

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-1610-2014 (O&M)

Date of decision: 25.7.2016

Sanjeev Sharma

...Appellant

Versus

Sulaxmi @ Sonia Sharma

...Respondent

**CORAM: HON'BLE MR.JUSTICE M. JEYAPPAUL
HON'BLE MRS.JUSTICE SNEH PRASHAR**

Present: Mr.P.S. Sullar, Advocate for the appellant

Mr.Rajiv Joshi, Advocate for the respondent

SNEH PRASHAR, J.

Assailing the judgment and decree dated 25th October, 2013 by virtue of which petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act of 1955') filed by Sanjeev Sharma- appellant against his wife Sulaxmi @ Sonia Sharma-respondent, was dismissed by learned trial Court, the instant appeal was preferred.

The facts which require recapitulation are as under:-

The appellant sought dissolution of his marriage with the respondent by a decree of divorce on two grounds (i) cruelty (ii) desertion. He averred that the marriage between him and the respondent was solemnized on 05.05.2007 according to Hindu rites and ceremonies. The expenditure on marriage was shared equally by both the parties. After the marriage, they cohabited together at his residence at Ambala

but no child was born out of the wedlock as the respondent lived with him just for few days. After 5/6 days of marriage, the respondent started insisting for going to her parents' house every Sunday. He accepted her demand for the sake of her happiness but after some time she started forcing him to take a separate accommodation as she was not interested in living with her parents-in-law. Being the only son of old and ailing parents, he was reluctant to accept the demand of the respondent, on which she started creating fuss over the matter. He then agreed for separate kitchen in the same house but on 03.06.2007, the respondent quarrelled with him and insisted on taking separate accommodation and went to her parents' house.

After a couple of days his (appellant's) parents went to the parental home of the respondent to bring her back. Before them also, she insisted for separate accommodation. His parents agreed to have a discussion over the matter and suggested her to return to the matrimonial home, but, she did not come back. They again visited the house of the respondent on 02.07.2007 but instead of welcoming them, she and her parents maltreated and disrespected his father. Thereafter, on intervention of common friends and relatives, the respondent returned to her matrimonial home but she kept on brooding over the issue of taking separate accommodation. On 09.08.2007, the respondent, who was carrying a pregnancy of 6-8 weeks, went for an abortion as she did not want to have a child and forced him to sign on the consent paper in the hospital against the wishes of his parents. On 17.08.2007 when he was in

his office, the respondent quarrelled with his mother and physically assaulted her. His mother called him and when he came home he saw that mirror of the dressing table was lying broken and his mother was crying bitterly. He tried to pacify his mother and in the meantime, brother and parents of the respondent came there and gave merciless beatings to him and his parents and threatened him of dire consequences. He and his family went to the police station for lodging a complaint against the respondent and her family members but the police did not take the same. The respondent then left the matrimonial home and ever since then is residing with her parents.

The appellant added that to bring the respondent back to the matrimonial home, he had filed a petition under Section 9 of the Act of 1955 in the month of September, 2009 but the same was withdrawn by him as the respondent and her family maliciously levelled the allegation of demand of dowry on him and his family. With the said averments, pleading that he had been treated with cruelty and had also been deserted by the respondent, as she had filed to join his conjugal company since 17.8.2007, the appellant sought a decree of divorce dissolving their marriage.

The respondent contested the petition raising preliminary objections regarding maintainability of the petition and concealment of true facts. Replying on merit, she admitted the factum of marriage with the appellant but denied that she had ever forced the appellant to allow her to go to her parents' house on every Sunday or to take a separate

accommodation from his parents. According to her, after marriage she stayed with her husband consecutively for 28 days at her matrimonial home and she conceived during that period. She then was sent to her parental home for about a month and she was pressurised by the appellant and his parents to bring a car or cash from her parents. When her parents refused to accede to their demand, the appellant very cleverly took her to his house on 2.7.2007 and got her pregnancy terminated in a private Nursing Home at Ambala Cantt. Later, on 17.8.2007 she was turned out of the matrimonial home and since then she had been residing with her parents.

All allegations levelled by the appellant were denied by the respondent and she pleaded that she had always been ready to join the company of her husband-appellant but he has never made any effort to reconcile the matter. The petition under Section 9 of the Act was withdrawn by him when the question of making payment of maintenance allowance arose. Since, she had always been ready to resume the marital obligations with the appellant, she had not filed any case against him.

On the pleadings of the parties, issues were framed. Both the parties adduced evidence in support of their respective contentions. Considering the evidence and the arguments addressed, learned trial Court, dismissed the petition vide judgment and decree dated 25.10.2013.

Feeling aggrieved, the appellant preferred the instant appeal.

The submissions made by Mr.P.S.Sullar, Advocate

representing the appellant and Mr.Rajiv Joshi, Advocate for the respondent have been heard and record perused.

As observed above, the appellant-husband had sought dissolution of his marriage with the respondent on two grounds (i) that he had been treated with cruelty by the respondent (ii) that he had been deserted by the respondent. As regards desertion, learned counsel for the appellant emphatically argued that it is an admitted fact that ever since 17.08.2007, the respondent is residing at her parental home and has failed to join the conjugal company of the appellant. Prior to that also, they cohabited as husband and wife hardly for 28 days. All efforts made by the appellant to bring the respondent back to the matrimonial home including filing of a petition under Section 9 of the Act of 1955 did not fructify. He had withdrawn the petition filed under Section 9 of the Act of 1955 for restitution of conjugal rights as it was the condition of the respondent that she will return to the matrimonial home only after the said petition is withdrawn. The appellant withdrew the petition as demanded but the respondent broke her promise and refused to return to the matrimonial home. Her stand in the present proceedings that she is ready to join her husband, has been recently concocted by her because she has never before stated so. The long separation has irretrievably broken down the marriage and therefore on this sole ground, the marriage deserves to be dissolved. To support his arguments, learned counsel relied upon the judgment passed by Hon'ble Supreme Court in **Naveen Kohli vs. Neelu Kohli AIR 2006 SC 1675.**

Advancing his arguments on the point of cruelty, learned counsel for the appellant urged that just after 5/6 days of his marriage with the respondent, she had started asking for a separate accommodation. Since, the appellant was reluctant to accept her unreasonable demand, she started raising quarrels. On 17.08.2007, when the appellant was away to his office, the respondent quarrelled with her mother-in-law and physically assaulted her and broke the mirror of the dressing table. By the time, the appellant came home, the respondent called her brother and parents, who came and threatened the appellant and gave severe beatings to him and his parents. Prior to that the respondent, who had conceived during her stay with the appellant, had got the pregnancy terminated against the wishes of the appellant and his family. The said facts were proved by the appellant and his testimony was corroborated by PW2 Ved Parkash Vashisht and PW3 Ramesh Kumar. The misbehaviour of the respondent with the mother of the appellant and the criminal assault on him by the brother and other family members of the respondent amounted to commission of severe mental and physical cruelty to the appellant at the hands of the respondent.

To us, the arguments of learned counsel for the appellant appear to be misplaced. No doubt, the appellant and the respondent are living separate since 17.08.2007 but “desertion”, for the purpose of seeking divorce under the Act of 1955 means the intentional permanent forsaking and abandonment of one spouse by the other without other's consent and without reasonable cause. Merely because a spouse is living

separately, will not in all circumstances by itself constitute 'desertion'. Two conditions (i) the factum of separation and (ii) the intention to bring cohabitation permanently to an end (*animus deserendi*), are essentially to be proved to make a case of 'desertion'. In other words 'desertion' means a continuous course of conduct of a spouse towards the other to be determined under the facts and circumstances of each case. In **Bipanchandra Jaisinghbai Shah vs. Prabhavati, AIR 1957 Supreme Court, 176** the Hon'ble Supreme Court held that if a spouse abandons the other in a state of temporary passions, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion.

In the case in hand, it is admitted case of both the parties that the respondent left the matrimonial home on 17.08.2007. Her persistent stand is that she was turned out of the matrimonial home. Admittedly, she has not filed any civil or criminal case against the appellant till date. The appellant filed a petition under Section 9 of the Act of 1955 but withdrew the same. The reason now assigned by him that the respondent had put up a condition that she will join his conjugal company only after he withdrew the petition, is contrary to his own pleadings. In the petition, he alleged that he withdrew the petition filed by him under Section 9 of the Act of 1955 for the reason that the respondent and her family had maliciously levelled allegation of demand of dowry against him and his family.

Also, the appellant could produce no substantive and

reliable evidence to support his contention that at any point of time he had made a genuine effort to bring back the respondent to the matrimonial home but she was not ready to return. On the contrary, the respondent after appearance in the instant petition filed her written statement and in very clear and clean words unconditionally offered to join the conjugal company of the husband-appellant. She pleaded that she has always been ready to return to her matrimonial home but it is the appellant, who has never made any effort to reconcile the matter. She added that the appellant withdrew the petition under Section 9 of the Act of 1955 filed by him when there arose a question of payment of maintenance to her. She reiterated during her deposition that she has never refused and is always ready and willing to live with her husband. She stated that she has full respect for her in-laws' family and due love and affection towards the appellant. Surprisingly, the appellant neither filed a rejoinder to the written statement of the respondent nor produced any evidence to controvert the aforesaid stand taken by her.

The evidence clearly indicates that the respondent had always been ready to perform her matrimonial obligations but it is the appellant, who has not been permitting/ allowing her to do so. As observed above, no case whatsoever had ever been filed by the respondent against the appellant and that strengthens her plea that there had never been an intention on her part to forsake the appellant or to bring an end to cohabitation with him. From the said facts and circumstances, it can be said without hesitation that there has been long

separation between the parties because ever since the respondent was made to leave the matrimonial home the appellant had never been interested in resuming cohabitation with her. Section 23A (1) of the Act postulates that no party to the marriage can be allowed to take benefit of its own wrong. Thus, the conduct of the appellant himself dis-entitles him from seeking divorce on the ground of 'desertion'.

Coming to the ground of cruelty, there is hardly any specific incident disclosed by the appellant, which could support his version that he had been treated with cruelty at the hands of the respondent. His foremost allegation was that just after 5/6 days of marriage, on being forced by the respondent, he allowed her to go to her parental home on every Sunday. It is not his plea that ever thereafter any quarrel irrupted between him and the respondent on that matter. Secondly, the appellant alleged that after some time, the respondent started forcing him to have a separate accommodation, as she did not want to live with her parents-in-law. As he was reluctant to leave his parents, the respondent started creating fuss. But nothing specific was pleaded or proved by him in this context.

It was further stated by the appellant that on 3.6.2007, the respondent quarreled with him on her demand for a separate accommodation and went to her parental home. After a couple of days, his parents visited the parental home of the respondent to bring her back but she did not return. On 2.7.2007, his parents again went to her house to bring her back but instead of being welcomed, they were maltreated

and disrespected. After few days, on intervention of common family friends and relatives, the respondent came back to the matrimonial home but kept brooding over the issue of a separate accommodation. At that time she was 6-8 weeks pregnant and on 9.8.2007 she got the pregnancy terminated against his and his parents' wish and he was forced to sign on the consent paper.

No substantive or reliable evidence could be produced by the appellant to prove that the respondent got the pregnancy terminated without his consent. In his cross-examination, he admitted that the papers regarding abortion were signed by him. It is further in his cross-examination that when the respondent was staying with him in his house, her 6-8 weeks pregnancy was got terminated on the advise of the doctor as the child was not growing properly. The statement of the appellant to the above effect proved that he had wrongly pleaded that the respondent had undergone abortion against his and his parents' wishes. He had also tried to connect that unfortunate incident with his allegation that the respondent was demanding a separate accommodation. When the reason stated by him regarding termination of pregnancy is proved to be false, there is every reason to disbelieve his allegation that the respondent was insisting on having a separate accommodation from his parents and used to quarrel with him on that matter.

The incident of 17.08.2007 when he alleged that the respondent had physically assaulted his mother could also not be proved. His mother did not step into the witness box. He stated that the matter

was reported to the police but no such evidence was produced. Moreso, in his pleadings, he stated that after being informed about the incident by his mother, he came home and saw that his mother was weeping and the mirror of the dressing table was lying broken. Contrary to his own version during his deposition he stated that the mirror of the dressing table was broken by brother of the respondent, when he alongwith his parents came there on being informed about the incident by the respondent. In that manner, the incident appears to be nothing but a concoction of evidence on part of the appellant.

Though, the word “cruelty” has not been strictly defined in the Act, however, it has been used in relation to human conduct, human behaviour and in respect of matrimonial duties and obligations. The concept of cruelty much less a mental cruelty has been highlighted in a well propounded judgment of the Hon'ble Supreme Court in **V.Bhagat vs. D.Bhagat AIR 1994 SC 710**, in which it was authoritatively held that the mental cruelty is such where it is not possible for the spouse to live in the company of the other and the nature of act is such where it is not reasonably expected to live by one spouse in the company of other. The concept of cruelty is directly related to human problem/psychological approach, frequent change in human behaviour and conduct of the spouses and all these things are to be kept in mind, while appreciating the concept of cruelty by the Court.

Revering to the case in hand as discussed above, there is hardly any evidence what to say substantive and reliable to prove that the

respondent misconducted herself or committed any such act towards the appellant, which could be termed as an act of cruelty.

The appellant failed to prove any of the grounds i.e. desertion or cruelty raised by him to seek dissolution of his marriage with the respondent.

Resultantly, the findings of learned trial Court do not call for intervention and there being no merit in the appeal, it is hereby dismissed.

(M.JEYAPPAUL)
JUDGE

(SNEH PRASHAR)
JUDGE

25.7.2016
gsv

Whether speaking / reasoned? Yes

Whether reportable ? Yes