

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No.1464 of 2017(O&M)

Date of Decision:24.01.2019

Sushil

. Appellant

Vs.

Priyanka

. Respondent

**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL**

Present: - Mr.Malkeet Singh, Advocate,
for the appellant.

Mr.T.C. Dhanwal, Advocate,
for the respondent.

RAKESH KUMAR JAIN, J.

This appeal is directed against the judgment and decree dated 1.2.2017 passed by the Family Court, Hisar by which the marriage of the appellant with the respondent was dissolved in terms of the provisions of Section 13(2)(iv) of the Hindu Marriage Act, 1955 [for short 'the Act'].

In brief, the respondent filed a petition under Section 13(2)(iv) of the Act alleging that her marriage was solemnized with the appellant on 27.3.2008 at Village Budha Khera, Sub Tehsil Uklana, District Hisar as per Hindu rites and ceremonies. The marriage of her elder brother Sunder was also solemnized on same day with the elder sister of appellant, namely, Manju. However, it is alleged that she was 13 years of age at the time of her marriage as she was born on 02.05.1995 as per the school record. The muklawa was held in the month of July 2011 but the respondent refused to join the company of the appellant on the ground that she was just 13 years of age at the time of her marriage and was unaware of the ultimate import of

her marriage. She had thus filed the petition for annulling the marriage on the ground that it was solemnized before the age of 15 years and repudiated the marriage before attaining the age of 18 years.

In the reply, the appellant had denied that the respondent was 13 years of age at the time of her marriage rather it was alleged that she had attained the age of majority. It is also denied that she had repudiated her marriage rather it is alleged that brother of the respondent, namely, Sunder had thrown the sister of the appellant, namely, Manju, out of the matrimonial home on the issue of dowry and the respondent had also left the matrimonial home without any rhyme and reasons.

On the pleadings of the parties, the trial Court framed various issues.

The respondent appeared as PW1 and tendered her affidavit of examination-in-chief as Ex.PW1/A. She also examined Varinder Singh, JBT Teacher, Government Girl Primary School, Uklana Mandi as PW4, who had tendered admission and withdrawal register of the School as Ex.P2 and a certificate issued by school indicating the date of birth of the respondent as Ex.P3. Besides that she had examined her father Bhal Singh as PW2 and one Vikas Beniwal, DPA, Office of Civil Surgeon, Hisar as PW3. On the other hand, the appellant had examined Siwraj as RW1 and his father as RW2 but did not lead any evidence to prove the age of the respondent to the contrary.

Learned counsel for the appellant had submitted that the respondent herself had stated in her cross-examination, while appearing as PW-1, that her real date of birth is 08.08.1995 whereas she had relied upon Ex.P-2 & P-3 in which her date of birth is mentioned as 02.05.1995. It is thus submitted that the respondent cannot be believed in regard to her date of

birth for the purpose of attracting the provisions of Section 13(2)(iv) of the Act. He has also argued that PW3, who had tendered Ex.P-1 i.e. non-availability certificate, has stated that no girl namely Priyanka daughter of Bhal Singh and mother's name Birma Devi, resident of village Budha Khera, Tehsil Uklana, District Hisar was found registered in the year 1994-95 and 1996. It is thus submitted that the date of birth given by the respondent is fictitious.

On the other hand, learned counsel for the respondent has submitted that the very fact that the father of the respondent did not record the entry of the birth of the respondent in the office of civil surgeon, Hisar would not be sufficient to hold that the other evidence brought on record by her i.e. the admission and withdrawal register of the school and the certificate of the school in which she had studied that she was not born in the year 1995 may be in the month of May or August because in both the situation she would still be 13 years of age at the time of her marriage. It is further submitted that no evidence has been led by the appellant that the respondent had attained the age of majority and there was no ceremony of muklawa held in July 2011 when she had allegedly attained the age of 16 years because the appellant and his father had stepped into the witness box and no other witness from their family or friends who were examined in support of their case that the respondent was major at the time of her marriage and no effort was made for muklawa in the year 2011 when the respondent had attained the age of 16 years.

We have heard learned counsel for the parties and perused the record with their able assistance.

Section 13(2)(iv) of the Act read as under:

“13(2) A wife may also present in a petition for the dissolution of her marriage by a decree of divorce on the ground –

(i) to (iii) XXxxxxx....

(iv) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation: - This clause applied whether the marriage was solemnized before or after the commencement of the Marriage Law (Amendment) Act, 1976.”

In order to apply Section 13(2)(iv) of the Act, the *sine qua non* would be the age of the wife i.e. she had not attained the age of 15 years at the time of solemnizing of her marriage and had repudiated her marriage after attaining the age of 15 years but before attaining the age of 18 years.

In the present case, the marriage was admittedly solemnized on 27.3.2008. According to the respondent, the marriage was not consummated as at the time of the marriage the respondent was only 13 years old as she was born on 02.05.1995. Efforts were made by the appellant to bring her to matrimonial home in July 2011 by performing ceremony of muklawā (a ritual as per custom) but she refused to join the company of the appellant and declared that she is not interested to go with him because she was 13 years of age at the time of her marriage and thus repudiated her marriage. In the month of July 2011, she had completed 15 years of age but was less than

18 years of age. In order to prove her age at the time of her marriage, the respondent has led documentary evidence in the shape of admission and withdrawal register of the Government Girls Primary School, Uklana Mandi wherein her date of birth has been recorded as 02.05.1995 and also a certificate issued by the school as Ex.P3 in which her date of birth has been so recorded. Both the documents have been corroborated with the statements of PW-4-Virender Singh, JBT Teacher of her school, who had produced original register of admission and withdrawal. The appellant has tried to take some kind of an advantage from the cross-examination of PW1 in which she has mentioned her date of birth as 02.08.1995 to contend that there is a difference about the date of birth in the school record and the statement. However, no evidence to the contrary has been led either documentary or oral by the appellant about the exact date of birth of the respondent to prove that she was major at the time of her marriage because the pleaded case of the appellant in her written statement is that the respondent herein had already attained the age of majority at the time of her marriage.

Thus in view thereof, we are of the considered opinion that the evidence led by the respondent of the school record which is a Government school in which the date of birth of the respondent has been mentioned as 02.05.1995 would suffice to hold that she was 13 years of age at the time of her marriage which was solemnized on 27.3.2008 and was thus less than 15 years and when she had repudiated her marriage in July 2011, she was more than 15 years but less than 18 years of age and therefore, the provision of Section 13(2)(iv) of the Act would squarely applies to her case. The appellant has not led any evidence except for him and his father's bald statement about denying the date of birth of the respondent and muklawa

ceremony which cannot be given credence over and above the evidence led by the respondent to prove that she was 13 years of age at the time of her marriage i.e. more than 15 years and less than 18 years of age at the time of repudiation of her marriage with the appellant to attract the provision of Section 13(2)(iv) of the Act.

In view of the aforesaid facts and circumstances, we do not find any error in the judgment and decree passed by the trial Court and therefore, the present appeal is hereby dismissed though without any order as to costs.

Decree-sheet be drawn accordingly.

(RAKESH KUMAR JAIN)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

24.01.2019

Vivek

Whether speaking /reasoned : *Yes/No*

Whether Reportable : *Yes/No*