

473

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-M No.104 of 2010 (O&M)

Date of Decision: 03.05.2016

Kamal Nain

.....Appellant

Vs

Pooja Rani

.....Respondent

CORAM:HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Umesh Narang, Advocate
for the appellant.

Mr. D.D. Sharma, Advocate
for the respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Husband-appellant remained unsuccessful in his endeavour to seek annulment of marriage under Section 12(i)(c) of the Hindu Marriage Act. 1955 (hereinafter referred to as 'the Act') before the trial Court.

[2]. Appellant submitted that his marriage was solemnized with respondent-Pooja Rani on 28.04.2007 according to Hindu rites and ceremonies, but the marriage could not be consummated on account of physical deformity and infection in the private parts of the respondent-wife. Appellant alleged that the physical deformity was of such type that even the wife was

ashamed of disclosing it. She had no interest in physical relations with the appellant. Appellant further alleged that a fraud was played with him by concealing physical deformity and infection in the private parts of the respondent and he was misled to marry her. Therefore, he prayed that marriage be declared null and void under Section 12 of the Act.

[3]. Appellant pleaded that the respondent and her parents filed false and frivolous complaints against him and his family members under Sections 406, 498-A IPC and under the provisions of Dowry Act. Respondent also filed complaint before the Sr. Supdt. of Police, Barnala which was inquired into and dismissed by the Police.

[4]. On the other hand respondent-wife contested the claim of the appellant on number of counts. She claimed that the appellant had not come to the Court with clean hands. Factum of filing earlier petition under Section 9 of the Act by the husband was concealed. In the said petition, stand taken by the appellant-husband runs contrary to the claim set up in the petition under Section 12 of the Act. Respondent besides denying the allegations of the husband also levelled allegation with regard to demand of dowry and failure to meet the demand by the respondent-wife and her family, entailed in filing the petition before the trial Court.

[5]. Further allegations were made by the respondent-wife that she was harassed by her in-laws despite healthy dowry given in the marriage and thereafter the in-laws were raising demand of Rs.4 lacs. A Panchayat was convened and an effort was made to settle the issue with the good offices of Sarpanch Raj Kumar and other persons, but the efforts of the Panchayat also remained futile. The respondent-wife also alleged that the complaint which was filed by her was pending inquiry and filing of the divorce petition was a counter-blast to said complaint.

[6]. On the pleadings of the parties, following issues were framed:-

- “1). Whether any fraud regarding suppression of physical deformity of the respondent was committed by her before solemnization of marriage with the petitioner? OPP*
- 2) Whether the petitioner is entitled for decree of annulment of the marriage? OPP*
- 3) Relief.”*

[7]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[8]. Trial Court dismissed the petition vide judgment and decree dated 01.02.2010. Hence the present appeal.

[9]. We have heard learned counsel for the parties and

have also gone through the material on record.

[10]. Husband-appellant reiterated the grounds for seeking divorce by alleging physical deformity and infection in the sexual organ of the respondent-wife. During the course of the arguments, learned counsel for the appellant conceded that there is no medical opinion much less material to show that respondent-wife was suffering from such a disease which was not curable in nature. The witnesses of the appellant namely Amrit Lal (PW-1) and Jagdeep Bansal (PW-2) cannot be treated to be expert witnesses on the alleged disease suffered by the respondent-wife, rather their testimonies were to the effect that they were informed by the parents of the respondent about the physical deformity and infection in the private parts of the respondent. Their statements were not corroborated by any other evidence much less any evidence from the side of the appellant. The alleged refusal by the respondent to get herself medically examined could not be proved by the appellant with reference to any evidence.

[11]. On the other hand respondent-wife herself got examined from Dr. J.S. Pandhi, M.D. Radiologist, Barnala who examined her on 23.08.2007. As per report Ex.R-7, respondent-wife was not suffering from any deformity. Respondent denied all the allegations levelled by the appellant and also projected a

case of concealment done by the appellant-husband to the effect that earlier he filed petition under Section 9 of the Act in which no such allegation of physical deformity and infection in the private parts of the respondent-wife was taken. By filing petition under Section 9 of the Act, husband showed his willingness to take back the wife to the matrimonial house.

[12]. Respondent not only denied the allegations of the appellant husband, but went on to prove by examining Sukhwinder Singh, Record Keeper (RW-2), who has proved OPD slip of Dr. Asha Gupta Ex.R-4 and observation made by the Doctor as Ex.R-5. Similarly Avtar Singh (RW-3) Computer Operator has proved the ultrasound report of respondent-wife as Ex.R-7. As per medical evidence the respondent was not suffering from any physical deformity. Visheshar Dass (RW-1) confirmed on affidavit that he had participated in the Panchayat to effect compromise between the parties, but the husband did not turn up for compromise on 19.08.2007 and 24.08.2007.

[13]. Evidently, the witnesses examined by the appellant had no personal knowledge about the allegations of physical deformity of the respondent. The evidence adduced by the wife was categoric to show that there was no deformity in the internal organs of the respondent. No effort was made by the appellant to get the respondent medically examined from any competent

Doctor.

[14]. During course of arguments, learned counsel for the appellant conceded that filing of petition under Section 9 of the Act at the instance of the appellant was in fact on account of misconception at the level of the Lawyer appearing on his behalf. The filing of petition under Section 9 of the Act was prior in point of time. Appellant claimed his marriage with respondent to be a love marriage. The stand taken in the petition under Section 9 of the Act runs in contrast to the stand taken by the appellant-husband in the petition under Section 12 of the Act. The factum of Section 9 of the Act was concealed in the petition under Section 12 of the Act. The party who has not come to the Court with clean hands and has concealed material information from the Court is not entitled to any relief.

[15]. Looking to the pleadings and material available on record, we are of the view that no indulgence can be granted in the appeal filed by the husband-appellant. Consequently this appeal is found to be totally devoid of merits and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

May 03, 2016
Atik

(M. JEYAPPAUL)
JUDGE