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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.2598 of 2018

Mr.Mageshwaran Perumal ... Appellant

Vs

Ms.Nilikshaben Yogeshkumar Patel ... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, 1984, praying to set aside the order passed in HMOP.No.4718 of 2016 dismissing the petition filed under Section 12 (1) (c) of the Hindu Marriage Act, 1955, by the IV Additional Family Court, Chennai, dated 04.10.2017.

For Petitioner : Mr.R.Mohan Doss

JUDGMENT

(Judgment of the court was delivered by
T.V.THAMILSELVI.J.,)

The matter was heard through "Video Conference".

2. The appellant herein is the petitioner who filed a petition under Section 12(1) (C) of the Hindu Marriage Act, 1955, in HMOP.No.4718 of 2016, before the IV Additional Family Court, Chennai, seeking relief to declare the marriage solemnized on 06.11.2016 between himself and respondent as null and void abinitio.

3. The respondent/wife remained ex-parte before the Lower Court, as well as before this Court. On hearing the petitioner side, the IV Additional Family Court concluded that the petition as such is not maintainable in law and dismissed the same. Aggrieved by that, the appellant/husband preferred this appeal.



4. Heard Mr.R.Mohan Doss, learned counsel appearing for the appellant and perused the materials and documents available on record.

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5. Points for consideration:

(i) Whether the trial Judge erred in interpreting the factual contentions and allegations raised by the appellant and erroneously dismissed the application, which was filed under Section 12(1) (c) of the Hindu Marriage Act?

(ii) Whether the trial Judge has erroneously concluded that the marriage was consummated without considering the legal aspect that the petition was filed under Section 12(1) (c) of the Hindu Marriage Act and not 12(1) (a)?

6. Facts reveal that the marriage between the appellant and the respondent was solemnized on 06.11.2016, as per Hindu Rites and Customs. The appellant was employed in United States of America and was married to an American Citizen earlier and got a female child. Since there was difference of opinion, both of them obtained divorce at U.S.A. Court, but had been granted joint custody of the child. The appellant decided to come down to India and marry a homely girl, who would look after him and the child. The appellant, got acquainted with the respondent through a matrimonial website viz., Bharat Matrimony and had disclosed openly that he is already a divorcee and is looking for a suitable bride.

7. The respondent agreed to marry him in spite of the age difference as she was only 19 years old, more than 14 years younger than the appellant and had promised that she would look after both of them and accordingly, the marriage was solemnized between the appellant and the respondent on 06.11.2016 and the same was registered on 07.11.2016 vide Marriage Serial No.605/2016 on the file of the Registrar of Marriages, SRO, Kodambakkam. The appellant noticed that the respondent seemed to be well acquainted with sexual life. She behaved as if she was an expert in sex and she was not a virgin. The appellant, with an inquisitiveness, like any other normal husband, enquired about her past life and was shocked to know that she was a sex-worker and used to earn for the family. She confessed that she was also involved in group sex. She started to distance herself from the appellant and at all times, she was involved only in chatting with her boy friends in Bombay.



8. The appellant though shocked about her confession, stated that he was ready to accept her, provided she forgets about her past and continues her marital life without shattering the sacrament of happy marital life. The appellant positively hoped that she would change herself. The respondent was involved only in chatting with her boy friends in Bombay. Further, she also confessed that her intention was to land in the U.S.A. through the appellant and even her mobile phone gallery revealed lots of photos in which the respondent was wearing very sexy dresses and playing with boys. Hence, within a week, the appellant was put to much mental agony. Immediately on 25.11.2016, since guardian/parents of the respondent suppressed many facts and the girl also suppressed her past life, the appellant approached the Court to declare the marriage that took place between them as null and void.

9. In spite of service of notice, the respondent remained ex-parte. On considering the appellant's averments, the Family Court concluded that as the marriage was consummated, the appellant is not entitled for divorce as he had prayed for. Aggrieved by that, the appellant preferred this appeal.

10. At the time of arguments, the learned counsel for the appellant submitted that the appellant approached the Court to declare the marriage between him and the respondent as null and void and Section 12(1) (c) of the Hindu Marriage Act, speaks as follows:

Section 12. "Voidable marriages:-

(1) Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the [was required under Section 5, as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978], the consent of such guardian was obtained by force [or by fraud as to the nature of the ceremony or as to any material fact or circumstances concerning the respondent];



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11. The appellant is bound to establish that there was suppression of real facts by the respondent and her family members at the time of marriage. According to the appellant, he was a divorcee and got a female child through his first wife.

12. The learned counsel for the appellant submits that he got acquainted with the respondent through the matrimonial website, Bharat Matrimony and had disclosed openly that he is already a divorcee and looking for a suitable bride to look after him and his girl child. The respondent's family approached the appellant and agreed for the marriage proposal. At the time of marriage, the respondent was aged about 19 years and she was 14 years younger than the appellant. Though this fact was explained to the respondent, the parents of the respondent informed him that the respondent accepted this marriage proposal. Thereafter, the marriage was held on 06.11.2016 and registered on 07.11.2016. But during the first night itself, the appellant found that she was well experienced in sex and did not behave like a 19 year old girl and the appellant found that she was a sex worker in Bombay and she was always chatting with her ex-boy friends. When he enquired, the respondent left the matrimonial home within a week with her belongings.

13. On seeing the misbehaviour of the respondent as well as her own confession, the appellant found that she and her family members suppressed many facts at the time of marriage proposal and considering suppression of facts, the appellant approached the Court to declare the said marriage as null and void.

14. In spite of service of notice to the respondent, she has not appeared before the lower court as well as this court and remained ex-parte. The allegation levelled against her remains unchallenged and silence on her part amounts to admission and the Court is entitled to draw adverse inference against her for her non-appearance. She is the right person to deny all these facts. But, inspite of notice, she remained absent before the trial Court as well as the Appellate Court. On the other hand, the appellant prima facie proved his case that within a week from the date of marriage, they got separated and he approached the Court. As per the appellant's case, at the time of marriage, the respondent was only 19 years old and her parents alone convinced him and the marriage was proposed but the previous life was suppressed which amounts to fraud as well as curtailment of facts. So the appellant is entitled to the relief as prayed for by him.



15. Considering all these facts and circumstances, we are of the view that the Family Court erroneously concluded that as the marriage was consummated, the appellant was not entitled for divorce. It is not the case of the appellant that the marriage was not consummated and the Court below is bound to look into the entire averments, facts and circumstances narrated in the petition and should not choose the allegation and dismiss the petition on the ground that the marriage was consummated. Therefore, the finding given by the trial Judge is unsustainable in law and the Civil Miscellaneous Appeal is allowed. Accordingly HMOP.No.4718 of 2016 is allowed as prayed for.

16. This Civil Miscellaneous Appeal is allowed and there shall be a decree of divorce. Accordingly, the marriage solemnized between the appellant and the respondent on 06.11.2016, is hereby declared as null and void. No costs.

s/d-
Assistant Registrar(CCC)

//True Copy//

Sub-Assistant Registrar

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To

The IV Additional Family Court, Chennai.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+3 Ccs to M/s. Swaminathan Law Associates sr 33062.

C.M.A.No.2598 of 2018

SSV(CO)
SP(08/12/2021)