent-wife had filed a petition under Section 125 Cr.P.C. besides filing an application under the Protection of Women from Domestic Violence Act, 2005. It was the case of the appellant-husband that these acts of the respondent-wife amounted to cruelty and he, accordingly, sought divorce on the said ground.

3. Upon notice, the respondent-wife entered appearance and filed her written statement. While admitting the factum of marriage, it was pleaded that earlier also the appellant-husband had filed a similar petition, but when the Court concerned while allowing of an application under Section 24 of the Act in the said proceedings, had

directed the appellant-husband to pay maintenance *pendent lite*, he stopped appearing before the said Court and accordingly, the said petition was dismissed in default. It was further alleged that the appellant-husband had deliberately concealed the said fact from the Court and had filed the second divorce petition on the same grounds. The allegations of cruelty were denied and rather it was stated that as the appellant-husband and his family members were not satisfied with the dowry given in the marriage, they started demanding Rs.2.5 lakh in cash as well as a car and that the sister-in-law (*Jethani*) of the respondent-wife had openly declared that she would not let the respondent-wife to settle her at the matrimonial home and that she was given merciless beatings and was finally ousted from the matrimonial home. Still further, it was pleaded that all these circumstances had compelled the respondent-wife to initiate the proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 besides filing a petition under Section 9 of the Act, for restitution of conjugal rights.

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

- “1. Whether the petitioner is entitled for a decree of divorce on the ground of cruelty as alleged? OPP
2. Whether the petitioner is entitled for a decree of divorce on the ground of desertion as alleged? OPP
3. Whether the petition is not maintainable in the present form? OPR

4. Whether the petitioner has concealed the material facts from this Court, if so to what effect?

OPR

5. Relief.”

5. In evidence, the appellant examined himself as PW-1 and had also examined his sister-in-law (*Bhabhi*) Suman as PW-2. He also tendered into evidence the documents Ex.P1 and P2. On the other hand respondent-wife appeared as RW-1 and had also examined her cousin Rohtash Kumar as RW-2. In documentary evidence the respondent-wife had produced Exs.R1 to R9.

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

7. Learned counsel appearing for the appellant has vehemently argued that the findings recorded by the learned Family Court are not tenable in the eyes of law. It is further submitted that even if the earlier petition of the appellant-husband was dismissed in default for his non-appearance, the second petition on the same cause of action is not barred and that by doing so, no prejudice has been caused to the respondent-wife. It is further submitted that if the learned Family Court was to dismiss the petition being barred under law, there was no requirement for the learned Family Court to return its finding on merit of the case. While referring to the findings of the learned Family Court as regards the petition being barred under law as also on merit, it is vehemently argued that the very approach of the

learned Family Court is not tenable in the eyes of law and the same has caused manifest injustice to the appellant-husband. It is further argued that the appellant-husband has led cogent and convincing evidence on record that the respondent-wife had initiated unnecessary litigation against the appellant-husband under the provisions of Protection of Women from Domestic Violence Act, 2005 as also under Section 125 Cr.P.C and once it was proved by the appellant-husband that the respondent-wife had left the matrimonial home without any justified cause, she was not entitled to any maintenance or any indulgence under the other provisions of law. Accordingly, a prayer for setting aside of the impugned judgment and decree has been made.

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

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

10. It is undisputed that earlier the appellant-husband had filed a similar petition and the same was dismissed in default on 09.11.2015. A copy of the said order was proved on record as Ex.R-8. While filing the second petition, the said factum was concealed by the appellant-husband and rather, he had sought a decree of divorce on the same grounds as contained in the earlier petition. It was under these circumstances that the learned Family Court found that the second

petition was barred and the only remedy for the appellant-husband was to seek setting aside of the said order.

11. A perusal of the impugned order would also show that the learned Family Court has found that the petition under Section 9 filed by the respondent-wife was allowed by the Court concerned and in the said judgment, a finding was returned by the said Court that the appellant-husband had left the company of the respondent-wife without any reasonable cause. It was further found that the said judgment had attained finality. Still further, it was found that in the order passed under the provisions of Protection of Women from Domestic Violence Act, 2005, the appellant was restrained from doing/committing any act of domestic violence. It was, thus, found that the appellant-husband could not be allowed to take benefit of his own wrongs.

12. We find that the second petition filed by the appellant-husband was barred under law as the earlier petition on the same cause of action and grounds was dismissed in default on 09.11.2015. Still further, the respondent-wife had obtained orders under the provisions of Protection of Women from Domestic Violence Act, 2005 and under Section 125 Cr.P.C., but the appellant-husband did not comply with the same.

13. It is settled law that no party can be allowed to take the benefit of his/her wrongs. In the instant case, it is the appellant-husband, who stopped appearing before the Court in the earlier petition for divorce obviously for the reason that he did not want to pay the amount of maintenance *pendent lite* awarded by the Court.

The said conduct of the appellant-husband coupled with the non-disclosure of the dismissal of the previous similar petition, shows that the appellant-husband did not approach the Court with clean hands. Thus, we do not find any illegality or perversity in the findings recorded by the learned Family Court.

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

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

09.09.2024
Himanshu

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