

2024:PHHC:117449-DB



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

FAO-M-221-2018 (O&M)

Date of decision: 05.09.2024

MANJIT KAUR

...Appellant

Versus

RANJIT SINGH

....Respondent

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

Present:- Mr. P.S. Khurana, Advocate for appellant.

Mr. A.K. Garg, Advocate for respondent.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 15.02.2018, passed by learned Additional Civil Judge (Senior Division) Exercising powers of District Judge Payal, whererby the petition under Section 9 of the Hindu Marriage Act, (hereinafter referred as 'the Act') filed by the appellant-wife was dismissed.

2. The aforesaid petition was filed by the appellant-wife for restitution of conjugal rights, inter alia, pleading that her marriage with the respondent-husband was solemnized on 01.12.2004 according to Sikh Rites. It was further averred that at the time of the marriage, a huge dowry was given to the respondent-husband and his family members by the parents of the appellant-wife. However, soon

after the marriage, the respondent-husband and his family members started harassing and taunting the appellant-wife and they used to pick up quarrels with her. It was further pointed out that after 2/3 days of the marriage, the parents of the respondent-husband took all the gold ornaments from the appellant-wife saying that the same would be kept into a bank locker but later on, on her requests no such gold ornaments were returned to her by them. It was further alleged that the married sisters of the respondent-husband used to interfere in their matrimonial life and that the respondent-husband was a habitual drunker and remained under the influence of liquor even during the day time. It was yet further alleged that the respondent-husband at the instigation of his parents had demanded Rs.10,00,000/- for purchasing a Skoda car, but the appellant-wife expressed her inability to pay such amount. It was further the case of the appellant-wife that she gave birth to a female child on 31.08.2005 at DMC Hospital, Ludhiana and all the expenses therefore were borne by her parents. It was further alleged that the parents of the appellant-wife had paid a sum of Rs. 3,00,000/- to the respondent-husband and his family members and it was only upon doing so, he took the appellant-wife along with the minor child to the matrimonial home. However, later, on 15.03.2007, the appellant-wife was badly beaten up by the respondent-husband and his family members and turned out of the matrimonial home. It was further alleged that on 01.06.2009, the respondent-husband along with his cousin-Bittu and four other unidentified persons armed with wooden sticks and *Kirpan*, came to the parental house of the appellant-wife and they had caused injuries to the parents of the

appellant-wife. The matter was reported to the police, but no action was taken against the respondent-husband and his accomplices. It was further averred that though the appellant-wife had made all sincere efforts to join the company of the respondent-husband, yet the respondent-husband had flatly refused to rehabilitate the appellant-wife in her matrimonial home.

3. Upon notice, the respondent-husband entered appearance and filed his written statement. The marriage between the parties was admitted. It was further asserted that the parties had filed a petition under Section 13-B of the Act for dissolution of their marriage by a decree of divorce by mutual consent before the Court of Additional Civil Judge (Senior Division) Malerkotla. The first motion statements of the parties were recorded on 15.06.2009 and the matter was adjourned to 09.02.2010, but the appellant-wife did not turn up for the second motion statement. It was further alleged that the petition for restitution of conjugal rights was filed by the appellant-wife with a sole motive to cause harassment to the respondent-husband.

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

“1. Whether the petitioner is entitled to decree for restitution of conjugal rights under Section 9 of HMA? OPA

2. Whether the respondent has sufficient cause to withdraw from the society of the petitioner? OPR

3. Whether the petition is not maintainable? OPR

4. Relief.”

5. In evidence, the petitioner-wife examined PW-1-Sadhu Singh and had she herself had appeared as PW-2, besides leading documentary evidence Ex.P1, Ex.P2 and Mark-A to Mark-B. The respondent-husband examined himself as RW-1; RW-2 Balkar Singh and tendered into evidence Ex.D3 to Ex.D9 and Mark-C to Mark-V.

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

7. Learned counsel appearing for the appellant-wife has vehemently argued that once the relationship of husband and wife between the parties was undisputed and it was also pleaded and proved by the appellant-wife that she had been turned out of the matrimonial home by the respondent-husband and his family members, the very approach of the learned Family Court in dismissing the petition under Section 9 of the Act is not tenable in the eyes of law.

8. On the other hand, the learned counsel appearing for respondent while supporting the impugned order passed by the learned Family Court, submits that the respondent-husband had not withdrawn from the company of the appellant-wife and it was she, who had deserted him without any justifiable reason.

9. We have heard learned counsel for the parties and have also gone through the impugned judgment and decree passed by the Court below.

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

11. It may be noticed that the present appeal was filed in the year 2018. Vide order dated 26.09.2018 passed by a Co-ordinate Bench of this Court, the parties were directed to appear in the Mediation and Conciliation Centre of this Court on 22.10.2018 and the respondent-husband was further directed to pay a sum of Rs.15,000/- to the appellant-wife towards interim litigation expenses before the Mediator on the said date. A perusal of the file would show that the efforts were made by the Mediators to settle the disputes between the parties but the mediation remain unsuccessful and thereafter, the case was sent back to the Court for further adjudication.

12. The learned trial Court has found that the appellant-wife had failed to prove that she had been thrown out of the matrimonial home by the respondent-husband. It was further found that from the evidence of the appellant-wife and her witness, it was established that the respondent-husband was willing to keep the appellant-wife with him and for that purpose, he had also filed a petition under Section 9 of the Act, which was later on withdrawn. It was further found that a petition under Section 13-B of the Act was also filed. It was yet further found that no effort, whatsoever, was made by the appellant-wife for her rehabilitation in the matrimonial home. The relevant extracts from the judgment of the learned Family Court would read as under:-

“18. The petitioner had taken the stand that she made efforts for resolving the matter and she was ready to go to her matrimonial house whereas the respondent had taken the stand that they number of times conveyed Panchayat for the purpose of taking back the petitioner to her matrimonial house but she did not come back and the said stand taken on the respondent is corroborated by the petitioner who in her cross examination deposed that she came to her parents on 05.03.2005. She further deposed that it is correct that upto 14.03.2009 there was no case pending between her and respondent and her parents in any Court except petition under Section 9 of HMA. She further deposed that it is correct that in May 2009 Bharpur Singh, Jaswinder Singh and respondent came to her house for compromise voluntarily they have several times come to their house prior to that. She further, deposed that the respondent and his father and relatives used to visit her house for compromise several times prior to May 2009 but she do not know the month, date and year voluntarily they also came in January 2009. She further deposed that it is correct that in May 2009 she agreed to accompany Ranjit Singh to her matrimonial house voluntarily whole matter was settled. She further deposed that it is correct that as per the above stated compromise Ranjit Singh and Palwinder Singh came to take her and her daughter to her matrimonial house voluntarily she was not present at house. She further

deposed that they came at 05:30 P.M. and she came to house at 07:30 P.M. She further deposed that when she came back to her parental house on 01.06.2009 Ranjit Singh and Palwinder Singh were not present at the house and they had left the house. Sadhu Singh in his cross examination deposed that he do not know that neither of his relative even went to the house of Ranjit Singh. He further deposed that it is correct that till 15.06.2009 neither he nor petitioner filed any suit or case against the respondent and his family. From the evidence of the petitioner and her witness, it is established that the respondent was willing to keep the petitioner with him but the petitioner did not came to live with the respondent and respondent has also filed petition under Section 9 of Hindu Marriage Act which was later on withdrawn as the petition under Section 13-B of Hindu Marriage Act was filed. There is no evidence on the record from which it could be inferred that the petitioner ever made any effort for her rehabilitation in the matrimonial house as alleged by the petitioner in her petition as no witness had been examined by the petitioner who would had gone to the house of the respondent for the rehabilitation of the petitioner. Moreover the father of the petitioner also stated that he do not remember if their relative went to the house of Ranjit Singh. It is hard to believe that father of the petitioner would not be remembering that any relative went to the house of Ranjit Singh for

rehabilitation. By simply stating a fact does not prove the same and same has to be proved by leading cogent evidence but the petitioner had failed to do so.

19. Thus, from the above discussion I am of the view that it is a petitioner who left the society of the respondent without any reasonable cause and the respondent number of times made efforts to bring back the petitioner to the matrimonial house. As the petitioner is herself at fault by not residing in the matrimonial house and leaving the same as such the petitioner is not entitled for the relief with regard to the restitution of the conjugal rights. Thus, both these issues are decided against the petitioner and in favour of the respondent”.

13. The purpose of the petition under Section 9 of the Act, is to facilitate a re-union between the parties. However, if the spouse seeking the decree of restitution of conjugal rights is found to have voluntarily left the company of the other spouse, he/she cannot be held entitled to the decree of restitution of conjugal rights. In the instant case, it was the appellant-wife who was found to be guilty of withdrawing from the company of the respondent-husband. Therefore, 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

05.09.2024
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No