

(2014) 11 P&H CK 0049

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. M-269 of 2004

Gurmohinder Pal
Singh

APPELLANT

Vs

Kamal Mohini

RESPONDENT

Date of Decision: Nov. 3, 2014

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13

Citation: (2015) 4 RCR(Civil) 48

Hon'ble Judges: Ajay Kumar Mittal, J ; Raj Mohan Singh, J

Bench: Division Bench

Advocate: Rajheshwar Singh, Advocate for the Appellant; G.C. Bedi, Advocate for the Respondent;

Final Decision: Dismissed

Judgement

Raj Mohan Singh, J.

1. The husband is in appeal against the judgment and decree dated 10.9.2004, dismissing his petition under Section 13 of the Hindu Marriage Act, 1955 (for short the Act) for dissolution of marriage by a decree of divorce. The facts of the case are that the marriage between the parties was solemnised on 30.5.1993 according to Sikh rites and ceremonies at village Kaimbwala near Chandigarh. The marriage was simple marriage in which no dowry articles were given and the same was attended only by few relatives and friends from both sides. The appellant-husband was working in Oil and Natural Gas Commission, Assam, whereas, the respondent-wife was employed at Palampur. It has been pleaded by the appellant-husband that it was made clear to the respondent-wife that after marriage she would have to leave the job permanently. After the marriage, the respondent-wife did not behave properly and disclosed to the appellant-husband that she had enjoyed independent life and has been brought up in a different environment and, therefore, it is not

possible for her to adjust in the family circumstances of the appellant-husband and she preferred to live separately. The appellant-husband stated that he remained silent because he did not want to hurt his parents by disclosing these facts in the very inception of the marriage. After spending some time at Mohali, the couple went to Assam and, stayed over there for about 1-1/2 month. The respondent wife came back to Delhi at her parental house. The appellant-husband went to Delhi to bring her back, but the respondent-wife flatly refused to accompany him and, thereafter, she left for Palampur to join her duties. The appellant-husband also visited Palampur and stayed with the respondent-wife for some time. In the year 1996, the appellant-husband was transferred to Bombay and the respondent-wife joined him and stayed there for few months. The respondent-wife did not want to conceive and always pressurised the appellant-husband for going back to her place of working. She did not even inform the demise of her mother and when the appellant-husband came to know about this, he along with his mother attended the bhog ceremony at Delhi, but the respondent-wife completely ignored them and did not pay any heed and even did not behave properly. She misbehaved with the appellant-husband in the presence of other relatives. It has also been submitted by the appellant-husband that they resided in Gujarat also for a short period of 1-1/2 month and, thereafter, the respondent-wife came back to Palampur on 9.6.2000 and virtually broke all the matrimonial ties with the appellant-husband without any rhyme or reason. Process of reconciliation did not pay any dividend and virtually the respondent wife deserted the appellant-husband w.e.f. 9.6.2000 without reasonable excuse. With this background, the appellant-husband has come, firstly by way of petition under Section 13 of the Act before the learned trial Court and now in appeal after dismissal of the same by the learned trial Court.

2. The claim of the appellant-husband has been contested by the respondent-wife on numerous counts. It has been claimed by her that the appellant-husband was in knowledge that her post is non-transferable. She remained on leave from November 1992 to April 1994 and stayed with the appellant-husband and, thereafter also she remained on leave from June 1997 to 19.3.1999 and remained in his company at different places of his posting. The university authorities got annoyed with her on account of her taking excessive leaves and she was accordingly, charge-sheeted and was ultimately dismissed from service. Thereafter, she filed representation against the order of her dismissal dated 2.12.2000 and her representation was accepted and she was again taken back in service in June 2003. Accordingly, the respondent-wife informed the appellant-husband about the development, but he did not help her and she had to bear all the vagaries of service life and other proceedings all alone. The alleged desertion by her w.e.f. 9.6.2000 is denied. The respondent-wife has submitted that she never preferred to live separately from the family members of the appellant-husband. In fact, the mother of the husband and two un-married sisters never wanted her to stay with the husband at his place of posting and in the year 1993 she alone went to Assam and stayed with the husband. The instances of

misbehaviour on the bhog ceremony of her mother is also denied and the respondent-wife showed her willingness and readiness to save the matrimonial life and also tried to meet the appellant-husband separately out of the court proceedings but he refused to meet her.

3. On the pleadings of the parties, following issues were framed:-

"1. Whether the respondent treated the petitioner with cruelty? If so, its effect? OPP

1-A., Whether the respondent deserted the petitioner for a continuous period of not less than 2 years immediately preceding the presentation of the petition? OPP

2. Relief."

4. The appellant-husband, in his evidence, got himself examined as PW-1 besides examining his mother as PW-2. In the evidence of the respondent-wife, she got herself appeared as RW-1. Issues No. 1 and 1-A, being material issues, were decided by the learned trial Court jointly. Since the divorce is sought to be taken on the ground of cruelty by the husband, cruelty has not been defined in strict sense, though it is explained in numerous precedents since long. Cruelty cannot be inferred from normal wear and tear of the married life, rather it should be such where there is reasonable apprehension in the mind of one of the spouse that the act of another spouse may endanger her or his life or would cause bodily injuries to the limbs. The concept of mental cruelty is also well explained where, the conduct should be such in which it is reasonably not expected by the spouse to live in the company of the other. The cruelty cannot be judged from isolated instances of life but it has to be judged over all from the lives of the participating members of matrimonial life. The concept is depending upon socio-economic conditions of the persons also, and also depending upon culture and human values. Cruelty has to be judged and appreciated in a given circumstance. Normal bickering of life and isolated instances of wear and tear of married life do not constitute any cruelty.

5. Learned trial Court, after taking stocks of the evidence on record, arrived at a finding of fact that the parties to litigation did not give adequate time to their marriage and there was total lack of adjustment between them. Both of them are working. Wife is posted on a non-transferable post. Both were required to adjust with each other without forcing other to come to his or her term. There was no question of leaving the job at the convenience of other. There is no evidence on record that the wife consented to leave the job after the marriage. There is no such agreement on record nor there is any evidence by virtue of which any inference can be drawn that the wife was supposed to leave the job after the marriage. No act of cruelty is proved except the bald statement of PW-2, Kirpal Kaur, mother of the husband, to the effect that when they went to take her, the wife insulted them. The cruelty has to be pleaded and instances with reference to time, place and manner of occurrence are required to be incorporated therein. If these ingredients are not pleaded and proved, no inference of cruelty can be drawn. If the statements of PW-1

and PW-2 are read in conjunction with each other, then only the alleged act of dis-obedience on the part of the wife can come to the fore, which itself is no ground to infer any cruelty in its strict interpretation. Such an act does not give any inference to any reasonable apprehension in the mind of the husband to perceive any injury to him. The disharmony and incompatibility cannot be presumed as cruelty for dissolving the marriage. Since the allegations of cruelty are general in nature, therefore, it does not amount to cruelty. Reference on this proposition can be made to 2014 (1) Hindu Law Reporter 197 titled as Sushil Kumar v. Smt. Pushpa Devi.

6. Similarly on the concept of mental cruelty, the underlining principles are that it has the roots in human behavior, psychological attitude, frequent changes in the conduct of the spouses. Some time mere irritation or annoyance may not amount to cruelty. The over all study gives rise to an accepted phenomenon that in order to constitute mental cruelty, it should be brought out that in the given situation, it is not possible for a spouse to live in the company of another and it cannot be reasonably expected to live together. The interpretation is enunciated in [V. Bhagat Vs. Mrs. D. Bhagat](#), .

7. The second ground of desertion, as claimed by the appellant that the wife deserted him w.e.f. 9.6.2000, has conflicting connotation if read in conjunction with his statement. Petition was filed on 9.11.2002. The statement of PW-2 shows that the respondent-wife stayed with the appellant-husband for about 20 days and, thereafter, she left the matrimonial house and joined her parents and, thereafter, she never turned back. If this statement is read along with statement of PW-1, the story of desertion is proved to be a cock and bull story. The respondent-wife, while appearing as RW-1 has categorically stated that she is ready and willing to join the matrimonial house. In her cross-examination, she has submitted that the husband does not want to keep her in the matrimonial house even if the job is left by her. The evidence on record is suggestive to the fact that the husband wanted to get rid of the wife by one mode or the other. The ingredients of desertion are not proved. Simpliciter leaving the house is not desertion unless and until animus deserendi is proved. The ingredients are that there is separate living and this separate living is with an intention to never return back to the matrimonial home. Reference on this point can be made to [Bipin Chander Jaisinghbhai Shah Vs. Prabhawati](#), , in which aforesaid ingredients have been elaborately discussed and held. Both the elements of factum of separation and intention to bring cohabitation permanently to an end were considered to be the conditions for inferring animus deserendi . Similarly in [Adhyatma Bhattar Alwar Vs. Adhyatma Bhattar Sri Devi](#), titled as Adhyatma Bhattar Alwar v. Adhyatma Bhattar Sri Devi, Hon"ble Apex Court has observed that there must be an intention to bring cohabitation permanently to an end and that is what animus deserendi is. Mere living apart is not desertion. Party must indicate either in express words or by conduct to put to an end to the matrimonial tie for which burden is always on the person who asserts in affirmative. Coming to the facts of

the present case, on both the counts i.e. cruelty and desertion, the evidence of the appellant-husband is lacking in material particulars. Therefore, it cannot be inferred that the respondent-wife has acted with cruelty and has deserted the appellant-husband by any means. The cumulative effect of the material on record is that the evidence does not prick the conscience of the Court and it does not in a way amount to cruelty and desertion on the part of the respondent-wife. Having no worth in the appeal, we dismiss the appeal without there being any costs.