

(2016) 09 P&H CK 0174

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 127-M of 2004

Yogender Singh

APPELLANT

Vs

Smt. Sunita

RESPONDENT

Date of Decision: Sept. 22, 2016

Acts Referred:

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

Citation: (2016) AIR(Punjab) 244

Hon'ble Judges: Mr. M. Jeyapaul and Mrs. Sneh Prashar, JJ.

Bench: Division Bench

Advocate: Mr. Munish Kumar Garg, Advocate, for the Appellant; Mr. G.S. Bains, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

M. Jeyapaul, J. - Aggrieved by the dismissal of the petition filed under Section 13 of the Hindu Marriage Act seeking divorce on the ground of

desertion and cruelty, the husband has preferred the present appeal.

2. The appellant has contended in his petition under Section 13 of the Hindu Marriage Act that the marriage between the appellant and the

respondent was solemnized on 19.4.1995 as per Hindu rites and ceremonies. The marriage was consummated but no child was born. The

respondent treated him and his family members in a cruel manner. She quarreled with the appellant and insulted him. She did not prepare food and

chose to remain away from the matrimonial home without informing the family members of the appellant. She was an impotent lady. On 15.4.1999

without the consent and permission of the appellant, respondent left the matrimonial home along with valuable articles and jewellery. Though the

dispute was referred to Panchayat, the family members of the respondent threatened the appellant.

3. Respondent in her written statement completely denied the allegation that she used to quarrel with the appellant and his family members. She

denied that she insulted the appellant and his family members. It was absolutely wrong that she remained out of home without the consent or

permission of the family members of the appellant. It was the appellant who gave severe beatings to the respondent raising a demand of dowry

from her parents. She was mercilessly beaten by the appellant and his family members and lastly in the year 1999, she was turned out from the

matrimonial home.

4. On the side of the appellant, PW1 to PW4 were examined and on the side of the respondent, RW1 to RW3 were examined.

5. The trial Court having adverted to the evidence on record in the background of the rival submissions made by counsel for the appellant and the

respondent arrived at the conclusion that except the general allegations of cruelty and misbehaviour of the respondent, there was no substantial

evidence forthcoming to establish the cruelty alleged by the appellant. There was also no proof that she deserted the appellant. Ultimately, the

petition filed under Section 13 of the Hindu Marriage by the appellant was dismissed by the trial Court.

6. Learned counsel appearing for the appellant referring to the evidence of PW1 to PW4 submitted that the cruel behaviour of the respondent was

spoken to cogently by PW1 and PW4. Inasmuch as the respondent had been residing separately since 1999, the act of desertion should be

presumed. Per contra, learned counsel appearing for the respondent referring to the evidence of RW1 to RW3 submitted that there was no

adduced evidence to establish the cruelty allegedly committed by the respondent. The respondent had to join her parents as she was thrown out of

the matrimonial home by the appellant and his parents in 1999. Therefore, he submitted that the appellant is not entitled to the relief as sought for.

7. On a careful perusal of the pleadings of the appellant as regards the cruelty, we find that general and vague allegations have been made even

without any reference to the year in which such an occurrence of cruelty took place. A bald allegation that the respondent treated him and his family members in a cruel manner without any legal evidence to substantiate such a plea, is not sufficient to grant the relief of divorce on the ground of cruelty. There was no cogent evidence to show that there was a quarrel picked up by the respondent with the appellant and she also chose to insult the appellant and her family members. Therefore, the mental cruelty alleged by the appellant is found not established. It appears that there had been wear and tear of the matrimonial life of the parties. The same had been projected as though cruelty had been committed by the respondent.

8. Appellant had in fact come out with an allegation that the respondent was a barren lady. But during the course of trial, such an allegation was not at all seriously urged before the trial Court. Even otherwise, it is found from the pleading of the appellant that the appellant had come out with a contradictory stand that the respondent was barren but at the same time, the marriage was consummated.

9. The documents produced by the respondent would show that the brother of the respondent lodged a complaint of misbehaviour and harassment caused to the respondent by her in-laws but the said case had been amicably settled with the intervention of the police on 24.2.1997. The respondent and her father have categorically stated during the course of evidence that respondent was prepared to join the matrimonial home.

10. Mere allegation of desertion is not enough to seek the relief of divorce. The spouse who alleges desertion as against the other spouse will have to prove animus deserendi on the part of the other spouse by leading cogent evidence of desertion. Mere living of spouse separately in all circumstances by itself shall not constitute desertion. There is nothing on record in this case to establish that the respondent deserted the appellant with animus deserendi, not permitting the appellant to cohabit with her.

Evidence adduced by the respondent that she was thrown out of the matrimonial home in the year 1999 and as a result of which she had to join her parents, cannot be rejected.

11. Learned counsel appearing for the appellant referred to the decision of Hon"ble Supreme Court in Dr. (Mrs.) Malathi Ravi, M.D. v. Dr.

B.V. Ravi, M.D., 2014 AIR (SCW) 4283, wherein it has been held as follows :-

In our considered opinion the issue of mental cruelty should be addressed to by this Court for the sake of doing complete justice. We think, it is

the bounden duty of this Court to do so and not to leave the parties to fight the battle afresh after expiry of thirteen years of litigation. Dealing with

the plea of mental cruelty which is perceptible from the material on record would not affect any substantive right of the appellant. It would be only

condoning a minor technical aspect. Administration of justice provokes our judicial conscience that it is a fit case where the plenitude of power

conferred on this Court under Article 142 deserves to be invoked, more so, when the ground is statutorily permissible. By such exercise we are

certain that it would neither be supplanting the substantive law nor would it be building a structure which does not exist. It would be logical to do so

and illogical to refrain from doing so.

12. That was a case where the Hon"ble Supreme Court gathering from the evidence on record that mental cruelty had been committed despite no

such plea of mental cruelty having been set up in the petition, chose to invoke the plenary jurisdiction under Article 142 of the Constitution of India

and granted the relief of divorce. We do not find that the above decision has any relevance to the facts and circumstances of this case.

13. In Savitri Pandey v. Prem Chandra Pandey 2002(6) BCR 511, the Hon"ble Supreme Court held as follows :-

In the instant case the appellant herself pleaded that there had not been cohabitation between the parties after the marriage.

She neither assigned any reason nor attributed the non-resumption of cohabitation to the respondent. From the pleadings and evidence led in the

case, it is apparent that the appellant did not permit the respondent to have cohabitation for consummating the marriage. In the absence of

cohabitation between the parties, a particular state of matrimonial position was never permitted by the appellant to come into existence. In the

present case, in the absence of cohabitation and consummation of marriage, the appellant was dis entitled to claim divorce on the ground of

desertion.

14. That was a case where the appellant-wife did not permit the respondent-husband to have cohabitation after the marriage. Under such

circumstances, the Hon"ble Supreme Court held that appellant-wife who did not co-operate cohabitation for consummating marriage was

disentitled to claim divorce on the ground of desertion. In other words, having deserted the husband, the wife had come forward with a prayer for

divorce on the ground of desertion. Such a plea was rejected by the Hon"ble Supreme Court in the special facts and circumstances of the above

case. We do not find any reason to apply the above observation of the Hon"ble Supreme Court to the facts and circumstances of this case.

15. As rightly pointed out by the learned trial Court, neither cruelty nor desertion alleged by the appellant was established with cogent evidence.

Therefore, in our view, the trial Court has rightly dismissed the plea for divorce. In the above circumstances, we do not find any reason to interfere

with the judgment of the trial Court. Therefore, the appeal stands dismissed.