(2013) 09 P&H CK 0373

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. M-264 of 2013

Davinder Singh		APPELLANT
	Vs	
Kulwinder Kaur		RESPONDENT

Date of Decision: Sept. 2, 2013

Citation: (2014) 173 PLR 503

Hon'ble Judges: Satish Kumar Mittal, J; Mahavir Singh Chauhan, J

Bench: Division Bench

Judgement

Mahavir S. Chauhan, J.

Kulwinder Kaur, respondent herein, (petitioner before the trial Court) was married to the appellant (respondent before the trial Court), on 04.02.1995 at Village Raisal, Tehsil Nabha, District Patiala according to the Anad Karj ceremony. The marriage was duly consummated, and out of the said wedlock, one daughter, namely, Gagandeep Kaur, and one son, namely, Navjot Singh, who are now aged 13 and 15 years, respectively, were born. Both the children are being taken care of by the respondent. The respondent approached the court of Additional District Judge, Patiala, by way of HMA Case No. 23-T of 28.02.2011/16.7.2012 for dissolution of her marriage with the appellant by a decree of divorce on the ground of cruelty. Appellant appeared before the learned trial Court and filed a written statement denying the allegations mentioned in the petition.

2. After framing of issues, parties were called upon to lead evidence in support of their respective pleas, whereupon respondent examined herself as PW-1, but the appellant could not lead evidence as his defence was struck off for non-payment of the maintenance fixed by the trial Court.

3. After hearing both the sides, learned trial Court accepted the petition and dissolved the marriage between parties u/s 13A of the Hindu Marriage Act, 1955 (for short the "Act") on the ground of cruelty vide judgment and decree dated 25.03.2013.

4. To assail correctness of the judgment and decree dated 23.5.2013, the defeated respondent (appellant herein) has brought this first appeal.

5. When the appeal came up for hearing before this Court for the first time on 20.08.2013, during the course of hearing, it came out that the appellant did not pay maintenance to the respondent during the pendency of the proceedings before the learned trial Court. When attention of the learned counsel was drawn to this factum, he sought an adjournment to clear the entire outstanding amount of maintenance, as ordered by the learned trial Court. The matter was, accordingly, adjourned for today. However, today learned counsel for the appellant has minced no words to say, that the appellant is not inclined to pay the arrears of maintenance, as ordered by the learned trial Court.

6. We have heard learned counsel for the appellant and have gone through the grounds of appeal, as also the impugned judgment and decree passed by the learned trial Court, very carefully.

7. Learned counsel for the appellant argues that in spite of the fact that defence of the appellant was struck off by the learned trial Court, the respondent has not been able to prove the ground of cruelty sufficient to untie the nuptial knot, and the trial Court, in fact, has been swayed by the fact that defence of the appellant was struck off, and whatever was stated by the respondent was has been to be a gospel truth.

8. Learned Counsel also relies upon a judgment of this Court rendered in the case of Ram Dass v. Smt. Kusam, 2000 (2) Civil Court Cases 103 to reinforce his submission that mere assertion by the respondent-petitioner that she was treated with cruelty by the appellant, was not sufficient to prove the cruelty as onus to prove the cruelty was very heavy on the respondent and her plea could not be rebutted only because defence of the appellant was struck off.

9. True, the respondents, having approached the learned trial Court for grant of a decree of divorce on the ground of cruelty, it was incumbent upon her to prove the ground of cruelty. That being so, there is no dispute as regards the judgment cited on behalf of the respondent-petitioner. However, a perusal of the impugned judgment shows that the respondent, while appearing as PW-1 before the learned trial Court, has stated that the appellant did not keep her in a decent manner and she had to run from pillar to post for her survival. She was physically assaulted by the appellant on number of occasions and, as such, she apprehended danger to her life at the behest of the appellant. It has also come on record that in view of beatings given by the appellant, the respondent had to be hospitalized. Evidence of the respondent has remained uncontroverted as defence of the appellant was struck off. The trial Court found as a fact that the circumstances brought on record by the respondent were sufficient to prove the ground of cruelty. At the same time, it observed that the appellant did not pay maintenance to the respondent, as ordered by it, in spite of the fact that the respondent has to take care of two grown

up children born out of the wedlock of the parties. It may be added that non-payment of maintenance, in our view, also amounts to cruelty, more so, when the hapless lady is possessed of no means of subsistence and has to support her two grown up children besides herself.

10. In view of what has been discussed here-in-above, coupled with the facts that the appellant did not pay maintenance to the respondent during the pendency of the divorce petition before the learned trial Court and has also failed to clear the arrears of maintenance as ordered by the trial Court despite grant of time to him vide order dated 20.08.2013, we find no ground to interfere with the impugned judgment and decree passed by the learned trial Court. The appeal therefore, fails and is, hereby, dismissed with costs, in limine.