

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-341 of 2014

Date of Decision: 6.2.2015

Parminder Kumar

....Appellant.

Versus

Kiran Bala

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE SNEH PRASHAR.**

PRESENT: Ms. Sukhpreet Kaur, Advocate for the appellant.

Mr. Kanwal Goyal, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. By way of instant appeal, the appellant-husband has challenged the judgment and decree dated 17.4.2014 passed by the Additional District Judge, Jalandhar, whereby the petition filed by the respondent-wife under Section 12 of the Hindu Marriage Act, 1955 (in short "the Act") for annulment of marriage, was allowed.

2. Put shortly, the relevant facts necessary for adjudication of the present appeal as narrated therein may be noticed. The marriage between the parties was solemnized on 22.2.2009 as per Hindu religious rites at Jalandhar. The said marriage was got registered on 2.3.2009. The respondent had done M.Sc (Botany) and B.Ed. She had also cleared the IELTS examination with 6.5 band and was preparing for M.Ed. Entrance examination. Before the marriage, it was told to her that

the appellant was a computer engineer and was owner and Managing Director of a finance company and had enough funds and means to support the respondent for her study visa to Canada. It was agreed between the parties that the respondent shall not join the company of the appellant and there would be no cohabitation between them until both of them reached Canada either for permanent immigration on the basis of point system or through study visa. The said marriage was solemnized and registered only for the sake of paper work for getting the study visa or permanent residence status of the respondent. The application was moved and address of correspondence was of the appellant and a communication was received from Canadian Embassy regarding refusal which was not shown to the respondent. The respondent applied for study visa for Canada after receiving offer letter from an institution in Canada in 2011. Earlier thereto, in December, 2010, when the father of the respondent approached the appellant for arranging the funds and for getting the study visa, he refused to do the same and even abused her father in filthy language and turned him out from his office. After this, the appellant started demanding ₹ 15 lacs in cash from the respondent and her parents for doing his business and started pressurizing her father to sell his house situated at Abadpura near Model Town, Jalandhar. The respondent got a Government job of Science Mistress and the appellant knowing fully well that she had not got any salary, yet he started asking her to send her whole salary to him. Thereafter, the appellant handed over a copy of the refusal letter from where they came to know that the appellant was engaged by Joshi Enterprises. It also came to their knowledge that the appellant was only a IT Diploma holder and was not a computer engineer and was working as a computer operator in a

private firm. The consent of the respondent was obtained by keeping her in dark regarding educational qualification and employment. The said fact was revealed on 5.7.2011. The parties never cohabited as husband and wife. A panchayat was convened where the appellant had agreed to give divorce and demanded ₹ 15 lacs. Accordingly, the respondent filed a petition under Section 12 of the Act for declaring the marriage between the parties as null and void being nullity and in the alternative prayed for dissolution of marriage by a decree of divorce under Section 13 of the Act on the ground of cruelty. The said petition was contested by the appellant by filing a written statement. Besides raising various preliminary objections, it was pleaded that both the appellant and respondent did the computer course together at the same institution in the same batch and they fell in love in the year 2004 and then on 22.2.2009, the marriage was solemnized, so there was no consummation and cohabitation between the parties till date. He claimed himself to be a computer engineer and that he is owner and Managing Director of the finance company having enough funds and means to support the respondent for her study visa to Canada and was even ready to finance study visa. The other averments made in the petition were denied and a prayer for dismissal of the same was made. From the pleadings of the parties, the issues were framed and the parties led evidence.

3. In support of her case, the respondent besides examining herself as PW3 also examined her aunt Nirmala Devi as PW1 and Bakshi Ram as PW2. All the three witnesses tendered their respective affidavits as Ex.PW1/A, Ex.PW2/A and Ex.PW3/A. On the other, the appellant examined himself as RW1 and tendered his affidavit as

Ex.RW1/A and photographs Ex.R1 to Ex.R5.

4. The trial court on appreciation of evidence led by the parties held that the marriage was liable to be dissolved being vitiated by fraud as the same was nullity under Section 12 of the Act. It was further held that since the respondent had not stayed or resided with the appellant, the ground of cruelty was not established. Accordingly, the trial court vide judgment and decree dated 17.4.2014 allowed the petition and passed a decree of nullity in favour of the respondent and against the appellant declaring their marriage as null and void. Hence, the present appeal.

5. Learned counsel for the appellant submitted that there were enough circumstances to show that the respondent was well aware of the educational qualification of the appellant as she was in love with him for 4½ years. It was argued that after getting the employment as a government teacher, the mind of the respondent changed and she filed the present petition. It was further contended that there was no evidence to show that the consent of the respondent was obtained by fraud. It was urged that the false allegations were levelled by the respondent.

6. On the other hand, learned counsel for the respondent besides supporting the judgment and decree, submitted that the trial court on appreciation of the evidence led by the parties had passed a decree of nullity.

7. After hearing learned counsel for the parties and perusing the record, we do not find any merit in the contentions of the learned counsel for the appellant.

8. Section 12 of the Act deals with 'voidable marriages'. Clause (c) of sub-section (1) of Section 12 along with clause (a) of sub-

section (2) of Section 12 of the Act which are relevant for the purposes of adjudication of the present appeal, read thus:-

“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) & (b) XX XX XX

(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) XX XX XX

(2) Notwithstanding anything contained in sub-section (2), 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) XX XX XX”

According to clause (c) of sub-section (1) of Section 12 of the Act, a marriage is voidable where the consent of the petitioner or the guardian has been obtained by force or fraud. The words “force” and “fraud” has not been defined in the Act. Broadly, fraud means and includes acts committed by a party with the intention to deceive or to induce the other party to do certain acts. The concealment of fact necessarily ought to be of such a nature so as to affect the decision of the parties. It depends upon facts of each case. Delhi High Court in **Anurag Anand v. Sunita Anand, AIR 1997 Delhi 94** held that monthly income and property status of husband can easily be called material fact and circumstances concerning him as envisaged under Section 12 of the Act. It was further observed:-

“26. Therefore, if as to the material facts and circumstances the representations are inflated or false and the difference or falsity is significant, I see no reason why they cannot be called fraud within the meaning of that term used in Section 12 of the Hindu Marriage Act. However, where the difference or falsity is only trivial, a different view may be taken. It will depend upon case to case. The tendency to give

false and inflated informations regarding material facts in the bio datas exchanged in marriage negotiations should be curbed. They are generally given for eliciting better proposals and if the other party is hooked the purpose is served. Therefore, this tendency is not to be allowed to prosper. Benefit of said section must be given to the party which has suffered the fraud.”

9. Section 12(2)(a)(i) prescribes time limit for presenting a petition to avoid a marriage on the ground of force or fraud. According to the said provision, such a petition has to be filed within one year after the force has ceased to operate or fraud has been discovered. The second condition for the maintainability of petition has been prescribed under Section 12(2)(a)(ii) of the Act. It stipulates that the petitioner should not have cohabited with his or her full consent with the other party to the marriage as husband or wife after the force had ceased to operate or the fraud had been detected.

10. Adverting to the facts involved herein, it is to be noticed that PW-1 Nirmal Devi aunt of the respondent in her testimony had categorically stated that it was a court marriage to facilitate for going abroad and after the marriage, the respondent was taken to her parental house. She was not even allowed to join the company of the appellant. In her cross-examination, she stated that the appellant had caused mental tension and harassment on account of his attitude. Further, PW-2 Bakshi Ram in his testimony deposed that the appellant was guilty of cruelty and cheating and committed fraud with the respondent. The said witness further stated that the appellant demanded ₹ 15 lacs for giving

divorce. The respondent while appearing as PW3, in her cross-examination stated that it was a normal marriage as neither Barat was there nor matrimonial and religious ceremonies were performed. She admitted that she was getting salary of ₹ 30,000/- per month. She denied that she had knowledge of educational qualification of the appellant. On the other hand, the appellant had not produced any document or evidence to show that the respondent had done computer course. The respondent while appearing as RW1 admitted that at the time when she got the government job, she was residing with her father. In his testimony he also admitted that he was a diploma holder in IT and was working as computer operator in the finance company, i.e. Mahi Finance Corporation. The trial court on the basis of evidence led by the parties held that the appellant had made wrong statement about his educational qualification and the financial status as there was no specific stand that it was a fraud committed by the respondent and there was no consummation of marriage after the discovery of fraud. The educational qualification and financial status of the appellant came to the light only when the father of the respondent got the papers of refusal of visa from the Canadian Embassy. Thus, the respondent could not be forced to live in relationship in which she had lost faith as her consent was obtained by way of fraud. Keeping in view the facts and circumstances of the case and the evidence on record, the trial court came to the conclusion that the consent of the respondent was obtained by fraud and on coming to know this fact, she had not joined the company of the appellant and there was no marital conjugal relationship between the parties which was sufficient ground to annul the marriage. The trial court rightly allowed the petition under Section 12 of the Act and dissolved the

marriage between the parties being voidable as the consent of the respondent-wife was obtained by fraud.

11. In view of the above and the findings recorded by the trial court which could not be demonstrated to be perverse or erroneous in any manner being based on misappreciation or misreading of the evidence on record, no interference is called for by this Court. Consequently, finding no merit in the instant appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

February 6, 2015
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(SNEH PRASHAR)
JUDGE