(2003) 02 P&H CK 0038

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal Order No. 174-M of 1999

Palwinder		APPELLANT
	Vs	
Saroj		RESPONDENT

Date of Decision: Feb. 19, 2003

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13(1), 9

Citation: (2003) 135 PLR 505 : (2003) 3 RCR(Civil) 683

Hon'ble Judges: Satish Kumar Mittal, J

Bench: Single Bench

Advocate: G.K. Mann, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

Satish Kumar Mittal, J.
Palwinder the husband has filed the instant appeal against the judgment and decree dated 24.7.1999 passed by learned Additional District Judge, Amritsar, vide which the petition filed by him against his wife Saroj u/s 13 of the Hindu Marriage Act, 1955 for dissolution of the marriage by a decree of divorce on the grounds of cruelty and desertion has been dismissed.

2. The marriage between the parties was solemnised on 26.6.1991. Out of this wedlock, two children were born, who are now 11 years and 9 years old. In the year 1996, the appeilant filed divorce petition against the respondent on the ground of cruelty and desertion. It was alleged that from the very beginning the behaviour and conduct of the respondent was harsh and cruel. She was pressuring the appellant to live separately from the join family and used to quarrel with him and his family members of flimsy matters. She did not cook the meals and did not wash the clothes of the appellant. She was under the influence of her mother and used to spend maximum time with her. It was further alleged that in October, 1995, the respondent took the minor daughter and other valuable ornaments and clothes

with her and left the matrimonial house without informing the appellant. Since then, she is living separately and has deserted the appellant without any sufficient cause. It was further alleged that the respondent had also filed a false criminal complaint against the appellant, his parents, brothers, sister and brother-in-law u/s 406, 498-A IPC, in which the appellant and this family members were summoned. It was alleged that the aforesaid conduct and behaviour of the respondent caused mental and physical cruelty to the appellant.

3. Pursuant to the notice issued to the respondent, she appeared and contested the aforesaid petition filed by the appellant by denying all the allegations levelled against her. It was pleaded that the appellant and his parents were not satisfied with the dowry articles. In the month of September, 1996, the appellant and his family members compelled the respondent to bring more dowry, failing which she was threatened not to be allowed to reside with the appellant. When the respondent tried to persuade them, she was mercilessly beaten and she alongwith her minor daughter was thrown out of the matrimonial home. Since then, respondent is living separately with her mother as inspite of the consistent efforts made by her family members she was not allowed to join the matrimonial home. It was alleged that it is the appellant, who is guilty of cruelty and he cannot be allowed to take the benefit of his own wrong.

4. After considering the evidence led by both the parties, the learned trial court dismissed the aforesaid petition while holding that the appellant had failed to prove on record the alleged cruelty. It was also held that the appellant has failed to prove on record his desertion at the hands of his wife as she was residing separately from him for sufficient cause.

5. Mr. G.S. Mann, learned counsel for the appellant assailed the findings recorded by the learned trial Court on the issue of cruelty and desertion and contended that the learned trial Court has wrongly decided the aforesaid two issues against the appellant on the basis of misreading of the evidence led by the appellant and on the basis of wrong assumption of law as well as facts.

6. I have heard the arguments of learned counsel for the appellant and have perused the record of the case. In my opinion, there is no merit in the appeal filed by the appellant. The allegations of cruelty alleged by the appellant are of general nature. Merely because the respondent did not cook meals; did not wash clothes of the appellant; is a quarrel-some lady and used to quarrel with the appellant on petty matters, it cannot be concluded that on such allegations marriage between the parties should be dissolved on the ground of cruelty. The learned Additional District Judge has considered the allegations levelled by the appellant against the respondent as well as the evidence led by him in this regard. The allegation of the appellant that the respondent used to threat him to commit suicide on his refusing to separate from his parents was found to be false. It has also been found that the appellant could not establish the alleged cruelty on the basis of which marriage

between the parties can be dissolved by a decree of divorce.

7. The allegations of the appellant regarding desertion was also found to be not established. The allegation in this regard that the respondent is under the influence of he mother and used to spend more time with her does not establish the desertion as required by law. The appellant is required to establish that without any sufficient cause the respondent is living separately for the last two years. In the instant case, the respondent has also filed a petition u/s 9 of the Hindu Marriage Act for restitution of the conjugal rites alleging that she was turned out of the matrimonial house by the appellant on the pretext of demand of dowry. The appellant who himself has turned out the respondent on the pretext of demand of dowry cannot be allowed to take benefit of his own wrong. Learned Additional District Judge has also recorded the finding on this issue against the appellant. It do not find any infirmity or illegality in the findings recorded by the learned Additional District Judge. In my opinion, it is not the case where the marriage between the parties should be dissolved on the aforesaid allegations which have not been established particularly when there are two children from his wedlock, who are now 11 years and 9 years old. In the facts and circumstances of the present case, I cannot arrive at the conclusion that the relations between the parties have deteriorated to such an extent that it is impossible for them to live together. The respondent is still ready to go with the appellant. In these circumstance, I am of the opinion that it is neither in the interest of society nor in the interest of two children to dissolve this marriage on the petty allegations levelled in the divorce petition.
8. In view of the aforesaid discussion, I find no merit in the present appeal and the same is hereby dismissed.