

In the High Court of Punjab and Haryana at Chandigarh

FAO No. M-216 of 2011

Date of Decision: May 31st, 2013

Chameli Devi

---Appellant

versus

Jagdish Singh

---Respondent

**Coram: Hon'ble Mr. Justice Rajive Bhalla
Hon'ble Mrs. Justice Rekha Mittal**

**Present: Mr. Avtar Singh, Advocate
for the appellant**

**Mr. C.M.Munjal, Advocate,
for the respondent.**

Rekha Mittal, J.

The present appeal lays challenge to the judgment and decree dated 6.5.2011 passed by the District Judge, Mansa, whereby the petition filed by Chameli Devi, appellant seeking dissolution of marriage of parties by a decree of divorce under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as “HMA”) has been dismissed.

The appellant was married with respondent on 31.5.2009 at Bareta Mandi as per Hindu rites and ceremonies. No child was born from the wedlock of the parties. As per averments of the appellant, the

attitude of the respondent was cruel towards her from the first day of the marriage. He started compelling her to bring more dowry from her parents. He is habitual drunkard and used to beat her under the influence of liquor. When she expressed her inability to meet his demand of ₹ 50, 000/-, she was turned out of the matrimonial home 13 months prior to the institution of the petition. The parents of the appellant convened a panchayat for her rehabilitation in the matrimonial home but the respondent refused to resume cohabitation until he was paid ₹50000/-. She has been deserted by the respondent without any reasonable cause due to which she has suffered mental and physical torture.

In reply, the respondent controverted the allegations of the petition and raised preliminary objections challenging the locus standi of the appellant to file the petition, petition being not maintainable and the appellant being guilty of concealing the material facts. It is averred that the appellant herself does not want to reside with the respondent and her parents are willing to get her married with some rich person. The father of the appellant came to meet her in the matrimonial home and took her along with him on the pretext of meeting with her mother but thereafter the appellant did not come back to the matrimonial home. The respondent tried his best to bring her back to the matrimonial home but she refused. He has filed petition under Section 9 of HMA for restitution of conjugal rights.

The appellant filed replication reiterating her averments set

out in the petition and denied the allegations raised by the respondent. The controversy between the parties led to framing of following issues by the learned trial Court:-

1. Whether the respondent has deserted the petitioner without any reasonable cause and excuse ? OPA
2. Whether the respondent has treated the petitioner with cruelty ? OPP
3. Whether the petitioner has concealed the material facts and has not come to the Court with clean hands ? OPR
4. Relief.

Chameli Devi, appellant, examined herself and Gian Kaur PW-2. Jagdish Singh-respondent did not lead any evidence as his defence was struck off for his failure to pay maintenance pendente lite and litigation expenses awarded by the learned trial Court.

After hearing counsel for the parties and appraising the evidence on record, the trial Court returned findings against the appellant and consequently dismissed the petition with costs.

Feeling dissatisfied with the verdict of the learned trial Court, the present appeal has been filed by Chameli Devi.

Counsel for the appellant submits that the learned trial Court has committed an error in denying the claim of the appellant that the respondent is guilty of subjecting her to cruelty and depriving her of conjugal rights. He has also deserted the appellant without any reasonable cause or excuse, therefore, the appellant is entitled to get a

decree of divorce on the grounds of cruelty and desertion. It is argued that the appellant was subject to torture, maltreatment, neglect and merciless beatings as her parents failed to satisfy the illegal demand of ₹ 50,000/- raised by the respondent. The respondent failed to pay maintenance pendente lite as awarded by the learned trial Court as well as during pendency of this appeal which shows that he has no concern for the well being of his wife. Counsel has strenuously argued that the appellant is entitled to a decree of divorce on the ground that the respondent failed to pay maintenance pendent lite awarded by the learned trial Court and this Court. Further dilating, it is submitted that once the defence of the respondent has been struck off, the reply filed by him has to be ruled out of consideration and, therefore, there is no counter or rebuttal to the allegations set out in the petition. In support of his contention, he has relied upon **Sheela Devi vs. Gurmukh Singh 2011(2) HLD 491**, **Kuldip Kaur vs. Gian Chand 2011 (6) RCR (Civil) 1010** and **Surjit Kaur vs. Amarjit Singh 2009(4) RCR (Civil) 787**.

Counsel for the respondent, on the other hand, argues that the appellant has levelled vague and general allegations against the respondent and those allegations on its face do not constitute cruelty to form basis for divorce. The appellant left the matrimonial home on the pretext of meeting her mother and thereafter, did not return despite best efforts by the respondent. The appellant cannot be allowed to take advantage of her own wrong to seek a matrimonial relief for dissolution

of marriage of parties. The respondent, keeping in view his poor financial condition, was unable to pay maintenance pendent lite but he cannot be condemned for his failure due to reasons beyond his control.

We have heard counsel for the parties and perused the records of the trial Court.

Indisputably, the respondent failed to comply with order passed by the learned trial Court granting maintenance pendente lite in favour of the appellant. His failure to pay maintenance led to striking off his defence by the trial Court. Resultantly, the respondent was not permitted to appear in the witness box or lead any evidence. Similarly, the appellant was allowed maintenance pendente lite by this Court during pendency of the appeal, vide order dated 9.11.2012. The operative part of order dated 9.11.2012 reads as follows:-

“ xxx xxx xxx xxx

Keeping in view the totality of the facts and circumstances discussed hereinabove, we assess maintenance pendente lite @ Rs. 5,000/- per month from the date of application, i.e. 13.07.2011. The arrears of maintenance shall be paid within a period of two months and future maintenance by the 10th of each calendar month.

The litigation expenses of Rs. 10,000/- have been paid.”

Respondent failed to discharge his obligation to pay maintenance and to comply with the order passed by this Court. Counsel for the appellant has referred to certain judgments of this

Court dealing with the question of adverse effect of failure of the husband to comply with the directions of the Court for payment of maintenance pendente lite and expenses of the proceedings. It has been consistently held by this Court that where the husband fails to pay maintenance pendent lite granted by the Court and the defence of the husband has been struck off for his failure to comply with order of the Court, the allegations set out by the wife in her petition for seeking divorce on the ground of cruelty are to be accepted and she becomes entitle to get a decree of divorce. In **Sheela Devi's** case (supra), a Division Bench of this Court while referring to various judgments has held as quoted hereinbelow:-

In Gurjeet Kaur alias Guddi versus Amar Singh, 1997

(3) P.L.R. 515 (P&H), a petition was filed by the wife for grant of divorce on the ground of cruelty. It was alleged by the wife that she was given beatings and was turned out of the house. The husband denied the allegations and the prayer for grant of decree of divorce was declined by the learned trial Court. In appeal, interim maintenance was fixed, but it was not paid by the husband. It was held that maintenance having not been paid, the Court has no option but to strike off the defence of the respondent. It was so ordered. Accordingly, the allegations of the appellant having gone un rebutted, the same were held to be accepted. In view of the averments of the appellant that she had been

maltreated by the respondent and there being no rebuttal to the said allegations, it was held to be proved and that the respondent treated the appellant with cruelty. Accordingly, the appellant was held entitled to a decree of divorce. Similar views have been taken in **Santosh Kaur versus Jagtar Singh, 1995 (3) R.R.R. 709 (P&H), Santosh versus Balwinder Kumar, 1997 (3) P.L.R. 516 (P&H) , Asha Rani versus Yash Pal, 1993 (Suppl.) Civil Court Cases 277 (P&H), Rani versus Parkash Singh, 1996 (2) P.L.R. 219 (P&H) and Usha Rani versus Prem Singh, 2005 (2) P.L.R. 292 (P&H).**”

The appellant has averred that she was subject to beatings, maltreatment, torture and dis-respect as she failed to satisfy illegal demand of her husband of ₹ 50,000/-. She was given physical torture including beatings by the respondent when he was under the influence of liquor. She is admittedly staying away from the matrimonial home since July/August, 2009. The plea of the respondent that he convened a panchayat to bring her back to the matrimonial home cannot be taken into consideration when otherwise there is no evidence on record that he convened any panchayat for rehabilitation of his wife. The appellant has been compelled to stay away from the matrimonial home resulting in depriving her of conjugal rights and causing mental cruelty. The respondent failed to pay maintenance pendente lite during pendency of proceedings before the trial Court as well as the present appeal. The

respondent cannot escape from his liability of maintaining his wife on the pretext of financial constraints or his failure being beyond his control. There is nothing on record to suggest that the respondent, a young person of about 30 years of age, is suffering from any ailment rendering him unable to work and earn livelihood for his family. The very fact that the respondent refused to pay maintenance thereby disregarding the orders passed by the trial Court and this Court shows that he has no concern for his wife and no respect for orders passed by Courts. As the respondent failed to pay maintenance pendente lite which led to his defence being struck off by the trial Court, counsel for the appellant, in the light of ratio laid down in the referred authorities, is right in his submission that the pleadings of the respondent cannot be looked into and the allegations made by the appellant regarding cruelty are to be accepted. The learned trial Court failed to take into consideration that as the respondent failed to pay maintenance pendente lite and his defence was struck off for disobeying the order of the Court, he cannot be allowed to be heard on merits.

The allegations raised in the petition would reveal that an amount of Rs. 1.5 lac was spent on marriage performed in May 2009. The appellant appears to be belonging to a family with mild financial back ground or below middle class. It is difficult to believe that the appellant or her parents would have decided to seek divorce if there was no serious reason for her to complain against the conduct of the respondent. We cannot loose sight of the fact that in our social set up,

parents find it difficult to get a suitable match for their daughter. It becomes all the more difficult to find a match for a divorcee girl. Unfortunately, a girl with disturbed matrimony is treated as an outcast. No reasons are forthcoming that could persuade the appellant to leave her matrimonial home and to live at the mercy of her parents and brothers etc. if she had a happy married life.

In view of what has been discussed hereinabove, the appeal is allowed. The judgment and decree passed by the trial Court is set aside. Resultantly, the petition for divorce is allowed. The marriage of the parties is dissolved on the grounds of cruelty and desertion. Decree sheet be drawn up accordingly.

**(REKHA MITTAL)
JUDGE**

**(RAJIVE BHALLA)
JUDGE**

May 31st, 2013

PARAMJIT