

***THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**
AND
THE HON'BLE SRI JUSTICE P. KESHA RAO

+F.C.A.No.240 OF 2009

%22-12-2017

T. Venkata Govardhana Mani

...Appellant

Vs.

\$ Kolluru Ramachandra Sekhar

....Respondent

!Counsel for the Appellant: Mr.S.Ram Sharma

^Counsel for the Respondent : Mr.V. Hari Haran

<Gist :

>Head Note:

? Cases referred:

- ¹ AIR 1973 Bom 276
- ² AIR 1988 SC 2260
- ³ FLW 2007 (3) RAJ 2306
- ⁴ (2001) Insc 259
- ⁵ AIR 2007 Bom. 115
- ⁶ (1998) 2 MLJ 490
- ⁷ (2006) 3 SCC 778



HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE P. KESHAVA RAO

F.C.A.No.240 of 2009

JUDGMENT: (per Hon'ble Sri Justice P. Keshava Rao)

Heard the learned counsel for the appellant as well as the respondent.

2. The present appeal is filed by the appellant-wife who is the respondent in the court below against the order and decree in O.P.No.603 of 2008 on the file of the Court of the Family Judge, Ranga Reddy at L.B.Nagar, Hyderabad annulling the marriage of the appellant with the respondent herein.

3. The facts of the case are that originally the respondent herein filed petition in O.P.No.603 of 2008 under Section 12(1)(a)(b)&(c) of Hindu Marriage Act to declare the marriage between him and the appellant herein as null and void by annulling the marriage against the appellant herein, on the file of the Court of the Family Judge, Ranga Reddy at L.B.Nagar, Hyderabad.

4. It is the case of the respondent herein that his marriage was performed with the appellant herein on 28.08.2005 at Koundinya Club, Medchal Road, Secunderabad according to Hindu Rights. The marriage was arranged in response to the matrimonial insertion made by the appellant's father. Before marriage there was a preliminary exchange of information between both the families in the first week of April, 2005. During the said meeting, the appellant has not communicated anything and her parents explained that

she is very shy by nature and does not communicate much. When the appellant was invited for selection of sarees for the wedding, she did not show much interest in purchasing sarees and other material. On the other hand, she insisted that she would make her purchases separately. On 04.08.2005 he went to the residence of the appellant and at that time, he noticed that the appellant was telling her parents that the respondent is not the person whom she had seen or got engaged to. However, the appellant's parents brushed it aside as a joke and the respondent did not pay much attention to it. Even on his visit on 14.08.2005, the appellant reiterated the same. On the explanation given by the parents of the appellant, the respondent ignored the same in good faith. Even on 21.08.2005 when the respondent visited the appellant's house, he faced the same situation. The respondent requested the parents of the appellant to send her for a picture, they declined for the same. On 27.08.2005 during 'Yedurukollu Ceremony', the respondent was going through the ceremony mechanically and compulsorily without showing any interest. On the day of marriage, the respondent has noticed that the appellant was while being escorted for performing the Gowri Pooja, fell on the stair-case and became unconscious. On such incident, in order to wake up the appellant, she was slapped by her relatives and was revived. When the respondent made enquiries, it was informed that because of irregular lunch and because of administration of some medicines to postpone the menstrual cycle, such incident has happened. Even during the Gowri Pooja, the appellant was continuously weeping and keeping to herself behaving wildly even throwing flowers and

Akshinthalu in a disorderly way. Even during the course of marriage ceremony, the appellant refused to have a photograph with the respondent or his relatives and friends. The appellant refused to accompany the respondent for Gruhapravesham ceremony at his house and for which she was persuaded hard to come. At that time, for the first time the respondent and his parents and relatives were able to observe the appellant at close quarters and seen that she was not able to manage herself and her maternal aunt who accompanied the appellant was found brushing her teeth, giving her bath and helping her out in all respects. Even on the night, the appellant slept along with maternal aunt on single cot by hugging her even though separate cots were provided to them. On the following day i.e. on 29.08.2005 when Satyanarayana Vratam was being performed, the appellant fell down again and became unconscious and again she was waken up by slapping her. The parents of the appellant administered lemon juice to her. On such incident, when it was enquired, it was informed that it is due to improper diet and etc. On insistence, the appellant's father informed that the appellant had suffered a bout of depression about three months back and Dr.M.Gowri Devi, Consultant Psychiatrist had recommended some medicines. When the respondent requested for papers, the parents of the appellant informed that the prescriptions issued by Image Hospitals will be sent later. Thereafter, at about 4.30 p.m. the appellant returned to the house of her parents escorted by her parents. At 7.30 p.m. the brother and brother-in-law of the respondent have collected the original prescriptions given by Dr.Gowri Devi. The original

prescription was dated 02.08.2004 by the said doctor and after seeing them, the respondent was shocked to know that the appellant was suffering from schizophrenia which is a serious mental ailment. On 04.09.2005 his parents and relatives visited the house of the appellant to make enquiries and particularly to know the state of affairs. In the meanwhile, the respondent and his parents have taken appointment of Dr.G. Prasad Rao, Consultant, Neuro Psychiatrist for second opinion. The doctor who examined the appellant confirmed it to be a case of mental ill-health and schizophrenia. The enquiries made by Dr.Prasad Rao revealed that the appellant has been referred to the Central Government Health Organization as early as in July, 2004 and the doctors of the said Organization have recorded the case as schizophrenia. During the examination before Dr.Prasad Rao, the appellant failed to identify the respondent and his father. On that, Dr.Prasad Rao informed that the patient requires a prolonged treatment and advised not to have matrimonial relationship in that state of health condition. When a meeting was held on 11.09.2005 the parents of the appellant informed that the disease is ignorable and with the consummation of marriage the condition of the appellant would improve. Thereupon, the respondent realized that a fraud has been perpetuated on him in not disclosing the true state of mind and health of the appellant and the same was deliberately hidden. On 19.09.2005, Dr.M.Gowri Devi was consulted by the parties along with their parents to ascertain the mental condition of the appellant. However, the appellant refused to be examined by the doctor, whereupon her mother slapped her and pushed her into the room

of the doctor. After preliminary examination, Dr.M.Gowri Devi informed that it was a serious case of mental disorder i.e. schizophrenia and the girl was unfit for matrimony and said that a prolonged treatment is required, may be for unspecified period of time. Even before the said doctor, the appellant failed to identify the respondent. The said doctor referred the appellant to one Dr.Niranjan Reddy, Psychologist at Somajiguda and called for some more test reports. They have realized that the appellant who was suffering with serious mental disorder was suppressed and since fraud is played, the respondent got issued a legal notice dated 29.09.2005. The said legal notice was received by the appellant and got replied through her counsel on 17.10.2005 denying the contents of the legal notice. Therefore, the respondent stated that the appellant and her parents are guilty in not disclosing the true state of affairs and on the contrary with a mala fide intention deliberately shut out the information misleading the appellant and his parents and perpetuated the fraud on them in getting the appellant married to him. The consent of the respondent had been obtained by misrepresentation of facts and fraud. Had he known the real facts, the respondent would not have given consent for the marriage. The marriage was also not consummated. The nuptial ceremony was also not arranged due to the conduct of the appellant. In those circumstances, a petition in O.P.No.603 of 2008 under Section 12(1)(a)(b)(c) of Hindu Marriage Act was filed to declare the marriage of the respondent performed on 28.08.2005 with the appellant as being vitiated by fraud and thereby declare the marriage as null and void.

5. Per contra, the appellant herein filed a counter denying the averments in the petition and contended inter alia that the petition is filed in a hasty manner with false and untenable allegations. The appellant denied that she is suffering from any acute schizophrenia and incapable of representing herself in the petition since in the cause title of the petition the appellant was shown as respondent represented by her father. The appellant has denied the allegations in para 8 of the petition that the enthusiasm and the joy of a girl to be married was noticeably absent in her during the shopping and that on 04.08.2005, 14.08.2005 and 21.08.2005 she failed to identify the respondent herein. In fact, the appellant has stated that herself and the respondent enjoyed their meeting together and exchanged pleasantries. The respondent had taken the appellant to outside and they returned after a long time in joyous mood spending a lot of time together and also attended the exhibition at Ghymkhana Grounds, Secunderabad. She also specifically denied that on 27.08.2005 none on her behalf were present at marriage hall during 'Yedurukolu ceremony' and she has performed the ceremony in a mechanical and compulsory manner without showing any interest. She also denied the statement that Dr.G.Prasad Rao who examined her said to have stated that it is a case of mental ill-health and schizophrenia and she has been referred to the Central Government Health Organization as early as in July, 2004 and it requires a prolonged treatment. She further stated that to escape from the responsibility of the matrimonial obligations, the respondent has chosen to file the petition in a hasty manner and he is guilty of unnatural behaviour and there is no

cause of action to file the petition. It is relevant that the appellant also stated in the counter that she was shocked due to the unnatural behaviour of the respondent towards her within few hours of her marriage with him in demanding additional dowry etc. apart from receiving Rs.1,00,000/- and other gifts. The respondent is guilty of causing mental agony and harassment to the appellant by filing the petition with all false and baseless allegations. Therefore, she sought to dismiss the petition with exemplary costs.

6. During the course of trial, the respondent examined himself as PW-1 and further examined PWs.2 to 6 on his behalf. He marked Exs.A-1 to A-21. On the other hand, the appellant examined herself as RW-1 and marked Exs.B-1 to B-9. After elaborate trial and appreciation of the pleadings as well as evidence, the court below, by orders dated 12.06.2009 allowed the petition by annulling marriage which took place between the appellant and the respondent on 28.08.2005 as null and void. Aggrieved by the said orders, the present appeal is filed by the wife who is the respondent in the court below.

7. The learned counsel appearing for the appellant, submitted that the petition filed by the respondent in the court below, itself is not maintainable and would not have been numbered because of the mistake in showing the appellant represented by her father. The appellant is not suffering with schizophrenia and the same is not a serious mental disorder. The Family Court ought to have appreciated that the respondent filed the petition with a mala fide intention against the appellant by showing that she is represented

by her father instead of herself in her name and failed to appreciate that the respondent and his parents demanded additional dowry etc. for which the parents of the appellant could not meet. He also contended that the court below failed to consider the admissions made by the respondent and erred in annulling the marriage of the appellant with the respondent on surmises. He also brought to the notice of the court about the admissions made by PW-1 in his cross-examination as under:

“My willingness to marry the respondent was conveyed by my parents. At the time of marriage negotiations I was not present. My parents informed me that there was no understanding with regard to giving and taking at the time of marriage. My engagement ceremony was held on 09.06.2005. I went to the house of my in-laws to meet the respondent three to four times prior to the marriage.”

I took the respondent from Abids where we made purchases to the hotel. I spent one hour with the respondent in the said Hotel. I spoke with her only with regard to the dishes which she likes on that day and nothing else. I provided the dishes she wanted. The respondent was sitting opposite to me across the table. I did not notice any abnormality in the behaviour of the respondent at that time. The shopping in Chandana Brothers, Abids took place for about four hours. The respondent was with us all through.

I spent with her only for 10 minutes in the exhibition. I did not find any difference in the behaviour of the respondent when I spent with her in the exhibition. I did not suspect anything wrong with the mental condition of the respondent, therefore I went ahead with the marriage.

I did not notice any sort of mental disorder during the night time.”

The learned counsel also brought to the notice of the Court that the appellant is quite normal by showing some of the photographs marked as exhibits in ‘B’ series. He also brought to the notice of the court, some of the portions in the counter that the appellant is not suffering from acute schizophrenia and incapable of representing herself in the original petition, that the allegations are made in the petition with a mala fide intention, the prescription dated 02.08.2004

by Dr. Gowri Devi does not disclose that the appellant is suffering from schizophrenia, a serious mental ailment and also denial of the information given by Dr. Prasad Rao that the appellant is suffering from schizophrenia as recorded by the Central Government Health Organization as early as in July, 2004 and it requires prolonged treatment and also that it is not desirable to have marital relationship in that state of health condition. The evidence of PW-4, is not reliable and the same cannot be believed. Relying on the evidence of PW-6, the learned counsel for the appellant submitted that PW-6 was not in a position to answer as to whether the appellant can reasonably live well with her husband. To support his contention that schizophrenia is not a serious mental disorder and the appellant can lead a happy marital life with the respondent he has relied on the following judgments:

- i) SOMNATH v. TIPANNA RAMCHANDRA JANNU¹
- ii) RAM NARAIN GUPTA v. SMT. RAMESHWARI GUPTA²
- iii) CIVIL APPEAL NO.8264 OF 2013 (Arising out of SLP © No.3544 of 2007) – KOLLAM CHADNRA SEKHAR v. KOLLAM PADMA LATHA;
- iv) JUDGMENT IN MISCELLANEOUS FIRST APPEAL NO.3224/2012(FC) OF THE HIGH COURT OF KARNATAKA AT BANGALORE;
- v) JUDGMENT IN CMA NO. 1556 OF 1999 AND CMP NOs.17981 TO 17982 OF 1999 – SMT. SHANTHI v. V. VIJAYARAGHAVAN;
- vi) JUDGMENT OF RAJASTHAN HIGH COURT IN PRAKASH KUMAR BACHLAUS V. SMT. CHANCHAL @ JAYA, DATED 23.01.2007³.
- vii) JUDGMENT OF SUPREME COURT DATED IN R. LAKSHMI NARAYAN v. SANTHI⁴.

¹ AIR 1973 Bom 276

² AIR 1988 SC 2260

³ RLW 2007 (3) RAJ 2306

8. Per contra, the learned counsel for the respondent would contend that the respondent was married to the appellant on 28.08.2005 as per the Hindu Customs at Secunderabad. It was an arranged marriage through matrimonial insertion known as Kalyana Jyothi (Third Annual Publication dated 27.02.2005 and after following the regular formalities, the marriage was performed. However, it is particularly brought to the notice of the court certain portions in the original petition to the effect that the appellant herein on three occasions as stated supra was not identifying the respondent and pleading ignorance. That apart, even during the pre-marriage ceremonies, particularly at the time of performing Gowri Pooja, she fell on the stair-case and became unconscious. In order to wake up, she was slapped by her relatives. In fact, the peculiar behavior of the appellant was observed for the first time when she came to gruhapravesam along with her maternal aunt after the marriage. The appellant was not able to maintain herself and in fact her maternal aunt was brushing her teeth, giving her bath and helping her different in all respects. Even during the night time, the appellant slept with her maternal aunt on single cot by hugging her even though separate cots were provided to them. On 29.08.2005 during Satyanarayana Swamy Vratham, the appellant once again fell down and became unconscious and in order to wake up, again she was slapped. The parents of the appellant administered lemon juice to her. After seeing the same, when the respondent and her parents enquired the reason, it was due to improper diet and medicines used for postponement of the

⁴ (2001) Insc 259

menstrual cycle. On the persistent enquiries made by the parents of the respondent, the father of the appellant informed that she suffered from a bout of depression about three months prior to the marriage and that Dr.M.Gowri Devi, consultant Psychiatrist have recommended some medicines. On the same day, the respondent's brother and brother-in-law collected the original prescriptions given by Dr.Gowri Devi from the father of the appellant and after going through the same, they were shocked to know that the respondent was suffering from 'schizophrenia' which is a serious mental ailment. On 05.09.2005, the respondent and his parents along with parents of the appellant have taken the appellant to one Dr.G.Prasad Rao, Consultant Neuro Psychiatrist for second opinion. After examination, the doctor confirmed it to be a case of mental ill-health and schizophrenia. On enquiries by Dr.Prasad Rao it was informed that the appellant had been referred to the Central Government Health Organization as early as in July, 2004 itself and the said doctors recorded the case as 'schizophrenia'. Thereafter, the appellant was once again taken to Dr.M.Gowri Devi of Image Hospitals. The appellant refused to be examined by the doctor, at that time the mother of the appellant slapped and pushed her into the room of the doctor and after preliminary examination, Dr.M.Gowri Devi informed that it was a serious case of 'schizophrenia' and the girl was unfit for matrimony. The said doctor referred the appellant to one Dr.Niranjan Reddy, Psychologist at Somjiguda for some more reports, but the parents of the respondent have ignored the same. Having come to know that the appellant is suffering with a serious mental disorder with

schizophrenia', the parents of the appellant played fraud on them in suppressing the above said aspect and performed the marriage. Therefore, the marriage is a void and may be annulled by a decree of nullity.

9. The learned counsel for the respondent specifically contended that since the consent of the respondent was obtained by playing fraud i.e. in suppressing the mental disorder of the appellant, as well as the appellant was also not in a position to give consent since she was not able to exercise the discretion of giving consent. On these grounds, he prayed that there are no grounds in the appeal and the same deserves to be dismissed. To support his contentions, he relied on the following citations:

- i) VANDANA J. KASLIWAL v. JENDRN. KASLIWAL⁵.
- ii) R. SANKARANARAYANAN v. ANANDHAVALLI⁶.
- iii) VINITA SAXENA v. PANKAJ PANDIT⁷.

Apart from the above said decisions, the learned counsel also relied on medical literature published in Asian Journal of Psychiatry and an Article by Mr. A. George Awad on the Burden of Schizophrenia on Caregivers.

10. As far as the facts in the decision in VANDANA J. KASLIWAL (5 supra) is concerned, the marriage of the appellant-wife was performed with the respondent-husband by concealing the fact that the appellant-wife was suffering from an acute schizophrenia which was incurable and categorized as 'exacerbation'. While

⁵ AIR 2007 Bom. 115

⁶ (1998) 2 MLJ 490

⁷ (2006) 3 SCC 778

dealing with the issue, the Court observed in para 21 of the judgment as under:

“Taking into consideration all the circumstances, it is very clear that the mental illness, which requires continuous medication and due to which there was irritability, uncooperativeness and hostility on the part of the appellant/wife and which is incurable, is something which is a material fact or the circumstance concurring the present appellant. In the clinical history given at Exh. 31, it was mentioned that the appellant had come to the hospital of Dr. Barhale as she was over talkative, abusive, irritable, angry, biting to any one, not mixing with people, talking on one topic, crying, shouting, trying to run away, biting to mother, laughing to herself, not working at home. If these were the symptoms of the mental illness, we cannot say that the mental illness of the appellant was a fact, which need not have been disclosed or which was not material. Therefore, concealment of such thing is definitely a fraud within the meaning of Section 12(1)(c) of the Act of 1955. Such behavior materially affects the marital life, so also tranquility and happiness in the home.

In our considered opinion, though marriage is sacrosanct, it requires consent of both spouses or their guardians, if spouses are not capable of giving consent, and it must be a free consent and in that sense, we have to consider whether the consent was given voluntarily. Here aid of definition of fraud, even from the Indian Contract Act, 1872 need not be overlooked and we, therefore, respectfully differ from the view taken by the single Judge in the case of Raghunath Gopal (supra), that mere non-disclosure prior to the marriage or concealment of curable epilepsy disease of girl and false representation that she was healthy does not amount to fraud within the meaning of the word used in Section 12(1)(c) of Hindu Marriage Act, 1955. If regard be had to Section 12(1)(c) of the Act of 1955, it is clear that if a fact or circumstance is so material as to affect decision of giving consent to marriage and if there is fraud regarding the same, may be by express words or even by concealment, then, marriage could be annulled. However, we hasten to make it clear that it is not every fact or circumstance which would be covered by the provision, but it must be substantially something which goes to the root of the matter, which definitely would weigh with any prudent person to change his mind. It must not be easily detectable. The Court would be very circumspect, cautious and pragmatic in identifying such fact or circumstance. In this case, the first part of the written statement itself shows that when query regarding abnormal behaviour of the appellant was made during marriage ceremony, it was stated that it might be because of mental stress due to failure in the examination and for want of sleep.”

11. Similarly, in R. SANKARANARAYANAN (6 supra), the appellant-respondent was not informed about the wife suffering from schizophrenia. In those circumstances, the court in para 23 observed as under:

“In this case, there was a suppression of the fact that the respondent was afflicted with the disease schizophrenia. The non-disclosure or the suppression is a concealment of a vital fact. There is no evidence in this case that the said fact was disclosed to the parents of the appellant or to him before he marriage. By concealing this vital fact, the consent has been obtained from the appellant. Hence, it tantamount to fraud, with reference to a material fact concerning the respondent.”

12. Even in VINITA SAXENA (7 supra), the respondent-husband was suffering with paranoid schizophrenia and the same was noticed by the appellant-wife only after the marriage. Therefore, the appellant-wife filed a petition under Section 13(1)(ia)(iii) of the Hindu Marriage Act for grant of divorce on the ground that the suppression of the fact of the respondent-husband suffering with paranoid schizophrenia and since the marriage was not consummated, even after five months of the marriage, amounts to cruelty. Though the respondent therein examined himself recording his statement in chief examination, before his cross-examination could be completed, deliberately did not appear into the witness box and complete his deposition. However, the trial Court dismissed the petition. Aggrieved by the same, the appellant-wife filed an appeal before the High Court and the High Court also dismissed the appeal by orders dated 10.09.2004. Against the said orders of the dismissal, Special Leave Petition was filed before the Apex Court. After hearing and appreciating the material placed before the Apex Court, the Apex Court was pleased to allow the appeal by observing as under:

“In our view, the trial Court failed to appreciate the uncontroverted evidence of the appellant who had proved the case on every count. It has been established beyond doubt by the Medical doctors who had deposed as witnesses and brought the original medical record of the respondent that the respondent is suffering from mental disorder. Further ground for grant of divorce on the plea of mental insanity/mental disorder is different than cruelty. The

appellant, in our view, had proved beyond doubt that the respondent suffered from mental disorder and that the appellant suffered cruelty by and at the behest of the respondent. Learned single Judge of the High Court failed to appreciate that in the absence of any evidence led by the respondent, the appellant's evidence had to be relied upon and on the basis of the evidence, the decree for divorce was bound to be granted in favour of the appellant. The appellant had also given specific instances of cruelty which clearly establish that she had a reasonable apprehension that it will be harmful or injurious for her to live with the respondent.

In the result, the civil appeal stands allowed. There will be a decree for divorce in favour of the appellant-wife and against the respondent-husband. The order of the trial Court as affirmed by the High Court, stands set aside. There will be no order as to costs."

13. The Medical Literature relied upon by the respondent disclose that the spouses of patients suffering from depression experience various forms of burden, study assesses and compare the material satisfaction and quality of life of the patients and their spouses. A high level of marital distress found amongst both patients and their spouses, whereas only patients reported poor quality of life. Increasing duration of untreated illness worsens both marital satisfaction and quality of life in spouses with no effects on patients, illness severity worsens quality of life in both groups with no effect on marital satisfaction. A better treatment response may be expected if focus is at improvement in quality of life rather than only symptom control. An Article by Mr. A. George Awad, *on the burden of schizophrenia on caregivers* would reveal that the Schizophrenia is a disabling, chronic psychiatric disorder that poses numerous challenges in its management and consequences. It extols a significant cost to the patient in terms of personal suffering, on the caregiver as a result of the shift of burden of care from hospital to families, and on society at large in terms of significant direct and indirect costs that include frequent hospitalizations and the need for

long-term psychosocial and economic support, as well as life-time lost productivity.

'Burden of care' is a complex construct that challenges simple definition, and is frequently criticized for being broad and generally negative. Frequently, burden of care is more defined by its impacts and consequences on caregivers. In addition to the emotional, psychological, physical and economic impact, the concept of 'burden of care' involves subtle but distressing notions such as shame, embarrassment, feelings of guilt and self-blame.

14. Though PW-5 had categorically stated that relying on the prescription dt.5.09.2005 i.e. Ex.A-5 given by him that the patient is suffering from chronic schizophrenia and was on irregular medication. He also stated that in his experience in most cases there is no cure, but only control of psychotic symptoms with significant disability occurring in 2/3rd of the patients. However, the appellant for the reason best known to her has not even chosen to cross examine him.

15. Coupled with the same, the evidence of PWs.5 and 6 who are the doctors examined on behalf of the respondent, have categorically deposed that the appellant is suffering from catatonic schizophrenia and she was advised to undergo diagnostic psychometric test. As far as PW-6, she has categorically deposed in the cross-examination as under:

"I am identifying the patient. She is sitting in front of me with her mother, on 2.8.2004 patient was not married. Witness further adds that if patient was married, I will record particulars of her husband, occupation, etc. I have mentioned her age as 26 years in Ex.A-4. In the instant case, the patient was brought to me by her mother.

Therefore, I have examined her in her presence. There are number of sub-categories in SCHIZOPHRENIA. I did not categorize into sub-divisions. In my experience from the findings recorded by me in Ex.A-4. If I were to categories, I would probably make my provisional diagnosis as CATATONIC SCHIZOPHRENIA and this particular category is not curable. This type of illness can be dangerous to self and society. Since I examined this particular patient only on one occasion. Therefore, I did not advise her for inpatient treatment. As on 02.08.2004, this patient was manageable by family members at her residence. In this particular case, totally curing of patient is NOT POSSIBLE. I cannot say if the patient's condition was improved after my prescription of medicines as the patient did not come to me again."

16. As observed by the Apex Court in VINITA SAXENA (7 supra), the effects of schizophrenia are as under:

"A RESEARCH ON THE DISEASE"

Schizophrenia is one of the most damaging of all mental disorders. It causes its victims to lose touch with reality. They often begin to hear, see or feel things that aren't really there (hallucinations) or become convinced of things that simply aren't true (delusions). In the paranoid form of this disorder, they develop delusions of persecution or personal grandeur. The first signs of paranoid schizophrenia usually surface between the ages of 15 and 34. There is no cure, but the disorder can be controlled with medications. Severe attacks may require hospitalization.

Risks

Without medication and therapy, most paranoid schizophrenics are unable to function in the real world. If they fall victim to severe hallucinations and delusions, they can be a danger to themselves and those around them."

17. The judgment relied upon by the counsel for the appellant in RAM NARAIN GUPTA (2 supra) is not applicable to the facts of the present case on hand for the reason that it is a case where the appellant failed to prove that his wife was suffering with mental illness and the same was so intends as to justify a reasonable apprehension that it would be impossible or unsafe for the appellant to live with her.

18. In the case on hand, the evidence of PWs.5 and 6 clinchingly proves that the appellant is suffering from catatonic schizophrenia and this particular category is not curable. Admittedly, no contra evidence is produced by the appellant to disprove the evidence adduced on behalf of the respondent. Even the judgment in Miscellaneous First Appeal No.3224/12 (Full Court), is not applicable to the facts of the present case on the ground that it is a case where the appellant-husband failed to establish that the respondent-wife was suffering with any illness. Therefore, the court has not accepted the contention that the cruelty under Section 13(1)(iii) of Hindu Marriage Act, is established.

19. The judgment of Rajasthan High Court in PRAKASH KUMAR BACHLAUS (3 supra), is not applicable to the facts of the present case since the appellant/respondent therein, alleged fraud since the respondent-wife was suffering from schizophrenia prior to the marriage. However, after the marriage, he lived with her for about 5 months, thereafter filed a petition. In those circumstances, the High Court negated the contention of the appellant-husband. The judgment of the Apex Court in R. LAKSHMI NARAYAN (4 supra) is also not applicable to the facts of the present case as the facts stated therein are totally different.

20. So far as the facts in Civil Appeal No.8264 of 2013 in KOLLAM CHANDRA SEKHAR are concerned, they reveal that the report placed before the Court stated that although respondent is suffering from illness of Schizophrenic type, does not show symptoms of psychotic illness at present and has responded well to the

treatment from the acute phases and her symptoms are fairly under control with the medication which had been administered to her. It is also stated that if there is good compliance with treatment coupled with good social and family support, a schizophrenic patient can continue their marital relationship. In those circumstances, the findings and reasons recorded to the effect that the patient is not suffering from the symptoms of schizophrenia was not interfered. However, the above said facts and the principle laid down therein is different from the facts of the present case. Further, in the abovesaid case, the respondent though was suffering from illness of schizophrenic type, was responding well to the treatment from the acute phases and the symptoms were under control on medication which had been administered to her. But, in the case on hand, the situation is otherwise. There is no evidence from the appellant rebutting that she is not suffering from catatonic schizophrenia or after treatment, she responded well and her mental status is improved.

21. As far as the facts in SOMNATH (1 supra) are concerned, the question raised was that the plaint was filed by the next friend of the plaintiff without obtaining any finding of the Court under the provisions of Order XXXII Rule 15 CPC that the plaintiff was, in fact, a person of unsound mind and that the next friend should sue. The trial Court dismissed the suit on the ground that the procedure was not followed properly in presenting the plaint. Aggrieved by the same, the appeal was filed. But, in the case on hand, the appellant herein, who was arrayed as respondent in the Court below, was

shown as respondent represented by her father Sri T.S. Venkatram, since the appellant was not capable of representing herself because of the severe mental disorder of schizophrenia. Though the appellant raised this issue in the counter affidavit, no preliminary issue/point was framed in that regard nor the appellant insisted before the Court below for adjudication of the said issue as a preliminary issue. Therefore, the facts of the present case are not applicable to the above judgment relied on by the counsel for the appellant. More so, even on merits, there is no rebuttal from the appellant that she is not suffering from schizophrenia or that after medication she is fully recovered and her behavior is normal.

22. As the decision in the present case depends on the interpretation of Sections 12(1)(a), (b) and (c) read with Section 5(2) of the Hindu Marriage Act (for short, "the Act"), the same are quoted hereunder:

"12 Voidable marriages: (1)(a) that the marriage has not been consummated owing to the impotence of the respondent; or

(b) that the marriage is in contravention of the condition specified in clause (ii) of Section 5; or

(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, 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."

"5. Conditions for a Hindu marriage:

(ii) at the time of the marriage, neither party -

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity."

23. Section 5 of the Act contemplates that a marriage may be solemnized between any two Hindus if the conditions specified therein are fulfilled. Amongst the other conditions stated therein, clause (ii) lays down that at the time of marriage neither party is incapable of giving a valid consent to it in consequence of unsoundness of mind; or though capable of giving a valid consent, has been suffering from mental disorder of such kind or to such an extent as to be unfit for marriage and the procreation of children. Thus, the clause lays down one of the conditions that neither party must be suffering from unsoundness of mind, mental disorder, insanity etc. Section 12(1)(b) refers that any marriage shall be voidable and may be annulled if the same is in contravention of the condition specified in clause (ii) of Section 5. On a plain reading of the said provision, it is manifest that the conditions prescribed in the Section if established, disentitle the party to a valid marriage. The marriage is not per se void, but voidable under the clause at the option of the aggrieved spouse. However, the conditions stipulated in the above said provisions call for a strict standard of proof. The onus of proof is very heavy on the party who approached the Court first seeking annulment of the marriage on the ground that the other spouse is incapable of giving valid consent and fraud has been played in suppressing the factum of suffering of a serious mental disorder.

24. The other aspect is that the objection to a marriage on the ground of mental disorder/incapacity must depend on the question of degree of the defect in order to rebut the validity of the marriage

taken place in accordance with the rites and customs prevalent in the communities since time immemorial.

25. The next question that crops up for consideration is whether the marriage between the parties can be dissolved by granting a decree of divorce on the basis of mental illness of one spouse which includes schizophrenia. Further, the degree of incapability or the disorder must be such either of the spouse seeking relief cannot reasonably be accepted to live with the other. All mental abnormalities are recognized as grounds for grant of decree of divorce.

26. Now coming to the undisputed facts of the present case on hand, the marriage is not consummated and that the parties are living separately from the day of the marriage. The documents in Exs.A4 and A5 i.e., the prescriptions given by PWs.5 and 6 prove that the appellant was suffering with catatonic schizophrenia even prior to the marriage itself. The said fact was brought to light only after the appellant was taken to PW.6 as well as the medical prescriptions given by the parents of the appellant to the respondent herein and his brother-in-law.

27. As stated supra, from the pleadings and the entire material on record in the form of oral as well as documentary evidence, it is established that the appellant is suffering from catatonic schizophrenia, which is a serious mental disorder. As per the evidence of PWs.5 and 6, it was confirmed that the appellant is suffering from mental ill-health i.e., schizophrenia and she has been

referred to the Central Health Organization as early as in July, 2004 itself and the doctors recorded as the case of schizophrenia. PW.6, after examination, informed that it was a serious case of schizophrenia and the girl is unfit for matrimony. Even PW.5 relying on the prescription, dated 05.09.2015, i.e., Ex.A5 stated that the appellant is suffering from chronic schizophrenia and was on irregular medication. He also stated that in his experience in most of the cases there is no cure, but only control of psychotic symptoms with significant disability occurring in 2/3rd of the patients.

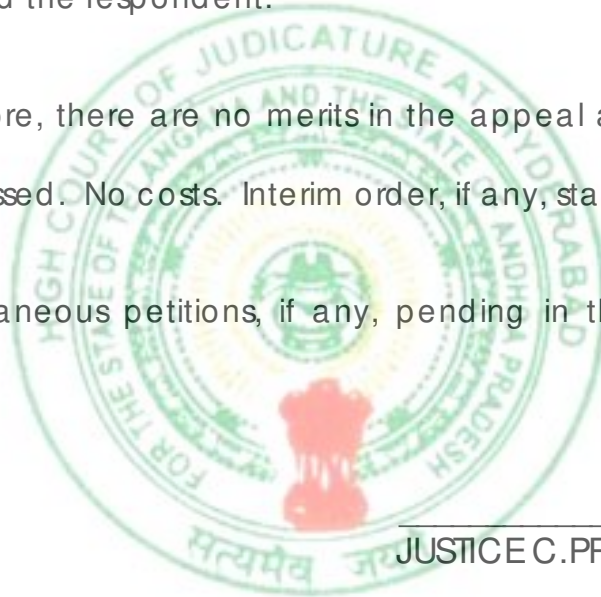
28. Thus, as culled out from the oral as well as documentary evidence, it is established that at the time of performing the marriage, the factum of the appellant suffering from schizophrenia was suppressed and the respondent was made to give his consent for the marriage. In fact, the aspect of appellant suffering from schizophrenia was observed by the respondent, his parents and relatives only during the course of pre and post marriage ceremonies, since the behavior of the appellant was unbecoming of a normal woman/housewife.

29. Therefore, it is crystal clear that in the first instance the consent of the respondent for the marriage was obtained by playing fraud on him in concealing the fact that the appellant was suffering from chronic schizophrenia. Secondly, the chronic history of patients of schizophrenia discloses that the behavior and conduct is contrary to a normal human being and as per the evidence of PW.6, the patient is not fit to lead a normal marital life. That apart, since the appellant is suffering from catatonic

schizophrenia and since the same is not curable, it can be safely inferred/presumed relying on the evidence that is brought on record that the appellant was also not in a position to give her consent for the marriage. On these grounds, this Court feels that it is a fit case where the marriage between the appellant as well as the respondent can be annulled on the grounds as mentioned in Section 12 of the Act. Therefore, this Court finds that there is no irregularity or illegality in the order passed by the Court below in allowing the petition by annulling the marriage between the appellant and the respondent.

30. Therefore, there are no merits in the appeal and the same is hereby dismissed. No costs. Interim order, if any, stands vacated.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE P. KESHA VA RAO

Date: 22.12.2017.
CCM/ES

LR copies to be marked.

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SRI JUSTICE P. KESHA RAO



F.C.A.No.240 of 2009

(Judgment of the Bench delivered by
Hon'ble Sri Justice P. Keshava Rao)

Date:22.12.2017

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