

**(2003) 03 P&H CK 0030**

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

**Case No:** First Appeal Order No. 197-M of 1999

Malkiat Singh

APPELLANT

Vs

Shinderpal Kaur

RESPONDENT

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**Date of Decision:** March 12, 2003

**Acts Referred:**

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

**Citation:** AIR 2003 P&H 283 : (2003) 2 CivCC 642 : (2003) 3 RCR(Civil) 200

**Hon'ble Judges:** Satish Kumar Mittal, J

**Bench:** Single Bench

**Advocate:** D.D. Sharma and Pawan Sharma, for the Appellant; S.C. Chhabra, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Satish Kumar Mittal, J.

1. Malkiat Singh, the husband, has filed the instant appeal against the judgment and decree dated 21-9-1999 passed by the Additional District Judge, Bathinda, vide which his petition for dissolution of marriage filed u/s 13(1-A)(ii) of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act") against his wife Smt. Shinderpal Kaur, respondent-herein, was dismissed.

2. The brief facts of the case are that the marriage between the parties was solemnised on 22-5-1992 according to Hindu rites. Out of this wedlock, a male child was born. According to the appellant, in the year 1994 the respondent left his company without any reasonable cause or ground. She left the matrimonial home along with her child and went to the house of her parents. In spite of his repeated requests and persuasion, when she did not resume her matrimonial duty and returned back to her matrimonial home the appellant filed a petition u/s 9 of the Act for restitution of conjugal rights on 18-7-1995 against the respondent. The said petition was allowed by the Additional Civil Judge (Sr. Division), Phul, vide his order

dated 23-5-1997. But despite the aforesaid decree of restitution of conjugal rights, the respondent did not resume his company and thereby she had failed to obey the said decree. The appellant further alleged that in spite of expiry of more than one year period after the said decree, the respondent has not resumed his company and actually she refused to resume his company. As such, the appellant alleged that he has left with no other remedy but to seek the dissolution of the marriage by filing the petition u/s 13(1-A)(ii) of the Act, which he filed on 22-7-1998.

3. Pursuant to the notice issued to the respondent, she appeared and hotly contested the aforesaid petition. She admitted that she was legally married to the appellant on 22-5-1992; and that a petition u/s 9 of the Act was filed by her husband against her which was allowed in his favour on 23-5-1997; and that at present she has been residing along with her child in the parental house with her brother. But she denied the other material allegations levelled by the appellant against her. She pleaded that she herself did not leave the company of the appellant. Rather, it was the appellant who treated and tortured her mentally as well as physically in a very cruel manner on one pretext or the other. In the month of March, 1994, she was kicked by her husband out of her matrimonial home. As such, it was the appellant who turned her out from her matrimonial home in a miserable condition on which she had to come to the house of her brother where she has been leading a miserable life. She further pleaded that after passing of the decree dated 23-5-1997, she made all efforts to persuade the appellant to allow her to reside with him and allow her to do her matrimonial duty in the matrimonial home. Her brother and the Panchayat members of the village also repeatedly persuaded the appellant to keep her and her child with him, but he did not allow her to resume his company. Moreover, after passing of the decree of restitution of conjugal rights, the appellant did not take any step to bring the respondent back to the matrimonial home. She further pleaded that the appellant was not interested to obey the order of the Court though the respondent was and is always ready and willing to resume the matrimonial duty and reside with him as his wife. As such, the appellant has no cause of action to file the petition for divorce u/s 13(1-A)(ii) of the Act.

4. It is pertinent to mention here that no rejoinder or replication was filed by the appellant to the aforesaid written statement filed by the respondent.

5. After considering the evidence led by both the parties and after hearing the matter, the Additional District Judge, Bathinda dismissed the petition filed by the appellant while holding that it was the appellant who has failed to make any efforts to bring his wife back; and he has stonewalled all efforts of the respondent, and of her relation and Panchayat to persuade him to keep her with him as his wife. It was further held that it was not for the respondent alone to obey the decree of restitution of conjugal rights or to resume the company of the appellant as his wife unless the appellant was also willing to allow her to accompany him in the matrimonial, home. It was further held that the appellant had not filed the petition

u/s 9 of the Act with a bona fide intention to bring his wife back to the matrimonial home, but he obtained the said decree with a mala fide intention merely to take a ground for filing the instant petition to seek divorce u/s 13 (1-A)(ii) of the Act. In view of this finding, it was held that the appellant is not entitled for the dissolution of marriage on the ground that one year has elapsed after passing of the decree of restitution of conjugal rights as he cannot be allowed to take the benefit of his own wrong, in view of Section 23(1)(a) of the Act.

6. The appellant has filed the instant appeal against the aforesaid judgment passed by the Additional District Judge.

7. It is pertinent to mention here that on 21-9-2000 at the time of motion hearing of the instant appeal, this Court tried to reconcile the matter between the parties, but the reconciliation was not possible due to the hard stand taken by the appellant. The following order was passed by this Court on that date :--

"Parties are present in the Court today. Respondent states that she is ready to stay with the appellant but the appellant says that he does not want to keep her. In these circumstances, it is not possible to bring the parties to a compromise. Adjourned for arguments to 31-10-2000. Call for record. Parties need not remain present till further orders."

8. During the pendency of the appeal when the respondent filed an application u/s 24 of the Act for grant of maintenance pendente lite and litigation expenses, the appellant neither filed any reply nor the counsel for the appellant appeared in the Court to contest the said petition. This Court vide its order dated 26-2-2001 awarded Rs. 1200/- per month as maintenance pendente lite from the date of the application and Rs. 3500/- as litigation expenses to the respondent by an interim order. It has been stated by the learned counsel for the respondent that even the appellant has not paid the aforesaid amount to the respondent.

9. I have heard the arguments of the learned counsel for both the parties and have perused the record. Shri D. D. Sharma along with Shri Pawan Sharma, learned counsel for the appellant, submitted that the trial Court has committed a grave illegality while dismissing the divorce petition filed by the appellant in spite of the fact it has been established on record that the respondent did not resume her matrimonial home even after passing of the decree of restitution of conjugal rights. The said decree passed against the respondent remained unsatisfied for a period of more than one year and the respondent in spite of the said decree, did not return back to her matrimonial home. The learned counsel for the appellant further submitted that the appellant in his statement as PW 1 has categorically stated that in spite of his best efforts, the respondent-wife did not join his company and she deliberately and intentionally disobeyed the decree of restitution of conjugal rights. He also submitted that, once a period of one year after passing of the decree of restitution of conjugal rights has elapsed and the decree remained unsatisfied, then

it becomes incumbent on the Court to grant the decree of divorce u/s 13(1-A)(ii) of the Act. He further submitted that the finding recorded by the Additional District Judge to the effect that the appellant obtained the decree of restitution of conjugal rights with oblique motive is based on conjectures; and the Additional District Judge has dismissed the petition of the appellant for dissolution of marriage by taking a wholly erroneous view.

10. The learned counsel for the respondent submitted that there is no illegality or Infirmity in the judgment and decree passed by the trial Court. On the basis of the evidence led by the parties, the trial Court has rightly come to the conclusion that no decree of divorce can be granted u/s 13(1-A)(ii) of the Act when the appellant himself was found to be on wrong. He cannot be allowed to take the benefit of his own wrong in view of Section 23(1)(a) of the Act. The learned counsel for the respondent further submitted that his client was always and is still ready to accompany the appellant and join her matrimonial duties as his wife. He further submitted that the conduct of the appellant during the pendency of the petition before the trial Court as well as before this Court always remained harsh and he never agreed to take the respondent to his matrimonial home. Keeping in view all these factors, there is no merit in the appeal filed by the appellant and the same is liable to be dismissed.

11. It is an admitted fact that in the year 1994, the respondent left the matrimonial home, The appellant alleged that the respondent left the matrimonial home at her own without any reasonable cause. On the other hand, the respondent stated that she was turned out of her matrimonial home by the appellant in a miserable condition on which she had to come to the house of her brother where she has been leading a miserable life. But the fact remains that the petition filed by the appellant u/s 9 of the Act was allowed by the Additional Civil Judge (Sr. Division), Phul vide his order dated 23-5-1997 and a decree for restitution of conjugal rights was passed against the respondent. It is also admitted case between the parties that even after the expiry of one year period after passing of the aforesaid decree, both the parties did not resume the matrimonial life. Thereupon, the husband filed a petition for dissolution of marriage u/s 13(1-A)(ii) of the Act on 22-7-1998. The allegation of the husband is that the respondent did not resume her matrimonial home in spite of the aforesaid decree and in spite of the fact that one year has elapsed after passing of the decree of restitution of conjugal rights, and thus she has failed to obey the decree. On the other hand, the allegation of the respondent wife is that she was always ready and willing to join the matrimonial home after passing of the decree of restitution of conjugal rights but the appellant did not allow her to join her matrimonial home. She alleged that not only she made great efforts but her brother with Panchayat members repeatedly tried to persuade the appellant to keep her and her child with him as his wife but he did not allow her to join her matrimonial home. Both the parties led evidence on these allegations. The husband only appears as PW 1 and on the other hand the respondent not only examined herself as RW 1 but she also produced RW2 - Darshan Singh, her brother and RW

3-Shavinder Singh, resident of the village. After considering the evidence led by the respective parties, the trial Court, in my view rightly, has held that the appellant never Intended to obey the decree dated 23-5-1997. He deliberately obtained the said decree with a mala fide Intention not to resume the company of his wife but to obtain a decree for dissolution of marriage on the grounds mentioned u/s 13(1-A)(ii) of the Act. The respondent-wife has categorically established on record that after passing of the aforesaid decree, she consistently tried to persuade the appellant to keep her in his company in his matrimonial home but he did not allow her to join his matrimonial home. Even during the pendency of the instant divorce petition before the trial Court, the efforts were made before the Lok Adalat to reconcile the matter but the appellant was not ready to keep her in his matrimonial home. The appellant always adopted an adamant attitude. Even before this Court, the efforts were made to reconcile the matter. The respondent, who always remained present in the Court, categorically stated that she was always ready and willing and she is still ready and willing to accompany the appellant to join her matrimonial home, but the appellant never agreed to her offer. He categorically stated before this Court that he was not ready to keep the respondent in his matrimonial home. Such attitude and conduct of the appellant before the trial Court as well as before this Court clearly established that he is only interested in dissolution of the marriage; and the petition filed by him u/s 9 of the Act was filed with an oblique motive to create a ground for dissolution of the marriage. Keeping in view the evidence led by the respondent in the present case and the aforesaid contention of the appellant, I do not find any infirmity in the finding recorded by the trial Court to the effect that the appellant filed the petition u/s 9 of the Act for dissolution of marriage with a mala fide intention.

12. The sole essence of a decree of restitution of conjugal rights is that the husband desiring the company of his wife makes an effort through the Court for its assistance in order to restore his wife back to him so that they may be able to lead conjugal life. This provision of law cannot be allowed to be misused by a spouse to obtain a decree for divorce by invoking the provisions of Section 13(1-A)(ii) of the Act by deliberately keeping the decree for restitution of conjugal rights as unsatisfied. Where the facts and circumstances of a case suggest that the request for restitution of conjugal rights on the part of the husband was merely a pretence and sham, and the proceedings were intended for an extraneous and a different purpose, he could not obtain divorce on grounds referred to in Section 13(1) of the Act. It is incumbent on the husband to satisfy the Court of his sincerity in wanting to resume cohabitation with his wife, In the Instant case, the appellant could not satisfy the Court about his sincerity to allow the respondent to resume her matrimonial duties. Once it is found by the trial Court that the appellant was at wrong as he deliberately did not allow the respondent to resume her matrimonial duties, the appellant cannot be allowed to take benefit of his wrong, in view of Section 23(1)(A) of the Act. It has been held by the Hon"ble Supreme Court in T. Srinivasan Vs. T. Varalakshmi (Mrs), that if a decree for restitution of conjugal rights obtained by husband only

with a view to seek divorce u/s 13(1-A)(ii) of the Act on the ground of absence of restitution of conjugal rights for more than one year after passing of the decree and for that purpose husband is keeping his wife deprived of her right to perform conjugal duties by driving her away and not allowing her to join him. This constituted misconduct u/s 23(1)(a) of the Act inasmuch as husband has taken advantage of his own wrong and he was rightly denied relief u/s 13(1-A) of the Act.

13. In view of the aforesaid discussion, I find no merit in the present appeal and the same is hereby dismissed with costs which are assessed at Rs. 5000/-.