

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

PRESENT:

THE HON'BLE JUSTICE HARISH TANDON

And

THE HON'BLE JUSTICE PRASENJIT BISWAS

SAT 131 of 2021

IA CAN 1 of 2021

Abdul Hannan

- versus -

Asnara Khatun

Judgment on : 18.10.2023

Prasenjit Biswas, J:-

1. Both the Courts below have decided the case against this appellant. The present appellant filed a suit before the Trial Court against his wife with a prayer for declaration that no marriage was taken place in between them. The respondent/wife claimed herself to be the wife of this appellant and filed a case before the Court of Judicial Magistrate claiming maintenance for herself and after getting notice of that case this appellant came to know that in collusion with one Muslim Marriage Registrar, the respondent/wife manufactured the certificate of marriage of him and the respondent. It is the contention of the appellant that he never married with the respondent and have never lived as husband and wife. It is further stand-point of the appellant that the respondent by practicing fraud

somehow obtained the alleged certificate of marriage after imitating his signature on it.

2. The respondent/wife did not turn up before the Trial Court after getting notice of the case filed by this appellant and so the case was decided ex-parte against her. It further appears that this appellant adduced evidence before the Trial Court and stated in his deposition that the respondent/wife obtained that certificate of marriage by practicing fraud upon him and the said certificate of marriage has been marked as Exhibit in that case.

3. It appears from the certificate of marriage (Exhibit 2) that it bears seal and signature of the marriage registrar and there is signature of this appellant on it. But now, this appellant is denying and disputing his signature or LTI on the said Exhibit 2 by taking plea that those were obtained by practicing fraud and in collusion with the marriage registrar. It is stated by the appellant in his plaint that he never married with the respondent and never resided with her as husband and wife. He came to know about the marriage with this respondent only after getting notice from the Court of Magistrate before which respondent/wife filed a case against this appellant praying for passing an order of maintenance. It is further lighted from the plaint that this appellant stated that a fraud has been committed in respect of procuring the certificate of marriage by his wife but we find mere stating in the plaint that a fraud has been played is not enough and the allegations of fraud must be specifically averred in the plaint, otherwise merely by using the word “fraud” is not suffice to prove that the alleged fraud has been committed in respect of obtaining certificate of marriage. It is the bounden duty of the appellant to prove his case on the

ground taken by him by producing cogent documents and evidences which is absolutely absent in this case.

4. So, we find that there is no illegality or irregularity in the judgments and orders passed by both the Courts bellow in coming to the conclusion that this appellant has hopelessly failed to prove that the respondent has practiced fraud in getting certificate of marriage. More so, we find that this appellant did not make any venture before the Trial Court to prove the genuinity of his signatures as it appears on Exhibit 2/ certificate of marriage. He may pray before this Court to send the Exhibit 2 before an expert for comparison the signatures appears on the certificate of marriage with his signature but in fact, he did not do so. Only vague allegations have been made in the plaint that his signature or LTI was obtained by practicing fraud.

5. So, we find there is no substantial question of law involved in this case and accordingly, it warrants dismissal.

6. Accordingly, the instant appeal be and the same is hereby dismissed but without any order of costs.

7. Connected application, if any, is also hereby dismissed as disposed of.

8. Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)