

Before Rajan Gupta & Manjari Nehru Kaul, JJ.

VIRENDER JAIN—Appellant

versus

YOGITA JAIN—Respondent

FAO-M No.31 of 2008

November 22, 2019

Hindu Marriage Act, 1955—S.13—Husband’s divorce petition on ground of cruelty—Dismissed by the Trial Court—Marriage solemnized on 04.11.2003—Minor son in husband’s custody—Parties living apart for almost fifteen years—Mediation failed to reconcile—Evidence on record and Court’s interaction with parties made evident that no hope of parties living together—Marriage mired in acrimony—Held, not wrong to presume that the marriage stood broken beyond repair—Divorce granted on payment permanent alimony and visiting rights to wife to meet her minor son.

Held that on perusal of the evidence as well as other material available on record, and our interaction with the parties, it is very evident that there is no hope of the parties living together to continue their marital life as already noticed.

(Para 9)

Further held that, the evidence and circumstances do suggest that the marriage between the parties was mired in acrimony as a result of which the respondent wife had been staying at her parental home at Rohtak. It is undisputed that the parties have been living apart for almost 15 years. It would not be wrong to presume that the marriage between the parties has broken down beyond repair. We feel if all endeavours to bring about a reconciliation between the parties, like in the instant case, fail then divorce should not be withheld. In the facts and circumstances of the instant case, it would be unrealistic to expect the parties to reconcile and live together.

(Para 10)

Further held that as a sequel to the above, we have no hesitation in setting aside the judgment and decree dated 13.12.2007 passed by the Court below. Consequently, the present appeal is allowed and the marriage between the parties is dissolved by way of decree of divorce. Decree sheet be prepared accordingly. However, the appellant-husband would be bound by the terms and conditions as envisaged in the

affidavit dated 07.11.2019, which already stands taken on record. The appellant-husband shall pay an amount of Rs.25 lakhs to the respondent-wife as permanent alimony towards full and final settlement within a month from the date of the order. The respondent-wife shall get visitation rights to meet her minor son as per the following terms:

1. The respondent-wife would meet the minor son at District Legal Services Authority, Rohtak on every 2nd and 4th Saturday of every month from 11.00 am to 2.00 pm.
2. It is made clear that in case the child is unable to meet the mother on the aforementioned days, the son would be taken to meet the mother on the following Saturday at District Legal Services Authority, Rohtak from 11.00 am to 2.00 pm.
3. Secretary, District Legal Services Authority, Rohtak shall personally monitor all such meetings and ensure that no other person/family member shall be present during the meetings between the respondent-mother and the minor son and no hindrance or hurdle whatsoever will be created by the appellant-father or any other person.

(Para 12)

Akshay Jindal, Advocate
for the appellant.

Mrigank Sharma, Advocate
for the respondent.

MANJARI NEHRU KAUL, J.(oral)

(1) The instant appeal has been filed by the husband-Virender Jain against the judgment and decree dated 13.12.2007 passed by Addl. District Judge, Sonapat vide which the petition filed by him under Section 13 of the Hindu Marriage Act, 1955 (for short ‘the Act’) was dismissed.

(2) Few facts necessary for adjudication of the instant appeal as pleaded in the petition filed by the appellant-husband before the court below may be noticed.

(3) Marriage between the parties was solemnized on 04.11.2003 as per Hindu rites and ceremonies at Gohana. One son was born out of the said wedlock on 05.08.2004, who is under the care and custody of the appellant- husband. The appellant-husband pleaded that

the behaviour of the respondent- wife was unbecoming towards him right from the beginning of their marriage, which caused a great deal of distress to him and his family. Soon after the marriage, the appellant-husband was told by the respondent-wife that the marriage had been solemnized against her wishes as she did not like him. She would often threaten the appellant-husband that if he even tried to touch her, she would end her life. However, the appellant-husband tolerated all this in the hope that her behaviour would improve but it only worsened with the passage of time. Several panchayats were convened wherein an assurance was given by the father of the respondent-wife that she would not misbehave in future. On an assurance being given, the appellant-husband took the respondent-wife back to the matrimonial home on 24.05.2004 but to his shock, there was no change in the behaviour of the respondent-wife as she continued with her rude behaviour towards one and all. Finally, on 08.07.2004, the respondent-wife compelled the appellant-husband to send her back to her parental home. While going away, she took along all her jewellery and valuables. Ever since then she had been residing at her parental home at Rohtak. On 05.08.2004, she gave birth to their son while staying at her parental home. The appellant-husband hoped that the birth of their son would help in bringing some change in the behaviour of the respondent-wife but the respondent-wife made no bones that she had delivered the child against her wishes. The appellant-husband was asked to take the child away as she did not want to maintain any relations with him. The appellant-husband submitted that on 25.09.2005 a compromise was arrived at between the parties wherein the respondent-wife admitted to her fault and agreed to get a divorce from the appellant-husband. Not only this, the respondent-wife received a lump sum amount from the appellant-husband and gave the custody of the son to the appellant-husband. In the above factual background, the appellant-husband pleaded that it was impossible for the parties to live together as the respondent- wife had treated him with utmost cruelty, which could not be condoned.

(4) Per contra, the respondent-wife in her written statement filed before the court below, refuted and categorically denied the allegations of the appellant- husband. She submitted that in fact it was the appellant-husband and his family, who had been maltreating her from the very beginning of the marriage. They would repeatedly taunt her for bringing inadequate dowry which had resulted in a loss of face for them in the society. She would be rebuked and taunted by her mother-in-law that being motherless she even did not know the basic

house-hold chores. She submitted that she had always tried to adjust in the matrimonial home and had never ever told the appellant-husband that the marriage had been solemnized against her wishes. She alleged that in fact it was the appellant- husband, who just after a week of their marriage, told her that he did not like her and had been compelled to keep her as his wife. She would often be physically assaulted by her mother-in-law. She categorically denied that she had ever threatened the appellant-husband to commit suicide if he ever tried to touch her. Since she was unable to satiate the demands of cash raised by the appellant- husband and his mother, she was given merciless beatings during her pregnancy and thereafter left at her parental home at Rohtak by her father-in-law, where she had been residing ever since then. After the birth of their son, it was her father, who informed the appellant-husband and his family but nobody even came to see the newly born child. Her father made efforts to get the matter reconciled by convening panchayats but the appellant-husband and his father remained adamant and humiliated her and her father by refusing to let her return to the matrimonial home. She submitted that on 21.01.2006 she along with her newly born son went to the matrimonial home but she was not allowed to enter the house as a result of which she was left with no other option but to spend the night at the house of one of the relatives namely Om Parkash. Thereafter, Ram Kumar, uncle of the appellant-husband was called by said Om Parkash, who then took her and the newly born child to the matrimonial home on the following morning but the appellant-husband and his mother refused to let them enter the house. It was further submitted by her that the appellant-husband and his family had obtained her signatures on blank papers and then turned her out from the matrimonial home but not before keeping her son with them without her consent. She thus, prayed for dismissal of the appeal.

(5) A rejoinder was also filed by the appellant-husband wherein he reiterated his case and controverted the submissions of the respondent-wife.

(6) From the pleadings, following issues were framed by the trial court:

1. Whether the petitioner is entitled to the decree of divorce on the grounds as pleaded in the petition? OPP
2. Relief.

(7) To support his case, appellant-husband stepped into

witness box as PW-3. Besides himself, he examined three other witnesses. On the other hand, respondent-wife stepped into the witness box as RW-1. She also examined her father Hukam Chand as RW-2 and Hari Parkash as RW-3, who deposed that the signatures of the respondent-wife and her father along with the signatures of the appellant-husband and his father had been obtained on blank papers.

(8) We have heard learned counsel for the parties and reappraised the evidence and other material available on record.

(9) During the pendency of appeal, the matter was referred to mediation and conciliation centre of this court for exploring the possibility of amicable settlement but all efforts to reconcile the matter failed miserably. This Court also interacted with the parties during the course of hearing. The appellant-husband remained adamant and reiterated his allegations against the respondent-wife. The respondent-wife, who was present in Court, submitted that despite the fact that she had been treated very badly by the appellant-husband and his family, she was still willing to return to her matrimonial home. She submitted that she longed to meet her son, who had been kept away from her forcibly; so much so, whenever she made efforts to return to the matrimonial home or meet her child, she was threatened with dire consequences by the appellant-husband and his family.

(10) On perusal of the evidence as well as other material available on record, and our interaction with the parties, it is very evident that there is no hope of the parties living together to continue their marital life as already noticed.

(11) The evidence and circumstances do suggest that the marriage between the parties was mired in acrimony as a result of which the respondent- wife had been staying at her parental home at Rohtak. It is undisputed that the parties have been living apart for almost 15 years. It would not be wrong to presume that the marriage between the parties has broken down beyond repair. We feel if all endeavours to bring about a reconciliation between the parties, like in the instant case, fail then divorce should not be withheld. In the facts and circumstances of the instant case, it would be unrealistic to expect the parties to reconcile and live together.

(12) During the course of hearing, the appellant-husband 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.22.00 lakhs, as permanent alimony towards full and final

settlement to the wife. The respondent- wife during our interaction strenuously urged that if the marriage is dissolved, a reasonable amount as permanent alimony be given to her as she had no one to fall back on and had been residing at the mercy of her ailing father. She also strongly pleaded that she may be allowed to meet her son, who had intentionally been kept away from her and all efforts made by her to meet the son had been in vain as the appellant-husband and his family had been extending threats of dire consequences to her.

(13) As a sequel to the above, we have no hesitation in setting aside the judgment and decree dated 13.12.2007 passed by the Court below. Consequently, the present appeal is allowed and the marriage between the parties is dissolved by way of decree of divorce. Decree sheet be prepared accordingly. However, the appellant-husband would be bound by the terms and conditions as envisaged in the affidavit dated 07.11.2019, which already stands taken on record. The appellant-husband shall pay an amount of Rs.25 lakhs to the respondent-wife as permanent alimony towards full and final settlement within a month from the date of the order. The respondent-wife shall get visitation rights to meet her minor son as per the following terms:

1. The respondent-wife would meet the minor son at District Legal Services Authority, Rohtak on every 2nd and 4th Saturday of every month from 11.00 am to 2.00 pm.
2. It is made clear that in case the child is unable to meet the mother on the aforementioned days, the son would be taken to meet the mother on the following Saturday at District Legal Services Authority, Rohtak from 11.00 am to 2.00 pm.
3. Secretary, District Legal Services Authority, Rohtak shall personally monitor all such meetings and ensure that no other person/family member shall be present during the meetings between the respondent-mother and the minor son and no hindrance or hurdle whatsoever will be created by the appellant-father or any other person.

(14) We expect and hope that the appellant-father shall realise that the minor son cannot be deprived of the love and affection of his mother, who has been longing to see and meet him. It is hoped that the bitterness, which exists between the parties, shall not be a cause of any

hindrance during these meetings. It would be beneficial for the minor son to interact with his mother as it would contribute to his wholesome and healthy development.

Tribhuvan Dahiya