

2025.PHHC.044852-DB 

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

FAO-1540-2025 (O&M)

Date of decision: 27.03.2025

KAWALJIT SINGH @ KAMALJIT SINGH

.....Appellant

Versus

DALJEET KAUR & ANR

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present:- Mr. Rajesh Duhan, Advocate for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 12.12.2024 passed by learned Additional Principal Judge, Family Court, Patiala, Camp Court, Samana (for short the 'Family Court'), whereby, the petition under Section 11 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the appellant-husband, was dismissed.

2. The aforesaid petition had been filed by the appellant-husband, *inter alia*, pleading therein that his marriage with respondent No.1 (hereinafter referred to as the respondent-wife) was solemnized on 29.05.2013, according to Sikh rites, but no child was born out of the said wedlock. It was further alleged that the attitude of the respondent-wife was not proper and she did not want to live with the appellant-husband and had compelled him to shift to her parental house and live there as *Ghar Jawai*. After the marriage, the appellant-

husband was shocked to learn that the respondent-wife was already married with respondent No.2-Baljinder Singh in 2011, but the said fact was concealed by her at the time of her marriage with the appellant. The respondent-wife used to leave the matrimonial house without intimating or informing the appellant-husband and that she continued her relationship with her previous husband by keeping the appellant in dark. It was further pleaded that the said acts and conduct of the respondent-wife left the appellant-husband into shock, stress, tension and depression causing him mental as well as physical cruelty. It was further pleaded that the respondent-wife after leaving the matrimonial home, was residing with her previous husband and, thus, she had deserted him without any reasonable cause. Accordingly, it was prayed that the marriage was liable to be declared as null and void being in contravention of the provisions of Section 5(i) of the Act.

3. Upon notice, the respondent-wife entered appearance and filed her written statement, admitting the factum of marriage. It was further asserted that it was an arranged marriage, but after the marriage she had been given beatings by the appellant-husband on account of bringing less dowry articles. The appellant-husband used to take liquor and other intoxicants and give beatings to the respondent-wife on one pretext or the other. She was maltreated, taunted and harassed for not giving birth to a child. In September, 2018, the appellant-husband had demanded more dowry articles and a cash amount of Rs.50,000/- from the respondent-wife and when she had expressed her inability to meet the said illegal demands, she had been

given beatings by the appellant-husband and his family members. She was turned out of the matrimonial home and the Panchayats convened in this regard did not yield any fruitful result.

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

“1. Whether the petitioner is entitled to a decree for nullity of his marriage with the respondent No.1 under Section 11 of Hindu Marriage Act, as prayed for? OPP

2. Relief.”

5. In evidence, the appellant-husband appeared as PW-1 and had also examined PW2-Kaka Singh, Notary Public Tehsil Complex Moonak, District Sangrur; PW3-Bikramjit Singh and PW4-Mukhtiar Singh Granthi of Gurudwara Sri Hargobind Sahib Patshahi Chevi, Khanauri Mandi. On the other hand, no oral or documentary evidence was led by the respondent-wife.

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

7. Learned counsel for the appellant-husband has vehemently argued that it was the specifically pleaded case of the appellant-husband that at the time of her marriage with him, the respondent-wife was already married to one Bikramjit Singh and in support of the said averments, the appellant-husband had examined RW4-Mukhtiar Singh Granthi of Gurudwara Sri Hargobind Sahib

Patshahi Chevi, Khanauri Mandi, who had deposed in respect of the earlier marriage of the respondent-wife. It is, thus, argued that once the factum of the earlier marriage of the respondent-wife stood established on record, there was no occasion for the learned Family Court to dismiss the divorce petition filed by the appellant-husband. It is further argued that even while appearing as PW-1, the appellant-husband had reiterated the averments made in the divorce petition. While referring to the testimony of PW2-Kaka Singh (Notary Public Tehsil Complex Moonak, District Sangrur), it is argued that the said witness had proved the affidavit of the respondent-wife and respondent No.2-Bikramjit Singh in respect of their marriage. Thus, it is, argued that the factum of the earlier marriage having been established on record and the said fact having not been brought to the notice of the appellant-husband at the time of his marriage with the respondent-wife, the findings recorded by the learned Family Court are legally untenable. Still further, it is argued that the finding of the learned Family Court that the appellant-husband had not been able to produce the secondary evidence of the affidavit of Bikramjit Singh (Ex.PW2/2), is not sustainable for the fact that Bikramjit Singh son of Sukha Singh and Vikramjit Singh son of Sukha Singh, was one and the same person i.e., respondent No.2. It is, thus, argued that the findings recorded by the learned Family Court are capricious in nature and the same are liable to be set aside by this Court.

8. On the basis of the evidence led by the parties, it was found by the learned Family Court that though the appellant-husband had examined RW2-Kaka Singh (Notary Public Tehsil Complex

Moonak, District Sangrur), to prove affidavits of the respondents as Ex.RW2/1 and Ex.RW2/2 yet none of the witnesses, who had signed the said affidavits, was examined. Still further, it was found that the attestation in the affidavit Ex.RW2/2 (that of Bikramjit Singh), was not accompanied by Aadhar card. It was further found that though an application moved by the appellant-husband under Section 65 of the Evidence Act for allowing him to prove affidavit of respondent-wife dated 05.11.2012, by way of secondary evidence was allowed, yet he failed to lead any such secondary evidence. It was, thus, found that the appellant-husband could have produced the marriage invitation card; photographs of the marriage of the respondents and the original attested affidavit of respondent No.2-Vikramjit Singh. The factum of both the respondents having gone to PW2-Kaka Singh (Notary Public Tehsil Complex Moonak, District Sangrur), and not to any other notary public in the nearby vicinity of Samana for attestation of the affidavit, was held to be not believable, in view of the fact of their being residents of Patran and Samana. It was further found that in case the respondent-wife was married to respondent No.2-Bikramjit Singh, the appellant-husband could have produced the original certificate of their marriage in the Court. It was, thus, concluded that the appellant-husband had miserably failed to prove the first marriage of the respondent-wife with respondent No.2-Bikramjit Singh.

9. In the instant case, the onus to prove the first marriage of the respondent-wife with respondent No.2-Bikramjit Singh was upon the appellant-husband. As noticed above, he had been granted permission by the Court to lead secondary evidence to prove the

affidavit dated 05.11.2012, allegedly executed by the respondent-wife, but no such evidence was led. The witnesses examined by the appellant and the documents produced on record, were found to be not sufficient to prove the case set up by the appellant-husband. No marriage certificate or photographs of the alleged marriage between the respondents was brought on record and, thus, it was rightly found by the learned Family Court that the appellant-husband had failed to prove the averments made in the divorce petition.

10. We find that the findings recorded by the learned Family Court are based on evidence on record. The same do not suffer from any illegality or perversity. It could not be pointed out that any evidence has been misread or not taken into consideration.

11. No other point has been urged.

12. Finding no merit in the present appeal, the same is hereby dismissed.

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

[SUDHIR SINGH]
JUDGE

[SUKHVINDER KAUR]
JUDGE

27.03.2025
himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No