

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

FIRST APPEAL NO. 158 OF 2018

Rohidas Dattu Chavan,
Age; 35 years, Occ; Business,
Resident of Virgaon, Tq. Akole,
Dist. Ahmednagar.

...APPELLANT

(Original Respondent)

VERSUS

1. Mrs. Anjum Abdul Maniyar
@ Anjum Rohidas Chavan,
Age; 34 years, Occ; Service,
Resident of Gaurav Nagar,
Fakir Wada, Ahmednagar.

2. Achal s/o Rohidas Chavan,
Age; 7 years, (Minor),
Under Guardian of mother
Respondent No. 1.

....RESPONDENTS

(Orig. Petitioners)

.....

Shri. B.V.Dhage, Advocate for Appellant

Shri.A.R. Devkate, Advocate for Respondents

....

CORAM : SMT. VIBHA KANKANWADI, J.

Date of Judgment : 02.07.2019.

JUDGMENT :

The Appeal has been filed by the

respondent in original proceeding for challenging the judgment and award passed in the Special Marriage Petition No. 04 of 2017 by the learned District Judge -3, Ahmednagar on 25.10.2017, whereby the said petition filed by the present respondents came to be allowed and the marriage between the present appellant and respondent No. 1 was declared as null and void (Hereinafter the parties are referred as per their original nomenclatures before the Trial Court).

2. Original Petitioner No. 1 had come with the case that she belongs to Muslim Community, whereas, the Opponent belongs to Hindu Community. The marriage was solemnized under the Special Marriage Act on 15.4.2009 in the office of the Registrar of Marriage, Ahmednagar. She claims that she had no knowledge that the Opponent has spouse living at the time of their marriage and that he was having three daughters and one son from his first marriage. It is also stated that he has played fraud upon her. According to petitioner No. 1, since the Opponent was having souse, living

at the time of their marriage, their marriage is void. Petitioner No. 2 is their child. She has contended that she want to keep the custody of petitioner No. 2 with her. It was also contended that the Opponent was harassing and subjecting her to cruelty by demanding salary amount from her and on that count also she prayed for divorce.

3. Opponent was duly served with notice (Exh. 8) on 1.2.2017, however he remained absent, and therefore the matter proceeded ex-parte against him.

4. The petitioner No. 1 filed her affidavit of Examination-in-chief and led documentary evidence. After taking into consideration the evidence on record and hearing, the learned District Judge -3, Ahmednagar, allowed the petition. Declaration about marriage of petitioner No. 1 and Opponent as null and void has been granted. Petitioner No. 1 is held to be entitled to retain the custody of petitioner No. 2. So also the consequential prayer of injunction restraining

the Opponent from entering the house of petitioner No. 1, as well as her office has been granted.

5. The Opponent has challenged the said judgment and decree on the count that he was forced and pressurized for not contesting the petition and his main prayer is to remand the matter to the Trial Court.

6. Heard learned Advocate Shri. B.V.Dhage, for Appellant and Shri. A.R. Devkate, learned Advocate for Respondent No. 1.

7. It has been vehemently submitted on behalf of the appellant that there was suppression of facts by the petitioner. In fact, petitioner No. 1 and the Opponent were happily enjoying their married life between 2009 to 2017 and petitioner No. 2 born out of their wedlock. Petitioner No. 1 was known to the Opponent since many years, even prior to their marriage. The family of petitioner No. 1 was the tenant in the house of Opponent at village Virgaon, Tq. Akole, Dist. Ahmednagar. The

entire family resided in his house for about 15 years. Father of petitioner No. 1 was Primary Teacher in that village and after his transfer, the family had shifted. Families of Opponent as well respondent No. 1 were having cordial relations and they were quite aware about the family background of each other. It is submitted that petitioner No. 1 took up a job as Junior Assistant in P.W.D. Department in 2004 and then she was transferred to Ahmendnagar in the year 2009. It is stated that after her transfer to Ahmednagar, the community people started pressurizing her to get divorce from the appellant and those persons were continuously pressurizing the Opponent. Under such circumstances, she started making false allegations against the Opponent. It is stated that she used to visit his house during the Saturdays and Sundays, but when the community people started harassing, she filed the petition for divorce. It was submitted on behalf of Opponent that due to pressure from the community people, he did not appear before the Trial Court and the matter was proceeded ex-parte.

He could not get proper opportunity to bring all these facts on record. Especially, the fact that, petitioner No. 1 was aware about all the facts in the life of Opponent. She has obtained the decree by suppressing the material facts. He therefore, requested to remand the matter with direction to the Trial Court to give proper opportunity to the appellant.

8. Per contra, the learned Advocate appearing on behalf of respondent No. 1 submitted that the reasons given by the learned Trial Court are proper and further submitted that though an opportunity was given to the Opponent to contest the matter, he preferred not to contest it and remained absent. Under such circumstances, the learned Trial Court has justified in proceeding with the matter Ex-parte.

9. Taking into consideration the above said rival contentions, following points arise for determination for the reasons as follows :

Sr.No	POINTS	FINDINGS
1)	Whether the matter deserves remand ?	In the negative.
2)	Whether the Trial Court erred in granting award on the ground that the marriage between the petitioner No. 1 and Opponent is nullity, there was cruelty to her at the hands of the Opponent ?	In the negative.

REASONS

As to point Nos. 1 & 2 :-

10. Since both points are inter-connected, they are taken for discussion together in order to avoid repetition.

11. From the contentions raised by petitioner No. 1 as well as appellant in his appeal memo, it can be seen that the fact of marriage between petitioner No. 1 and the Opponent on 15.4.2009 under the Special Marriage Act, is not disputed. So also it is not disputed that petitioner No. 1 belongs to Muslim Community, whereas, the Opponent belongs to Hindu community. It is also not in

dispute that petitioner No. 2 was born out of their wedlock.

12. It is to be noted that petitioner No. 1 had come with the case that there was suppression of material facts that the Opponent was married earlier and had three daughters and one son from his first wife. She has produced on record documentary evidence to support said contention. Now the question is as to whether it was known earlier to petitioner No. 1, and she had suppressed the fact of knowledge from the Court. The Opponent has not disputed the fact that he was served with summons of the petition, but he remained absent and did not contest. He has come with the case that he was pressurized by the community people of the petitioner No. 1. The learned Advocate appearing on behalf of appellant has pointed out para No. 7 of the appeal memo, wherein pleadings to that effect have been made by him.

13. It is to be noted that there are no details as to when the alleged threat was given or

pressurizing tactics were adopted by the muslim community people are given. The names of those community people have not been given. If appeal memo is required to be read as it is, specially para Nos. 6, 7 and 8 be read in continuous, then it gives picture that after petitioner No. 1 joined her services in 2004, she was transferred to Ahmednagar in 2009, then appellant says that after her transfer to Ahmednagar, muslim community people started pressurizing him to give divorce. In fact, as per petitioner No. 1 their marriage was solemnized on 15.4.2009. He has not given the date and month on which petitioner No. 1 was transferred to Ahmednagar. He has also not explained as to why the muslim community people interfered in their marital life. He has not stated that he had taken action against those community people for threatening him pressurizing for divorce. What efforts he had made to reconcile this with Petitioner No. 1 was not stated by him. Another fact to be noted is that the allegations are not made out that acts of pressurizing by the community people were continuing since after the

transfer of petitioner No. 1 to Ahmednagar in 2009 till the divorce petition is filed in the year 2017. So this long gap speaks for itself and it does not support the contention of the appellant that from 2009 to 2017, he was just sustaining pressure from the muslim community people, without taking any action against them as he was continuously harassed by them.

14. When he was duly served with notice (Exh. 8) on 1.2.2017 by which he was directed to appear before the Court on 22.2.2017, he remained absent and the order for proceeding the matter ex-parte was passed against him on 30.3.2017. However, ultimately, the judgment has been pronounced on 25.10.2017. In such circumstances, he had ample opportunity to go to the Court and get the order of "Ex-parte" set-aside passed against him in the matter, but he had not taken that opportunity. Furthermore, he has not given any cogent and sound reason as to why he remained absent. Therefore, there is no question of remanding the matter to the Trial Court.

15. It appears from the appeal memo that the appellant has no intention to challenge the fact that he was married earlier and had three daughters and one son from his first wife. He has not produced any evidence on record to show that his first marriage was not in existence before 15.4.2009. Rather, he intends to say that all these facts i.e. main fact of his first marriage and having three daughters and one son from his first wife, were within the knowledge of petitioner No. 1 while performing the marriage with him and this fact has been suppressed from the trial Court. Even, if for the sake of argument it is accepted that she had every knowledge about the first marriage of the Opponent and yet she performed the marriage with him, that does not legalize their marriage for the simple reason that as per Section 4 of the special Marriage Act, the earlier marriage of any spouse should not be in existence on the date of the marriage which is performed under the Special Marriage Act. So, any way, it would be nullity

and therefore, there is no question of remand of the matter on this count also.

16. Now as regards the custody of the child is concerned, she has daughter aged about 07 years, under such circumstances, her custody has been given to petitioner No. 1 by the learned Trial Court which cannot be doubted. So also the fact which is on record that there are three daughters and one son from the first marriage to the Opponent. Under such circumstance, no fault can be found with the decree that has been passed by the learned Trial Court. Therefore, points are answered accordingly. There is no merit in the present appeal and it deserves to be dismissed. Hence following order :

ORDER.

First Appeal No. 158 of 2018 is hereby dismissed, with costs.

(**SMT. VIBHA KANKANWADI**)
JUDGE

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