

Before Rajan Gupta & Manjari Nehru Kaul, JJ

ASHOK KAUSHIK—Appellant(s)

versus

SUNITA KAUSHIK—Respondent(s)

FAO-M-161-2015

October 29, 2019

Hindu Marriage Act, 1955- S.13 - Husband's divorce petition on ground of cruelty – Dismissed by the trial court – Marriage solemnized on 29.11.1991 – Son living with husband – Absence of conjugal relationship for about 14 years – Relations sour – Wife's complaint to police alleging husband tried to set her on fire, was found false – She also alleged husband's illicit relations with another woman without any shred of evidence – The record and court's interaction with parties made evident it was impossible for them to live together – Held, no hesitation in concluding the marriage stood broken beyond repair - Divorce granted subject to payment of permanent alimony to wife.

Held that, husband has alleged that it was the brothers and parents of the wife, who after entering the house in the wee hours of the morning, beat him up, leading to serious injuries being sustained by him, whereas, the wife came up with the allegation that the husband had tried to set her on fire. It is also a matter of record that the complaint was found to be false. The wife no doubt has alleged that it was all done with the connivance of the police, however, be that as it may, the fact remains that relations between the parties have been far from cordial. The filing of criminal cases against the husband reflects the pass to which the relationship between the spouses has come to. She has also alleged that the husband is having illicit relations with another woman and a house too has been purchased by him for the woman. However, these allegations are only on papers without any shred of evidence to support the same.

(Para 11)

On perusal of the evidence on record as well as after our interaction with the parties, one can infer that there is no hope of both the parties living together to continue their marital life. Admittedly, there has been an absence of any conjugal relationship between the parties for the last at least 13 to 14 years. Taking overall perspective of

the matter, we have no hesitation in concluding that the marriage between the parties exists only on papers and has broken down beyond repair.

(Para 13)

Gautam Dutt, Advocate
for the appellant(s).

Rajinder Goyal, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J.

(1) The instant appeal has been preferred by the husband – Ashok Kaushik, impugning the judgment and decree dated 11th February, 2015, passed by the Ld. Addl. District Judge, Chandigarh (hereinafter referred to as 'Ld. Court below'), vide which the petition filed by him, under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') for dissolution of his marriage with the respondent-wife/Sunita Kaushik, was dismissed.

(2) A few facts necessary for adjudication of the instant appeal, as pleaded in the petition filed by the appellant-husband (petitioner therein) before the Ld. Court below, may be noticed.

(3) The marriage between the parties was solemnized on 29th November, 1991, according to Hindu rites and rituals at Chandigarh. One son was born out of the said wedlock on 06th August, 1993. The behaviour of the respondent-wife seemed abnormal and therefore, the appellant- husband requested her to get herself medically examined for any mental abnormalities, but she flatly refused to undergo any medical test. In November, 1994, she left her matrimonial home leaving behind her 15 months old son as well. She did not bother to meet the child even once. The child was then brought up by the husband and his family. Despite earnest and repeated efforts made by the husband to bring her back to the matrimonial home, she refused to join his company. During this period of separation, the father of the wife filed a complaint vide DDR No. 21, dated 21st February, 1997 at Chandigarh, levelling false allegations against the husband. The matter was got settled only after the husband gave in writing that he would not visit her house again. When the husband shifted to his own house in Panchkula in June, 2009, the brother of the wife left her at the gate of the matrimonial home. The husband accepted her back and provided her with all the amenities on the first floor of the house including an

independent kitchen and other routine expenses. The wife would remain aloof and would not interact with the husband and his family including her own son. On 06th November, 2011, the parents and brothers of the wife entered the house around 4:30 AM and physically assaulted him as a result of which, the husband sustained multiple injuries. When the police arrived at the spot, the wife instead filed a complaint that the husband had tried to set her on fire by forcibly entering into her room. The allegations were subsequently found to be false. Further, she would level allegations that the husband had illicit relations with another woman and a child too had been born to the woman out of the loins of the husband.

(4) *Per contra*, the respondent-wife (respondent therein) categorically refuted and denied the allegations of the husband, in her written statement filed before the Ld. Court below. She submitted that on 05th November, 2011, she had been compelled to leave her matrimonial home to save her life, as the husband and his family had tried to set her on fire. She alleged that the petition filed by the appellant-husband under Section 13 of the Act was a counter-blast to a complaint filed by her on 25th November, 2011, under Section 159(3) Cr.P.C., against her husband. She denied that she was suffering from any mental abnormality. Rather, she alleged that it was the husband and his family, who had been subjecting her to continuous cruel and harsh behaviour. She had been tolerating the same just to save her marriage. She further alleged that the husband and his family were greedy. Way-back in 1991, before the marriage of the parties, on the occasion of Diwali, a demand of a car and other articles had been made by her father-in-law. When her parents had expressed their wish to call off the marriage, her parents-in-law had apologized and settled the matter. She claimed that a huge amount of money had been spent on her wedding by her parents. She was sent to her parental home a few months before the due date of delivery of her son and all the expenses at the time of delivery were borne by her parents. She submitted that the husband would threaten that he would get a false abnormality certificate *qua* her from a doctor friend of his and then throw her out from the matrimonial home. She alleged that when she joined the company of the husband in his new house at Panchkula, her son was instigated to beat her up. She was told by the husband that he would continue to inflict torture on her till she brought her share from his father's property. On 05th November, 2011, at around 11:30 at night, her husband forcibly entered her room in a drunken state and tried to set her afire, but she managed to escape in time. She was compelled to call the police and her brothers

for help. A DDR was got registered. However, due to the high connections of the husband, no case ever got registered. She pleaded that she had neither caused any physical and mental agony to the husband in any manner nor had she deserted him, as alleged in the petition under Section 13 of the Act, filed by the appellant-husband.

(5) In response to this, the husband filed a replication wherein, he controverted the submissions of the respondent-wife and reiterated his stand as taken in the petition.

(6) From the pleadings of the parties, the following issues were framed by the Ld. Court below:-

“1. Whether the respondent has treated the petitioner with cruelty ? OPP.

2. Whether the respondent has deserted the petitioner for a continuous period of more than two years at the time of filing of the petition for divorce without reasonable cause ? OPP”

(7) Both the parties adduced evidence in support of their respective cases before the Ld. Court below. The husband examined himself as PW-3, besides, examining three other witnesses and thereafter, he closed his evidence. On the other hand, the wife herself stepped into the witness-box as RW-1 and closed her evidence.

(8) After analyzing the evidence as well as the material on record, the Ld. Court below dismissed the petition filed by the husband.

(9) We have heard learned counsel for the appellant and have reappraised the evidence and other material on record.

(10) During the pendency of the instant appeal, the parties were referred to the Mediation and Conciliation Centre of this Court, but the same proved to be futile exercise. This Court also interacted with the parties on various dates, but the extreme bitterness between them was very obvious as they both reiterated their allegations against each other.

(11) It is a matter of record that way-back in 1997, a complaint was filed against the husband by the father of the wife, which led to the husband giving in writing that he would not visit her house again. It is very apparent that the relations between the parties had turned sour, at least, as early as in 1997. Thereafter, when she moved back into the house of the appellant-husband in June, 2009, the relations between the spouses continued to be strained as would be evident from the fact that

she resided on the first floor of the same house while the husband and the son lived on the ground floor. Undoubtedly, some occurrence did take place on 06th November, 2011 in the house of the parties. Both the parties though have come up with contrary versions. The husband has alleged that it was the brothers and parents of the wife, who after entering the house in the wee hours of the morning, beat him up, leading to serious injuries being sustained by him, whereas, the wife came up with the allegation that the husband had tried to set her on fire. It is also a matter of record that the complaint was found to be false. The wife no doubt has alleged that it was all done with the connivance of the police, however, be that as it may, the fact remains that relations between the parties have been far from cordial. The filing of criminal cases against the husband reflects the pass to which the relationship between the spouses has come to. She has also alleged that the husband is having illicit relations with another woman and a house too has been purchased by him for the woman. However, these allegations are only on papers without any shred of evidence to support the same.

(12) It may be observed here that during our interaction with the parties, the husband stated that the relations between the parties had deteriorated to such an extent that it was impossible to live together as husband and wife. He, however, came up with a proposal that in the eventuality of the instant appeal being allowed, he was ready to pay a reasonable amount to the extent of Rs.75.00 lakhs, as permanent alimony towards full and final settlement to the wife.

(13) On perusal of the evidence on record as well as after our interaction with the parties, one can infer that there is no hope of both the parties living together to continue their marital life. Admittedly, there has been an absence of any conjugal relationship between the parties for the last at least 13 to 14 years. Taking overall perspective of the matter, we have no hesitation in concluding that the marriage between the parties exists only on papers and has broken down beyond repair.

(14) In view of the above, we thus set aside the impugned judgment and decree dated 11th February, 2015, passed by the Ld. Court below. The marriage between the parties is hereby dissolved by a decree of divorce. Decree-sheet be drawn up accordingly. We direct the appellant-husband to pay a sum of Rs.80.00 lakhs as permanent alimony to the respondent-wife towards full and final settlement within a period of two months from the date of passing of this order. It is made clear that in case the appellant-husband fails to pay the aforesaid

amount of permanent alimony to the respondent-wife within the stipulated period, the present order would be of no avail and the instant appeal shall stand dismissed, as the acceptance of the appeal as indicated above, is *inter alia* predicated on the payment of permanent alimony.

Tribhuvan Dhaiya