

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO. 15 OF 2017

Ms. Yogita Kamlakant Chari ... Appellant

V e r s u s

Shri Shekar P. Chari ... Respondent

Shri A. D. Bhobe and Ms. S. Bhobe, Advocates for the Appellant.

Shri R. Gawas, Advocate for the Respondent.

Coram:- NUTAN D. SARDESSAI, J.

Reserved for Judgment on : 22 March 2018
Pronouncement of Judgment on : 28 March 2018

JUDGMENT

Heard Shri A. D. Bhobe, learned Advocate for the appellant and Shri R. Gawas, learned Advocate for the respondent.

2. The above appeal challenges the judgment passed by the Courts below whereby the Matrimonial Petition filed by the appellant came to be dismissed by the learned Senior Civil Judge, Bicholim and the appeal filed by her came to be dismissed by the judgment of the District Court dated 29.08.2016.

3. The appeal came to be admitted on 07.07.2017 and the following substantial questions of law came to be framed :

(i) Whether the Courts below have misconstrued the subject admission of PW1 to arrive at a perverse finding of fact that the appellant has failed to establish that she has not freely consented to the civil marriage with the respondent ?

(ii) Whether the failure of the Courts below to note that the subject registration did not lead to a religious marriage between the appellant and the respondent which could infer that the registration of the marriage between the appellant and the respondent was not freely consented by the appellant herein ?

4. Briefly, it was the case of the appellant that upon the death of her father three years earlier, she was looked after by her mother and was very much influenced by her being of the young age of 22 years and having passed her 12th standard. Her mother had started looking out for proposals of her marriage though she was not in favour of getting married so early and she wanted to complete her

graduation and join teaching job after Master degree and to be economically sound and independent before entering into matrimony. Further, her mother was insistent on her settling down in matrimony. Her mother somewhere in March 2011 requested her to consider a proposal which she denied but her mother forced her to see the photographs of the respondent. She had informed her mother that she was not at all interested in an early marriage when the future of her younger brother and sister was at large. Her mother was not ready to listen to her and impressed on her that the proposal of the respondent was very good, he being a carpenter and that if she got married to the respondent, her future would be bright and she would complete her graduation and apply for a government position.

5. It was her case further that bending to the force, coercion and emotional blackmailing of her mother, she gave her consent for the marriage with the respondent under pressure of her mother and she was even ready to sign the marriage declaration only to please her mother who had given her threats to commit suicide in case she refused to sign the declaration. She had signed the registration to please her mother and after eight days or so she was always under stress and mental tension which she conveyed to her mother and

that she was not interested in going ahead with the proposal. Her decision was not to get married and that she was compelled to sign the marriage declaration and that she was not ready to go ahead with the religious ceremony of marriage with the respondent. He had responded to the said news by visiting her and abused her with filthy language and also her mother and besides started making unreasonable demand for money. Looking to the nature and attitude of the respondent, her mother too had realised that in case she forced the petitioner to perform the religious marriage with the respondent, the appellant may run into depression and even may attempt to commit suicide and therefore she supported the view taken by the appellant. She was accordingly constrained to file the suit for the annulment of the marriage under Article 19 of the Family Laws as she was under coercion and pressure and threat of suicide by her mother.

6. The respondent resisted the suit denying the case of the appellant as pleaded by her on the coercion and threat of suicide given to her by her mother and instead spelt out a case that he had liked and fallen in love with her and proposed marriage in May 2010 when both had met for a family marriage. They had thereafter started meeting each other frequently and the appellant was calling him on his mobile

almost regularly. She had visited his house at Sal and he too had visited her house at Madkai and that the parents were aware about the love affair between the two. His neighbours too were aware of the love affair between the two and accordingly the marriage was registered with the consent of the parents. It was his case that the marriage declaration form was signed by the appellant voluntarily without any pressure from anyone. He admitted that he had visited the house of the appellant on 09.11.2011 as they were called to finalise the date of performing the religious ceremony when the mother of the appellant suddenly told him that the uncle of the appellant did not want to give her in marriage and opposed the marriage even to the extent of refusing to perform the ritual of her Kanyadan. The appellant's mother succumbed to the pressure from her uncle who was working on the rigs and had shown helplessness and stated that it was not possible for her to perform the religious ceremony as she was a widow. There was no demand made by him for any money nor any threats given to the appellant. There was no basis to file the suit and therefore it had to be dismissed with costs.

7. The learned Trial Judge framed two issues for determination and an additional issue which she answered in

the negative and dismissed her suit. Being aggrieved by the said judgment, the appellant preferred an appeal before the District Court which too dismissed the Appeal confirming the judgment of the trial Court and giving rise to the Second Appeal at her instance.

8. Shri A. D. Bhole, learned Advocate for the appellants submitted that two substantial questions of law were framed by this Court for determination on 07.07.2017. Though the marriage was registered, there was no religious function held thereafter nor did the appellant stay at the matrimonial house of the respondent at any time inspite of the civil registration much less was there any consummation of marriage thereafter. He adverted to the evidence led by the appellant to substantiate her case basically that she was coerced into agreeing for the marriage and that too under threats of committing suicide by the mother and submitted that a stray statement in her evidence was used by the learned Trial Court and affirmed by the Appellate Court against her as her consent or unequivocal admission. He also referred to her further evidence to substantiate his case and invited attention to the judgment of the trial Court to show the error committed by the learned Trial Judge and that of the District Judge justifying a reversal of the judgment on the substantial

question of law whether the courts below had misconstrued her admission to arrive at a finding that she had failed to establish that she had not freely consented to the civil marriage with the respondent. He referred to Article 19 and 23 of the Portuguese Civil Code and submitted that both the substantial questions of law had to be answered in the affirmative and the appeal had to be allowed.

9. Shri R. Gawas, learned Advocate on behalf of the respondent on his part referred to the pleadings in the suit filed by the appellant and the written statement in defence filed by the respondent. He next referred to the judgment of the Appellate Court and submitted that the entire evidence recorded by the learned Senior Judge was properly considered by the First Appellate Court and submitted that both the Courts below rightly dismissed the suit and the appeal and there was no cause for interference with the impugned judgment in this appeal.

10. i have carefully considered the submissions of the learned Advocates and also gone through the records. The suit as filed by the appellant was simplicitor for injunction, annulment of the marriage in terms of Article 19 of the Family Laws and for a direction to cancel the Civil Registration. It was

primarily for the appellant to establish before the Trial Court that her consent was obtained by undue influence and coercion and threats of suicide by her mother entitling her to the said relief. It is therefore to be seen on examining the evidence whether there was at all consent at her instance to the registration of the marriage with the respondent as recorded by the Trial Court or whether there was misconstruction of the evidence and conclusion that there was consent at her instance unlike her case that she had not freely consented to the marriage. In that regard, it would not be out of context to refer to the evidence on record viz a viz the case carved out by the parties to the dispute. The appellant had clearly asserted in her affidavit in evidence, her case that she was not willing to get married on account of her young age and as she wanted to pursue her further studies and take a government job but that her mother was not ready to listen to her, impressed upon her that her future would be bright on accepting the proposal of the respondent and that bending to the force, coercion and emotional blackmail by her mother, she gave her consent under pressure for the marriage with the respondent. She also agreed to sign the marriage declaration only to please her mother and who had also given a suicide threat to her in case she refused to sign the declaration/registration of marriage with the respondent.

11. She was under immense stress and mental tension after signing the marriage registration to please her mother and in which state of mind she conveyed to her mother that she was not interested in going ahead with the marriage. Her reaction had reached the ears of the respondent who had come to her house with his mother, abused her and her mother with filthy words and besides made a demand for money failing which he would not keep her alive and would not allow her to get married to anybody else. Her mother had then realised the consequences of forcing her into matrimony with the respondent and thereafter supported her to proceed with the suit. She had maintained in her cross examination that her marriage was an arranged one brought by a distant relative on the father's side. She had confirmed during her cross examination that since her mother told her that she was accepting the proposal of the respondent, she had also accepted the same. Besides to a pointed question whether she had personally agreed to marry the respondent, the appellant stated that since her mother agreed for the marriage, **she had to agree** for the marriage meaning thereby there was no element of free consent at her instance. No doubt, she later stated that she got married with the respondent by her own

consent and she signed a declaration with her consent but that had to be construed by the learned Trial Court in the light of the assertion in the affidavit in evidence which had not been particularly rebutted and the earlier statement in her evidence that her mother had coerced her and for which reason she had to sign the declaration.

12. In that context, Shri A. D. Bhobe, learned Advocate for the appellant had relied on the order of a learned Single Judge of this Court in Jacqueline Fernandes @ Jacqueline Philomena Baptist & Ors. vs. Thomas Diago Fernandes & Ors. [Writ Petition No.185 of 2018] wherein the learned Judge had observed at para 6 that "It is trite that the evidence of any witness has to be read as a whole and it is not open to the Court to pick and chose any particular statement either in the chief-examination or in the cross-examination while appreciating the evidence of such a witness...." Applying the said principle, the learned Trial Judge could not have construed that the appellant had freely consented to the signing of the declaration/registration of the marriage. Moreover, the evidence read as a whole in the cross-examination reveals that she had never met the respondent before the registration nor talked to him on mobile phone nor

visited his house. Besides, the learned Trial Judge had also not considered her other evidence that she was also under tension because she had lost her father and being the eldest daughter of the house on whom the whole responsibility lay and her statement that there was no elderly member of the family for looking after the requirements of performing her marriage.

13. Besides, the learned Trial Judge also did not consider her statement that she had spoken to her mother immediately after her marriage registration that she was not ready to marry so soon which if considered might have prevailed on the learned Trial Judge to hold otherwise on the aspect of consent. A thorough reading of the evidence in its proper context should have led the learned Trial Judge to conclude that the consent of the appellant was not free and that she was a signatory to the registration declaration under pressure and coercion. Besides, the learned Judge had also lost track of the fact that she had categorically denied the case set up by the respondent in defence as put to her.

14. The appellant had examined her mother in support of her case who had stated at the outset that there was no

love affair whatsoever between the appellant and the respondent and that her daughter had refused to marry him when she threatened her that she would commit suicide and only thereafter she became ready to look after the marriage proposal from the respondent and to marry him. Her testimony too bore out that the appellant was not willing to marry the respondent and wanted to get the registration cancelled when he threatened the appellant that he would cut her to pieces viz-a-viz the case brought on record by the appellant. The respondent had reiterated his case in the affidavit where he had not at all been able to substantiate his case in defence about the so called love affair with the appellant, their moments together and so on and so forth. The learned Trial Judge despite other evidence on record construed that she had willingly consented to the marriage registration with the respondent and held that she had failed to establish that her consent for the civil registration was obtained under coercion and pressure and threats of suicide by her mother. What was also lost on the trial Court while deciding the suit as late as January 2016 that despite the so called registration of the marriage as early as 2011, there was no solemnization of the marriage till the time the appellant went for annulment thereof in the petition and the judgment accepting the case of the respondent for a moment that it was

a love affair and that she had willingly consented to the marriage.

15. The learned Appellate Court heard the learned Advocates for the parties and formulated points for determination whether the consent of the appellant was obtained by her mother under coercion and answered the same in the negative holding that the appellant was not entitled to get an annulment of the civil registration. The learned Appellate Court considered the statement of the appellant as given in the affidavit and like the trial Court went on to hold that her consent was free and went a step ahead to record that her marriage was a love affair marriage by misconstruing the evidence of the appellant on record. The Appellate Court concurred with the finding recorded by the Trial Court that her consent to civil marriage was not obtained by coercion or threat to commit suicide and quite on the contrary and unlike the records concluded that there was no element of coercion and pressure to the appellant to consent to the registration.

16. There was no basis for the learned Appellate Court to conclude that there was unequivocal version given by the appellant and her mother that her consent was free and

without coercion. The learned Appellate Court was equally seized of the fact that no religious ceremony was performed as per Hindu rituals, was a factor to be taken into account which would have belied the case of the respondent in defence that it was a love marriage and the consent of the appellant was free and without any taint of coercion. The learned First Appellate Court on the specious premise proceeded to hold that there was no perversity in the impugned judgment and order when there was apparently misconstruction of the evidence on record by the trial Court and its affirmation mechanically by the First Appellate Court. Thus, taking note of the findings rendered by the Courts below, i find that there was a clear misconstruction of the so-called admission of the appellant by the Trial Court to arrive at a perverse finding of fact that she had failed to establish that she had not freely consented to the civil marriage with the respondent and in view thereof answer the first substantial question of law in the affirmative.

17. Besides, it was lost on the Trial Court and also on the Appellate Court that despite the registration, there was no religious marriage between the two and which could lead to an inference that the registration of the marriage between the appellant and the respondent was not freely consented to by her. On that premise too, there was a failure by the trial Court

and by the First Appellate Court and in view thereof, i return an affirmative finding on the second substantial question of law.

18. Article 19 dealing with the annulment of the marriage on the ground of mistake or coercion provides that a suit may be filed only by the spouse whose consent was caused by coercion or by mistake. Article 21 deals with coercion and reads that for the purpose of Article 18, coercion consists of a threat of a serious and imminent danger to the life or to the honour of the coerced person or to that of any of his relatives by lineal consanguinity or upto the fourth degree in a collateral line. Article 23 provides that the limitation for annulment on the ground of coercion and reads that the annulment of the marriage on the ground of coercion is barred by limitation after one year from the date on which the coercion had ceased.

19. Considering these provisions too and that the suit was maintained by the appellant within time, there was also an error by the Courts below in rendering the findings against the appellant. Thus, having answered both the substantial questions of law in the affirmative and having found merit in the appeal, i pass the following :

ORDER

The Judgment and Decree dated 29.08.2016 passed by the District Judge-2, (FTC) North Goa, Panaji, in Regular Civil Appeal No.15 of 2016 and also that passed by the Court of the learned Senior Civil Judge, Bicholim in Matrimonial Petition No.42/2011/A dated 08.01.2016, are quashed and set aside and the suit is decreed with costs.

NUTAN D. SARDESSAI J.