IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

HON'BLE JUSTICE SUBRATA TALUKDAR
AND
HON'BLE JUSTICE SAUGATA BHATTACHARYYA

FAT 146 of 2020
With
IA No. CAN 1 of 2020

Sanjib Sarkar
vs.
Smt. Rajasree Roy

For the Appellant	:	Mr. Prantik Ghosh
For the Respondent	:	Mr. Kiron C. Saha Mr. Pratip Mukherjee Mr. Omar Faruk Gazi
Heard on	:	26/08/2021
Judgment on	:	11/11/2021

Subrata Talukdar, J:

Under challenge in this appeal is a judgement and decree dated the 13th of December 2017 passed by *the Learned Trial Court*, being the Second Additional District Judge at Sealdah, in Matrimonial Suit No. 142 of 2017(for short referred to as *the Learned Trial Court* and the said MAT suit or only the *MAT suit* respectively).

By the impugned judgement and decree *the Learned Trial Court* upheld the prayer for annulment of marriage filed by the Petitioner/ the Wife under Section 25(III) of the *Special Marriage Act*, 1954(for short the *Special*

Marriage Act). The Respondent/ the Husband in the *MAT suit* is the appellant before this Court (hereinafter referred to as *the appellant/ the husband*). The respondent in this appeal is the wife (hereinafter referred to as *the respondent / the wife*).

The Learned Trial Court, *inter alia*, held that the consent of the *respondent/ the wife* was obtained by *the appellant/ the husband* by practising fraud. It was held that *the appellant/ the husband*, prior to marriage and during their period of courtship, represented to the *respondent/ the wife* that he was a school teacher earning a handsome salary. It was further represented that the family of *the appellant/ the husband* was well-to-do and the *appellant/ the husband* intended to start construction of his own house on a plot of land at Durganagar.

The couple were introduced to each other over Facebook in 2014. The introduction ripened into a love affair and the marriage was ultimately registered on 16th September 2016 before the Special Marriage Registrar, P.S. Maniktala, Kolkata – 67, under the jurisdiction of *the Learned Trial Court*.

The Learned Trial Court took notice of the contention of the *respondent/ the wife* that two days after registration of the marriage, *i.e.* on 18th of September 2016, the *appellant/ the husband* confided the truth connected to his actual state of affairs before the *respondent/ the wife*. It was, *inter alia*, confided that the *appellant/ the husband* is a Group-D staff and not a school teacher. His family did not belong to the well-to-do strata of

society. He had contracted marriage with the *respondent/ the wife* with the intention of gaining a respectable living standard out of her income.

To support her allegations before *the Learned Trial Court*, the *respondent/ the wife* relied upon several documentary evidence which were marked as Exhibits. The documentary evidence pertain to several complaints before the police authorities as well as before the Cyber Cell of Kolkata Police. The complaints, *inter alia*, pertain to the alleged circulation of intimate and obscene pictures of the *respondent/ the wife* with the *appellant/ the husband* or of herself alone. Another set of evidence relate to the electronic messages sent over Facebook by the *appellant/ the husband* to the *respondent/ the wife* which demonstrated the fraud practised by him to entice the *respondent/ the wife* into a marital relationship.

The defence of the *appellant/ the husband* before *the Learned Trial Court* is one of denial. It is submitted that throughout the period of their courtship and following registration of their marriage, the *respondent/ the wife* had visited the residence of the *appellant/ the husband* and interacted with his family members. The actual physical and economic status of the *appellant/ the husband* was therefore all along known to the *respondent/ the wife*. There being no manner of concealment or misrepresentation on the part of the *appellant/ the husband*, the prayer for a declaration of nullity of marriage under Section 25 (III) of the *Special Marriage Act* should fail.

Mr. Ghosh, Learned Senior Counsel appearing for the *appellant/ the husband*, takes the primary point that the so-called electronic evidence relied upon by the *respondent/ the wife* before *the Learned Trial Court* in

support of her stand that false representations have been made by the *appellant/ the husband* were inadmissible as evidence. It is submitted that such electronic messages sent through Facebook could not be relied upon on behalf of the *respondent / the wife* since such messages were not certified by law as provided under Section 65B (4) of the Indian Evidence Act.

It is argued that law has been settled *In Re: Arjun Panditrao Khotkar Versus Kailash Kushanrao Gorantyal*, reported in *2020) 7 SCC 1* on the point that secondary evidence by way of electronic record is admissible only if such evidence is supported by a requisite certificate under Section 65B (4)(*supra*). It is argued that *the Learned Trial Court* failed to take judicial notice of the fact that the documentary evidence comprising the electronic record of the purported messages sent by the *appellant/ the husband* are not supported by any certificate under Section 65B (4) (*supra*). Such evidence in electronic form, particularly Exhibit-9 series, could not have been therefore relied upon by *the Learned Trial Court* to arrive at a conclusion that there has been misrepresentation amounting to fraud practised by the *appellant/ the husband* for obtaining consent to marriage from *the respondent/ the wife*.

It is further submitted that the purported record of electronic evidence relied upon on behalf of the *respondent/ the wife* is beyond the scope of actual pleadings. The so-called admitted documents are simply a product of oral evidence generated by and on behalf of the respondent. Even the oral evidence of the *respondent / the wife* has been thoroughly rebutted by the evidence of DW-2 which has not been demolished in cross-examination.

Per contra, on behalf of the *respondent/ the wife* the judgement and decree impugned is supported on the ground that the evidence made available before *the Learned Trial Court* have been supported by the primary evidence of the respondent/the wife herself who was the petitioner in the Mat Suit. It is submitted by Mr. Saha, Learned Counsel, that the essential facts pertaining to the events leading up to the registration of marriage have not been demolished. It is pointed out that DW-2, one Susanta Adhikary, is the brother-in-law of the *appellant/ the husband* and hence an interested witness.

It is argued that the *appellant/ the husband* was unable to deny the primary facts and evidence submitted by the *respondent/ the wife* connected to concealment of information. Probative value of the evidence tendered by the *respondent/ the wife* before *the Learned Trial Court* cannot be negated on the technicality of certification of electronic evidence since it is an admitted position that such evidence has been accessed and/or tendered in primary form by and from the plaintiff herself.

Having carefully considered the rival submissions as well as the materials on record, this Court is required to first notice the arguments of the *appellant/ the husband* that certification in terms of Section 65 (B)(4) was absolutely necessary *qua* the electronic evidence tendered by the *respondent/ the wife*. While noticing such issue this Court finds that the law laid down in 2020) 7 SCC 1 creates a difference between the manner of tendering primary evidence as distinguished from secondary evidence in electronic form. It has been, *inter alia*, held by the Hon'ble Apex Court that the requisite certificate in Section 65 B (4) is not necessary for the original

documents as produced which can be done by the owner of the laptop, computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned on which the original information is stored and/or is operated by such owner who is tendering the evidence.

The above situation of tendering evidence from a primary source is distinguished from a situation where the computer and/or source of such information happens to be part of a computer or computer network. Since it is impossible to physically bring such network or system to the Court during trial, the only method of proving such information contained in the electronic record can be by way of certification provided under Section 65B (4) of the Evidence Act, 1872 (as amended).

To the best of the mind of this Court, it is not denied by *the appellant/ the husband* that the electronic evidence relied upon on behalf of the *respondent/ the wife* before *the Learned Trial Court* was sourced from the original electronic device owned by *the respondent/ the wife*. It is *the respondent / the wife* who has stepped into the witness box in support of her primary contention relating to the fraud practised on her. It is an admitted position that the electronic record relied upon by her was sourced from her Facebook account.

This Court also does not find that the nature of the documentary evidence as produced on behalf of *the respondent/ the wife* before *the Learned Trial Court* was at divergence with her pleadings and the other evidence on record. It is noticed that although the courtship lasted for two

years, the break-up of the marriage after only two days of registration could only result out of a discovery or disclosure so enormous on the mind and spirit of one of the parties, in this case *the respondent/ the wife,* as to make any further bonding impossible.

In the backdrop of the above discussion, the judgement and decree impugned is not interfered with.

However, considering the relative economic status of the parties, the award of costs by *the Learned Trial Court* against the appellant/ the husband stands set aside.

FAT 146 of 2020 with **IA No. CAN 1 of 2020** stands thus **disposed of**.

There will be no order as to costs.

Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities

I agree.

(Saugata Bhattacharyya, J.) **(Subrata Talukdar, J.)**