



In the High Court of Punjab and Haryana, at Chandigarh

First Appeal Order No. 497 of 2017

**Reserved On: 02.07.2025
Pronounced On: 08.07.2025**

Ranjit Singh Uppal

... Appellant(s)

Versus

Kashmir Channi Uppal

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Anil Kshetarpal.
Hon'ble Mr. Justice Rohit Kapoor.**

Present: Mr. G.S.Jaswal, Advocate
for the appellant(s).

Mr. G.S.Punia, Senior Advocate
with Mr. P.S.Punia, Advocate
for the respondent.

Anil Kshetarpal, J.

I. Brief Facts of the Case

1. The appellant herein is the respondent's husband. He assails the correctness of the judgment passed by the Family Court on 01.12.2016 while dismissing his petition for dissolution of marriage by way of decree of divorce. Originally, the appellant filed a petition which was allowed *ex parte*. However, on an application filed by the respondent, the *ex parte* decree was set aside while recording a finding that the appellant is guilty of giving incorrect address of the respondent. Thereafter, the respondent was allowed to contest the petition which, as already noticed, has been dismissed.

2. In order to comprehend the issues involved in the present case,

the relevant facts in brief are required to be noticed. The marriage between the parties was solemnized on 02.04.1996. The respondent wife was staying in Canada where she was permanently residing, whereas the appellant was residing in India. Immediately after their marriage, she submitted an application sponsoring the appellant for migration to Canada. The application of the appellant was rejected by the Embassy. The respondent filed an appeal against the order of rejection which was allowed. The appellant was allowed to migrate to Canada in the year 1999. On 24.07.2000, the respondent gave birth to son, namely Zoravar Singh from the loins of the appellant.

3. On 15.09.2008, the appellant filed a petition seeking divorce on the ground that the respondent had no liking for him and she felt that the appellant was not upto her standard and status. She used to scold and terrorize him due to disparity in educational qualification. She also used to insult him in the presence of his friends and visiting guests. In the month of February 2006, she left the matrimonial company of the appellant and never returned. The petition was contested by the respondent. It was claimed that she never treated the appellant with cruelty or deserted him. In fact, the appellant came to India and with the malafide intentions, he filed a divorce petition by giving her incorrect address. She also offered to join the company of the appellant without any precondition as the future of the child is involved.

II. Evidence Adduced

4. The appellant appeared in evidence as PW.1 and he examined PW.2 Balbir Singh and PW.3 Joginder Singh.

5. On the other hand, the respondent herself stepped into the witness box as PW.1.

III. Arguments Addressed

6. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book along with the requisitioned record.

7. The learned counsel representing the appellant submits that the parties are residing separately in Canada from the last 17/18 years. After the grant of *ex parte* decree of divorce, the appellant remarried and is blessed with two children from his second marriage. He submits that there are no chances of reconciliation and the marriage between the appellant and respondent is a dead marriage. He further submits that the Family Court has erred in dismissing the petition as the respondent stayed with the appellant only for a few days.

8. Per contra, the learned counsel representing the respondent has drawn the attention of the Court to the findings arrived at by the Family Court.

IV. Analysis and Discussion

8. It is evident that the respondent was well settled in Canada and was permanently residing there. It was the appellant who wished to settle in Canada. The respondent came to India and their marriage was solemnized on 02.04.1996. Thereafter, the respondent sponsored the appellant's name for his migration which was rejected by the Embassy. It was the respondent who filed an appeal which was allowed after the passage of 2½ years of the marriage. Thereafter, the appellant migrated in the year 1999 to Canada. If

the respondent did not like the appellant, she would not have filed an appeal or made efforts to ensure the appellant's immigration. While appearing in evidence, the respondent has stated that at the time of interview of the appellant for his migration, she stayed with the appellant for a period of three months in India. Moreover, after migrating to Canada, the appellant and respondent initially resided with the respondent's mother and thereafter, they set up their independent matrimonial home. Undoubtedly, the appellant was arrested on the complaint of the respondent in the year 2003-2004 in Canada. However, thereafter, they resided together. It is also the case of the respondent that she resided with the appellant in India in her parental home till September 2007. Hence, the appellant has failed to prove that the respondent has deserted him since February 2006. It is the appellant who filed a petition for the grant of decree of divorce against the respondent by giving her incorrect address and was able to obtain *ex parte* decree.

9. The appellant has also failed to prove cruelty on the part of the respondent, as the respondent has admitted that she had only filed one police complaint against the appellant in the year 2003-2004. The appellant has not produced any other material to prove that the respondent has treated him with cruelty. From the bare reading of the statement of the appellant who appeared as PW.1, it is evident that he has failed to prove cruelty and desertion on the part of the respondent. In fact, the respondent has stated that she was pressurized to sponsor the appellant's brother's immigration to Canada which she refused. Hence, she was dropped at her parental house.

10. The Family Court has recorded the findings of fact upon appreciation of evidence which is not proved to be the result of misreading

or non-reading of the evidence. The Family Court has drawn a plausible conclusion on appreciation of evidence. Hence, this Court does not find it appropriate to interfere.

11. Undoubtedly, the parties are separately living in Canada from the last 17/18 years. However, there is no provision in the Hindu Marriage Act, 1955, to grant a decree of divorce on account of the fact that the parties are living separately particularly during the pendency of petition and appeal. The statute provides that if the either spouse, without any reasonable cause, deserts him/her only then the decree for divorce can be granted. However, as already noticed, the appellant has failed to prove the aforesaid fact.

V. Decision

12. For the foregoing reasons, this Court does not find any merit in the present appeal.

13. Consequently, finding no merit in the present appeal, the same is dismissed.

(Anil Kshetarpal)
Judge

(Rohit Kapoor)
Judge

July 08th , 2025

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No