

In the High Court of Punjab and Haryana at Chandigarh

FAO-M-11-2017 (O&M)

Reserved on 08.03.2018

Pronounced on 5.4.2018

Jaipal

.....*Appellant*

Versus

Surbhi

....*Respondent*

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present : Mr. Naveen Kashyap, Advocate for the appellant.

Mr. Girish Agnihotri, Senior Advocate with
Mr. Saurabh Gulia, Advocate for the respondent.

GURVINDER SINGH GILL, J.

1. The appellant-husband has filed this appeal challenging judgement and decree dated 7.12.2016 passed by the District Judge, Panchkula whereby a petition filed by respondent-wife under Section 12 of the Hindu Marriage Act, 1955 (hereinafter referred to as "*the Act*") has been accepted and a decree of annulment of marriage of the parties has been passed.
2. The case set up by respondent-wife, in her petition under Section 12 of the Act is that she had developed friendship with the appellant when she was aged about 14/15 years and on 18.2.2014 the appellant took her to a temple

known as Prachin Shiv Durga Temple, Panchkula where they exchanged garlands. It is averred that neither parents of any of the parties were present nor ceremony of *Saptapadi* was performed and as such, there was no valid marriage in the eyes of law. The respondent further averred therein that they never lived together even for a single day and the said marriage had not been consummated and she has been residing with her parents prior to and even after 18.2.2014. The respondent-wife specifically stated in her petition that her consent had been obtained by the appellant by coercion. The respondent thus prayed for annulment of the marriage by passing a decree of divorce.

3. The appellant-husband in his written statement raised preliminary objections as regards the maintainability, estoppel etc. He took a stand that the parties knew each other for more than 4 years prior to their marriage and had decided to marry despite being of different castes as the appellant is *Jat* by caste whereas the respondent is *Bania*. Appellant stated therein that they had married against wishes of their parents, out of their own free will and consent and that the marriage had been solemnized as per Hindu rites including *Sindoor* ceremony as well as *Saptapadi* ceremony before sacred fire in presence of priest and witnesses. After marriage they went to house of the appellant and disclosed about their marriage to the family of the respondent telephonically, upon which the family of respondent-wife threatened them of dire consequences forcing the parties to file an application before Superintendent of Police, Kurukshetra seeking protection. It is averred that an application was also moved before Human Rights Commission, Haryana. The appellant-husband further pleaded in his written statement that the

parents of respondent visited the matrimonial home of the respondent and requested the appellant and his family to send respondent-wife with them as they had accepted the marriage and desired to send the respondent from their home by performing *Bidai* ceremony in presence of their family, friends and relatives to which the appellant agreed and the respondent accompanied her parents but her father did not send the respondent back to her matrimonial home and kept on postponing the matter on one pretext or other and during the said period, the respondent was pressurized and threatened by her family to dissolve the marriage. The appellant-husband while denying all the material averments of the petition, stated that it was a valid marriage which had been duly consummated on 18.2.2014 itself and they lived as husband and wife from 18.2.2014 to midnight of 20.2.2014 and thus prayed for dismissal of the petition.

4. The parties were put to proof on the following issues:-

1. Whether the marriage between the parties is liable to be dissolved on the ground of nullity? OPP.
2. Whether the petition is not maintainable in the present form? OPR.
3. Whether the petitioner has got no locus standi to file the same? OPR.
4. Whether the petitioner is estopped by her own act and conduct from filing the present petition? OPR.
5. Relief.

5. The respondent-wife apart from herself stepping into witness box as PW-1 tendered into evidence a copy of marriage certificate as Ex.P-1 and affidavit

of Jaipal (husband) as Ex.P-2. To controvert the aforesaid evidence, the appellant-husband himself stepped into the witness box as RW-1. An affidavit of RW-2 Pardeep Sharma was tendered into evidence towards examination-in-chief but he never turned up for his cross-examination. The appellant-husband also tendered into evidence affidavits of Surbhi (wife) as Ex.R-1 and R-2; original marriage certificate as Ex.R-3; certified copy of complaint dated 20.2.2014 as Ex.R-4; certified copy of Detailed Marks Certificate as Ex.R-5; certified copy of driving licence as Ex.R-6; certified copy of marriage certificate as Ex.R-3/A; certified copy of application to S.P. as Ex.R-7; certified copy of order dated 20.2.2014 as Ex.R-8 and photographs as Ex.R-9 to R-18.

6. The learned lower Court upon considering the evidence led by the parties returned its findings on issue No.1 in favour of the respondent-wife holding therein that no valid marriage had been performed between the parties. The remaining issues were decided against the appellant-husband and consequently the petition was accepted and a decree for annulment of marriage by declaring the marriage a nullity was passed. The appellant-husband, aggrieved with the said judgment and decree, challenged the same by filing the present appeal.
7. We have heard learned counsel for the parties and have perused the record of the case. The short and precise question involved in the present case is as to whether a valid marriage had taken place amongst the parties on 18.2.2014. While the respondent-wife has set up a case that the essential ceremonies had not been performed, the appellant-husband has taken a stand that the

ceremonies like *Sindoor*, *Saptapadi* before the sacred fire were duly performed for solemnising marriage of the parties. It may here be mentioned that the respondent-wife in her petition admitted that she had developed friendship with the appellant when she was merely 14/15 years of age and on account of the friendship, appellant-husband had taken her to a *Mandir* and they exchanged garlands. However, she has further categorically deposed that *Saptapadi* ceremony was never performed. At this juncture, it is apposite to refer the provisions of Section 7 of the Act, which read as follows:

“7 **Ceremonies for a Hindu marriage.** – (1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the *saptapadi* (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.”

8. The appellant, in order to contend that he had contracted a valid marriage with the respondent, has drawn the attention of this Court to photographs Ex.R-9 to R-18 showing the parties to be exchanging garlands. One of the photographs also depicts as if they are performing *phera* ceremony. The appellant-husband in his cross-examination has admitted that photographs had been clicked by Pardeep Sharma and that some had been clicked by his cousin Mukesh. However said Mukesh has not been examined by the appellant. As per affidavit Ex.RW-2/A of RW-2 Pardeep Sharma, the said photographs were clicked by the said witness. However, after tendering his affidavit towards his examination-in-chief, he never turned up for his cross-

examination and thus his statement remained incomplete. It is well settled that a statement bereft of cross-examination is an incomplete statement and cannot be read in evidence. The respondent-wife never got an opportunity to cross-examine the aforesaid witness Pardeep Sharma so as to challenge the veracity of his statement nor is there any scientific evidence to establish that the aforesaid photographs are genuine photographs. In these circumstances, it will not be safe to rely upon the said photographs. Though, the parties, after marriage had moved a complaint before Human Rights Commission, Haryana on 20.2.2014 seeking protection but a perusal of affidavit Ex.R-2 shows that shortly thereafter i.e. on 26.2.2014 the respondent-wife filed a detailed affidavit before the said Commission wherein she deposed as follows:

- “1.
2. That the fact of the matter is that though in the petition filed by the deponent, Surbhi Garg alongwith Jaipal, it has been averred categorically that the deponent and Jaipal solemnized the marriage on 18.2.2014 in Prachin Shiv Durga Temple, Panchkula yet in fact no marriage was solemnized. The complainant No.2, Jaipal had contacted the Pujari of the Mandir and requested that just he wanted to show that they have solemnized the marriage so that he could be able to approach the Court for the grant of protection.
3. That it is pertinent to mention here that the deponent is less than 19 years and the complainant No.2 is more than 30 years. Hence, there was no occasion to solemnize marriage with the complainant No.2 Jaipal. The deponent, complainant No.1, actually was minor when he came in contact with the deponent. At that time, he got some blank papers signed from the deponent. He even threatened the deponent she would be put into trouble. He not only misguided the deponent; rather under duress and coercion he prompted her that we shall solemnize the marriage and would live as husband and wife.”

9. The respondent-wife has specifically stated in said affidavit that she never agreed for so-called marriage and that she is living happily with her parents. The aforesaid affidavit furnished within a week of marriage causes a dent in the case of the appellant as regards the averment that a valid marriage had been contracted. Though, the appellant also relies upon a marriage certificate dated 18.2.2014 (Ex.R-3) to the effect that a marriage had taken place between the parties at Prachin Shiv Durga Temple, Panchkula on 18.2.2014 and that the ceremonies had been conducted by Pandit Rajinder but interestingly no date of marriage is mentioned in the said certificate. Further the priest who had performed the ceremonies of marriage has not been examined by the appellant.
10. In view of the aforesaid discussion, we find that the appellant has been unable to establish performance of ceremonies of the marriage especially the ceremony of *Saptapadi*. Neither the photographs relied upon by the appellant stand proved, nor there is any testimony of the Priest who had allegedly performed ceremonies of the marriage. The Marriage Registration Certificate would be of no consequence when the appellant has been unable to establish the essential ceremonies of the marriage. When factum of marriage is disputed, then registration of marriage under the Hindu Marriage Act or the Special Marriage Act cannot constitute proof of a valid marriage. In **1994(4) SCC 363 Jolly Das Vs. Tapan Ranjuan Das**, Hon'ble Supreme Court while setting aside judgment of High Court, restored judgment of matrimonial Court declaring the marriage a nullity under somewhat identical circumstances where a marriage certificate had been produced by husband

but a valid marriage could not be established. The relevant extract from the said judgment reads as follows:

“5. In the light of all the above facts, circumstances and probabilities, the learned District Judge was satisfied that a fraud was played by the respondent on the appellant in getting the said marriage registered and that, therefore, it is a fit case for declaring the marriage void under Section 25(iii) of the Special Marriage Act. The High Court on appeal was influenced more by the oral evidence led by the respondent and did not attach due importance to the glaring improbabilities in the respondent's case. We have already referred to these facts hereinabove. They are the non-consummation of marriage by the parties, the absence of any ceremony or function connected with the marriage, the fact that they never lived together as husband and wife for a period of 8 months and that no one on the side of the appellant had anything to do with the said marriage even though there is no allegation that the parents or relatives of the appellant's were opposed to the marriage. The respondent was a grown-up person while the appellant was a young and inexperienced college student of 19 years. More importantly, he was in the position of a teacher to the appellant. It appears to us that the respondent may have taken advantage of the innocence, inexperience and tender age of the appellant and obtained her signatures on the Marriage Certificate and other forms by making fraudulent misrepresentation to her. In

the circumstances, we are inclined to believe the appellant's case that her signatures were obtained on certain forms without fully apprising her of their contents. In short, it was a sham marriage. All the witnesses examined by the respondent are connected with the music school run in the respondent's house, in one or the other way. Their oral evidence does not inspire confidence in us. The circumstances mentioned above show that it was a marriage only in name. Except the marriage certificate issued by the Marriage Officer, there is no trace of the marriage. All this probabalises the version of the appellant and not that of the respondent.”

11. In 2016(1) L.A.R. 558 Harjinder Singh vs. Sunita Heer wherein the husband, while opposing a petition for divorce was relying upon Marriage Registration Certificate, this Court held that in the absence of any proof that the certificate had been issued upon production of any photographs or other proof of any marriage and on account of omission to examine any official from office of Registrar of Marriages as a witness and to produce Marriage Certificate Register, the certificate could not be held to be admissible in evidence.
12. The appellant to be successful in establishing the factum of solemnization of marriage with respondent was required to show that the essential ceremonies of marriage of two Hindus including *Saptapadi* ceremony has been duly performed. There being lack of evidence on this material aspect, this Court does not find any reason to interfere the findings of the lower Court to the effect that there had been no valid marriage between the parties.

Consequently the said findings are hereby affirmed. There being no merit in the appeal, the same is hereby dismissed.

13.
- Decree sheet be prepared. Parties to bear their own costs.

(M.M.S. Bedi)
Judge

(Gurvinder Singh Gill)
Judge

April 05, 2018

mohan

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No