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

FAO-4724-2024 (O&M)

Date of Decision: October 01, 2024

Ajay Kumar Luthra

....Appellant

versus

Manju Gulati

.... Respondent

**CORAM: HON’BLE MR. JUSTICE SUDHIR SINGH
HON’BLE MR. JUSTICE ALOK JAIN**

Present:- Mr. Dhiraj Jindal, Advocate for the appellant.

SUDHIR SINGH, J. (ORAL)

CM-17557-CII-2024

For the reasons stated in application, same is allowed. Delay of 25 days in filing the appeal is condoned.

Main case (O&M)

Challenge in the present appeal is to the judgment and decree dated 05.08.2024 passed by learned Additional Principal Judge, Family Court, Ambala (for short ‘Family Court’), whereby, the petition under Section 13 of the Hindu Marriage Act, 1955 (for short ‘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 the respondent/wife was solemnized on 24.10.2012 according to Hindu Rites and Ceremonies and out of the said wedlock, one male child was born on 25.10.2013. It was further

averred that after the marriage, behaviour of the respondent/wife towards the appellant and his family members was very uncomfortable and she had shown disrespect and rudeness towards them. The respondent/wife started arguing and quarreling on petty matters. It was further asserted that after 4-5 months, on the eve of *Holi*, the parents and brother of the respondent/wife visited her matrimonial home and though they were welcomed by the appellant/husband and family members, yet, the respondent/wife had complained and taunted that her parents were not welcomed by the appellant's mother and had created a scene. The matter was brought to the notice of her parents and brother, but instead of advising the respondent/wife, they had started misbehaving with the appellant and his mother. It was further alleged that after birth of the child, the respondent/wife had stayed in her parental home for 3-4 months and whenever the appellant went to bring her and newly born back, the parents of the respondent/wife had made excuses. It was further alleged that in May 2014, the respondent/wife came back only with a condition that she would not do any household work and parents of the appellant will have no access to the minor child. It was further the case of the appellant/husband that the respondent/wife had put a condition that in case, he wants to cohabit with her, he will have to expel his mother from the matrimonial home. In July 2014, the respondent/wife set herself on fire, in the absence of appellant and his mother. Before the police, she made a statement that it was an accident, which occurred due to her own negligence. It was yet further asserted that the respondent/wife had filed a false divorce case in the District Courts, Mohali, in February 2015 on the ground of desertion. In June-July 2015 when the appellant returned to India, he convened a *panchayat* and tried his best to

reconcile the matter, but the respondent/wife refused to join his company and rather expressed her desire to live separately. Thereupon, a *panchayat* agreement was reduced into writing on 13.02.2015, in which, the matter between the parties was settled at Rs.16,50,000/- and the respondent/wife had received a demand draft of Rs.10,50,000/-; one FDR of Rs.2,00,000/- in the name of minor son-Kanish and Rs.4,00,000/- in cash. Accordingly, a petition under Section 13-B of the Act was filed at Dera Bassi wherein first motion statement of the parties was recorded. Thereafter, the respondent/wife realizing her mistake, had apologized to the appellant/husband and his mother and had expressed her desire to join the company of the appellant/husband and accordingly, in March 2016, the said petition was withdrawn. In June-July 2017, the appellant/husband went to live in a separate rented accommodation at Dera Bassi with the respondent/wife and their minor son. All the ornaments, goods, articles and other belongings were brought by the respondent/wife along with her and she had executed an affidavit in favour of mother of the appellant, in this regard. However, in April 2018, the respondent/wife left the company of the appellant/husband and thereafter, she did not come back to her matrimonial home. Terming the aforesaid acts as cruelty and desertion, the decree of divorce was prayed for.

3. Upon notice, the respondent/wife entered appearance and filed her written statement, admitting factum of marriage and also birth of minor child. It was alleged that the respondent/wife used to face mental torture on the hands of the appellant/husband and his mother on account of bringing less dowry. It was further asserted that the appellant/husband was a chain smoker and a drunkard, and under the influence of intoxication, he used to beat the

respondent/wife even during her pregnancy and she had to be admitted in the hospital. The factum of *panchayati* compromise, in the year 2015, was admitted, but it was asserted that the petition under Section 13-B of the Act was withdrawn after reconciliation between the parties. It was further asserted that in June 2018, she was forcibly ejected from the house of the appellant/husband, and she had filed a complaint dated 07.07.2018 at the Police Station Dera Bassi. It was further pleaded by the respondent/wife that till date, she was residing in a rented accommodation with her minor child and all the expenses for maintenance and upbringing of the child were being borne by her with the help of her parents.

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

- “1. *Whether the petitioner is entitled to a decree of divorce on the ground of cruelty? OPP*
2. *Whether the petitioner is entitled to a decree of divorce on the ground of desertion? OPP*
3. *Whether petition is not maintainable in the present form? OPR*
4. *Relief.”*

5. In evidence, the appellant/husband appeared as PW1 besides tendering Exhibit P1 to P4, Exhibits PX, PX1 and Mark A to Mark E. On the other hand, the respondent/wife appeared as RW1 besides tendering Exhibit R1 and Mark 1 to Mark 21.

6. Learned Family Court, after considering rival contentions of the parties and evidence on record, dismissed the petition filed by the appellant/husband, as noticed above.

7. Learned counsel appearing on behalf of the appellant/husband has vehemently contended that the impugned judgment/decreed passed by

learned Family Court is based on conjectures and surmises inasmuch as learned Family Court has failed to take into consideration that cruelty and desertion caused by the respondent/wife was proved by the appellant/husband by leading cogent and convincing evidence on record. It is contended that the appellant/husband had specifically pleaded before learned Family Court that the respondent/wife had compelled him to live separately and to give up the company of his mother and, if he did not do so, she would not allow him to cohabit with her. It is thus, submitted that denying cohabitation also amounts to mental cruelty. It is further argued that findings of the learned Family Court that the appellant had failed to examine his mother in support of allegations of cruelty, the fact remains that mother of the appellant is 70 years old and it is not possible for her to come to the Court for examination. It is yet further submitted that even in her cross-examination, the respondent/wife deposed that she would not allow the appellant/husband to keep minor son with him, which clearly speaks of mental cruelty. Lastly, it is contended that the evidence led by the respondent/wife was beyond pleadings and therefore, learned Family Court ought not to have relied upon the said evidence.

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

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

10. In order to prove cruelty, the appellant/husband was required to lead cogent and convincing evidence by dissecting instances of such cruelty committed by the respondent/wife. However, it was found by learned Family

Court that, though, the appellant/husband had pleaded that the petition under Section 13-B of the Act filed by the parties was withdrawn only after the respondent/wife had apologised for her act and conduct, yet, there was nothing on record in this regard. The statements of the parties/order were placed on record i.e., Exhibits P1 to P-3. Rather the said documents showed that the parties had made statement to the effect that some misunderstanding and differences had developed between them and they had decided to withdraw the petition in order to live happily and peacefully in future. It was further found that mother of the appellant/husband was not examined and she was the only person who could have thrown light in this regard. Yet further, it was found that no neighbour in respect of the alleged self-immolation/setting fire upon herself by the respondent/wife, was examined. Learned Family Court did not find any substance in the plea of the appellant/husband in respect of efforts made by him for reconciliation. It was yet further found that after having arrived at settlement, it was apparent from Exhibits P1 to P3, the parties lived together as husband and wife for 2 years, and after 16.03.2016, the appellant/husband was required to specifically detail out the acts of mental cruelty caused by the respondent/wife. The statements Exhibits P1 and P3 and their subsequent cohabitation had the effect of condoning the previous acts. Learned Family Court had also found no substance in the pleadings of the appellant/husband that he had never lived separately from his mother whereas, the fact was that he left for Singapore on number of occasions leaving his mother alone at Ambala, besides living at other places.

10.1. At the same time, learned Family Court did not find any substance in the allegations levelled by the respondent/wife regarding the

appellant/husband having extramarital relations. The said allegations were found to be vague and without any substance. However, it was found that the appellant/husband had failed to prove the cruelty committed to him by the respondent/wife. As regards desertion, the respondent/wife, in her cross-examination, had stated that she lived with her husband till 22.06.2018 when her husband left for work but did not return. The appellant, in his cross-examination, admitted that in June 2018, he left for Singapore. Thus, it was found that the appellant/husband could not prove that the respondent/wife had deserted him.

11. It is well settled that in order to constitute a cruelty, the party alleging the same must prove on record that the behaviour of the party complained against is or has been such that it has made it impossible for the said party to live in the company of the party complained against. The acts of cruelty must be such from which it can be reasonably and logically concluded that there cannot be any reunion between the parties due to the said acts. The cruelty can either be physical or mental or both. Though there is no mathematical formula to devise the extent of cruelty alleged against, yet the facts and circumstances of each and every case must be examined in the light of the gravity contained in them.

12. 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...”

13. In **K. Srinivas v. K. Sunita**, 2015(1) RCR (Civil) 38, Hon'ble

Apex Court observed as under:-

“6. Another argument which has been articulated on behalf of the learned counsel for the Respondent is that the filing of the criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filing of the husband's divorce petition, and being subsequent events could have been looked into by the Court. In any event, both the parties were fully aware of this facet of cruelty which was allegedly suffered by the husband. When evidence was led, as also when arguments were addressed, objection had not been raised on behalf of the Respondent-Wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf.

7. In these circumstances, we find that the Appeal is well founded and deserves to be allowed. We unequivocally find that the Respondent-Wife had filed a false criminal complaint, and even one such complaint is sufficient to constitute matrimonial cruelty.

8. We, accordingly, dissolve the marriage of the parties under Section 13(1)(ia) of the Hindu Marriage Act...”

14. 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 behaviour 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 behaviour 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 drew 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”.

15. 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.”

16. If the findings of the learned Family Court are examined in light of the law laid down by the Hon’ble Supreme Court in the aforesaid judgments, it would emerge that the party pleading cruelty and desertion must prove the same. In the instant case, there had been differences between the parties, but the same appeared to have been reconciled from time to time and in 2016 when mutual divorce petition was withdrawn by the parties, the settlement was arrived at between them. The appellant/husband could not plead or prove on record specific instances of cruelty after 16.03.2016. The pleadings of the appellant/husband would only show that he tried to plead and prove cruelty by taking into account all the instances and incidents from the

date of marriage itself. However, once the matter was compromised in 2016, the earlier acts and conduct, if any, on the part of the respondent/wife, stood condoned. Similarly, as regards desertion, it was the own admission of the appellant/husband that he went to Singapore in June, 2018. Once the appellant/husband left for Singapore of his own, he could not plead that he was deserted by the respondent/wife. Thus, learned Family Court has rightly found that the appellant/husband had failed to prove cruelty or desertion on the part of the respondent/wife.

17. In view of the above, we do not find any illegality or perversity in the impugned judgment/decreed passed by the learned Family Court. It could not be pointed out that any evidence has been misread or not taken into consideration by learned Family Court. No other points have been urged. Hence, the same is hereby dismissed.

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

(SUDHIR SINGH)
JUDGE

(ALOK JAIN)
JUDGE

October 01, 2024
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No