

(2014) 07 P&H CK 0734

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO-2835-2013 (O&M)

Ramesh Bhatti

APPELLANT

Vs

Ashwani Kumar

RESPONDENT

Date of Decision: July 11, 2014

Acts Referred:

- Divorce Act, 1869 - Section 10(1)(ix)

Hon'ble Judges: Rajiv Narain Raina, J

Bench: Single Bench

Advocate: Samuel Gill, Advocate for the Appellant

Final Decision: Allowed

Judgement

Rajiv Narain Raina, J.

Substituted service has been effected on the respondent husband of the appellant through publication in daily newspapers. The Tribune in its issue dated 12th May, 2014 and in Punjab Kesri on 13th May, 2014. The newspaper cuttings have been placed on the record of the miscellaneous application. The appellant filed the petition for divorce under the provisions of the Indian Divorce Act, 1869 (for short the "Act") against the respondent on the grounds of cruelty. The marriage was contracted on 28th October, 1998 according to Christian ceremonies. A male child was born to the parties in August 1999. After the marriage the couple resided together in Jalandhar before they fell apart. The appellant-petitioner asserted in the divorce petition that she was treated with cruelty. There arose between the couple irreconcilable differences in temperaments, habits, tastes, thoughts which went from bad to worse. There were frequent quarrels. At the time of marriage, the husband was working as a Pharmacist in private company but lost his job and is unemployed since January, 2009. All attempts at reconciliation failed.

2. The learned Additional District Judge, SAS Nagar (Mohali) vide judgment dated 6th April, 2013 has dismissed the wife's petition for divorce for the reason that she was

unable to pin-point any specific acts of cruelty practiced by her husband on her. On the ground of desertion, the Court below has held that the desertion is required to be shown for at least 2 years immediately preceding the presentation of the petition which was not the case. The learned trial Court has observed that it is the petitioner's own statement that she was thrown out of the matrimonial home on 20th February, 2011 whereas the divorce petition was filed on 2d December, 2011 which shows that the desertion for a period of two years as provided u/s 10(1)(ix) of the Act was not there.

3. From a reading of the averments in the divorce petition, it cannot be said that there are no material particulars of cruelty set out therein. The husband remained ex parte throughout the proceedings before the Matrimonial Court and his defence is not available on record. In the circumstances, by applying the well accepted principle of non-traverse, the averments in the petition regarding cruelty are accepted as admitted, uncontroverted and sufficient to support a plea of dissolution of marriage by grant of a decree of divorce. The appellant cannot be left indefinitely at the mercy of a husband who has not turned up to contest, admit or deny the petition or to oppose the prayer for divorce. On the facts of this case, substituted service is taken as proper service on the respondent who remained ex parte before the matrimonial court. The inference can reasonably be drawn that the husband does not wish to contest the case on merits and accepts the position as alleged in the petition.

4. For the foregoing reasons, this petition is accepted. The impugned order is set aside. The appellant's marriage with the respondent is dissolved by grant of a decree of divorce. The petitioner and the respondent will no longer be husband and wife.