

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-410 of 2014 (O&M)

Date of Decision: 19.1.2015

Karma

....Appellant.

Versus

Sonia

...Respondent.

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

PRESENT: Mr. Hardeep Singh, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. The appellant-husband by way of instant appeal has challenged the judgment and decree dated 1.9.2014 passed by the Additional District Judge, Patiala, whereby the petition filed by the respondent-wife under Section 13(2)(iv) of the Hindu Marriage Act, 1955 (in short "the Act") for dissolution of marriage by a decree of divorce, was allowed.

2. Sans unessentials, the facts of the case are that the marriage of the parties was solemnized on 7.3.2002 at village Dedhna, Tehsil Patran, District Patiala according to Hindu religious rites. The date of birth of the respondent is 4.5.1997 and at the time of marriage, she was minor and was not competent to give her consent for the marriage. At that time, the consent of mother of the respondent was obtained by force and undue influence which was not binding on the

respondent. After the solemnization of the marriage, the respondent had not joined the company of the appellant and thus, their marriage was not consummated so far. She had been residing with her parents. A week prior to the filing of the divorce petition, the appellant along with his family members and some police officials visited the parental house of the respondent to forcibly take her away. The respondent came to know about the said marriage only at that time. Accordingly, she filed a petition for annulling the marriage by a decree of nullity. The said petition was contested by the appellant by filing a written statement. Besides raising various preliminary objections, it was pleaded that the mother of the respondent had given her consent voluntarily. The appellant admitted that since the date of marriage, the parties had not cohabited together and their marriage had not been consummated. It was further pleaded that as per the custom prevalent in their Biradari the marriages were solemnized in a simple way during the minority of the persons and Muklawa ceremony wherein the bridegroom takes the bride to his house was being performed after they attained the age of majority. There was custom in the community for the marriage by exchange i.e. Watta Sattey Da Saak. Even the marriage of the sister of the appellant was solemnized with the cousin of the respondent. When the respondent attained the age of majority, the appellant, his family members and other relatives approached the parents of the respondent for performance of Muklawa ceremony but they refused to perform the same. 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 trial court framed the following issues:-

- “1. Whether the petitioner was less than 15 years

of age at the time of her marriage with the respondent?OPP

2. Whether the petitioner has repudiated the marriage before attaining the age of 18 years?OPP

3. Whether the marriage of the petitioner is liable to be dissolved under Section 13(2)(iv) of the Hindu Marriage Act? OPP

4. Relief.

3. In support of her case, the respondent examined her mother Smt. Satya Devi as PW1 who produced the copies of primary class certificate as Ex.P1 and matriculation certificate as Ex.P2. She also examined PW2-Karam Chand and PW3-Balbir Singh who are the residents of her village. On the other hand, the appellant besides examining himself as RW1 also examined Jai Pal as RW2 and Ram Lal as RW3. He also produced copy of judgment dated 18.2.2014 whereby the petition filed under Section 9 of the Restitution of Conjugal Rights by him was decreed exparte.

4. The trial court took issues No. 1 to 3 together being interconnected and on appreciation of evidence led by the parties, decided the same in favour of the respondent and against the appellant holding that when the said marriage is prohibited by law, it cannot be recognized on such like ground and the respondent was held entitled to a decree for annulment of marriage of the parties. Accordingly, the trial court vide judgment and decree dated 1.9.2014 passed a decree dissolving the marriage of the parties. Hence, the present appeal.

5. Learned counsel for the appellant submitted that such like

marriages were permissible in the community to which the parties belong. It was further submitted that the petition filed under Section 9 of the Restitution of Conjugal Rights filed by the appellant was allowed and the respondent was directed to return to her matrimonial home within three months of the passing of the judgment. It was urged that the trial court had misread the evidence led by the parties and wrongly allowed the petition filed by the respondent.

6. After hearing learned counsel for the appellant, we do not find any merit in the appeal.

7. It would be expedient to notice Section 13(2)(iv) of the Act, which is relevant for the decision of the appeal. It reads thus:-

“13. Divorce.- (1) XX XX XX

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,-

(i) to (iii) XX XX XX

(iv) that her marriage whether consummated or not was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation.- This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).”

This clause was added by the Marriage Laws (Amendment) Act, 1976, with effect from 27.5.1976. According to it, where a marriage

was solemnized before the wife had attained the age of 15 years and repudiation takes place by her between 15 years and 18 years of her age, she is entitled to seek divorce whether the marriage is consummated or not. As per Explanation appended to this clause, it has applicability whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976.

8. The mother of the respondent while appearing as PW1 had produced primary class certificate Ex.P1 and matriculation certificate Ex.P2. As per the said certificates the date of birth of the respondent is 4.5.1997. The marriage between the parties was solemnized on 7.3.2002. Thus, at the time of marriage, the respondent was minor and less than 5 years of age. The parties had not consummated the marriage. The respondent had disowned the said marriage before attaining the age of majority and, therefore, prayed that the marriage be dissolved. The present petition under Section 13(2)(iv) of the Act had been filed on 5.7.2013, i.e. between the age prescribed under the said provision. Further, the petition seeking restitution of conjugal rights was filed on 18.9.2013 wherein the appellant had not disclosed the fact that the respondent had filed a petition for dissolution of marriage on the ground that the marriage of the parties was a child marriage. The exparte decree was obtained on 18.2.2014 by concealment of material facts from the court concerned which would have no effect on the rights of the respondent. Keeping in view the facts and circumstances of the case, the trial court had rightly held the respondent entitled to the decree for annulment of marriage of the parties. The relevant findings recorded by the trial court read thus:-

“13. In this case, the marriage of the parties was

solemnized on 7.3.2002 and it is an admitted fact that till today the parties have not cohabited together. As per the plea raised by the respondent the marriage in the community are performed during the minority of the parties to the marriage but Muklawar ceremony is performed after they attain the majority. He has alleged that when he attained the majority in July 2013, he along with other members of his family went to the parental house of the petitioner for Muklawar ceremony. Therefore, it is made out that the respondent has attained the majority in the year 2013 and therefore his age at the time of the marriage was about 7 years. The petitioner alleged that her date of birth is 4.5.1997 and she has produced her Primary class Certificate and Matriculation certificate Ex.P.1 and Ex.P.2, wherein her date of birth is recorded as 4.5.1997. Her mother has also made the statement on oath that the date of birth of the petitioner is 4.5.1997. There is no reason to disbelieve the said evidence. The respondent and his witnesses have stated that the petitioner was aged about 10/12 years at the time of her marriage but they have not been able to produce any clear and cogent evidence to substantiate the said allegation. When the respondent himself was aged about 7 years at the time of marriage, it is difficult to believe that the petitioner was aged about 10/12 years at that time.

Moreover, the version of her mother regarding the date of birth of petitioner, cannot be disbelieved. Therefore, it is made out that the petitioner was aged about 5 years at the time of her marriage. She has not attained the age of majority so far and she has already repudiated the said marriage. Therefore, the marriage of the parties is liable to be annulled under Section 13(2)(iv) of the Act.”

9. In view of 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

January 19, 2015
gbs

(SNEH PRASHAR)
JUDGE