

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 52 OF 2019

SHAIKH NAZIR

...Appellant

Versus

PARVIMBI SHAIKH

...Respondent

Mr. Iftikhar Agha and Mr. K. Morajkar, , *Advocates for the appellant.*

Mr. S.G. Desai, Senior Advocate with Ms. S. Shelke, *Advocate for the respondent.*

CORAM: MANISH PITALE, J.

DATED: 27th September, 2021.

ORAL ORDER:

1. By this Second Appeal, the appellant has challenged concurrent orders passed by the two Courts below dismissing a Marriage Petition filed on his behalf for annulment of marriage under Article 1074 of Chapter I, Division I, Sub-Division II of Family Laws of Goa, Daman and Diu.

2. The petitioner approached the Court of the Civil Judge, Senior Division, Margao, with the aforesaid petition for annulment of marriage contending that the respondent had represented to him that she was a spinster while she was earlier married to another person and the appellant later discovered that at the time when the marriage took place between the parties on

25/07/2005, her earlier marriage was still subsisting. It was further claimed that while the marriage between the parties took place on 25/07/2005, the two of them lived together for a very short period and that after a heated argument on 16/08/2005, the respondent left the matrimonial house, never to return. It was contended that since the aforesaid fact of earlier subsisting marriage was suppressed from the respondent, it was in violation of Article 1073(5) of the Family Laws and under Article 1074 the appellant was entitled to claim annulment of marriage. In the petition itself, it was stated that cause of action arose on 15/12/2007 i.e. the date on which the appellant became aware about the respondent being earlier married and not divorced.

3. The respondent opposed the said petition, contending that the appellant was always aware about the earlier marriage of the respondent. It was claimed that the said marriage was already dissolved and therefore, there was no ground available for the petitioner to seek annulment of marriage under Article 1074 of the Family Laws.

4. The aforesaid Court framed issues and the evidence of the parties was taken into consideration. One of the issues framed pertained to the question of limitation. The Court found that even as per the petition filed by the appellant on 25/02/2013, it was conceded that the appellant first came to know about the

earlier marriage of the respondent on 15/12/2007. It was also stated in the petition itself that a similar petition was also filed and withdrawn by the appellant. Taking into consideration the aforesaid admitted position on facts, the said Court held that the petition was barred by limitation and that in any case it was barred by Order XXIII Rule 4 (1) (b) r/w. Section 12 of the Code of Civil Procedure (CPC), particularly because the earlier petition was withdrawn unconditionally. Apart from this, the said Court also rendered findings on the merits of the matter against the appellant.

5. Aggrieved by the same, the appellant approached the District Court by filing an appeal. By judgment and order dated 26/03/2019, the appeal was dismissed when the Appellate Court also found that the petition was barred by limitation. A specific reference was made to Article 22 of the Family Laws (Part I) which provides a limitation period of one year from the date of knowledge in such circumstances.

6. Mr. Iftikhar Agha, learned Counsel for the appellant submitted that substantial question of law arose in the present appeal for the reason that the two Courts below had concurrently erred in taking into consideration documents that were produced by the respondent even when they were not marked as Exhibits and admittedly the respondent never entered the witness box. It

was further submitted that even if the documents were to be taken into consideration, which included a Memorandum of Understanding executed between the respondent and her earlier husband and a Certificate issued by a Jamat, it would be evident that when the appellant and the respondent got married, the earlier marriage was indeed subsisting. On this basis, it was submitted that the two Courts below failed to appreciate that the marriage deserved to be annulled under Article 1074 of the Family Laws.

7. On the other hand, Mr. Desai, learned Senior Counsel appearing for the respondent highlighted the aspect of limitation and he submitted that the finding rendered by the two Courts below concurrently on the said issue was unassailable and if that be so, the appellant could not be heard in the matter. It was emphasized that an earlier petition was filed by the appellant in the year 2009 for the same relief and it was admittedly withdrawn unconditionally. Even in the subsequent petition, from which the present appeal has arisen, the appellant himself stated that the cause of action arose on 15/12/2007, while the petition itself was filed on 25/02/2013, thereby clearly demonstrated that it was hit by limitation prescribed under Article 22 of the Family Law (Part 1). As the earlier petition filed in the year 2009 was withdrawn unconditionally, it could not lie in the mouth of the appellant that the subsequent petition was maintainable.

8. Having heard the learned Counsel for the rival parties and upon perusal of the material on record, it becomes evident that the Courts below were justified in concurrently holding against the appellant on the question of limitation itself. A perusal of the petition for annulment of marriage filed on behalf of the appellant would show that it was admittedly filed on 25/02/2013. Paragraphs 9 and 10 of the said petition read as follows:

“9. The Petitioner states that the cause of action arose on the 15th December, 2007, on which date, the Petitioner came to know that the Respondent was earlier married and not divorced, and the cause is continuing. The petition is therefore not barred by limitation.

10. The Petitioner states that the Petitioner had filed a similar petition earlier but the same was withdrawn by the Petitioner.”

9. The Appellate Court in its judgment in paragraph 10 has observed as follows:

10. First of all, it is clear from the cross-examination of the petitioner that on an earlier occasion he filed the petition for dissolving the marriage through his power of attorney and the same was withdrawn unconditionally. The copy of the said petition for annulment of marriage vide Marriage Petition No.06/2009 is produced on record at exhibit 26. The petitioner has totally suppressed this fact in the present matter and there is absolutely no whisper about it. Therefore, the second suit on the same ground is not at all tenable unless withdraw of earlier

proceedings is allowed with liberty to file a suit afresh. No order of the Court is produced on record to show that such liberty was granted to the petitioner."

10. The aforesaid material clearly shows that in cross-examination the appellant conceded to the fact that the earlier petition filed for the same relief of annulment of marriage on the very same ground was withdrawn unconditionally. Apart from this, paragraph 9 of the subsequent petition quoted above clearly states that even according to the appellant the cause of action arose on 15/12/2007, while the petition itself was filed on 25/07/2013. It is undisputed that Article 22 of the Family Laws (Part 1) provides as follows:

"Article 22 : The annulment of marriage on the ground of mistake is barred by limitation after one year from the date on which the party under mistake had knowledge of it or from the date of coming into force of the present Decree, with the force of law, if such marriage is contracted prior to it."

11. Applying the said provision to the admitted pleadings and facts as conceded by the appellant, would show that the two Courts below were justified in holding that the petition for annulment of marriage was barred by limitation. Once this Court reaches the said conclusion, there is no need to further consider the matter. No substantial question of law arises in the

present appeal for exercising jurisdiction under Section 100 of the CPC. Accordingly, the appeal is dismissed.

MANISH PITALE, J.

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