

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

FIRST APPEAL NO. 416 OF 2021

Mr. Nikhil Ashok Kumar Singh	 Appellant
v/s.	
Ms. Divya Kishin Panjwani	 Respondent

Mr. Virendra V. Pethe for the Appellant.
Mr. Suresh S. Kolte for the Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 13th JULY, 2022.

P. C. :-

- . With consent, heard finally at the stage of admission.

2. This Appeal challenges the order dated 13/08/2021 passed by the Ad-hoc District Judge-1, Kalyan in Marriage Petition No.29/2021. By the impugned judgment, the learned District Judge, Kalyan has dismissed the Petition filed by the Appellant under section 25 of the Special Marriage Act, 1954.

3. It is the case of the Appellant that he and the Respondent were in love with each other and decided to marry without the knowledge of their parties. On 02/09/2020, they issued a notice to marriage officer

at Thane disclosing their intention to get marry. The Appellant and the Respondent married on 20/11/2020 under the provisions of Special Marriage Act. The Appellant and the Respondent informed Vithalwadi Police Station about their marriage. Since the marriage was without the consent of the respective parents, the police personnel called their parents and with consent of both the families, the Appellant and the Respondent went to their respective house.

4. It appears that their families did not approve the marital relationship of the Appellant and the Respondent. The Appellant has claimed that since the date of their marriage, the Respondent is residing with her parents and subsequently, she has denied to continue the marital relationship with the Appellant. The Appellant has further averred that the Respondent has willfully refused to consummate the marriage. The Appellant therefore sought annulment of the marriage.

5. The Respondent filed a written statement and she admitted the contents of paragraph 10 of the plaint wherein the Appellant had averred that the Respondent had willfully refused to consummate the marriage. The Respondent had also filed her affidavit wherein she has confirmed the contents of paragraph 10 of the plaint that she has

willfully refused to consummate the marriage.

6. Section 25 of the Special Marriage Act, 1954 provides for annulment of marriage when the marriage has not been consummated owing to the willful refusal of the Respondent to consummate the marriage. In the instant case, the Respondent has admitted in the written statement as well as in the affidavit that she has willfully refused to consummate the marriage. Considering the above facts and circumstances, in my considered view, the learned Judge was not justified in dismissing the Petition only on the ground that the Appellant and Respondent had no opportunity to reside in the matrimonial residence.

7. Hence, the Appeal is allowed. The impugned judgment and decree is set-aside. The marriage between the Appellant and the Respondent is annulled.

(SMT. ANUJA PRABHUDESSAI, J.)

PREETI
H JAYANI

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