

Urmila Ingale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7533 OF 2017

Deepa Vasant Karmarkar	Petitioner
Vs.	
Shri Kishor Rambhau Mandlik	 Respondent

Mr.Abhaykumar Apte, , for the Petitioner.
Mr.Rajesh A. More, for Respondent.

CORAM : M. S. KARNIK, J.

DATE : 01st APRIL, 2021

P.C. :

. Heard learned Counsel for the Petitioner Shri Apte. Learned Counsel for the Petitioner - wife challenges an order passed below Exhibit 32 in the matrimonial proceedings instituted by the Respondent - husband for divorce before the Family Court No.4, Pune. The Petition for divorce is filed by the Respondent - husband on the ground of nullity of marriage in view of section 5(i), 11 & (12)(1)(c) of the Hindu Marriage Act, 1955 (for short the said Act). According to Shri Apte, the marriage was solemnized on 15/04/2012. The Petition was filed on 23/04/2013 for annulment of the marriage. Relying on section 12(2)(b-ii) of the said Act, it is contended by Shri Apte that the

Family Court ought not to have entertained the proceedings as the Petition has been filed after one year from the date of the marriage.

2. Shri Apte further submitted that only with a view to bring the Petition within limitation, stand is taken by the Respondent - husband that he got knowledge about the marriage after FIR came to be registered against the husband on 14/11/2012. He therefore submitted that what is relevant for the purpose of section 12 of the said Act for entertaining the Petition is the date of the marriage and filing of the Petition for annulment within one year therefrom. According to him, date of knowledge is not material. He says that the Petition is not within limitation.

3. Learned Counsel for the Respondent invited my attention to the findings of the trial Court in the impugned order.

4. I have heard learned Counsel for the parties. The trial Court found that apart from seeking the decree of nullity under section 12 (1)(c) of the said Act, the Petition is also filed seeking the relief under section 5(i) & 11 of the said Act and

therefore did not find favour with Petitioner's contention that the Petition cannot be entertained. In these circumstances, I do not see any reason to interfere with the findings of the Family Court that whole Petition cannot be dismissed.

5. Learned Counsel relied upon the decision of the High Court of Kerala in the case of K.K.Dileepkumar S/o P.K.Karunakaran Vs. Salena Kumari @ Shalini D/o Karunakaran in Mat. Appeal No. 187 of 2007 dt.27/02/2018 for the proposition that if the appellant is to be entitled to decree under section 12 (1)(c) of the said Act, he has to approach the Court for the relief within the period of limitation. In the present case, as the Family Court has observed that the Petitioner has also sought reliefs under section 5(i) & section 11, therefore in these circumstances, it is to be held that whole Petition cannot be dismissed. I see no error in the view taken. The Petition before the Family Court is of the year 2013. I am informed that presently recording of the evidence has commenced. It is open for the Petitioner to raise the contention at the appropriate stage that decree under section 12(1)(c) cannot be granted in view of the limitation which can be considered on its own merits. However, the view taken by the Family Court that entire Petition cannot be dismissed only on this ground is not erroneous. I therefore see no reason to

interfere with the order passed by the learned Judge of the Family Court.

6. Writ Petition is dismissed.

(M.S.KARNIK, J.)