

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

FAO-M-129-2018 (O&M)
Decided on : July 31st, 2019

Nirmal Kaur Appellant

Versus

Amanjit Pal Singh Respondent

**CORAM : HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Argued by : Mr. B.S.Jolly, Advocate
for the appellant.

Mr. Vivek Arora, Advocate
for respondent.

Manjari Nehru Kaul, J.

The instant appeal has been preferred by the appellant-wife – Nirmal Kaur against the judgment and decree dated 11.01.2018 vide which the petition filed by the respondent-husband under Section 9 of the Hindu Marriage Act, 1955 (for short 'the Act') was allowed by the trial Court.

2. Few facts necessary for adjudication of the instant appeal as pleaded in the petition before the learned Court below may be noticed. The marriage between the parties was solemnized on 17.01.2009 at Mullanpur, District Ludhiana as per Hindu rites and ceremonies. After the marriage, the appellant-wife and the respondent-husband lived and cohabited at Moga. One male child was born in the year 2010 out of the said wedlock, who is in the custody of the appellant-wife. As per averments made in the petition, after the marriage, the parties lived together at Moga for about two months.

Thereafter, the appellant-wife pressurized the respondent-husband to shift to Chandigarh. Since the respondent-husband did not agree to live in the parental home of the appellant-wife, they rented an accommodation at Chandigarh. The respondent-husband claimed that they were leading a happy married life but relations between them started turning sour after the birth of their son when the appellant-wife started harassing him. The appellant-wife, who is a government employee and drawing a handsome salary, started pressurizing the respondent-husband to sever all ties with his side of the family and friends, to which he did not agree. He further alleged that since he was a petty employee in a private company, he was unable to afford the luxuries desired by the appellant-wife, as a result of which the appellant-wife's behaviour worsened. The appellant-wife as well as her family would not even hesitate to humiliate and misbehave with the respondent-husband in front of one and all. In fact, the appellant-wife would level false allegations against the respondent-husband of being involved in illicit relations. Finally, in October, 2011, the appellant-wife left the matrimonial home along with her child without the knowledge and consent of the respondent-husband. It was further alleged that the respondent-husband made earnest efforts to bring the appellant-wife back into the conjugal fold but it proved to be a futile exercise. Ultimately, the respondent-husband being fed up with the behaviour of the appellant-wife filed a petition under Section 13 of the Act against her at Chandigarh, but with the intervention of family and friends, it was withdrawn as he wanted to reside with his wife i.e. the appellant and their child along with his parents, at Moga.

3. The appellant-wife in her written statement filed before the Court below, denied the allegations and averments made in the petition, inter alia pleading that the petition under Section 13 of the Act was withdrawn by the respondent-husband without assigning any reason as he did not want to pay maintenance to the appellant-wife and the minor child. It was, thereafter, that the petition under Section 9 of the Act was filed by the respondent-husband. She admitted that both the parties resided and cohabited with each other at Moga after marriage but pleaded that since she was employed as a Clerk in the Mini Secretariat, Punjab and posted at Chandigarh, she had to return to Chandigarh to rejoin her duties. She alleged that she was pressurised to quit her government job and live with the respondent-husband at Moga. On her refusal to quit her job, she was subjected to both physical and mental abuse by the respondent-husband and his family. As per the appellant-wife, she never neglected her matrimonial obligations and duties and gave her full attention to her family, yet the respondent-husband treated her with utmost cruelty, so much so, on account of the harassment meted out to her, she was compelled to lodge a complaint with the police at Chandigarh against the respondent-husband. She made earnest efforts to adjust with the respondent-husband but in vain.

4. On the pleadings of the parties, following issues were framed by the learned trial Court:

1. Whether the petitioner is entitled for the decree of restitution of conjugal rights, as alleged? OPP
2. Whether the petition is not maintainable? OPR
3. Whether petitioner is guilty of suppression of material

facts from this Court? OPR

4. Whether petitioner has not approached the Court with clean hands? OPR

5. Relief.

5. Thereafter, both the parties adduced evidence in support of their respective stands. The respondent-husband stepped into the witness box as PW-1 and tendered an affidavit Ex.PW-1/A in evidence. Besides himself, he examined Harbhajan Singh as PW-2 and Gurdial Singh as PW-3, who deposed on the same lines as the respondent-husband and stated that the appellant-wife was not interested in joining the company of the husband despite efforts made by him and the panchayat. On the other hand, the appellant-wife herself stepped into the witness box as RW-1 and tendered in evidence an affidavit Ex.RA along with other documents.

6. After analyzing the evidence led by the parties as also the other material available on record, the trial Court allowed the petition filed by the respondent-husband and directed the appellant-wife to join the company of the husband and perform her matrimonial obligations holding that she had failed to establish any sufficient or reasonable cause not to return to the society of the husband.

7. We have heard learned counsel for the parties and have perused the evidence as well as other material available on record.

8. It would be pertinent to mention that during the pendency of the instant appeal, the parties were referred to the Mediation and Conciliation Centre of this Court to explore the possibility of an amicable settlement, which however, failed to yield any positive result.

9. Learned counsel for the parties while addressing arguments stuck to their respective stand and reiterated their submissions made before the trial Court.

10. It would be apposite to reproduce Section 9 of the Hindu Marriage Act, which is as follows:

9". Restitution of conjugal rights- *when either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.*

[Explanation – where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.]”

The crux of Section 9 of the Act is withdrawal of one spouse from the society of the other without there being any reasonable excuse. In the instant case, the initial burden of proving his case rested with the respondent-husband and after he discharged his burden, the onus shifted on to the appellant-wife that her withdrawal from the society of the respondent was on account of a reasonable excuse. In other words, the appellant-wife had to prove reasonable excuse, once her withdrawal from society was proved by the respondent-husband.

11. In the case in hand, it was pleaded before the Court below that the appellant-wife had left the company of the respondent-husband without his knowledge and consent despite the fact that she was showered with love

and affection and treated well. This comes across as one of those cases wherein admittedly, the appellant-wife was a government employee not only at the time of her marriage but even thereafter she was posted at Chandigarh whereas the respondent-husband was based at Moga where he was working for a private company. In fact during the pendency of the instant appeal, it has come on record that an application i.e. CM No.15415-CII of 2018 was moved by the respondent-husband in which as per his own averment he was unemployed.

12. As far as "reasonable excuse" as provided in Section 9 of the Act is concerned, the conduct and situation of the respondent-husband cannot be lost sight of. As per his own averments and admission, he is unemployed whereas on the other hand it is not disputed that the appellant-wife is a permanent government employee working with the Home Department, Government of Punjab, Chandigarh. In this factual matrix, the allegation of the respondent-husband against the appellant-wife that her continued residence in Chandigarh amounts to neglect of her matrimonial obligations seems to be rather unfair. It is not the case of the respondent-husband that at the time of marriage he was kept in the dark about the job of the appellant-wife. He being an educated man would have naturally known the exigencies of a government job for which she cannot be blamed now. The respondent-husband cannot in such a situation be allowed to seek sympathy by projecting himself as a wronged party. In fact exerting pressure on the appellant-wife to get herself transferred to Moga amounts to cruelty. It seems to be a rather old fashioned in today's world to insist on a wife to live at a place where her husband is employed. It is very common

these days for a number of married couples to be working and gainfully employed in different cities. It would be extremely unfair and rather a pity to expect the appellant-wife to discontinue her government job and shift to Moga so as to avoid a decree under Section 9 of the Act from being passed against her. To our mind, the appellant-wife living separately, under the circumstances, will not amount to withdrawal from the society of the respondent-husband, thus, obviating even the need to prove “reasonable excuse”.

13. During our interaction with the appellant-wife, who was present in Court, she expressed her willingness to live with her husband at Chandigarh and return to the conjugal fold. Her submission comes across as being very genuine as she submitted that not only was she a permanent government employee but her son was getting education in a good school at Chandigarh. In the eventuality of shifting to Moga to live with the respondent-husband, it would cost the appellant-wife her job, a gamble she can ill afford since as per the admission of the respondent-husband himself he was unemployed. The fire in the hearth must keep burning, and the appellant-wife is the provider.

14. Suffice it to say, it is not necessary for spouses to be staying under the same roof. Parties may stay at different places or even distant places and that alone will not dilute or erode a conjugal relationship, especially in the facts of the present case. An inference would have to be drawn from the facts and circumstances of each case if the withdrawal of one party/spouse from the society of the other was intentional or not. In the case in hand, on reappraisal of the evidence and other material as well as

after an interaction with the parties, the withdrawal of the appellant-wife from the society of the respondent-husband cannot be said to be intentional withdrawal, if it can be termed as withdrawal from the society in the first place. The respondent-husband cannot be said to be a wronged party.

15. As a sequel to the above discussion, we accept the appeal filed by the appellant-wife and set aside the decree for restitution of conjugal rights. It would be in the interest of the parties to work out a workable solution.

16. Accordingly, the present appeal is allowed.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

July 31st, 2019
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Whether speaking/non-speaking: Yes/No
Whether reportable : Yes/No