

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 110 of 2013**

(Arising out of judgment/order dated 29.8.2013 in Civil Suit No.142A/2010 of the learned 1st Additional Principal Judge, Family Court, Raipur)

- Rakesh Sonkar S/o Late Tijuram Sonkar Aged About 32 Years R/o Ramsagarpara, Aamatalab Road, Post Office Ward, Dhamtari, P.S. Dhamtari, Tahsil, Civil And Revenue District Dhamtari C.G.

---- **Appellant**

Versus

- Smt. Nemita @ Namita Sonkar W/o Rakesh Sonkar Aged About 24 Years Presently residing at Shri Omprakash Pushpkar, Near Gol Bazar, Rohinipuram, Tahsil, Civil And Revenue District Raipur C.G.

---- **Respondent**

For Appellant : Shri P.P. Sahu, Advocate.
For Respondent : Shri C.R. Sahu, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

Order On Board By Prashant Kumar Mishra, J.

14/09/2017

1. This appeal under Section 19 (1) of the Family Courts Act, 1954 raises an issue as to whether the marriage between the parties should be annulled under Section 12 (1) (c) of the Hindu Marriage

Act, 1955 (henceforth 'the Act') for the reason that the wife was suffering from schizophrenia even prior to marriage but the said fact was not disclosed to the appellant while obtaining his consent for marriage.

2. The marriage between the parties was solemnized on 5.5.2009. The respondent/wife remained in her matrimonial house for about a month. Immediately after the marriage, the husband came to know about the respondent's mental illness as she was regularly found to behave in an erratic manner. She used to close her eyes for most of the time and was sitting quiet and idle. At times she would behave aggressively and threatened to commit suicide. She was taking daily dose of unlabelled medicine. Whenever the husband would make effort to take her to the doctor, she would try to grab matchsticks and clothes for committing suicide and would insist on going to the doctor with her mother only. On 3rd July, 2009, her mother came to the appellant's place and on the said date, the respondent went back with her mother to her parental house, when the appellant was not in the house and it was neither informed to the appellant. Despite repeated efforts, the respondent did not come back to his house. During his third attempt to bring back his wife, it came to his notice that the respondent is obtaining treatment from Dr. Prakash Narayan Shukla of Raipur, who is

Psychiatrist. Thus, according to the appellant, the respondent was married with him by obtaining his consent without informing him about her suffering from Schizophrenia and that it is not possible for him to reside with the respondent, therefore, the marriage deserves to be annulled.

3. According to the respondent/wife, the allegations levelled in the plaint are false and concocted. The husband wants to re-marry, therefore, he is making these allegations. She would further state that she was ill-treated by the appellant and his relatives in connection with demand of dowry and that the respondent being graduate in Science (B.Sc.), she is mentally fit and alert and is not suffering from any mental disorder.
4. The trial Court framed issue No.1 – as to whether the respondent is suffering from mental disorder, Thyroid, Blood Pressure and Diabetes for which she is not able to procreate the child and secondly, whether the appellant's consent for his marriage with the respondent was obtained without disclosing the material fact about the respondent's mental disorder. Both the parties have led the evidence on these issues knowing fully well each other's case. The trial Court has eventually dismissed the suit for divorce on the finding that though there is evidence of respondent's mental illness

i.e. Schizophrenia from which she was suffering even prior to marriage, but there being no evidence that because of the said mental illness, she is not able to procreate the child, a decree under Section 12 (1)(b) read with Section 5 (ii)(c) of the Act cannot be allowed.

5. Shri P.P. Sahu, learned counsel for the appellant would submit that the plaintiff has proved his case of concealment of material fact about the wife, therefore, the suit should have been decreed.
6. Per contra, Shri C.R. Sahu, learned counsel for the respondent would submit that in the absence of any evidence that the respondent is not able to procreate the child, the necessary ingredients for proving the ground under Section 12 (1)(b) read with Section 5 (ii)(c) of the Act has not been made out in favour of the appellant, therefore, the appeal deserves to be dismissed.
7. The appellant's basic case in the plaint appears to be that the wife was suffering from Schizophrenia as she used to behave as if she is living in illusion and was erratically behaving, however, this fact of her mental illness i.e. Schizophrenia was not informed to the appellant while obtaining his consent, therefore, a fraud has been committed on him (para-13 of the plaint), though in para-12 he has pleaded that the respondent is not able to procreate the child. In

the written statement, material plaintiff allegations have been denied. Therefore, perusal of the pleading and the issues would explicit that the trial Court has treated the plaintiff case not only for seeking a decree on the ground of Section 12 (1)(b) but also under Section 12 (1)(c) of the Act. The parties went to trial on these two issues, therefore, they were fully aware about each other's case, yet while rendering the judgment, the trial Court has not addressed itself on the ground under Section 12 (1)(c) of the Act. Ordinarily, in such cases, the matter could have been remitted back to the trial Court but since a specific issue about the ground under Section 12 (1)(c) of the Act has been framed and the evidence is also available on record, we proceed to decide the appeal on merits rather than remitting the matter back to the trial Court.

8. True it is that the evidence of medical expert (PW-2) Dr. Prakash Narayan Shukla under whom the respondent was obtaining treatment prior to and after the marriage would not throw much light as to whether the respondent was unfit for procreation of the children, therefore, the plaintiff/appellant has not proved the ground under Section 12(1)(b) read with Section 5 (ii)(c) of the Act. However, the matter does not end here because the trial Court has framed the issue concerning the ground under Section 12 (1)(c) of the Act also.

9. The ground under Section 12 (1)(c) of the Act would attract when there is evidence in case of the spouse suffering from Schizophrenia or mental disorder prior to marriage but the said fact was not disclosed to the complaining spouse while obtaining his/her consent for marriage. The evidence available in the matter would suggest that the wife had gone for treatment to (PW-2) Dr. Shukla on 15.4.2008 i.e. more than one year prior to the date of marriage. She was regularly taken to this witness for her check up and progress in recovery. It is the specific statement of this witness that about a month prior to the marriage i.e. on 26.3.2009 the respondent had again attended his clinic for treatment and she was prescribed medicines by him for which prescription was issued under the signature of the junior doctor working under him. It is thus clearly proved by this witness that the respondent was suffering from Schizophrenia even prior to marriage.
10. The respondent has examined herself as DW-1. In her statement she would depose that the issue about her mental illness was not known to any other person except her parents. She has also admitted that on 2 occasions she tried to commit suicide though she has explained that she took such steps because of the behaviour of her in-laws' family. She also admits that she was treated by Dr. Shukla even prior to the marriage. Her father Parasram Pushpakar

(examined as DW-2) has also admitted in para-5 of his cross-examination that the plaintiff or his parents were not informed about the respondent's mental illness prior to the marriage. He will qualify this statement by further stating that since his daughter was not suffering from any mental disorder, there was no occasion to disclose the same to the plaintiff. However, this explanation would not hold true in view of the admission of the respondent/ DW-1 in para-14 of her statement duly supported and corroborated by the statement of (PW-2) Dr. Prakash Narayan Shukla.

11. In view of the above state of evidence on record, we are convinced that the fact of respondent's mental illness i.e. Schizophrenia from which she was suffering even prior to marriage was not disclosed to the appellant while obtaining his consent for marriage, therefore, the ground under Section 12(1)(c) of the Act is proved in favour of the appellant/husband.
12. In a recent judgment rendered by us in the matter of **Yogesh Puri Goswami Vs. Smt. Pallavi Goswami** {FAM No.52/2014, decided on 24.8.2017}, we have elaborately referred to the nature of the disease known as Schizophrenia by quoting text book of medicine by Rustom Jal Vakil, Second Edition at page 1482 and the judgment rendered by the Supreme Court in the matter of **Ram**

Narayan Gupta Vs Smt Rameshwari {AIR 1988 SC 2260}. We have thereafter referred to the judgment in the matter of **Vinita Saxena Vs Pankaj Pandit** {(2006) 3 SCC 778} where the Supreme Court has held that when it is proved by evidence that the respondent is suffering from mental disorder, the other ground for grant of divorce on the plea of mental sanity or mental disorder is different than cruelty. We have then referred to the judgments in the matters of **Babui Panmato Kuer Vs Ram Agya Singh** {AIR 1968 PATNA 190}, **Smt Asha Srivastava Vs R.K. Srivastava** {AIR 1981 DELHI 253}, **Rajinder Singh Vs Smt Pomilla** {AIR 1987 DELHI 285} and **Smt. Alka Sharma Vs Abhinesh Chandra Sharma** {AIR 1991 MADHYA PRADESH 205}, where the respective High Courts have held that the husband is entitled for decree of nullity of marriage on the ground under Section 12 (1)(c) of the Act when it was found that his consent was obtained by concealing the fact that the wife is suffering from Schizophrenia.

13. Present is also a case where on the basis of evidence available on record, we have found that the wife was suffering from Schizophrenia even prior to marriage and the said material fact was concealed from the husband at the time of obtaining his consent for marriage, therefore, the appellant has successfully made out a ground under Section 12(1)(c) of the Act and he is entitled for

decree of annulment of marriage.

14. Consequently, the Appeal is allowed and the marriage solemnized between the parties on 5.5.2009 is declared to be nullity.

15. A decree be drawn up accordingly.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Arvind Singh Chandel)

Barve