

Court No. - 29**Case :-** FIRST APPEAL No. - 1391 of 2023**Appellant :-** Km. Ankita Devi**Respondent :-** Shri Jagdependra Singh @ Kanhaiya**Counsel for Appellant :-** Vinay Mishra, Mata Achal Mishra**Hon'ble Vivek Kumar Birla, J.****Hon'ble Donadi Ramesh, J**

1. Heard Sri Mata Achal Mishra, learned counsel for the appellant and perused the record.
2. The appellant-plaintiff (wife) has come forward to challenge the impugned judgement and order dated 22.11.2023 passed by the Family Court in Matrimonial Suit No. 272 of 2018 (Km. Ankita Devi vs. Shri Jagdependra Singh @ Kanhaiya), whereby petition filed under Section 11 of the Hindu Marriage Act, 1955 was dismissed.
3. Submission of the learned counsel for the appellant is that the dismissal of the petition under Section 11 of the Act is patently illegal. He submits that the appellant-plaintiff (wife) had initially filed a Matrimonial Petition No. 272 of 2018 on 10.2.2018 under Section 12 of the Act wherein an amendment application dated 30.3.2019 was filed, which was allowed by the Family Court vide order dated 22.2.2021 on payment of cost and Section 12 of the Hindu Marriage Act (hereinafter referred to as the 'Act') was deleted and in place thereof, Section 11 of the Act was incorporated. It is pointed out that the respondent-husband (defendant) challenged the said order by filing First Appeal No. 649 of 2021 (Jagdeevendra Singh @ Kannahaiya vs. Km. Ankita Devi) before this Court, which was dismissed vide order dated 1.3.2023 and the proceedings of the divorce petition were directed to be decided expeditiously. It is further submitted that thereafter vide order dated

25.5.2023 the matter was directed to be proceeded ex parte against the husband, who although appeared before the Court below and filed his written statement but absented himself. The appellant-wife (plaintiff) appeared as PW-1 and examined herself and filed the marriage registration certificate, Allahabad Bank passbook and Aadhar Card of the appellant. It is submitted that she was working as Executive Officer, Nagar Panchayat, Manjhanpur, District Kaushambi and the marriage was got registered under duress as mother of the appellant-wife was a heart patient and her treatment in AIIMS was required and she was not in a position to get her treated in AIIMS because of financial constraints. It was submitted that therefore the marriage was an outcome of fraud and thus, the impugned judgement is liable to be set aside and the petition filed under Section 11 of the Act is liable to be allowed.

4. It is also submitted that admitted fact of the case is that initially petition was filed before the Family Court under Section 12 of the Act, which was deleted and Section 11 of the Act was incorporated, therefore, any other relief in the facts and circumstances was also liable to be considered and granted. Submission, therefore, is that even by ignoring the grounds of Section 11 of the Act, the relief should have been granted to the appellant-plaintiff herein and the marriage was liable to be declared void.

5. We have considered the submissions of learned counsel for the appellant and perused the record.

6. Before proceeding further, it would be appropriate to take notice of Sections 5, 11 and 12 of the Hindu Marriage Act, 1955, which are quoted as under:

"5. Conditions for a Hindu marriage- A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

(i) neither party has a spouse living at the time of the marriage;

(ii) at the time of marriage, neither party-

(a) *is incapable of giving a valid consent to it in consequence of unsoundness of mind; or*

(b) *though capable of giving a valid consent, has been suffering from mental disorder or such a kind or to such an extent as to be unfit for marriage and the procreation of children; or*

(c) *has been subject to recurrent attacks of insanity;*

(iii) *the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage;*

(iv) *the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two;*

(v) *the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;*

11. Void marriages- *Any marriage solemnized after the commencement of this Act shall be null and void any may, on a petition presented by either party thereto, against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.*

12. Voidable marriages- (1) *Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:-*

(a) *that the marriage has not been consummated owing to the impotence of the respondent; or*

(b) *that the marriage is in contravention of the condition specified in clause (ii) of section 5; or*

(c) *that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under Section 5, as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978, the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstances concerning the respondent; or*

(d) *that the respondent was at the time of the marriage pregnant by some person other than the petitioner.*

(2) *Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage-*

(a) *on the ground specified in clause (c) of sub-section (1), shall be entertained if-*

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband and wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;

(b) on the ground specified in clause (d) of sub-section (1), shall be entertained unless the Court is satisfied-

(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(ii) that the proceedings have been instituted in the case of a marriage solemnized before the commencement of this Act within one year of such commencement and in the case of marriages solemnized after such commencement within one year from the date of the marriage; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the said ground."

(emphasis supplied)

7. We find that the Court below has considered the provisions of Sections 5 and 11 of the Act and found that none of the grounds as given in Section 11 of the Act are existing in the present case and therefore, the petition was dismissed on merits. During course of arguments, on a pointed query, learned counsel for the appellant fairly conceded that no ground as provided in Section 11 of the Act is available in the present case and the petition should have been considered on the other grounds and also on the grounds as available in Section 12 of the Act. It was pointed out that the ceremony of Saptapadi (Sat Fera) was not performed and no marriage ceremony had taken place, therefore, the marriage was not valid and therefore, registration of marriage was inconsequential in nature.

8. On perusal of the record, we find that in the written statement, it has been categorically stated by the respondent-husband that the marriage had taken place in a simple

ceremony on 14.2.2017 and thereafter the marriage was got registered on 25.3.2017 by appellant herself appearing and admitting factum of marriage before the Sub Registrar, Kanpur Nagar as stated in para 18 of the written statement, therefore, there is no question of any fraud having been played by the respondent-husband. In paragraph 23 of the written statement, it has been categorically stated that as the petition under Section 12 of the Act should have been filed within a year after the knowledge of the alleged fraud, which is not available in the present case. Therefore, it appears that for this reason, subsequently an amendment application for changing the provision from Section 12 of the Act to Section 11 of the Act had been filed, which was allowed. Therefore, changing the provision of law under which the petition was filed before the Family Court was clearly a conscious decision of the appellant herself. During course of arguments, learned counsel for the appellant has admitted that none of the grounds as available in Section 11 of the Act are made out, therefore, we find that the argument of learned counsel for the appellant that even though the provisions of Section 12 of the Act has been changed to Section 11 of the Act, petition should have been considered as per the provisions of Section 12 of the Act, is patently misconceived. We find that ultimately no fruitful purpose would be served by keeping this litigation pending in view of the admitted legal position. A bare reading of Sections 5, 11 and 12 as quoted above would clearly disclose that the grounds of Section 12 of the Act are different from the grounds as given in Section 11 of the Act and therefore, specific assertion as made in the petition must have been proved by the appellant (plaintiff), which she failed to prove.

9. In the present case, it is being asserted by the appellant-plaintiff that she met the respondent-defendant in an office and thereafter he along with so-called mother (Ex. Cadre Minister, Revenue Adviser) used to visit the house of the appellant-

plaintiff. The mother of the appellant-plaintiff was a heart patient and she needed money for her treatment. The respondent-defendant persuaded her for her treatment at AIIMS, New Delhi and kept the proposal of marriage, which was not accepted by her, however, she was influenced to go to Kanpur from Agra and the respondent-defendant prepared some documents for registration of marriage by misleading, however, he persuaded her to make signature and so that the marriage can be performed subsequently. It is further asserted that under such compelling circumstances, when treatment of her mother was required, she made signatures for solemnization of marriage with the respondent-defendant. Therefore, the claim of the appellant-plaintiff is that a fraud was played by respondent-defendant (husband) and hence, she filed a petition under Section 12 of the Hindu Marriage Act wherein admittedly, the provision was got amended on her own application from Section 12 to Section 11 of the Act.

10. The Delhi High Court in MAT. APP. (F.C.) 204 of 2023 (wherein names of the parties have not been given) filed for annulment of marriage on the ground of fraud under Section 12 (1)(c) of the Hindu Marriage Act considered the various aspects of the matter and noticed that the term "fraud" has not been defined in the Act and observed that 'not every kind of misrepresentation or concealment of fact' can be termed as "fraud" as envisaged under Section 12 of the Act. Several judgements of other High Courts have also been considered, paragraphs 12, 13, 14, 15, 16, 17 and 18 whereof are quoted as under:

12. The term "fraud" has not been defined in the Act. Under the Hindu Marriage Act not every kind of misrepresentation or concealment of fact can be termed as fraud as envisaged under Section 12 of the Act. Clause 'c' of Section 12(1) of HMJ thus provides that the marriage may be annulled by a decree of nullity if:

(i) the consent of the petitioner is obtained by force or by fraud;

(ii) such force or fraud must be to "the nature of the ceremony" or as to "any material fact or circumstance concerning the

respondent”.

13. Mulla, in *Principles of Hindu law, 11th Edition*, deals with this aspect at page 739 and observes that by way of illustration, the concealment of a fact that the wife had been in a “naikin” by profession and even in the keeping of more than one person prior to the marriage was not a fraud if there was consent to the marriage. So long as the person “freely consents” to solemnization of the marriage in accordance with customary ceremonies, understanding the nature and having an intention to marry, objection as to the validity of marriage on the ground of fraudulent representation or concealment cannot be taken subsequently. The marriage cannot be avoided by showing that the petitioner was induced to marriage by fraudulent statements relating to family or fortune, caste or religion or age or character of the respondent. Where, however, a party is kept under the impression that what is being performed is only a betrothal or there is a deception as to the identity of the other person, then it would amount to fraud giving a cause for annulment of marriage.

14. In *Anath Nath De vs. Smt. Lajjabati Devi*, AIR 1959 Cal. 778, the Calcutta High Court explained that the question of consent of the parties to the marriage arise at two stages ; firstly at the time when the parties consent to solemnize the marriage and secondly, at the time when the marriage itself is solemnized. The Hindu Marriage not being a contract, the consent at the first stage though obtained by fraud, cannot affect the validity of the marriage. The consent at the time of solemnization of marriage is the material consent and if it is obtained by fraud, it affects the validity of the marriage.

15. Similar view was expressed by Punjab & Haryana High Court in the case of *Harbhajan Singh vs. Smt. Brij Balab*, AIR 1964 Punjab 339, wherein it was further observed that in case of a marriage under Hindu law fraud is not used in a general way and the marriage cannot be dissolved by on every misrepresentation or concealment. If the term “fraud” was to be interpreted in accordance with Indian Contract Act, then it would become impossible to maintain the sanctity of marriage. By way of illustration, it was stated that if a respondent is a person of Bad Character before the solemnization of marriage, it cannot be termed as a fraud. The legislature did not intent that the past conduct of the respondent except what is mentioned in Section 12 of the HMA, should become a ground for dissolution of marriage.

16. Similarly, Bombay High Court in *Raghunath vs. Vijaya*, AIR 1972 Bom. 132 observed that term „fraud“ used in Section 12(1)(c) of the HMA does not speak of fraud in any general way, nor does it mean every concealment or misrepresentation may be considered as fraudulent. If the consent is given to the solemnization of marriage, the same cannot be avoided on the ground of fraud.

17. In *Sujatha vs. Hariharan*, 1995 (II) M.L.J 327 DB of Madras High Court observed that to constitute a “fraud” under Section 12(1)(c) of the HMA there must be an abuse of confidential position, some intentional imposition or some deliberate concealment of material facts which are the fundamental basis of the marriage contract.

18. The meaning of material fact or circumstances concerning the respondent was examined in the case of *Pradeep s/o Namdeorao Ambhore vs. Pallavi Pradeep Ambhore* 2017 (6) Mh.L.J., where the moot

question was whether the concealment of the wife suffering from sickle cell anemia, amounted to material fact or circumstance. It was observed that while it is difficult to define with certainty what amounts to a material fact, it is safe to say that a fact or circumstance which is of such a nature that was likely to interfere with the marital life of the parties, then it is material fact or circumstance. Such a material fact or circumstance must be in respect of a person or the character of the person and it is immaterial whether it is curable or not. Further, a fact crucial to the extent that if disclosed would result in either of the parties not consenting to the marriage, would also be termed as a material fact.”

11. In our opinion, the Family Court, under such circumstances, ultimately after change of provision from Section 12 of the Act to Section 11 of the Act, has rightly proceeded to consider the grounds of declaration of marriage as void as provided in Section 11 of the Act in the light of Section 5 (i), (iv) and (v) of the Act. It cannot be disputed that there is a difference between void marriage and voidable marriage. Needless to point out that a void marriage is regarded as non-existent or as never having taken place and such declaration that the marriage is void ab initio can be sought under Section 11 of the Act on the grounds as provided therein whereas a voidable marriage is regarded as valid and subsisting unless a competent Court annuls it until the decree of nullity is obtained in accordance with the Hindu Marriage Act. Unless the decree is granted, the lis remains binding and continues to subsist. The marriage performed in contravention of Clauses (i), (iv) and (v) of Section 5 of the Act is void and incapable of being cured or ratified whereas in a case of voidable marriage, a declaration is necessary, otherwise the marriage continues to remain is regarded as marriage and continues to subsist.

12. In the present case, we have noticed the fact that the appellant-plaintiff herein was working as Executive Officer, Nagar Panchayat, Manjhanpur, District Kaushambi and she is, thus, a well-educated service class lady holding important post and, therefore, presumably, she must be having sufficient

financial means as well. Therefore, it is unbelievable that any kind of fraud or use of force could have been used on her for making signatures for the registration of marriage and that too when signatures were admittedly made by her and are reflected from the certificate of registration of marriage at page 25 of the paper book. Therefore, a bald oral assertion in absence of any cogent evidence cannot be accepted and, therefore, in our opinion, has rightly been rejected by the Family Court. The Family Court has also rightly taken into account Section 8 of the Act, which provides for registration of marriages. The certificate of registration duly signed by the appellant herein clearly carries a declaration that marriage was solemnized on 14.2.2017 at Kamleshwaram Guest House, Chhapeda Pulia, Kakadev, Kanpur, Kanpur Nagar, Uttar Pradesh. There is no reason to disbelieve this documentary evidence of marriage and clear-cut declaration therein. In this background, even though no final finding is being recorded but we have reservation if the petition even if filed under Section 12 of the Act could have succeeded.

13. In such view of the matter, we do not find any legal infirmity in the order impugned herein. As only legal question about availability of grounds under Section 11 is involved, which, as conceded by the learned counsel for the appellant are not available, therefore, we are not inclined to admit the present appeal.

14. Therefore, we do not find an merit in the present appeal and no fruitful purpose would be served by admitting the appeal or even keeping this appeal pending.

15. Present appeal is, accordingly, dismissed at the admission stage itself.

Order Date :- 16.01.2024

Abhishek