***Before Rakesh Kumar Jain and Harnaresh Singh Gill, JJ.***

**HARMEET SINGH**—*Appellant*

*versus*

**RUPINDER KAUR**—*Respondent*

**FAO-M No.111 of 2019**

April 30, 2019

A) ***Hindu Marriage Act, 1955—S.13 (1) (i-a)—Non-payment of maintenance by husband—Decree of divorce—Appeal—Non-payment of maintenance to wife disentitles husband to any relief—No permission to take benefit of his or her wrong—Decree of divorce in favour of wife proper—Hence, appeal not maintainable.***

*Held that* the wrong committed by the appellant or husband i.e. non-payment of the maintenance amount, disentitles him to any relief in the present appeal. Though, the impugned judgment and decree has been passed in a petition filed by the respondent-wife, yet suffice to say that on the analogy of not permitting a spouse to take benefit of his or her own wrong, we are of the considered opinion that the respondent-husband has got no right to maintain the present appeal.

(Para 9)

B) ***Hindu Marriage Act, 1955—S.13 (1) (i-a)—Non-payment of maintenance by husband—Decree of divorce—No effort(s) made by husband either to pay maintenance amount and get order of striking off his defence set aside/modified or challenged in appeal or revision shows that husband neither interested in making payment of maintenance pendent-lite nor taking divorce proceedings seriously—Thus, husband has no right to be heard—Hence, decree of divorce in favour of wife upheld.***

*Further held that* it is a settled principle of law that a litigant, who sleeps over his right, is not entitled to any relief even on the ground of equity. Still further, one who seeks equity must do equity. Applying the said principles, the appellant-husband, who has not paid a single penny towards the maintenance amount fixed by the trial Court, including the arrears thereof, has no right to be heard. Merely because under the provisions of the Act, he has a right of appeal, is not sufficient enough to interfere in the judgment and decree passed by the learned trial Court, especially when, nothing has been pointed out about

the illegality in the order, striking off the defence of the appellant or husband.

(Para 10)

Jagdish Sing Mahal, Advocate
*for the appellant.*

**HARNARESH SINGH GILL, J.**

(1) Challenge in the present appeal is to the judgment and decree dated 05.12.2018 passed by the learned Additional District Judge, Gurdaspur, whereby petition filed by the respondent-wife has been allowed and the marriage has been dissolved on the ground of cruelty.

(2) The factum of marriage between the parties and the birth of two male children, namely, Pavneet Singh and Bhupinder Singh is undisputed. The respondent-wife filed the petition for divorce on the ground that barely after six months of the marriage, the appellant-husband and his family members, started harassing and torturing her for bringing insufficient dowry; that her husband is a drunkard and besides spending his entire salary of Rs.40,000/- being earned by him as a Manager in a Hotel at Dalhousie, he would compel the respondent-wife to bring more money from her parents, in order to satisfy his alcoholic requirements; that on 14.06.2015, she, before having been turned out of the matrimonial home, had been given severe beatings, as a result of which she along with her minor children, left her matrimonial home for her parental home and that the efforts for reconciliation yielded no result. It was further alleged that when the respondent-wife had filed a petition under Section 125 Cr.P.C. for grant of maintenance, the appellant-husband with a view to avoid his liability of maintenance, filed a petition under Section 9 of the Hindu Marriage Act, 1955 (for short "the Act').

(3) Upon notice, the appellant-husband appeared and filed his written statement. While denying the allegations of cruelty, it was averred that the respondent-wife had left the matrimonial home on her own as her demand of getting the shops and house in her name was not acceded to by the appellant-husband.

(4) On the pleadings of the parties, issues were framed and they led their respective evidence.

(5) After taking into consideration the evidence on record and further considering the rival contentions of the parties, the learned trial

Court allowed the petition filed by the respondent-wife holding therein that the cruelty stood duly proved by the evidence led by her. It was held that the appellant-husband failed to pay the interim maintenance to the respondent-wife, which was granted to her vide order dated 29.08.2018. Earlier, an ex-parte decree was granted on 25.10.2016 but subsequently on an application filed by the appellant-husband, vide order dated 11.09.2017, said ex-parte decree was set aside and the petition was restored to its original number. Thereafter, vide order dated 29.08.2018, on an application filed under Section 24 of the Act, the appellant-husband was directed to pay to the respondent-wife an amount of Rs.3500/- per month as maintenance pendent-lite. However, owing to non-payment of such amount of maintenance including the arrears of Rs.87,500/-, the defence of the appellant-husband was struck off vide order dated 23.10.2018. Thus, taking into consideration that it was a case of no evidence on behalf of the appellant-husband the learned trial Court allowed the petition filed by the respondent-wife by granting a decree of divorce on the ground of cruelty.

(6) We have heard learned counsel for the appellant but do not find any merit in the present appeal.

(7) Undeniably, after the defence of the appellant-husband was struck off for non-payment of the maintenance amount including the arrears, he lost his right as also the opportunity to lead the evidence. No effort(s) was made by the appellant-husband either to pay the maintenance amount and get the order of striking off his defence set aside/modified or challenged the said order by any of an appeal or revision. Thus, it is apparent that the appellant-husband was neither interested in making the payment of maintenance pendent-lite nor was taking the divorce proceedings seriously. Even before this Court no attempt much less a bona-fide attempt has been made by the appellant to clear and/or pay the maintenance amount. This clearly shows that the present appeal is nothing but an empty formality on behalf of the appellant-husband. We could have thought for grant of an indulgence had there been any attempt on the part of the appellant-husband to pay the maintenance amount. However, nothing of the sort has been done by him. This clearly speaks volumes of the appellant's conduct and the trial Court, in our view, was justified in striking off the defence of the appellant-husband.

(8) In the instant case, on the one hand, the appellant-husband is evading the process of Court by not paying the maintenance amount including the arrears thereof and on the other hand, he has filed the

present appeal against the judgment and decree passed by the trial Court. The Hon'ble Supreme Court in ***Hirachand Srinivas Managaonkar*** versus ***Sunanda***[1], while declining the relief of a decree of divorce under Section 13(1-A)(i) of the Act to the husband therein, has held that no such relief could be granted to him once he fails to pay the maintenance despite the orders passed by the Court. It was held that granting the relief, sought for by the respondent-husband, would amount to giving the respondent-husband an opportunity to take benefit of his own wrong as stipulated under Section 23 of the Act. The relevant extracts from the said judgment would read as under:-

> "18. Now we come to the crucial question which specifically arises for determination in the case, whether refusal to pay alimony by the appellant is a 'wrong' within the meaning of Section 23(1)(a) of the Act so as to disentitle the appellant to the relief of divorce. The answer to the question, as noted earlier, depends on the facts and circumstances of the case and no general principle or strait-jacket formula can be laid down for the purpose. We have already held that even after the decree for judicial separation was passed by the Court on the petition presented by the wife it was expected that both the spouses will make sincere efforts for a conciliation and cohabitation with each other, which means that the husband should behave as a dutiful husband and the wife should behave as a devoted wife. In the present case the respondent has not only failed to make any such attempt but has also refused to pay the small amount of Rs. 100 as maintenance for the wife and has been marking time for expiry of the statutory period of one year after the decree of judicial separation so that he may easily get a decree of divorce. In the circumstances it can reasonably be said that he not only commits the matrimonial wrong in refusing to maintain his wife and further estrange the relation creating acrimony rendering any rapprochement impossible but also tries to take advantage of the said 'wrong' for getting the relief of divorce. Such conduct in committing a default cannot in the facts and circumstances of the case be brushed aside as not a matter of sufficient importance to disentitle him to get a decree of divorce under Section 13(1-A)."

[1] 2001 AIR (SC) 1285

(9) As noticed above, the wrong committed by the appellant-husband i.e. non-payment of the maintenance amount, disentitles him to any relief in the present appeal. Though, the impugned judgment and decree has been passed in a petition filed by the respondent-wife, yet suffice to say that on the analogy of not permitting a spouse to take benefit of his or her own wrong, we are of the considered opinion that the respondent-husband has got no right to maintain the present appeal.

(10) It is a settled principle of law that a litigant, who sleeps over his right, is not entitled to any relief even on the ground of equity. Still further, one who seeks equity must do equity. Applying the said principles, the appellant-husband, who has not paid a single penny towards the maintenance amount fixed by the trial Court, including the arrears thereof, has no right to be heard. Merely because under the provisions of the Act, he has a right of appeal, is not sufficient enough to interfere in the judgment and decree passed by the learned trial Court, especially when, nothing has been pointed out about the illegality in the order, striking off the defence of the appellant-husband.

(11) No other point has been urged.

(12) In view of the above, we do not find any illegality or perversity in the judgment and decree passed by the learned trial Court. Consequently, finding no merit in the present appeal, the same is hereby dismissed. No costs.

*Ritambhra Rishi*