

**(1979) 11 P&H CK 0005**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** First Appeal from order No. 44-M of 1979

Jagan Nath APPELLANT

Vs

Smt. Krishna Kumari Sharma RESPONDENT

**Date of Decision:** Nov. 12, 1979

**Hon'ble Judges:** J.M. Tandon, J

**Bench:** Single Bench

**Advocate:** R.L. Sarin, for the Appellant;

**Final Decision:** Allowed

**Judgement**

J.M. Tandon, J.

Jagan Nath Appellant and Krishana Kumari Respondent were married in 1972. The Respondent gave birth o(sic) two sons who are aged 5 1/2 years and 3 years. On September 27, 1978, the Appellant filed a petition for divorce against the Respondent on the grounds of cruelty and desertion on her part for conntinuous period of more than two years immediately preceding the presentation of the petition without any cause.

2. A notice was issued to the Respondent by the learned Additional District Judge, Ferozepur, in whose Court the petition was pending. She was served but she did not put in appearance, with the result that ex parte proceedings were ordered against her on November 21, 1978. The Appellant himself appeared as a witness to support his petition and he also produced AWs. Om Parkash and Lekh Raj to support his casse. The learned trial Court held that the Respondent had been living separately from the Appellant for the last about two years before the presentation of the petition and that she had refused to have matrimonial relations with him which amounts to cruelty on her part. The trial Court, however, opined that it would not be fit case for granting a decree of divorce keeping in view the interests of the two minor children and the fact that the possibility of a compromise between the parties cannot be ruled out Under these circumstances, the Appellant was granted an ex parte decree for judicial separation against the Respondent by order dated February

3, 1979. It is against this order that the present appeal is directed.

3. A notice of the appeal was issued to the Respondent. She has been served but has not put in appearance.

4 The Appellant in his own statement said that their marriage took place in 1972. One son was born in 1973 and the other in 1976. The Respondent is living separately from him since 1976 against his wish. In December, 1976 he accompanied by Lekh Raj, Om Parkash and Jagan Nath went to the mother of the Respondent to request her to send the Respondent. The mother of the Respondent told them that she had become a Braham Kumari and had renounced the world. The Respondent also told him that she was having brotherly relations with him. She declined to maintain matrimonial relations. In September, 1977, he again contacted the mother of the Respondent for the same purpose but without any success. AW Om Parkash said that he is a resident of Moga. The house of the parents of the Respondent is at a distance of 35 yards from his home. In December, 1976, he had accompanied the appellant, Jagan Nath and Lekh Raj to the mother of the Respondent. The Respondent and her mother were present at the house. They requested the Respondent to accompany them. The mother of the Respondent told them that she had become a Braham Kumari and will not accompany them. The attempt was again repeated in September, 1977. A.W. Lekh Raj also stated likewise.

5. From the ex parte evidence led by the Appellant it is proved that the Respondent had deserted the Appellant for more than two years immediately preceding the presentation of the petition without any cause. It is also proved that she has declined to maintain matrimonial relations with the Appellant which amounts to cruelty. Similar findings given by the learned trial Court are affirmed.

6. In view of findings above, the learned trial Court, however, erred in not granting a decree of divorce to the Appellant by dissolution of his marriage with the Respondent. The findings warranted the granting of a decree of divorce to the Appellant.

7. In the result, I accept the appeal, set aside the order of the trial Court granting a decree for judicial separation to the Appellant and further dissolve the marriage of the Appellant with the Respondent by granting him a decree of divorce against the Respondent with no order as to costs.