

(2009) 07 P&H CK 0091

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Renuka Verma

APPELLANT

Vs

Padam Verma

RESPONDENT

Date of Decision: July 1, 2009

Acts Referred:

- Hindu Marriage Act, 1955 - Section 10, 13

Citation: (2009) 4 RCR(Civil) 502

Hon'ble Judges: S.D. Anand, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

S.D. Anand, J.

This is wife's appeal against the impugned order dated 18.9.2007 vide which the learned Trial Court, while allowing a petition u/s 13 of the Hindu Marriage Act (hereinafter referred to as "the Act") filed by the respondent-husband, ordered the dissolution of their marriage. The learned Trial Court upheld the allegations levelled by the respondent-husband that the appellant- wife had treated him with cruelty and had deserted him without any reasonable cause.

2. The respective pleadings of the parties, as apparent from the file are as under:

The marriage between the parties was solemnised on 20.11.1992 at Gurdaspur, according to Hindu rites and ceremonies. The parties cohabited, as husband and wife, at Gurdaspur and two sons (Jatin Verma and Sahil Verma) were born out of their union on 25.10.1993 and 21.8.1995 respectively. A female issue namely Bhavna was also born out of their union in the year 1999 at village Tara Garh. At the time of presentation of the petition, Sahil Verma was put up with the respondent; while Jatin and Bhavana were putting up with the appellant-wife. At the time of the marriage, the respondent-husband was working as a building contractor. His two younger brothers were unmarried at that time. Mother of the respondent-husband was living

with them. (Father of the respondent-husband was dead by that time). Immediate after the marriage, the appellant-wife started insisting that the respondent-husband should separate in mess and residence from the other members of his natal family. The respondent-husband expressed his inability to do so in view of the fact that his father had predeceased his mother and he has to look after his two unmarried brothers. The appellant-wife, thereafter, started quarreling with her mother-in-law. She would even abuse her brothers-in-law even on petty matters. Thereafter, one of the younger brothers of the respondent-husband got married and his two brothers and his mother separated in mess and residence from the respondent-husband. Even then, the behaviour of the appellant-wife did not undergo any change. Whenever relations of the respondent would come to visit, she would be disrespectful towards them. She was also in the habit of abusing the respondent in the presence of visiting friends and relations. From his job of a building contractor, the respondent changed his profession to a property consultant and building designer. Whenever a customer would be visiting him at his house, the appellant would resist that visit. On that account, the respondent shifted his office to a rented premises.

3. In the year 1996, the appellant refused to sex to the respondent. Even thereafter, the appellant denied sex to him. She was in the habit of announcing that the respondent is a characterless husband and is leading a immoral life. She would so announce when there were friends of the respondent visiting them.

4. In the month of November, 1998, the appellant picked up a quarrel with the respondent and threatened to commit suicide and involve the respondent and living members of his natal family in a false case. She also called upon the respondent to deposit a sum of Rs. 10 lacs in her name or else she would abandon him for ever. During the Christmas holidays on 21.12.1998, the appellant went over to her natal house, alongwith both her sons. The understanding was that she would get back to the matrimonial house on 1.1.1999 when the children of the parties had to resume schooling. She did not, however, honour the commitment. On 22.2.1999, the respondent fetched the appellant and the two sons of the parties to the matrimonial house. She, however, again left the matrimonial house unannounced on 25.5.1999 with her both sons and went over to her natal house at village Taragarh. She also carried along her gold ornaments, cash amount of Rs. 1 lac and other valuable clothings. The respondent approached her and requested her to join the matrimonial company and also to return the amount of Rs. 1 lac which she had taken from the matrimonial house. Though the appellant sent one of the minor sons with the respondent but she refused to herself get back the matrimonial house.

5. In the month of July, 1999, the appellant gave birth to a female child. However, the birth of the child was not intimated to the respondent.

6. The respondent filed a petition for judicial separation in the month of July, 1999. However, it was dismissed by the learned Trial Court vide order dated 15.4.2004. In

the course of the written statement filed at that trial, the appellant-wife had levelled false allegation of cruelty against the respondent. In appeal, however, this Court allowed a plea by the respondent-husband to dismiss that petition as withdrawn.

7. In the present petition, the respondent applied for the dissolution of the marriage between the parties inter-se on the plea of desertion and cruelty.

8. The appellant-wife denied that she ever conducted herself in a disrespectful manner towards any member of her in-laws family. In the course of the preliminary objection, she averred that the petition was a counter-blast to a petition filed by her for maintenance and for obtaining custody of her two children. She also challenged the maintainability of the petition in view of the fact that a previous petition for judicial separation on these very allegations of cruelty had been dismissed. She denied having ever insisted upon the respondent separate in mess and residence from his mother and brothers. She did concede that the two brothers of the respondent separated from the respondent but averred that they separated from the respondent only on account of their dispute inter-se and not on account of any desire on the part of the appellant for separation in mess and residence from the natal family of the respondent. While denying that she ever refused sex to the respondent, she alleged that the respondent has strange type of relationship with one Nirmal Kanta who exercised complete control over the decisions taken by him. Further allegation in the context is that Nirmal Kanta used to visit the matrimonial house of the parties frequently and the respondent used to stay at her residence for day together. Whenever the appellant objected to the relationship between the respondent and Nirmal Kanta, he would belabour her. She further denied having taken any gold ornaments, cash amount or clothings from the matrimonial house. It was alleged that the respondent turned her (and her two minor children) out of the matrimonial house on 21.12.1998 when she was in a family way. The respondent was approached by her parents for rehabilitation but he announced that the proposal could be put through only if he would be paid a sum of Rs. 5 lacs. However, her parents could not pay that amount on account of financial incapacity. Qua the birth of the female child, it was averred that the factum of birth had been duly intimated to the respondent but he did not, however, accept her as his daughter because he always had a suspicion about the legitimacy of the child.

9. The trial proceeded on the following issues:

1. Whether the respondent treated the petitioner with cruelty? OPA
2. Whether the respondent has deserted the petitioner without any sufficient cause since the year 1999? OPA
3. Whether the petition is not maintainable? OPR
4. Relief. PW-2 Narender Singh and PW-3 Jaswant Singh were examined by the respondent who entered the witness box, as his own witness, as PW-1 at the trial.

Ex.P2 (a copy of the statement made by the appellant-wife in the previous proceedings) and Ex. P3 (a certified copy of report filed by the Incharge of Women Cell) were tendered into evidence. In addition thereto, Ex. PX, a copy of order dated 13.7.2004 pertaining to a litigation between the parties, was also tendered into evidence.

10. Insofar as the appellant-wife is concerned, she entered the witness box, as her own witness, as RW-1 and tendered into evidence documents Ex. R-6 to Ex. R9.

11. The learned Trial Court, on a perusal of the material obtaining on the file, upheld the plea of desertion raised by the respondent-husband and proceeded to order the dissolution of marriage between the parties interse.

12. The appellant-wife is in appeal.

13. The learned Counsel, appearing on behalf of the appellant, argued at the very outset that the petition filed by the respondent-husband was not at all maintainable because of the fact that he had earlier filed a petition u/s 10 of the Act for grant of a decree for judicial separation precisely on these very allegations. However, the learned Counsel was not in a position to deny that, in appeal, this Court had allowed the respondent-husband to withdrawn that petition. In that view of things, it is not open to the appellant-wife to raise a plea of non-maintainability.

14. It was, then, argued by the learned Counsel appearing on behalf of the appellant that the impugned finding on plea of cruelty deserves invalidation in view of the fact that there were no specific instances quoted by the respondent-husband in the petition which could form foundational premise of a plea of cruelty.

15. It is apparent, from the material obtaining on the file, that in the course of the written statement filed by the appellant-wife in the petition for judicial separation, she had made precise allegation against the respondent-husband that he is having illicit relationship with one Nirmal Kanta. Even in the present trial, she made an averment that there was a strange relationship between the respondent and Nirmal Kanta aforementioned, that Nirmal Kanta used to frequent the matrimonial house of the parties and that respondent would stay at the house of Nirmal Kanta aforementioned for days together.

16. It would require pertinent notice that the appellant-wife conceded having made a statement at the previous trial and the present trial attributing illicit relationship between the respondent- husband with Nirmal Kanta aforementioned. However, in the course of cross-examination at the present trial, she conceded that the respondent is not having illicit relations with Nirmal Kanta aforementioned. She also conceded that Nirmal Kanta performs the Chowki of Vaishno Mata. She also conceded that Nirmal Kanta aforementioned visited the parties after the marriage and blessed them. In the previous petition as well, the appellant had admitted that the respondent-husband was not having illicit relationship with Nirmal Kanta. She

also conceded that she has no idea if Nirmal Kanta is treated like a Goddess.

17. It is, thus, apparent that the appellant wife had indulged in unsubstantiated exercise of character assassination against the respondent-husband. Even though the earlier petition was dismissed as withdrawn, she cannot wish away the specific allegation on the point of illicit relationship which she had made against respondent- husband in the previous petition. Even otherwise, she reiterated those very allegations in the pleadings at the present trial. In view, thus, of the fact that the appellant-wife conceded in the previous trial and also the present trial too, that the respondent is not having any illicit relations with Nirmal Kanta, it is apparent that she levelled baseless allegations touching the moral integrity of the respondent- husband. An act of the indicated category would, obviously, be taken to be an instance of cruelty which the appellant inflicted upon her husband.

18. There is a precise allegation in the petition that the appellant-wife left the matrimonial house on 21.12.1998, along with her two sons with a promise to return after the Christmas holidays on 1.1.1999. The factum of her leaving the matrimonial house was not denied by the appellant-wife at the trial, though her allegation in the context was that she was turned out of the matrimonial house, alongwith her two children, on 21.12.1998. The further allegation in the petition was that the appellant-wife again left the matrimonial house on 22.5.1999. Qua it too, the appellant-wife had raised a plea that she was turned out of the matrimonial house. Her averments at the trial are not corroborated by any independent evidence. The least the appellant-wife could do to buttress her averment was to examine atleast some member of her natal family who could testify at the trial the circumstances under which she left the matrimonial house and went over to her natal house.

19. Apart therefrom, the appellant-wife raised a plea that respondent has suspicion about legitimacy of the female child of the parties. No such suspicion was indicated by the respondent- husband at the trial nor was any suggestion to that effect put to the respondent-husband at the trial. There again, the appellant-wife is guilty of an act of cruelty by attributing suspicion to the respondent- husband which is not proved to have ever existed in latter's mind.

20. It is, thus, apparent from the discussion that the appellant - wife raised a plea qua the personal character of the respondent - husband in the pleadings of the earlier petition and also the present petition. However, she is proved to have conceded in the previous petition that the averred illicit relationship, as between the respondent-husband and Nirmal Kanta does not exist. She is, thus, proved to have committed an act of cruelty vis-a-vis the respondent- husband.

21. Apart thereof, she is further proved to have levelled an unsubstantiated allegation that the respondent-husband had any doubt about the legitimacy of her female child.

22. In the light of the foregoing discussion, I have no hesitation in affirming the findings recorded by the learned Trial Judge which (findings) are relatable to the material obtaining on the file and are facts based in character. There also is no illegality or infirmity in the appreciation of the evidence by the learned Trial Court. The appeal is held to be denuded of merit and is ordered to be dismissed.