

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 1st DAY OF MARCH, 2023**

**PRESENT**

**THE HON'BLE MR JUSTICE ALOK ARADHE**

**AND**

**THE HON'BLE MR JUSTICE VIJAYKUMAR A PATIL**

**MISCELLANEOUS FIRST APPEAL NO.5183 OF 2016 (FC)**

**BETWEEN:**

...APPELLANT

(BY SRI G.LAKSHMEESH RAO, ADVOCATE)

**AND:**

...RESPONDENT

(RESPONDENT - SERVED)

THIS M.F.A IS FILED UNDER SECTION 19(1) OF FAMILY COURT ACT, AGAINST THE JUDGMENT AND DECREE DATED 16.06.2016 PASSED ON M.C.NO.102/2014 ON THE FILE OF

THE PRINCIPAL JUDGE, FAMILY COURT, SHIVAMOGGA,  
DISMISSING THE PETITION FILED U/S 18 OF DIVORCE ACT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED ON  
22.02.2023, COMING ON FOR PRONOUNCEMENT OF  
JUDGMENT, THIS DAY, **VIJAYKUMAR A PATIL J.**, DELIVERED  
THE FOLLOWING:

### **JUDGMENT**

This appeal under Section 19(1) of the Family Courts Act, 1984 has been filed by the appellant/husband against the judgment and decree dated 16.06.2016 in M.C.No.102/2014 passed by the Family Court, Shivamogga, by which the petition filed under Section 18 of the Indian Divorce Act, 1869, seeking declaration of petitioner's marriage with the respondent, as null and void, has been dismissed.

2. Facts leading to filing of this appeal briefly stated are that the appellant and the respondent are Indian Christians and their marriage was solemnized on 01.05.2014 at CSI Vanes Memorial Church, Bhadravathi, and the CSI Vanes Memorial Church Bhadravathi has issued marriage certificate. The appellant has averred

that the marriage proposal of the respondent was brought by the wife's mother, brother representing that the respondent's age is 36 years at the time of marriage. Based on such representation the appellant and his family members have consented for the marriage in good faith and accordingly the marriage was solemnized.

3. It was averred that nuptial ceremony was on 01.05.2014, however, the respondent's parents started telling that due to physical strain to the respondent in the marriage ceremony, requested the appellant to postpone the same, and as per their request the ceremony was postponed. Thereafter the respondent wife was brought to appellant's house at Shivamogga and started residing there. It was further averred that even after some days when the appellant requested for nuptial ceremony, the respondent informed that she is not keeping well and in the meanwhile, she suddenly fell ill and was unable to walk. When this fact was brought to the notice of mother of respondent, she and her son rushed to Shivamogga and they took the respondent to Bhadravathi informing that

they will provide treatment for her and would send her back. It was further averred that respondent wife came back after two weeks and on the very next day i.e., on 22.5.2014, again she fell ill. Appellant and his family members were shocked and enquired regarding medical history and illness of the respondent wife but the same was not disclosed. The appellant further averred that he took the respondent to Doctor on 23.04.2014 and Doctor advised her to undergo some tests and when the tests were conducted, it was revealed to the shock of appellant that respondent was suffering from Fatty infiltration of liver, Left renal Hydronephrosis, Microcytic Hypochromic Anemia and her blood report was also abnormal. It was further averred that when the appellant questioned the respondent and her family members, it was finally revealed that she is suffering from incurable disease since long time, the said fact was concealed by the respondent and her family members at the time of marriage proposal. It is averred that, she has also disclosed that her age is 41 years, which is again a shock to the appellant as it was

represented to him that her age is 36 years at the time of marriage proposal. It was further averred that the respondent wife is 4 years elder than the appellant and it is clear that consent of the appellant for marriage was obtained by fraud, misrepresentation and also there is concealment of material facts, hence the marriage remains unconsummated. It is further averred that when things were revealed, the parents of the respondent took away the respondent wife to their house. The act of the respondent and her family members amounts to fraud, misrepresentation, concealment of material facts, by which they have obtained consent of the appellant to marry the respondent. Hence sought to declare the marriage of the appellant with the respondent solemnized on 01.05.2014 as null and void.

4. The respondent wife entered appearance before the Family Court by filing the statement of objections and opposed the petition by denying the averments made therein and sought for dismissal of the petition.

5. The Family Court recorded the evidence of the parties. The appellant examined himself as PW.1 and one more witness as PW.2 and got marked documents Exs.P1 to P12. The respondent examined herself as RW.1 and got marked document as Ex.R1. The Family Court by judgment and decree dated 16.06.2016 *inter alia* held that petitioner failed to prove the grounds to declare his marriage with the respondent as null and void. Accordingly the petition was dismissed. In the aforesaid factual matrix, the present appeal is filed.

6. Heard learned counsel for the appellant. Respondent though served has remained unrepresented. Hence placed *exparte*.

7. Learned counsel for the appellant submits that appellant and the respondent are Indian Christians and their marriage was solemnized on 01.05.2014 at Bhadravathi. It was further contended that marriage proposal of the respondent was brought by her mother and brother representing that respondent's age is 36 years

at the time of marriage and based on such a representation the appellant and his family members had consented for the marriage in good faith. It was submitted that nuptial ceremony was fixed on 01.05.2014 however, the respondent's parents started telling that due to physical strain to the respondent requested to postpone the same, believing their words, the ceremony was postponed. It was further contended that respondent was not keeping well and in the meanwhile, she suddenly fell ill and was unable to walk. This fact was brought to the notice of respondent's family members, then they took her to Bhadravathi for providing treatment. It was further contended that respondent wife came back after two weeks and on the very next day i.e., on 22.05.2014, she again fell ill, the appellant and his family members were shocked and enquired regarding medical history and illness to respondent, but the same was not disclosed. It is further submitted that when the appellant took the respondent to Doctor on 23.04.2014 Doctor advised her to undergo some tests, the tests revealed that the

respondent was suffering from Fatty infiltration of liver, Left renal Hydronephrosis, Microcytic Hypochromic Anemia and her blood report was also abnormal. It was further submitted that when the appellant questioned the respondent and her family members, it was finally revealed that she is suffering from incurable disease since long time. It was also revealed that the respondents age was 41 years at the time of marriage, however, they have represented that her age is 36 years, when they brought the proposal of marriage. It is further submitted that the respondent wife is 4 years elder than the appellant husband and the consent of the appellant for the marriage was obtained by fraud, misrepresentation and also there is concealment of material facts. Therefore the marriage remained unconsummated.

8. Learned counsel for the appellant places reliance on the decision of the Gujarat High Court in **LILLYKUTTY MATHEW Vs. C.J. SIMON (2000 LEGAL EAGLE (GU) 310**, to support his contention, however we find that the said decision has only persuavtive value.



9. It is contended that the act of the respondent and her family members amounts to fraud and misrepresentation as they have obtained the consent for marriage by concealing the material facts of the age and health issues of the respondent, and the same can be the ground to declare the marriage of the appellant and respondent as null and void which the family court has failed to look into and hence sought for setting aside the impugned judgment and decree.

10. We have considered the submission of the learned counsel for the appellant and have perused the material on record.

11. The parties do not dispute the relationship between them. It is also not disputed that after the marriage, the respondent wife joined the appellant husband at Shivamogga. The appellant in his petition at para 5 has clearly pleaded that respondent wife and her family members have concealed the material fact i.e., age of the respondent, they have represented the appellant

that the age of the respondent is 36 years at the time of marriage proposal. However, her age was 41 years at the time of proposal of marriage, which amounts to obtaining the appellant's consent for marriage with the respondent by fraud, misrepresentation and by concealing the material fact. The respondent in her statement of objection denied the said contention, however, in her cross-examination she admitted that at the time of marriage, she was aged 41 years, her brother Vasu's was aged about 50 years and Veda was aged about 49 years, however, she has denied that she misrepresented her age for the reason that if her actual age was disclosed, she could never get a bride groom.

12. The Family Court considered the pleading, evidence and gave a finding that appellant has not chosen to examine any witnesses to show that respondent misrepresented the material facts to the appellant, prior to the marriage. The Family Court further held that nothing prevented the appellant from examining his family members, who were present at the time of marriage talks.

But he has not done so, hence failed to establish that respondent and her family members have played fraud.

13. On meticulous examination of pleading and evidence on record, it is very much clear that appellant has laid the foundation of fraud, misrepresentation and concealment of fact by the respondent wife in para 5 of the petition. The appellant examined himself as PW.1 before the Family Court wherein he reiterates the same contentions. The respondent wife in cross examination of PW.1, could not elicit any contrary admissions. The respondent wife (RW1) in her cross examination has clearly admitted that she was aged 41 years at the time of marriage proposal, however she has disclosed her age as 36 years. When there is clear admission of the respondent wife that she and her family members have informed the appellant that her age is 36 years at the time of marriage proposal; however it was 41 years, we do not find any reason to disbelieve the admission of RW.1. In our view, the Family Court erred in appreciating the pleading and evidence on record, which has resulted in incorrect finding.

14. Thus from the evidence on record the appellant has proved the ground for declaring the marriage between the parties solemnized on 01.05.2014 as null and void.

15. For the aforementioned reasons the impugned judgment and decree dated 16.06.2016 passed in M.C.No.102/2014 on the file of Family Court Shivamogga, is set aside and it is hereby declared that the appellant's marriage with the respondent solemnized on 01.05.2014 as null and void. Accordingly the appeal is allowed.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

NG  
CT: DMN  
CT: SV