

Neutral Citation No. - 2024:AHC-LKO:30789-DB

Court No. - 2

Case :- FIRST APPEAL No. - 125 of 2018

Appellant :- Kaushal Shankar Pandey

Respondent :- The Principal Judge Family Court Lucknow And
Another

Counsel for Appellant :- Saroj Kumar Shukla, Gaurav Shukla, Vishal
Mishra

Counsel for Respondent :- Asim Kumar Singh, Chandra Bhushan
Pandey

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

Heard Shri Saroj Kumar Shukla, learned counsel for the appellant and Shri Chandra Bhushan Pandey, learned counsel for the respondent no. 2.

This is a first appeal under Section 19 of the Family Courts Act, 1984 challenging the judgment and order dated 22.09.2018 passed by Principal Judge, Family Court, Lucknow in Misc. Case No. 195 of 2018; Kaushal Shankar Pandey Vs. Smt. Sandhya Pandey.

The facts of the case are that marriage of the appellant was solemnized with the respondent no. 2 on 12.02.2018, as claimed by the appellant herein. After marriage she started behaving in a cruel and strange manner and she was taken to hospital where the Doctor stated that she was suffering from mental illness. Against the aforesaid background a petition was filed under Section 12 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act, 1955') praying

that the marriage of the appellant with the respondent no. 2 be declared null and void and a decree be passed in his favour on the ground that consent of the petitioner for marriage was obtained by fraud as to material facts and circumstances concerning the respondent no. 2 i.e. with regard her mental illness. The Family Court did not admit the petition/application under Section 12 of the Act, 1955 and dismissed it on the first day itself on the ground that the case is not maintainable under Section 12 of the Act, 1955 based on the averments made in the petition. According to the Family Court concealment should have been in respect of a mental illness which was incurable only then Section 12 of the Act, 1955 would have been attracted, which was not the case at hand. In this context the Family Court perused the medical certificates annexed with the petition to arrive at a conclusion that same did not disclose incurable mental illness.

The contention of appellant's counsel is that this was not a case where the petitioner did not disclose a cause of action for its maintainability under Section 12 of the Act, 1955. As regards the finding given by the Family Court on the first day itself at the admission stage that the disease as per documents annexed with the petition was not incurable this was a matter of inquiry and evidence would have been led after the plaint has been admitted including oral and documentary evidence. It was not a stage where the petition could have been dismissed after going through the averments made in the petition. He invited our attention to various paragraphs of the petition/plaint filed by the appellant under Section 12 of the Act, 1955, especially paragraph 17 onwards wherein it has been specifically stated that after few days of marriage itself the behaviour of the respondent no. 2 changed and she started behaving as a lunatic and quite often she used to faint. One day, when she fainted suddenly and became motionless the appellant and his family members took her to Lohia Hospital, Gomti Nagar, Lucknow in emergency ward wherein the

family members of the respondent no. 2 told the appellant that she was suffering from mental ailments since prior to the marriage. He also invited our attention to Paragraph 18 and succeeding paragraphs to contend that cause of action was clearly disclosed for maintaining the petition under Section 12 of the Act, 1955. Whether ultimately the cause was found to be sustainable or not could have been seen at the appropriate stage after evidence had been led and after the respondent no. 2/ defendant has put in appearance, but, there was no reason for the Family Court to have dismissed the petition on the first day itself without even issuing notice to the respondent no. 2 who was arrayed as defendant there. He further submitted that so far as the finding that the disease was not incurable based on the some prescription annexed with the petition, the submission was that those prescriptions were annexed only to show that she was being treated for mental illness since prior to her marriage but at the appropriate stage when the appellant would have been granted the opportunity to lead evidence, documentary as well as oral, then, the evidence would have been led, therefore, there was no occasion for the Family Court to have dismissed the plaint of the appellant without admitting it, on the first day itself, without issuing notice to the wife. He has relied upon the Division Bench judgment of Chhattisgarh High Court rendered on 24.08.2017 in ***FAM No. 52 of 2014; Yogesh Puri Goswami Vs. Smt. Pallavi Goswami.***

Shri C. B. Pandey, learned counsel for the respondent no. 2 has placed reliance upon the judgment reported in AIR 1997 Madras 135; A. Premchand Vs. V. Padmapriya and another Division Bench judgment dated 12.09.2023 rendered by the Delhi High Court in ***MAT.APP.(F.C.) 204/2023*** to contend that any and every concealment would not be covered under Section 12 of 1955. Moreover, the disease regarding which the allegation was of concealment should have been incurable. Most important he submitted that the plaint did not disclose a cause of action, therefore, considering the provisions of Order VII

Rule 11 CPC the Family Court was justified in dismissing the same at the outset. He further submitted that illness is not a ground under Section 12 of the Act, 1955 for annulling the marriage. The contention of Shri C.B. Pandey, learned counsel for the respondent no. 2 is that all the grounds mentioned in the petition under Section 12 of the Act, 1955 are in fact grounds for divorce. He has referred to Section 13(1) (3) of the Act, 1955.

Having heard learned counsel for the parties and having perused the records, which are available with us, we find that the plaint/petition under Section 12 of the Act, 1955 was filed on 22.09.2018 before the Principal Judge, Family Court, Lucknow and the same has been decided on the same day without issuing any notice to the defendant, therefore, the moot point is as to whether the plaint disclosed a cause of action or not and was there any other legal bar in maintaining such a plaint/petition.

Now, Section 12 of the Act, 1955 reads as under:-

"12. Voidable marriages.- (1) Any marriage solemnised, 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 (2 of 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 circumstance 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 or 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 proceedings have been instituted in the case of a marriage solemnised before the commencement of this Act within one year of such commencement and in the case of marriages solemnised 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."

When we peruse the plaint filed by the appellant we find that there is a specific averment of marriage between the appellant and the respondent no. 2 in Paragraph no. 1 of the plaint. The marriage took place on 12.02.2018, as claimed, as per Hindu rites and rituals at District- Deoria. It has been averred that after marriage the wife came to live with the appellant at his house. In the first night itself she

declined to have physical relation with him. The appellant took it normally, however, he did ask the wife as to whether she has any problem whereupon she did not give any satisfactory reply. He saw the wife wide awake in the first night and also the next day and night. She had not slept. This has been stated in Paragraphs No. 1 to 6. In paragraph 7, it had been stated that the wife started behaving cruelly with the appellant and his family members. Her behaviour was quite aggressive. She used to throw items on the floor and used to fight with the family members. In paragraph no. 9 it has been stated that a few days after marriage she fainted suddenly, on account of which, the family members of the appellant and the appellant himself became worried. When she regained consciousness and was asked about it, she did not behave normally rather she was behaving like a lunatic and started abusing the family members. Various other averments have been made, however, we straightaway come to Paragraphs No. 17, 18 and 19 of the plaint which read as under:-

"17. यह कि विवाह हुए जैसे जैसे कुछ दिन व्यतीत होते गये प्रतिवादिनी के व्यवहार में बहुत परिवर्तन आ गया तथा वह पागलों जैसी हरकतें करती और अक्सर बेहोश हो जाया करती एक दिन प्रतिवादिनी अचानक बेहोश हो गयी तथा प्रतिवादिनी के शरीर में किसी प्रकार की कोई प्रतिक्रिया न होने पर वादी व उसके परिवार वाले प्रतिवादिनी को तत्काल लोहिया अस्पताल, गोमती नगर, लखनऊ के इमेरजेन्सी वार्ड में ले गये तथा उक्त बेहोशी के विषय में वादी ने प्रतिवादिनी के परिवार वालों, जीजा आदि को बताया तो प्रतिवादिनी के परिवार वालों एवं जीजा द्वारा यह कहा गया कि "प्रतिवादिनी विवाह से पूर्व से ही मानसिक बीमारी से ग्रसित रहती है अर्थात् मानसिक रूप से ग्रस्त रहती है, जिसका ईलाज सहारा अस्पताल, गोमती नगर, लखनऊ की डॉ श्रीमती अर्चना शुक्ला द्वारा किया जाता है, इसके अलावा यह भी बताया कि प्रतिवादिनी को लोहिया अस्पताल में कोई फायदा नहीं होगा, तथा वादी उसका ईलाज सहारा अस्पताल में ले जाकर करवाये"। प्रतिवादिनी के ईलाज के प्रपत्र साथ में संलग्न है जो कि संलग्नक सं०-1 है।

18. यह कि वादी ने जब प्रतिवादिनी की उक्त बीमारी के विषय में छिपाये जाने के सम्बन्ध में पूछा तो प्रतिवादिनी के परिवार वालों एवं जीजा आदि द्वारा कहा गया कि साले, प्रतिवादिनी का तुम्हारे साथ विवाह हो गया है और अब उसे छोड़ने का प्रयास किया

तो तुम्हें व तुम्हारे परिवार वालों को जान से मारवा देंगे या झूठे मुकदमों में फंसवाकर जिन्दगी भर जेल में सड़वा देंगे।

19. यह कि वादी एवं प्रतिवादिनी के मध्य आज तक कोई शारीरिक सम्बन्ध स्थापित नहीं हुए है और प्रतिवादिनी के मानसिक रूप से ग्रस्त होने के तथ्यों को छुपाकर वादी का विवाह प्रतिवादिनी के साथ छलकपट एवं धोखाधड़ी के आधार पर सम्पन्न किया गया है इसके अलावा प्रतिवादिनी द्वारा कई बार वादी व उसके परिवार वालों को खाना में जहर देने की धमकी दी तथा स्वयं आत्महत्या करने की कोशिश की है।"

Paragraphs No. 21 and 22 of the plaint read as under:-

"21. यह कि प्रतिवादिनी व उसके परिवार वालों द्वारा प्रतिवादिनी की मानसिक बीमारी के विषय के तथा छिपाये गये है तथा प्रतिवादिनी का विवाह वादी के साथ तथ्यों को छुपाकर किया गया है तत्पश्चात से वादी द्वारा प्रतिवादिनी के परिवार वालों से बातचीत करने की कोशिश की तो वह लोग निरन्तर वादी व उसके परिवार वालों को जानमाल की धमकियां दे रहे हैं और प्रतिवादिनी को अपने साथ दिनांक-14.08.2018 को ले गये तथा प्रतिवादिनी जाते समय समस्त कीमती जेवरात, कीमती कपड़े आदि लेकर अपने मायके चली गयी।

22. यह कि प्रतिवादिनी "मानसिक बीमारी से ग्रसित रहती है", "आत्महत्या करने का प्रयास करती है", "वादी व उसके परिवार वालों को खाना में जहर देने की बात करती है", "अचानक बेहोश जो जाती है", "वादी पर यह दबाव बनाती है कि वह अपने परिवार वालों से कोई वास्ता न रखे", "प्रतिवादिनी के परिवार वाले एवं जीजा द्वारा प्रतिवादिनी का विवाह तथ्यों को छिपाकर अर्थात् छलकपट व धोखाधड़ी कर वादी के साथ विवाह सम्पन्न कराया है", "प्रतिवादिनी अक्सर झूठे मुकदमों में बन्द करवाने की धमकी देती है", "प्रतिवादिनी एवं वादी के मध्य आज तक कोई शारीरिक सम्बन्ध स्थापित न होने के कारण" वादी यह वाद माननीय न्यायालय के समक्ष विवाह को शून्य करार करवाने हेतु दाखिल कर रहा है।"

On a bare reading of the aforesaid paragraphs we find that there is specific averment regarding concealment of mental illness of the wife who is respondent no 2 herein who was defendant in the Suit. Certain medical documents were annexed as Annexure No. 1 to the plaint which were prescriptions pertaining to 22.04.2017 which is a date prior to the date of marriage of the appellant with the respondent

no. 2. According to the appellant's counsel this prescription was annexed to show that the respondent no. 2 was mentally ill even prior to marriage but this fact had not been disclosed, though, it was a material fact and circumstance pertaining to the respondent no. 2. Hence, the plaint was maintainable under Section 12(1)(c) of the Act, 1955. Other prescriptions of a date subsequent to marriage were also annexed to show that she was taken to the hospital and was provided treatment by a Psychiatrist the same Doctor who had been treating her prior to marriage.

As regards the contention of Shri S.B. Pandey, learned counsel for the respondent no. 2 that all the grounds mentioned in the petition under Section 12 of the Act, 1955 are in fact grounds for divorce the same is absolutely misconceived. The petition under Section 12 of the Act, 1955 of the appellant is based on concealment of the fact mental illness which was existing prior to marriage and not on the ground of incurable mental illness itself.

Based on the aforesaid it is very difficult to accept the contention of Shri C.B. Pandey, learned counsel for the respondent no. 2 that the Family Court was justified in dismissing the plaint on the first day itself, as, it did not disclose any cause of action. The plaint, in fact, did disclose a cause of action. How far the cause of action was sustainable and acceptable after evidence had been led, is a different matter on which we can not express any opinion at this stage. The merits of the issues sought to be raised by Shri Pandey would have been seen at the appropriate stage, but, this was not a case where the plaint could have been dismissed on the first day itself in the manner in which it has been done, whether with reference to Order VII Rule 11 or otherwise. It is also the case of the appellant that even incurable diseases, factum of which has been concealed by the spouse, can be made a ground for annulment of a marriage under Section 12 of the Act, 1955. We do not

express any opinion on merits of this issue, but, suffice it to say that the order passed by the Principal Judge, Family Court, Lucknow dated 22.09.2018 in Misc. Case No. 195 of 2018 can not be sustained either on facts or in law. The same is liable to be set-aside. It is accordingly, set-aside. Consequently, the proceedings under Section 12 of the Act, 1955 shall stand revived for a consideration by the Principal Judge, Family Court, Lucknow afresh as per law.

The photocopy of the records which had been sent to us, shall be returned back to the Family Court concerned.

The first appeal is **allowed**.

(Om Prakash Shukla,J.) (Rajan Roy,J.)

Order Date :- 19.4.2024

R.K.P.