

Before Rajan Gupta & Manjari Nehru Kaul, JJ.

KARAMJIT KAUR—Appellant

versus

PREM SINGH DHILLON—Respondent

FAO No.5908 of 2016

October 04, 2019

Hindu Marriage Act, 1955—S.13—Husband’s divorce petition on ground of cruelty—Divorce granted by trial Court—Wife’s appeal—Husband’s allegations that wife subjected him to mental cruelty, were found to be mere unsubstantiated averments, as no specific incident or event, much less any date of such cruelty, had been mentioned—Evidence of husband pressurizing wife to get money from her parents and subjecting her to physical and mental cruelty on not getting it, has gone unchallenged—Allegation of desertion against wife also bereft of any merit—Husband himself created hostile and adverse circumstances for the wife, forcing her to take refuge with her young children in parental home—Held, husband cannot be permitted to take advantage of his own wrong while seeking dissolution of marriage—Impugned judgment and decree of divorce set-aside.

Held that, it is apparent that the husband had been regularly provided financial assistance by the parents of the wife and as long as the same was forthcoming, he had no complaints against her. It has gone unchallenged in the evidence adduced before the court below that he had indeed been helped financially by the appellant-wife's parents. Further, the allegations of the wife that the husband was pressurizing her to get more money from her parents and on her expressing her inability to do so, he subjected her to both physical and mental harassment has also gone unchallenged on record. Thus, the allegations of the husband that he was subjected to mental cruelty is nothing but a mere unsubstantiated averment, inasmuch as, no specific incident or event, much less, any date of being subjected to such acts of cruelty by the wife have been mentioned by the appellant-husband.

(Para 12)

Further held that, coming to the next ground of desertion as alleged by the husband, the same is bereft of any merit. His continuous conduct of neglecting his duties as a husband unerringly points towards

him being responsible for creating such hostile and adverse circumstances for the wife, which left her with no other option but to take refuge with her young children in her parental home. The husband cannot thus be permitted to take advantage of his own wrongs while seeking relief under Section 13 of the Act for dissolution of his marriage with the wife.

(Para 13)

Anmol Rattan Sidhu, Sr. Advocate with
Raghav Gulati, Advocate
for the appellant(s).

Hitesh Verma, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J.

(1) The instant appeal has been preferred by the wife – Karamjit Kaur, impugning the judgment and decree dated 01st August, 2016, passed by the Ld. District Judge, Family Court, Barnala (hereinafter referred to as 'Ld. Family Court'), vide which the petition filed by the respondent- husband/Prem Singh Dhillon, under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), was allowed.

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

(3) The marriage between the parties was solemnized on 25th March, 1999, as per Hindu rites and rituals as well as by way of Anand Karaj. Two children were born out of the wedlock. As per the averments of the husband, the wife was short tempered and would indulge in rude and cruel behaviour over trivial issues. So much so, she would misbehave with the husband in front of one and all. As a result of which, it would cause him a great deal of embarrassment. On 01st May, 2008, she left the matrimonial home along with her minor children and took along with her all her jewellery and clothes on the pretext of visiting her parents. Thereafter, husband made earnest efforts through Panchayat to bring her back to the matrimonial home but the same was unsuccessful. He then filed a petition under Section 9 of the Act, which was allowed, but the wife still did not join the society of her husband.

(4) *Per contra*, the appellant-wife (respondent therein) categorically refuted and denied the allegations of the husband, in her written statement filed before the Ld. Family Court. She submitted that the husband was an agriculturist. She submitted that at the time of their marriage, her parents had spent a considerable amount of money and had given her a lot of dowry which included not only gold jewellery, furniture, electronic items, clothes but also cash amounting to Rs.3.00 lakhs for purchase of a car. After her marriage, her parents continued giving her and her husband a lot of gifts including cash as and when the husband and his family would demand the same. She submitted that in fact the husband and his family were greedy persons and they were conscious of the fact she had no brother. In this background, they would compel her to get more dowry from her parents. Her parents tried to satisfy all the demands but it remained unsatiated. The husband was an agriculturist at the time of marriage. Her parents rendered all financial assistance to the husband to study and improve his educational qualifications leading to him obtaining degrees in M.A. and M.Ed. The husband thereafter worked as a teacher in a private school for a short span. Since, he wished to run his own private school, he asked the appellant-wife to arrange for funds for setting up a school by pressurizing her to sell the property which she was yet to inherit from her father. However, she expressed her inability to do so. Thereafter, he got employed as a teacher in a Govt. school and would often mock at her by calling her an illiterate. He would not even hesitate to tell her that he, in fact, wanted to marry a Govt. school teacher. He sought her permission to do so, but the wife refused, as a result of which, she would be often physically assaulted. In April, 2008, she was turned out of the matrimonial home with her children. She alleged that the husband in a very clever move filed an application before the Women's Cell, Barnala, on 04th April, 2008 and got a compromise effected between themselves in the presence of respectables. Resultantly, the wife started residing with the husband. The behaviour of the husband remained cordial for a little while. However, it was short-lived as he was back to his misdeeds. In May, 2008, she was turned out of the matrimonial home along with minor children, after being subjected to beatings. The Panchayat, which was convened to effect a reconciliation proved futile. Ever since then, she had been compelled to reside with her parents. She alleged that he had neglected his duties both as a father and as a husband. She further alleged that in order to cover up for his misdeeds, the husband had filed a petition under Section 9 of the Act on wrong facts, which had been allowed too. She submitted that she had

challenged the same by way of an appeal in the High Court. The wife further submitted that it was she, who had got convened a Panchayat to bury the hatchet, but the husband refused to settle the matter.

(5) The husband filed a rejoinder to the written statement of the wife, wherein, he denied all the averments made by the wife in her reply and reiterated his earlier version as pleaded in the petition filed before the Ld. Family Court.

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

- “1. Whether the respondent Smt. Karamjit Kaur has treated the petitioner with cruelty as prayed for ? OPP
2. Whether the petitioner is entitled to decree of divorce ?
OPR
3. Relief.”

(7) Both the parties adduced evidence in support of their respective stands before the Ld. Family Court. The husband examined as many as three witnesses including himself. On the other hand, wife examined four witnesses in support of her case including herself.

(8) After analyzing the evidence led by the parties and also the other material on record, the Ld. Family Court allowed the petition filed by the husband by holding that the grounds on which the husband was seeking dissolution of their marriage with the wife stood proved.

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

(10) It may be noticed that the parties during the arguments reiterated their earlier versions and maintained their respective stands as taken before the Ld. Family Court. 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 a futile exercise, as the husband did not appear before the Mediator. All efforts made by this Court as well to bring about a reconciliation between the parties proved futile.

(11) In the instant case, the marriage between the parties was dissolved by the Ld. Family Court by holding that the conduct of the wife towards the appellant-husband constituted cruelty and in fact it was she who had deserted the husband. However, perusal of the

evidence and other material available on record, reveals that all the allegations of cruelty levelled by the husband against the wife are nothing but frivolous allegations, which would not fall within the ambit of 'cruelty'.

(12) It is apparent that the husband had been regularly provided financial assistance by the parents of the wife and as long as the same was forthcoming, he had no complaints against her. It has gone unchallenged in the evidence adduced before the court below that he had indeed been helped financially by the appellant-wife's parents. Further, the allegations of the wife that the husband was pressurizing her to get more money from her parents and on her expressing her inability to do so, he subjected her to both physical and mental harassment has also gone unchallenged on record. Thus, the allegations of the husband that he was subjected to mental cruelty is nothing but a mere unsubstantiated averment, inasmuch as, no specific incident or event, much less, any date of being subjected to such acts of cruelty by the wife have been mentioned by the appellant-husband.

(13) Coming to the next ground of desertion as alleged by the husband, the same is bereft of any merit. His continuous conduct of neglecting his duties as a husband unerringly points towards him being responsible for creating such hostile and adverse circumstances for the wife, which left her with no other option but to take refuge with her young children in her parental home. The husband cannot thus be permitted to take advantage of his own wrongs while seeking relief under Section 13 of the Act for dissolution of his marriage with the wife.

(14) In view of the above facts and circumstances of the case, we have no hesitation to hold that the impugned judgment and decree dated 01st August, 2016, deserves to be set aside. Consequently, the instant appeal stands allowed.

Tribhuvan Dahiya