

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-7202-2023 (O&M).

Date of Decision: 05.01.2024.

Kusum Lata @ Pinki

....Petitioner.

Versus

Suraj Bhan

....Respondent.

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CORAM: HON'BLE MR. JUSTICE LALIT BATRA

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**Argued by:** Mr. Deepanker Sabharwal, Advocate,  
Mr. Shiv Kumar, Advocate and  
Mr. Brajesh Kumar, Advocate  
for the petitioner.

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**Lalit Batra, J.**

This civil revision petition under Article 227 of the Constitution of India has been filed by petitioner-wife impugning the legality of order dated 09.10.2023 (Annexure-P/6), rendered by learned Principal Judge, Family Court, Sonipat, vide which her application dated 25.05.2023 (Annexure-P/5) under Order VII Rule 11 CPC, seeking dismissal of petition under Section 13 of Hindu Marriage Act, 1955 (for short, 'Act, 1955'), as Family Court, Sonipat, has no jurisdiction to entertain above said petition, has been dismissed.

2. Petitioner's case in brief is that marriage between petitioner and respondent was solemnized on 28.03.1999 in accordance with Hindu rites and ceremonies and out of said wedlock they have been blessed with two children

namely Yash and Divya. Petitioner was subjected to cruelty at the hands of respondent-husband and she was turned out of her matrimonial home on 03.06.2009 and she was constrained to get the FIR registered against respondent-husband for the commission of offence punishable under Sections 406 and 498-A IPC. Petitioner also filed an application for grant of maintenance. On 27.06.2015, with the intervention of Mediation Centre at Rohini, compromise was arrived at between the parties and after getting the FIR quashed, on 18.01.2016 petitioner alongwith children was brought to her matrimonial home, where she stayed for about six months and then she was turned out without any rhyme or reason. Thereafter, petitioner had filed petition under Section 125 Cr.P.C. seeking maintenance in the Family Court, Rohini, Delhi, and the same is pending adjudication. During the course of proceedings in petition under Section 125 Cr.P.C., respondent-husband had put in appearance and placed on record Rent Deed dated 20.02.2019 depicting therein that he is residing in House No.80, village Singalpur, Shalimar Bagh, New Delhi. On 11.04.2019, respondent-husband filed petition under Section 13 of Act, 1955, in Family Court, Sonipat, seeking dissolution of marriage by decree of divorce.

During the course of proceedings of above said petition under Section 13 of Act, 1955, petitioner-wife filed an application under Order VII Rule 11 CPC seeking dismissal of divorce petition on the ground that since at the relevant time when the above said petition was instituted, respondent-husband was residing in Delhi and as such Family Court at Sonipat has no jurisdiction to entertain and try the said petition. Vide impugned order dated

09.10.2023 (Annexure-P/6), above said application moved by petitioner-wife was dismissed by the Family Court, Sonipat.

3. Learned counsel for the petitioner *inter alia* contended that admittedly marriage of petitioner (wife) and respondent (husband) was solemnized in the year 1999 at village Bakhtawarpur, Delhi. Out of said wedlock, they have been blessed with two children. Since petitioner was subjected to cruelty at the hands of respondent, she was constrained to leave her matrimonial home but with the efforts made at Mediation Centre, Rohini, Delhi, petitioner with brought back to her matrimonial home in the year 2016 but she stayed there for about six months and then she was turned out of her matrimonial home and since then she is living at the mercy of her parents at village Bakhtawarpur, Delhi. He further contended that during the course of proceedings of petition under Section 125 Cr.P.C. initiated at the instance of petitioner, respondent-husband had placed on record a Rent Deed dated 20.02.2019 depicting therein that he is residing in a tenanted premises situate at village Singalpur, Shalimar Bagh, New Delhi. In April, 2019, respondent-husband had filed divorce petition under Section 13 of Act, 1955, at Family Court, Sonipat. As a matter of fact, above said petition seeking dissolution of marriage by decree of divorce has been filed by respondent-husband with *malafide* intention to defeat the right of petitioner-wife to get maintenance. Since at the relevant time (April, 2019), respondent-husband as well as petitioner-wife were residing in Delhi, in this scenario, Family Court at Sonipat, has no jurisdiction to entertain above said divorce petition.

4. I have heard learned counsel for petitioner and have also gone

through the contents of petition especially the documents placed on the record.

5. Notice of instant petition is not required to be given to respondent-husband as relevant documents are already on the record. In order to avoid further delay in the litigation and unnecessary litigation expenditure, the service of notice to respondent-husband, is dispensed with.

6. Admittedly, marriage between petitioner-wife and respondent-husband was solemnized in the year 1999 according to Hindu customs at village Bakhtawarpur, Delhi. It is categorical stand of petitioner-wife that in the year 2009, she was subjected to cruelty at the hands of respondent-husband and she was forced to leave her matrimonial home but with the conciliation efforts made at Mediation Centre, Rohini, she was brought back to her matrimonial home in the year 2016, where she stayed for about six months and then she was turned out of her matrimonial home without any rhyme or reason and since then she is living in Delhi at the mercy of her parents.

7. A bare perusal of the record reveals that in December, 2018, petitioner-wife filed a petition in Family Court, Rohini, Delhi, under Section 125 Cr.P.C. (Annexure-P/1) against respondent-husband seeking maintenance. It appears that during the course of said proceedings, Rent Agreement dated 20.02.2019 (Annexure-P/2) was filed by respondent-husband, wherein it was claimed that he was residing in House No.80, village Singalpur, Shalimar Bagh, New Delhi. Petition under Section 13 of Act, 1955 (Annexure-P/3), was instituted by respondent-husband against petitioner-wife seeking dissolution of marriage by decree of divorce on 11.04.2019 in Family Court, Sonipat. As revealed from the contents of petition under Section 13 of Act, 1955, on

27.06.2015, compromise was arrived at between parties with the intervention of Mediation Centre, District Court, Delhi and thereafter petitioner and respondent last resided together as wife and husband at village Kami, District Sonipat. However, that reunion did not last long. At this juncture, it is relevant to point out here that petitioner-wife in the instant petition has specifically mentioned that she was turned out from her matrimonial home by the respondent and his family members in the year 2016 and since then she is living at the mercy of her parents.

8. Divorce petition under Section 13 of Act, 1955, was instituted on 11.04.2019 seeking dissolution of marriage on the grounds of cruelty and desertion. Before proceeding further, a careful reading of provisions of Section 19 of Act, 1955, is quite relevant and the same is reproduced hereunder:-

***“19. Court to which petition shall be presented.—Every petition under this Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction:—***

***(i) the marriage was solemnized, or***

***(ii) the respondent, at the time of the presentation of the petition, resides, or***

***(iii) the parties to the marriage last resided together, or***

***(iiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition; or***

***(iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or***

*more by those persons who would naturally have heard of him if he were alive.”*

9. After having gone through the factual position of the divorce petition, learned Family Court recorded findings that respondent-husband has taken a plea that he is permanent resident of village Kami, District Sonipat; that parties lived together in matrimonial home at village Kami; that though petitioner-wife pressurized respondent-husband to shift to Delhi but latter had refused to do so and that their matrimonial dispute was finally settled and then petitioner-wife came back to live with her husband at village Kami, but that alliance could not last long. Learned Family Court while giving reference to Rent Agreement has given the finding that as pleaded by respondent-husband though due to job requirement, he started living in Delhi, but he lived there for shorter time and came back to village Kami on account of ill health. Even otherwise, Rent Agreement dated 20.02.2019 is not a crucial factor to determine the jurisdictional aspect as in terms of Clause (iii) of Section 19 of Act, 1955, the relevant fact pertains to *where the parties to the marriage last resided together*. In this view of the matter, once it is categorical stand of respondent-husband that he alongwith petitioner-wife last resided together at village Kami, District Sonipat, and that circumstance took place in the year 2015-2016, thus, learned Family Court, Sonipat, has rightly concluded that there is no legal impediment for respondent-husband to invoke jurisdiction of Court at Sonipat and resultantly application moved by petitioner-wife seeking exclusion of jurisdiction of Family Court, Sonipat, to try the divorce petition, was rightly dismissed.

10. Thus, finding absolutely no irregularity or illegality in the impugned order calling for any interference by this Court and there being no merit in the petition, the same is dismissed.

11. Pending application, if any, also stands disposed of.

12. Nothing contained hereinbefore shall mean any expression of opinion of this Court on the merits of the case.

(LALIT BATRA)  
JUDGE

05.01.2024  
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Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No