

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

**FAMILY COURT APPEAL NO.154 OF 2012
IN
PETITION NO.A-739 OF 2009**

Mr Samit Subhash Agarwal ... Appellant
v/s
Ms Kamlesh Lataprasad Gupta ... Respondent

Mr Rakesh Agrawal for Appellant.
Mr Mohan Pillai i/b Mrs Madhavi M. Pillai for Respondent.

***CORAM : K.K. TATED AND
B.P. COLABAWALLA, JJ.***

***RESERVED ON : 06 APRIL, 2018
PRONOUNCED ON : 27 APRIL, 2018.***

JUDGMENT [PER B. P. COLABAWALLA J.] :-

1. This Family Court Appeal has been filed by the Appellant - husband who was the original Petitioner before the Family Court. This Appeal takes exception to the final order / judgment and decree dated 10th September 2012 passed by the

Ind Family Court, Bandra, Mumbai in Petition No.A-739 of 2009 filed by the Appellant herein. This Petition No.A-739 of 2009 was filed by the Appellant under section 12(1)(c) of the Hindu Marriage Act, 1955. In short, the Appellant – husband sought a decree of nullity of his marriage solemnized with the Respondent on 14th February, 2009. To this Petition, the Respondent – wife also filed a counter claim seeking a decree of restitution of conjugal rights under section 9 of the Hindu Marriage Act, 1955. By the imugned judgement and decree, the Family Court dismissed the Petition of the Appellant – husband and allowed the counter claim of the Respondent – wife.

2. The brief facts giving rise to the present appeal are as under :-

- (a) According to the Appellant, he found the proposal of the Respondent through the Times of India matrimonial column. After a few days, the Respondent's parents met his parents and they decided to perform the marriage of the Appellant and the Respondent. Accordingly, an engagement ceremony took place on 15th January 2009 at Leela

Hotel, Goregaon (East), Mumbai. Thereafter, the marriage was fixed on 13th February 2009 at Ajanta Marriage Hall, Goregaon (West), Mumbai.

- (b) It is the case of the Appellant that according to his community, the Respondent was required to remain present at the said venue prior to arrival of the Appellant to fulfill the ritual of garlanding each other. Thereafter, reception ceremony was to take place and performance of marriage as per vedic rites before the sacred fire taking seven steps around it was to be performed. On completion of all these rituals the marriage was said to be solemnized according to the customs prevailing in the Appellant's community.
- (c) Accordingly, on 13th February 2009 the marriage function was scheduled to begin at 8.00 p.m. It is the case of the Appellant that his relatives went to the marriage hall but the Respondent's parents and relatives were not present at that time. After about an hour, the Respondent and her relatives came to the wedding hall. Thereafter, they started to pick up a

quarrel with the Appellant and his family members. They started insulting by giving abuses to the Appellant and his family members. Therefore, the Appellant's father was deeply hurt and he suffered a severe heart ailment and was immediately admitted in Kapadia Nursing Home. It is in these circumstances that the Appellant decided to postpone the marriage for some days but the Respondent and her family members did not show any consideration. They continued to give abuses and threatened to take action against the Appellant and his family members. The Appellant therefore decided to call off the marriage which was yet to be performed.

- (d) On the next day, the Appellant received a message from a woman who claimed to be a social worker. She called the Appellant to meet her at Hanuman Temple at Malad (close to the residence of the Appellant) on 14th February 2009 at about 9.30 a.m. The social worker tried to brainwash the Appellant and compelled him to come to the temple. She informed the Appellant that due to the fact that the marriage

was called off the previous day, the Respondent was suffering from low blood pressure and if he refused to perform the marriage, he would face dire consequences. In these circumstances, the Appellant went to the temple and was shocked to see that the Respondent was dressed in her best clothes as a bride. On the other hand, the Appellant was dressed in a most casual manner. It is the further case of the Appellant that he was completely controlled by the Respondent and her family members. They had called for photographers and the media from various T. V. channels. Thereafter, the Appellant was forced to take photographs showing that he and the Respondent are marrying. The Appellant was also forced to sign on a blank form which appeared to be a Marriage Registration Form. According to the Appellant, though he tried to resist and avoid signing the said Form, he was forced and was not allowed to read the contents of the said Form. Further, it is the case of the Appellant that though the rituals of a Hindu Marriage were not performed, the photographs were taken showing that the Appellant had put

Sindoor on the Respondent and they made 2-3 rounds in a circle as if they were taking pheras around the sacred fire. Though the Appellant was not willing to marry the Respondent, he was forced to do so and was made to pose for photographs showing that the marriage had been solemnized.

(e) It is also the case of the Appellant that the Saptapadi ceremony (taking seven rounds/steps around the sacred fire) had not been performed. Looking to all these facts, it is contended by the Appellant that his so called marriage with the Respondent has taken place by force and without his free will and consent and is therefore a nullity under the provisions of Hindu Marriage Act 1955. To seek this declaration, Petition No.A-739 of 2009 came to be filed before the Family Court at Bandra under section 12(1)(c) of the Hindu Marriage Act, 1955.

(f) Once the summons were served upon the Respondent, she filed her written statement (at Exh.13) contesting the allegations made in the nullity Petition. She has

stated in her written statement that her father had given an advertisement in the matrimonial column of Times of India and she met the Appellant's family members. After that, an engagement ceremony of Appellant and Respondent was performed in January 2009 and the marriage was decided to be performed on 13th February 2009. The marriage ceremony was to be started from 8.00 p.m. till 11.00 p.m. on 13rd February 2009. The marriage ceremony was attended by nearly 400 people. After departure of the relatives and friends, the Appellant and his family members demanded Rs.5 lacs from the Respondent and her family. The Respondent's father was not able to fulfill this demand and therefore the Appellant and his family members called off the marriage. Therefore, the Respondent informed this incident to the Police.

- (g) After involvement of the Police, it is the case of the Respondent that the Appellant himself expressed his desire to marry her at Hanuman Temple which is situated very close to his house. The Respondent

categorically denied that she invited or called any media person as was sought to be alleged by the Appellant. The Respondent categorically stated that the marriage of the Appellant and the Respondent was solemnized with the free will and consent of the Appellant and after the wedding ceremony, the Respondent was taken to the Appellant's house and stayed there from 14th February, 2009 till 28th April, 2009. It is the case of the Respondent that as she was a working lady, she was going to her office from the residence that she was occupying with the Appellant. It is the Respondent's case that the Appellant came closer to the Respondent from 6th March 2009 till 28th April 2009 and was in fact enjoying physical touch and had twice inserted his finger in her private part. The Respondent was hopeful that in due course of time they would be able to lead a happy married life. However, much to her surprise, on 28th April 2009, the summons of Petition No.A-739 of 2009 was served upon the Respondent at her office address. Thereafter, when she came to her matrimonial home, she found that it was locked. It is in these

circumstances that she went to the Police and informed them about the same. She has alleged that the Appellant has withdrawn himself from the company of the Respondent without any sufficient reason or cause and therefore prayed for dismissal of Petition No.A-739 of 2009. On the basis of what was stated in the written statement, a counter claim was also filed by the Respondent – wife seeking a decree of restitution of conjugal rights under section 9 of the Hindu Marriage Act 1955.

- (h) After pleadings were completed, the Family Court, on 28th November 2009, framed the following issues :-

<u>ISSUES</u>	<u>FINDINGS</u>
"1) Does he prove that his marriage was performed with her without his consent ?	In the Negative.
2) Does she prove that he has withdrawn himself from her company without sufficient reason or cause ?	In the Affirmative.
3) Whether their marriage is to be annulled by a decree of nullity ?	In the Negative.

- 4) Whether she is entitled to have a decree of restitution of conjugal rights as a counter claim ?**

In the Affirmative.

- 5) What order and decree**

As per final order."

- (i) After the issues were framed, both the parties led their respective evidence. The Appellant examined himself as well as his maternal aunt - Sushma Sureshkumar Garg, his friend - Nishit Hari Dhattrak and his mother - Madhu Subhash Agarwal. On the other hand, to contest the claim of the Appellant and to prove her counter claim, the Respondent examined herself and also the priest who had performed the marriage one Bhogendra Jha as well as one Mr. Ashish Lalji Singh.
- (j) After the evidence was completed, the Family Court heard counsel for both parties and answered the issues framed by it as mentioned hereinabove. In a nutshell, after going through the evidence, the Family Court came to the conclusion that the Appellant was unable to prove that the marriage with the Respondent was solemnized without his consent. The

Family Court also came to the conclusion that the Appellant – husband had withdrawn himself from the Respondent's company without sufficient reason or cause. The Family Court also came to the conclusion that the marriage solemnized between the Appellant and the Respondent on 14th February 2009 could not annulled by decree of nullity and the Respondent was entitled to a decree of restitution of conjugal rights. Accordingly, in the operative part of the impugned judgment and decree, the Family Court held as under:-

- "i) The Petitioner – husband's petition claiming decree of nullity of marriage is hereby dismissed with costs.**
- ii) The Respondent – wife's counter claim is decreed with costs.**
- iii) The Petitioner – husband is directed to join the company of the Respondent – wife within three months from today.**
- iv) A decree be drawn up accordingly."**

- (k) It is being aggrieved by this impugned judgment and decree that the present appeal has been filed before us.

3. In this factual backdrop, Mr Agrawal, learned counsel appearing on behalf of the Appellant, submitted basically two contentions before us. They are :-

- (i) that the alleged marriage between the Appellant and Respondent was not with the free will and consent of the Appellant and therefore a nullity in the eyes of law; and
- (ii) that in any event the Saptapadi ceremony was not performed by taking 7 steps around the sacred fire as required under section 7 of the Hindu Marriage Act, 1955 and therefore the marriage could never have been said to be completed between the Appellant and the Respondent.

4. As far as the issue of free consent is concerned, Mr Agrawal submitted that by virtue of what is stated in the evidence of the Appellant, it was clear that he was forced to marry with the Respondent. He submitted that it has been specifically pleaded by the Appellant that if he did not show up at the Hanuman Temple, he would face dire consequences. He was therefore forced to go to the Hanuman Temple and was forced to sign a blank form and which now appears to be a Marriage

Registration Form. This marriage with the Respondent was never performed willingly and the alleged photographs that were taken of the marriage between the Appellant and the Respondent were taken forcefully by threatening the Appellant.

5. As far as this issue is concerned, we have carefully gone through the evidence of the Appellant as well as that of the Respondent. We have also gone through the analysis of the evidence in the impugned decree and order dated 10th September, 2012. After carefully perusing the evidence on record, we are unable to agree with Mr Agrawal that the marriage that was solemnized between the Appellant and the Respondent was with any force or coercion as was sought to be contended before us. It is not in dispute that the Appellant went to Hanuman Temple on 14th February, 2009. The photographs that have been placed on record clearly show that the Appellant garlanded the Respondent. Another very important factor that needs to be taken into consideration is that on 14th February 2009, after the marriage ceremony was performed, the Appellant took the Respondent to his residence and cohabitated as husband and wife from the date of the marriage (14th February, 2009) till 28th April, 2009 (when the present Petition came to be served upon

the Respondent). It is further the Respondent's testimony that after 6th March 2009, the relationship between the Appellant and the Respondent became normal and the Appellant was enjoying the company of the Respondent physically by touching her private organs. This testimony of the Respondent has not been shattered in any way by the Appellant. If in fact the marriage was performed by force, the question of taking the Respondent – wife to the house of the Appellant immediately after the marriage and thereafter cohabitating with her till 28th April, 2009 would not arise. If in fact, the marriage was solemnized by force, there would no question of the two persons cohabitating with each other for so long and that too by having a physical relationship. Looking to all these facts and the preponderance of probabilities, we do not find anything wrong in the impugned decree under which the Family Court has come to the conclusion that the Appellant has been unable to prove that the marriage solemnized between the Appellant and the Respondent was by force and without his free will and consent. This argument of Mr Agrawal therefore has to be rejected.

6. Mr Agrawal then submitted that in any event, the Appellant was entitled to a decree of nullity as the marriage had

not been completed as per the provisions of section 7 of the Hindu Marriage Act, 1955 inasmuch as the Saptapadi ceremony (i.e. taking seven steps by the bride-groom and the bride jointly before the sacred fire) was not performed. He submitted that the alleged marriage of the Appellant and the Respondent was never solemnized as per Hindu traditions and procedures. It was never performed by any authenticated and authorized person. He was at pains to point out that as per section 7 of the Hindu Marriage Act 1955, it was necessary that the Saptapadi ceremony is performed and which according to Mr Agrawal, DW - 2 (the priest) had admitted that he had not performed any such ceremony. Further, Mr Agrawal submitted that it was necessary that seven steps have to be taken around the sacred fire and in the present case, the priest (D.W. 2) had admitted that only a bundle of incense aggarbatti sticks were burnt around which the seven steps took place. He further submitted that the priest (D.W. 2) was not a regular Poojari of Hanuman Temple and did not visit the said Temple regularly. For all these reasons, Mr Agrawal submitted that there was conclusive evidence on record to show that the marriage between the Appellant and the Respondent was not solemnized as per the provisions of the Hindu Marriage Act, 1955 and in these circumstances, the

Appellant was entitled to a decree of nullity.

7. On this aspect, we have carefully gone through the evidence and more particularly the evidence of Bhogendra Jha – the Priest who performed the marriage ceremony (D.W.2). In his examination-in-chief, D.W. 2 had deposed that the father of the Respondent approached him at around 9.00 a.m. to 9.30 a.m. and told him to perform the marriage of his daughter at Hanuman Temple, Malad on 14th February, 2009. He has further deposed that the Appellant and the Respondent both were present in the Temple and five to seven persons were present from the Appellant's side and about 10 to 12 persons were present from the Respondent's side. He has further stated that the marriage was completed within a period of one hour and one hour ten minutes and he had uttered the mantras and the Appellant and the Respondent took seven steps around the sacred fire. He has further stated that the Appellant has not opposed the marriage. At the time of marriage, about 150 to 200 persons were present in the Temple as it was a Saturday. He has deposed that the mother of the Appellant was also present and she had brought Sindoor to the Hanuman Temple. After the marriage ceremony was performed, both the Appellant and the Respondent left

together. In cross-examination, DW - 2 has stated that he has performed seven pheras without any Saptapadi as he is unaware of what is Saptapadi. However, he has categorically stated that a bundle of agarbatti was burnt and the Appellant and the Respondent had taken seven steps/pheras around it. He has categorically denied that he has falsely deposed that he performed the marriage. On going through his evidence, we do not find any substance in the arguments canvassed by Mr Agrawal. In his examination-in-chief as well as in the cross-examination what is clear is that the D.W. 2 had uttered the mantras and the Appellant and the Respondent had taken seven pheras around the bundle of burning agarbattis (incense sticks). Mr Agrawal was at pains to point out that walking around burning agarbattis would not amount to taking seven pheras around the sacred fire as mentioned in section 7 of the Hindu Marriage Act, 1955 and therefore this clearly shows that the marriage was not completed as required under the provisions of the Hindu Marriage Act, 1955. We are unable to agree with this submission. What is a sacred fire has not been defined in the Act. The fact that there was a bundle of agarbattis that was burning and the Appellant and the Respondent took seven pheras around the said agarbattis is not disputed. This being the case, at least to

our mind, this would be enough to show that there was compliance of section 7 of the Hindu Marriage Act, 1955. Merely because the priest (D.W. 2) has stated in his cross-examination that he has not performed Saptapadi because he was not aware of what that is, will not carry the case of the Appellant any further. The Act itself mentions in section 7 as to what is Saptapadi viz. taking of seven steps by the bride-groom and the bride jointly before the sacred fire. The fact that seven pheras were taken around the bundle of burning aggarbattis and looking at the other evidence (such as photographs amongst other things) which clearly show that Sindoor was put by the Appellant on the Respondent and he has garlanded her, we have no hesitation in holding that all the requirements of a marriage as contemplated under Hindu Marriage Act, 1955 were duly complied with. Merely because they took seven pheras around the burning aggarbattis does not mean that no seven pheras were taken around the sacred fire as contemplated under section 7 of the Hindu Marriage Act, 1955. This being the case, we find even this argument of Mr Agrawal cannot be sustained and is therefore rejected.

8. Before parting, we must mention that we have gone

through the impugned order with great detail. We find that the impugned judgment and decree is a well written judgment and has considered all the aspects of the matter, that require no interference by us in Appeal. The learned Family Court has considered entire evidence on record and in our view correctly analyzed it and thereafter given its findings.

9. In these circumstances, we find no merit in this Appeal. The impugned judgment and decree is upheld. This Appeal is therefore accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(B. P. COLABAWALLA, J.)

(K.K. TATED, J.)