

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

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FAMILY COURT APPEAL NO.158/2014

Pradeep s/o Namdeorao Ambhore
 Aged 31 years, occu: at present NIL
 R/o Adarsha Colony, Akola
 Tq. & Dist. Akola.

..APPELLANT

v e r s u s

Sau. Pallavi Pradeep Ambhore
 Aged : 25 occu: Household
 R/o C/o Ramesh Khushalrao Sawale
 R/o Anand Vatika Washim Bye-Pass Road,
 Tq. & Dist. Akola.

...RESPONDENT

.....
 Mr. S.J.Kadu, Advocate for the appellant
 Mr. M.Badar, Advocate for the respondent

CORAM: **SMT. VASANTI A. NAIK &**
 MRS. SWAPNA JOSHI, JJ.
DATED : **25th & 26th April, 2017**

ORAL JUDGMENT: (PER SMT. VASANTI A. NAIK, J.)

By this Family Court Appeal, the appellant-husband has challenged the judgment of the Family Court, Akola, dated 5th July 2011, dismissing the Petition filed by the appellant for a declaration that the marriage between the appellant and the respondent-wife is null and void, under the provisions of Section 12(1)(c) of the Hindu Marriage Act. By the said judgment, the alternate prayer of the appellant that a decree of divorce may be granted,

under Section 13 (1)(ia) and (v) of the Hindu Marriage Act, was also rejected.

2. Few facts giving rise to the petition are stated thus:-

The appellant-husband (hereinafter referred to as '*the husband*') was married with the respondent-wife (hereinafter referred to as '*the wife*') at Khamgaon, on 10.06.2009, as per the customs prevailing in the community. The husband and the wife belong to the *Buddhist* community. After the marriage, the wife started residing in the matrimonial home, at Akola. In the petition filed by the husband for a declaration that the marriage is a nullity and/or for a decree of divorce on the ground of cruelty, it is pleaded by the husband that within three months of the marriage, the wife was taken by her mother and sister to Khamgaon, for rest. It is pleaded that there was a telephonic call from the father of the wife to the husband on 11.10.2009 to immediately come to Khamgaon as the wife was hospitalized in the hospital of Dr.Umesh Badhe at Khamgaon. According to the husband, he went to Khamgaon at about 1.30 pm, as he was anxious to know about the health of the wife. It is pleaded that the husband became aware that the wife was suffering from a serious problem concerning her health. It is pleaded that the wife was then referred to Ashok Hospital at Akola, on 14.10.2009 and after conducting various tests, such as, CT scan, X-ray, blood reports, it was suggested by Dr.Agrawal that the wife should be referred to Ozone Multi

Speciality Hospital and Critical Care Centre, in Akola, for treatment. The wife was admitted in the Ozone Hospital in the Intensive Care Unit at about 10.00 pm. It is pleaded that the past history of the wife revealed that she was treated by the Doctors at Khamgaon, mainly, Dr.Umesh Badhe and it was found that the wife was suffering from incurable disease ie, 'Sickle Cell Anemia'. The husband pleaded that sickle cell anemia is hereditary and it was explained in the petition as to what are the causes and the symptoms of the said disease. After explaining about the disease, it was pleaded that the children of the person suffering from sickle cell anemia, are often smaller than the other children whereas the adults with sickle cell anemia are often slender and smaller in size than the normal adults. It was pleaded that two forms of strokes could occur in people suffering from sickle cell anemia - one form could occur when the blood vessel in the brain is blocked and the other form could occur when the blood vessel in the brain bursts. It is pleaded that a person suffering from sickle cell anemia could suffer a stroke. It is pleaded that the wife was suffering from sickle cell anemia and as a result of the same, she had a paralytic attack and was hospitalized for long. It is pleaded that in the Ozone Hospital several tests were performed on the wife and it was confirmed from the reports like MRI, brain test, CT scan, X-ray, blood reports etc. that the wife suffered from sickle cell anemia and paralysis. It is pleaded that when the wife was taking treatment in Ozone hospital, she was suffering from

paralysis. It is pleaded that within three months of the marriage, the aforesaid incidents occurred and on making enquiries, it was revealed to the husband that at the time of marriage the wife as well as her paternal relatives knew that the wife was suffering from sickle cell anemia but without disclosing the said fact to the husband, the husband's consent for the marriage, was secured. It is pleaded that the husband became aware on enquiry that the wife was aware before the solemnization of the marriage that she suffered from sickle cell anemia, but she purposefully did not disclose this fact to him. It is pleaded that the wife is suffering from an incurable disease and as a result of the said disease, the marital bliss of the husband is spoiled to the hilt, inasmuch as, even the marriage between the parties was not consummated. It is pleaded that at the time of the marriage the husband was ignorant of the fact that the wife was suffering from sickle cell anemia or else the husband would not have married the wife. It is pleaded that the opinion of several Doctors was sought by the husband and every Doctor opined that the wife was suffering from sickle cell anemia and the said disease was incurable and some patients suffering from the said disease cannot survive for more than thirty years. The husband pleaded that the marriage of the wife with the husband, without disclosing the 'material fact' in regard to the disease suffered by the wife, is a systematic fraud played by the wife and her parents and the husband is, therefore, entitled to a declaration that the marriage between the parties is a

nullity. In the alternative, the husband pleaded that the husband had solemnized the marriage with the wife with great expectations and the husband has suffered great mental trauma, due to the fact that the wife was suffering from the incurable disease. The husband, therefore, sought a decree of divorce on the ground of cruelty.

3. Initially, since the wife did not file written statement and also did not participate in the proceedings, an *exparte* order was passed against the wife. An Application was made by the wife for setting aside the *exparte* order on 15.03.2011 and after hearing the parties, the Court allowed the Application by setting aside the order of proceeding *exparte* against the wife. While allowing the Application, the Court recorded about the negligence on the part of the wife in not defending the petition and also about the conduct of the father of the wife, who was then working in the Police Department, especially in respect of his misbehaviour in the Court and also about the call made by the father of the wife on the mobile phone of the learned Judge. It is mentioned in the order setting aside the *exparte* order that even on mobile phone, the father of the wife, who was in the Police Department, was speaking very arrogantly with the Judge and was trying to intimidate her. Be that as it may, in view of the permission granted by the Family Court, the wife filed the reply to the petition, filed by the husband, under Sections 12(1)(c) and 13 (1) (ia) of the Hindu Marriage Act. The wife denied every allegations made by the

husband against her in his petition. The wife specifically denied that she suffered from sickle cell anemia before the marriage or even after the marriage. The wife denied that she was taking the treatment from Dr. Umesh Badhe at Khamgaon. The wife denied that the husband became aware that the wife and her family members were aware about the disease suffered by her and they had deliberately not disclosed the said fact to the husband before the solemnization of the marriage. In the specific pleadings, the wife specifically denied that she suffers from sickle cell anemia or any disease, as claimed by the husband. The wife pleaded in the specific pleadings that she was having very good health at that time and was doing the household work properly and efficiently. The wife further pleaded that the husband had, at the time of the marriage, taken huge amount from the father of the wife and was further demanding money for purchase of a luxury bus. It is pleaded that since the father of the wife was not able to provide money for purchasing a luxury bus, the husband had filed a false and bogus case against the wife, with a view to extract money from the father of the wife on the pretext that the wife suffered from sickle cell anemia.

4. On the aforesaid pleadings of the parties, the Family Court framed the issues and the husband tendered his evidence on affidavit. The husband reiterated the facts stated by him in his petition, in his examination-in-chief, that was tendered on affidavit. Despite grant of opportunity, the wife failed to

cross-examine the husband. The husband examined one more witness ie Dr. Ashok Agrawal, in whose hospital the wife was admitted at Akola. Dr.Agrawal stated in his evidence that the wife was admitted in Ozone hospital on 14.10.2009 as she had a blood clot in one of the veins in the brain and she was also suffering from sickle cell anemia. The Doctor stated in his evidence on affidavit that on 22.10.2009, the wife was discharged from Ozone Hospital. It is stated that the clot in the brain of the wife was removed by medical treatment and as regards the sickle cell anemia, the same is not curable and the patient has to take medical treatment regularly. The Doctor stated that the condition is hereditary with varied severity. He stated that the case of the wife was not very serious as she had improved. He stated that it is not necessary that the life span of a patient is short. It is stated that the wife had brain damage but she had improved and there is improvement in her brain upto 85 to 90%. Dr.Agrawal was also not cross-examined on behalf of the wife. However, since the matter was proceeded *exparte*, the Court posed certain queries to the Doctor. The Doctor informed the Court that the patients like the wife could lead a normal life and are also capable of procreating children. The Doctor stated that the children born to a person like the wife, would be carriers of sickle cell anemia. It was stated that there is a possibility that the child can grow normally if the patient is not the carrier. He, however, admitted that the symptoms of the disease would be general weakness and severe

fatigue. He stated that the said disease cannot be diagnosed until suspected clinically and investigated. The other two queries made by the Court refer to the sickle cell trait and not sickle cell anemia and hence it would not be necessary to reproduce the answers to the said queries. Apart from the said oral evidence, the husband tendered several documents on record to show that the wife suffered from sickle cell anemia. The medical certificates ie, the pathological reports, the reports of MRI scan, X-ray reports, Serology and Immunology tests reports, Biochemistry reports, CT scan reports and other reports, including the reports of the experts at Ozone Hospital were tendered by the husband to show that the wife suffered from sickle cell anemia. On an appreciation of the material on record, the Family Court recorded a finding that the wife no doubt suffered from sickle cell anemia as pleaded by the husband, but the husband was not successful in proving that the wife was aware that she suffered from the said disease prior to the marriage and that she had not disclosed about the said disease to the husband and had fraudulently secured his consent to the marriage. The Family Court, probably, referred to some literature pertaining to sickle cell anemia and sickle cell trait to make certain observations in the judgment, in regard to the nature of the disease and its impact on the marital life. After holding that the husband had not proved that the wife had failed to disclose about the disease, the Family Court held that the husband was not entitled to a decree of divorce on the

ground of cruelty, as the husband cohabited with the wife for about three months after the solemnization of the marriage and the marriage was consummated. The judgment of the Family Court is challenged by the husband in this Appeal.

5. Shri Kadu, the learned counsel for the husband, submitted that the Family Court was not justified in recording a finding that the husband was not successful in proving that the wife was aware about the fact that she was suffering from sickle cell anemia before the solemnization of the marriage and that she had not disclosed the said fact to the husband despite the knowledge. It is submitted that an adverse inference needs to be drawn against the wife, inasmuch as the wife has failed to enter into the witness box and withstand the cross-examination that would have been conducted on her. It is submitted that though it is apparent from the reports that are placed on the record and also from the finding recorded by the Family Court that the wife suffers from sickle cell anemia, the wife was audacious enough to deny in her written statement that she suffers from sickle cell anemia. It is submitted that the wife is not a trustworthy person and an adverse inference needs to be drawn against her, particularly when she has not entered into the witness box. It is stated that the evidence of the husband remained uncontroverted, in the absence of his cross-examination. It is submitted that the Doctor examined on behalf of the husband had also clearly stated that the disease suffered by the

wife is incurable though it is possible that the wife could lead a normal life. It is submitted that within three months of the marriage, the wife had suffered a paralytic attack and it is clear from the pleadings in the petition as also the evidence tendered on record, that a person suffering from sickle cell anemia is likely to suffer a brain stroke. It is stated that it is further apparent from the evidence of Dr. Agarwal that there was a damage to the brain of the wife, in view of the clot in her brain, which was caused due to the disease suffered by her. It is submitted that though the husband has specifically stated that he became aware on enquiry, that the wife suffered from sickle cell anemia before the marriage and she and her parental relatives knew about the said fact which was deliberately concealed from the husband before the marriage, the Family Court has rejected his case without recording any cogent reasons. It is submitted that the Family Court was not justified in holding that the non-disclosure of the fact that the wife suffered from sickle cell anemia, even assuming that the husband had proved the same, could not result in granting a decree of nullity, as the disease suffered by the wife would not have an adverse impact on the matrimonial life of the husband. It is submitted that the Family Court has not read the literature thoroughly, before making certain observations about the nature and the effects of sickle cell disease. It is submitted that in the circumstances of the case, the Family Court ought to have held that the husband had been successful in proving that the wife and

her parents knew that the wife suffered from sickle cell anemia before the solemnization of the marriage and that they had deliberately not disclosed the said fact to the husband, with a view to secure his consent, by fraud. It is submitted that the husband would be entitled to a decree of divorce on the ground of cruelty as the wife has levelled serious allegations in regard to demand of money-dowry for the purchase of a luxury bus and even at the time of the marriage and has utterly failed to prove the said allegation. It is stated that the wife has failed to enter into the witness box to prove her case that the husband had demanded a large sum from the father of the wife for purchasing a luxury bus and during the marriage also, he had demanded money. It is stated that it is well-settled that levelling of false allegations in regard to the demand of dowry from the wife or her relatives and failing to prove the same would tantamount to cruelty.

6. Shri Badar, the learned counsel for the wife has supported the judgment of the Family Court. It is submitted that if a party does not enter into the witness box, no adverse inference could be necessarily drawn against the said party. It is stated that this Court cannot draw an adverse inference against the wife that she had not entered into the witness box as the Family Court has, on a proper appreciation of the material on record, refused to draw an adverse inference against her. It is stated that apart from the oral version of the husband, the husband has not produced any evidence on record to show

that the wife was suffering from sickle cell anemia before the solemnization of the marriage and that she or her parents had not disclosed this fact to the husband with a view to cheat him. It is submitted that the evidence of Dr.Agrawal cannot be helpful to the husband as Dr.Agrawal has stated in his evidence that the wife was suffering from sickle cell anemia and the said diagnosis was made three months after the solemnization of the marriage. It is submitted that no documentary evidence has been produced by the husband on record to show that the wife was suffering from the said disease before the solemnization of the marriage and she knew about it. It is submitted that the case of fraud, as is stated on behalf of the husband, is not established in this case. It is submitted that if Dr.Badhe of Khamgaon had treated the wife for sickle cell anemia as per the case of the husband before the solemnization of the marriage, the husband ought to have examined Dr.Badhe, which he failed to examine. It is reiterated that no document showing that the wife suffered from sickle cell anemia before the solemnization of the marriage, is produced by the husband before the Family Court.

7. On hearing the learned counsel for the parties, it appears that the following points arise for determination in this Family Court Appeal:-

(i) Whether the husband proves that the wife and her parents had concealed the 'material fact' that the wife was suffering from sickle cell anemia before the solemnization of the marriage?

- (ii) Whether the husband is entitled for a decree of annulment of marriage?
- (iii) In the alternative, whether the husband is entitled to a decree of divorce on the ground of cruelty?
- (iv) What order ?

8. We have already narrated the pleadings of the parties in the earlier part of this judgment. The husband has clearly stated in his pleadings and evidence that within three months of the marriage, the wife was taken by her mother and sister to her paternal home at Khamgaon, for rest. Within fifteen days therefrom the husband was telephonically informed at Akola that the wife was suffering from serious health problem. The husband was informed about the hospitalization of the wife on 11.10.2009. The wife was referred to Dr.Agarwal's hospital at Akola and the said Doctor further referred the wife to Ozone Hospital in Akola as, at the relevant time, the wife had suffered a paralytic stroke in view of the clot in her brain. The wife was admitted in the Ozone Hospital at Akola from 14.10.2009 to 22.10.2009. The wife was then taken to Khamgaon by her parents on 22.10.2009. There is no cohabitation between the parties after the said date as the parties have separated since then. It is the case of the husband that from the various medical reports i.e. CT scan, histo-pathology reports, biochemistry reports, MRI reports etc, it was revealed that the wife was suffering from sickle cell

anemia and paralysis. Due to the medicines administered by the Doctors in the Ozone Hospital, the clot in the brain of the wife was dissolved but there was damage to the brain of the wife as could be seen from the evidence of Dr.Agrawal. It is also stated by the husband in his evidence that after he became aware from the reports of the Doctors about the disease of the wife, he made enquiry and it was revealed to him from the talks with relatives that the wife and her relatives were aware that the wife was suffering from sickle cell anemia before the solemnization of the marriage, however, by concealing the said fact the consent of the husband for the marriage was secured and the husband was cheated. The husband has specifically pleaded that the wife was not capable of consummating the marriage and of living a happy marital life. The husband has specifically pleaded and has also stated in his evidence that had the husband been aware of the disease suffered by the wife he would not have married her. The husband has pleaded and has also stated in his evidence that according to the opinion of various experts, sickle cell anemia is incurable and patients suffering from the said disease do not have a normal life span. It is pleaded and stated by the husband in his evidence that he became aware that the wife suffered from sickle cell disease which can be inherited. It is pleaded and also stated in the evidence of the husband that sickle cell anemia could cause a clot in the brain when a blood vessel is blocked or when a blood vessel bursts due to the disease. It is stated that the wife had suffered paralysis

in view of the disease and was admitted in the Ozone Hospital for quite some time. The evidence of the husband has remained uncontroverted. Apart from the evidence of the husband, the husband has examined Dr.Agrawal. The evidence of Dr.Agrawal reveals that the clot in the brain of the wife was dissolved and she had improved remarkably to the extent of 85 to 90 per cent. The Doctor stated in his evidence that sickle cell anemia is not curable and a patient would be required to take regular medical treatment. Certain queries were posed to the Doctor by the Court as he was not cross-examined by the wife. The Doctor stated that the patients like the wife could lead a normal life and though the patient is capable of procreating children, the children born from such patients would be the carriers of sickle cell anemia. He stated in his reply to the query that symptoms of sickle cell anemia could be general weakness and severe fatigue. He stated that it cannot be diagnosed until suspected clinically and investigated. The sixth and seventh query by the Court to the Doctor pertains to sickle cell trait and since it is not the case of anybody that the wife suffers from sickle cell trait, we would ignore the said answers. It is apparent on a combined reading of the evidence tendered by the husband and Dr. Agrawal as also the various documents produced by the husband on record, that the wife did suffer from sickle cell anemia. It is also apparent from the evidence of the Doctor, as also the finding recorded by the Family Court that disease sickle cell anemia is incurable. The Family Court has

referred to the literature pertaining to the said disease to make some observations in the judgment about the nature of the disease and its impact on a person. The Family Court has observed that the wife could have lead a normal life and was capable of procreating children and, therefore, the marital life of the husband shall not be affected because of the disease suffered by the wife. While considering whether any fact or circumstance that is concealed prior to solemnization of the marriage is a 'material fact' or not, the Family Court has observed that the fact should be such that it should materially interfere with the happy marital life of the parties. The Family Court held that apart from the fact that the husband had failed to prove that the wife was aware that she suffered from sickle cell anemia before the solemnization of the marriage, the disease was not such, that it would interfere with the family life.

9. It is apparent from the material on record that the wife suffered from sickle cell anemia. Several medical reports placed by the husband on record clearly demonstrate the aforesaid position. It would therefore be necessary to consider whether the wife had the knowledge that she suffered from the disease before the solemnization of the marriage and whether she had concealed the said fact from the husband and had secured his consent, fraudulently. The burden to prove the fact that the wife knew before the solemnization of the marriage that she suffered from sickle cell disease and

that she had concealed the said fact from the husband would no doubt lie on the husband, who has alleged so. It would now be necessary to consider whether the husband has discharged the initial burden that is placed on him in this regard. The husband has clearly pleaded in his petition that after talking to several persons he became aware that the wife was suffering from sickle cell anemia before the solemnization of the marriage and the said fact was concealed by the wife's parents from the husband, while securing his consent for the marriage. We will have to test the credibility of the statement of denial by the wife in her written statement, in the circumstances of the case. The wife had failed to present herself in the Court and when an *exparte* order was passed, on an Application moved by her, the said order was set aside. It is difficult to gauge why the wife was shy of presenting herself in the Court and defending the case of the husband that she suffered from a serious disease, prior to the solemnization of the marriage and that she had concealed the said fact from the husband. The wife filed the written statement after the *exparte* order was set aside. We are surprised at the statements made by the wife in the written statement. The wife has gone to the extent of denying in the written statement that she suffers from sickle cell anemia despite the fact that voluminous documentary evidence in the form of medical reports was placed by the husband on record to demonstrate that the wife suffered from the said disease. It was expected of the wife to come to the Court with clean

hands and to inform the Court that though she suffers from sickle cell anemia, the said disease is diagnosed only after the solemnization of the marriage and before the marriage she was not aware about the disease and therefore there was no question of practicing fraud on the husband by concealing the said fact. However, for the reasons best known to the wife, she did not choose to take that course of action and flatly denied that she suffers from sickle cell anemia. In these circumstances, we doubt the credibility of the statement of denial made by the wife and this makes us believe that the case of the husband could be true. The case of the husband is that the wife suffered from sickle cell anemia before the solemnization of the marriage and that she had concealed the fact from the husband, with a view to secure his consent. The wife and her parents would be the only persons who could tell the Court that they knew or did not know before the solemnization of the marriage that the wife suffered from sickle cell anemia. The knowledge about a particular fact or the concealment of a particular fact are the conditions of mind of a person, which are within the knowledge of the person to whom those conditions are attributed. The best person who could have informed the Court that the wife did not suffer from sickle cell anemia before the marriage and/or that the said disease was not diagnosed even if she suffered from the same before the solemnization of the marriage, is the wife alone. Apart from the wife, this fact could have been informed to the Court by her parents or the relatives on her

parental side. If one party alleges in respect of the condition of mind about the other party, specially about the knowledge or concealment by the other party and discharges the initial burden in regard to the said fact or condition by pleading and tendering evidence in that regard and if the said party is neither cross-examined and the party against whom the allegation is levelled in respect of the particular condition of mind does not enter into the witness box to tender any evidence, whatsoever, it cannot be said that it would be wrongful on the part of the Court to accept the evidence of the party alleging that the other party had the knowledge of the fact, which is said to be within the exclusive knowledge of the other party and its relatives. We find much force in the submission made on behalf of the husband that if the wife was not aware about the fact that she suffered from sickle cell anemia before the solemnization of the marriage, she could have easily entered into the witness box, just to deny the said statement. Then may be, the onus could have shifted on the husband to tender more material, if at all it was available, to prove the said fact. The wife chose, for the reasons best known to her, to remain away from the witness box. The Family Court, in the circumstances of the case, ought to have drawn an adverse inference against the wife as neither the wife nor her parents have entered into the witness box to state that they did not know about the fact that the wife suffered from sickle cell anemia before the solemnization of the marriage. The Family Court has disbelieved

the case of the husband in this regard only because the husband has not tendered any documentary evidence that pertains to a period prior to the solemnization of the marriage. In our view, merely because the husband had not produced the documentary evidence which could not have been in his possession, the case of the husband could not have been held to be untrue. In our view, it is apparent from the circumstances of the case that the wife and her family members must have been aware that the wife was suffering from sickle cell anemia before the solemnization of the marriage and that they had concealed the said fact from the husband. Merely because the husband had failed to examine the Doctor at Khamgaon who was not known to the husband and who had treated the wife, it cannot be said that the husband has failed to prove his case. In our view, the husband's case is proved in view of the evidence of the husband, which is uncontroverted and unchallenged and the failure on the part of the wife and her parents to enter into the witness box to state that she did not have the knowledge before the solemnization of the marriage that she suffered from sickle cell anemia.

10. After having held that the wife and her parents were aware about the fact that the wife suffered from sickle cell anemia before the solemnization of the marriage and the said fact was concealed by the wife from the husband and his family members, it would now be necessary to consider whether the party desirous of performing the marriage should disclose that he/she suffers

from sickle cell anemia to the party who approaches with a marriage proposal. It would now be necessary to consider whether the concealment of the fact that the party to the marriage suffers from sickle cell anemia, would be a 'material fact', as mentioned in Section 12(1)(c) of the Act.

11. The provisions of Section 12(1)(c) state that a marriage solemnized between the parties after the commencement of the Hindu Marriage Act shall be voidable and may be annulled by a decree of nullity if the consent of the petitioner 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. The question as to what would be a 'material fact' that needs to be disclosed, came up for consideration before several Courts from time to time. It is held by this Court in the judgment reported in **AIR 1982 BOM 400** (*P. Appellant v. K, Respondent*) that concealment of any material fact or circumstance concerning the respondent could result in granting a decree that the marriage solemnized between the parties was a nullity. The Court observed that 'fraud' means representing as existing what is not and concealing what is material. It is held that the representation or concealment necessarily presupposes that the respondent was aware of the fact and circumstance which was misrepresented or concealed. While holding so, the Court held that every fact and circumstance cannot be material. It is held that it is difficult to define with any certainty what can be said to be a material fact or circumstance but, it may be

safely said that the fact or circumstance that is of such a nature, as would likely interfere with the marital life and pleasure including sexual pleasure would be a material fact or circumstance. The Court held that the material circumstance must be concerning the respondent meaning thereby that it must be in respect of the person or character of the respondent. It is held that it is immaterial whether such fact or circumstance is curable or could be remedied. In the facts of the case before the High Court, the intercourse between the parties demanded previous manipulation of the uterus before penetration and it was held in the said case that such intercourse cannot be said to be an intercourse in the normal way. The Court, therefore, held that since the wife was aware about the said fact before the solemnization of the marriage, the concealment of the said fact entitled the husband therein to the annulment of the marriage. In the case in the judgment reported in **AIR 2007 Bombay 115** (*Vandana J. Kasliwal Versus Jitendra N. Kasliwal*), the wife was taking medical treatment in view of the recurring attacks of insanity before her marriage and the Court held that non-disclosure of the fact that the wife was suffering from schizophrenia, which is an incurable disease would have entitled the husband to a decree of annulment of marriage. While granting a decree in favour of the husband, the Court held that in that case, the husband was a normal young man, a graduate working as an accountant, was earning substantially and he could not have consented to marry a girl having background of mental illness

had he known about the said fact before the marriage. It is held by this Court in the said judgment that if a fact or circumstance is so material as to affect a decision of giving consent to marriage and if there is fraud regarding the same may be by express words or even by concealment, then the marriage could be annulled. The Calcutta High Court has, in the judgment reported in **AIR 2015 Calcutta 248** (*Kala Raman Versus Ravi Ranganathan*) went to the extent of declaring a marriage a nullity because the wife had concealed the fact that she was suffering from chronic Periodontitis and constant foul smell used to come out from the mouth of the wife. In the judgment reported in **AIR 1998 Madras 198** (*R.Sankaranarayanan Versus Anandhavalli*), the Court again granted a decree under Section 12(1)(c) of the Act as the wife was suffering from schizophrenia and she had not disclosed the said fact to the husband before the solemnization of the marriage despite the knowledge of the same. In the judgment reported in **AIR 2007 Himachal Pradesh 19** (*Smt.Urmila Devi Versus Narinder Singh*), the Court has observed that any fact or circumstance which is of such a nature that it shall materially interfere with a happy married life would definitely be a material fact. In that case, it was held that had the wife disclosed to the husband before the marriage that she had never got menses, the husband may not have married her. While holding so, the Himachal Pradesh High Court considered the judgment of the Delhi High Court reported in **AIR 1997 Delhi 94** (*Anurag Anand Versus Sunita Anand*)

where it was held that the act on the part of the husband of disclosing an income which was much higher than the actual income earned by him amounted to fraud. It is also held by the Allahabad High Court in the judgment reported in **AIR 1997 Allahabad 429** (*Smt.Bindu Sharma Versus Ram Prakash Sharma & Others*) that the representation on the part of the husband that he was having an attractive job though he was undergoing an apprenticeship training in a factory and did not have a regular job amounted to fraud and the wife was entitled to the annulment of marriage.

12. What can be gathered from the aforesaid decisions is that a fact or circumstance which would materially interfere with a happy marital life would be a 'material fact' as also a fact which if disclosed would have resulted in the husband or the wife not agreeing or consenting to the marriage would also be a 'material fact'. In our view, it cannot be said that only such facts and circumstances which would materially interfere with a happy marital life would only be material facts. A fact, though it may not seriously interfere with the marital life of the party but, would be of such a nature, which if disclosed, would result in either of the party not consenting for the marriage, would also be a 'material fact'. In the cases which we have referred to hereinabove, a decree of annulment of marriage is granted where the spouse suffered from epilepsy, the uterus was not in place, the wife had never got the menses, the

husband had disclosed inflated income or misrepresented about his job, the wife suffered from chronic periodontitis, etc. In all the aforesaid cases, it is held that the wrongful disclosure of a material fact or the concealment of a material fact like the ones which are referred in those cases, would result in the annulment of the marriage under Section 12(1)(c) of the Act. In the case in hand, the wife was suffering from sickle cell anemia and the said fact was not disclosed by the wife or her parents to the husband or his family members before the solemnization of the marriage. Sickle cell anemia is not curable as could be noticed from the evidence of Dr.Agrawal. Even the Family Court has observed that sickle cell anemia is not curable though it could be kept under some control. The Family Court has, however, held that a party suffering from sickle cell anemia would not make the married life of his/her spouse unhappy. In our view, the Family Court was not justified in holding so. Sickle cell anemia is not only not curable but it is hereditary. Patients of sickle cell anemia suffer from general weakness and severe fatigue. Within three months of the marriage, the wife in this case suffered a paralytic stroke in view of the clot in her brain, which is one of the ill effects of sickle cell anemia. The husband has categorically pleaded in his petition that two types of strokes could be suffered by a person suffering from sickle cell anemia and within three months of the marriage the wife had suffered a paralytic stroke and was required to remain in hospital for quite a long time. Within three months of

the marriage, the wife was taken to her parental home for rest. Dr.Agrawal had clearly opined that sickle cell anemia is not curable. He had further stated that sickle cell anemia could be inherited by the offspring. To the query made by the Court, Dr.Agrawal had further stated that the symptoms of sickle cell anemia would be general weakness and severe fatigue. If sickle cell anemia is not curable and the symptoms of sickle cell anemia are general weakness and fatigue, in our view the said condition would surely affect the marital life to certain extent. It is of course another matter if a party becomes the victim of an incurable disease after the solemnization of the marriage. But, if a girl or a boy, who is of a marriageable age suffers from an incurable disease before the solemnization of the marriage and knows about it, it would be necessary for her/him to disclose the said fact to the party that approaches him/her with a proposal for the marriage. The Family Court has referred to some literature of which a specific reference is not made in the judgment, to hold that sickle cell anemia is not such a disease which would affect the marital life of the parties. What are the expectations of a normal man or a party or what is perceived by a normal man or an individual of a happy married life cannot be decided by simply taking a sympathetic view in favour of a party that is suffering from the incurable hereditary disease like the one in this case by holding that the marital life would not be adversely affected to a great extent. Though we are not inclined to refer to or mention the literature and data which we have

read during the past couple of days, since this matter was being argued, we would like to mention that the impact and the effects of this disease are dreadful. Even dreadful diseases, though we may not specifically name them, may sometimes not be so dreadful in the sense that the man suffering from the same may be able to live for long and live well but, in several other cases with similar or the same diseases, it may not be so and the person may not live long and may also not live well as in the other case. In our view, the test here would be whether the husband, if he knew about the fact that the wife was suffering from sickle cell anemia before the solemnization of the marriage, would have consented to marry her. In the judgment reported in **AIR 2007 Bombay 115** (*Vandana J. Kasliwal Versus Jitendra N. Kasliwal*), the man was a normal young man working as an accountant and earning considerably and the fact that the girl suffered from schizophrenia was not disclosed to him. Had the fact been disclosed to a normal young man who was starting his life and career that the girl whose proposal had come to him suffered from schizophrenia, he may not have married her. In the instant case also, it is the case of the husband that had he been aware that the wife was suffering from sickle cell disease before the solemnization of the marriage, he would not have married her. In our view that would also be one of the tests which can be applied while considering the scope of the word 'material fact' in Section 12(1) (c) of the Act. The wife who suffered a paralytic attack within three months of

the marriage due to the sickle cell anemia disease could not be said to have led a happy married life with the husband, specially when there is a possibility that a child born to the wife would also be a carrier of sickle cell anemia. Also, the wife would not have had normal health as she would always suffer from general weakness and fatigue. If that is so, the husband would have been required to treat her with sympathy and as a patient throughout the life. It was necessary for the Family Court to have considered these aspects of the matter while holding that the disease of the wife could not have affected the marital life of the husband. It is easy for a third person to say that it could be easy for the other concerned person to lead a happy married life with a party who suffers from an ailment and who knew about it prior to the marriage but in our view that is not the test that needs to be applied. While considering what is a 'material fact', we cannot look at the problem or visualise it as a third person and we will have to look at it as if we are concerned with the problem or facing it, as if we were to marry or our daughter or son were to marry and what would have been the effect had this fact not been disclosed to us. A Court may not express so, while deciding the case but that should be in the back of the mind of the Court. This test does not appear to have been applied by the Family Court while holding that the family life of the husband could not have been spoiled though the wife suffered from sickle cell anemia. In our view, it would be necessary for a party to disclose, if that party is aware

before the solemnization of the marriage that he/she suffers from sickle cell anemia to the party that comes to the said party with a proposal for marriage. It would be necessary to inform the other side and the said 'material fact' cannot be concealed as had the said fact been disclosed, it may result in the other party refusing to consent to marry the party who suffers from the said disease.

13. In our view, the Family Court has committed an error in rejecting the evidence of the husband that the wife was aware about the disease suffered by her before the solemnization of the marriage though the wife failed to enter into the witness box and was audacious enough to state in the written statement in spite of two dozen reports of specialist doctors diagnosing sickle cell anemia that she does not suffer from the disease at all. We are not inclined to believe the word of the wife in the written statement as the statement made by her that she does not suffer from sickle cell anemia, even at the time of filing of the written statement is an absolute lie. The Family Court was justified in holding that the wife suffers from sickle cell anemia. We have already stated hereinabove that the husband had discharged the initial burden and since the wife did not tender any evidence whatsoever to point out that she was not aware that she suffered from the disease before the solemnization of the marriage, an adverse inference ought to have been drawn against her. If one party alleges that the other party has the knowledge about some fact and

tenders oral evidence stating so, as stated herein-above, it would be necessary for the other party who allegedly has the knowledge about the fact to enter into the witness box, at least to state that he/she had not known it. As soon as that is said, the onus would again shift on the other party but, in this case, the wife failed to enter into the witness box and in our view just to escape the cross-examination from the side of the husband, which may have proved the case of the husband that the wife knew about the disease before the marriage. In our view, in the circumstances of the case, the Family Court has not appreciated the evidence in the right perspective while dismissing the petition filed by the husband.

14. Though the husband would be entitled to a decree of nullity, we must add that if at all we were not to grant a decree of nullity in favour of the husband, we would have granted a decree in his favour under Section 13(1) (ia) of the Act on the ground of cruelty as the wife has levelled serious allegations that the husband had asked huge amount from her father at the time of the marriage and had also sought a large amount from him for purchasing a luxury bus and since her father had not paid the amount, he had filed a false case that she suffers from sickle cell anemia. The fact that the wife suffers from sickle cell anemia is proved by the husband and it is also held so, by the Family Court. The wife has not proved the serious allegations that she has levelled against the husband in the written statement. She has not entered

into the witness box to prove the allegations about the wrongful demands made by the husband at the time of the marriage or even thereafter. It is well settled that levelling of false allegations against the husband, specially in respect of demand of dowry and failing to prove the same would tantamount to cruelty. Be that as it may, since we are granting a decree of nullity in favour of the husband, it would not be necessary to grant a decree of divorce on the ground of cruelty as, as soon as we hold that the marriage is a nullity, there is no question of dissolving the marriage under Section 13 of the Act.

15. Hence, for the reasons aforesaid, the Family Court Appeal is allowed. The judgment of the Family Court is hereby set aside. The petition filed by the husband for annulment of marriage under Section 12(1)(c) of the Hindu Marriage Act is allowed. The marriage between the parties stands annulled under the provisions of Section 12(1)(c) of the Act. There would be no order as to costs.

JUDGE

JUDGE

sahare/Apte