



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

FAMILY COURT APPEAL NO. 19 OF 2023

Ketaki d/o Ramakantrao Paralkar,
Age : 27 years, Occupation : Household,
R/o. Ramakantrao Paralkar,
C 20, Basmath Road, M.I.D.C., Parbhani,
Tq. & Dist. Parbhani.

....Appellant

Versus

Ganesh Sudhakarrrao Jadhav,
Age : 37 years, Occupation : Private Sevice,
R/o. Ckhilkha, Tq. Ahmedpur,
Dist. Latur.

....Respondent

AND

FAMILY COURT APPEAL NO. 22 OF 2023

Ketaki d/o Ramakantrao Paralkar,
Age : 27 years, Occupation : Household,
R/o. Ramakantrao Paralkar,
C 20, Basmath Road, M.I.D.C., Parbhani,
Tq. & Dist. Parbhani.

....Appellant

Versus

Ganesh Sudhakarrrao Jadhav,
Age : 37 years, Occupation : Private Sevice,
R/o. Ckhilkha, Tq. Ahmedpur,
Dist. Latur.

....Respondent

.....

In both matters :

Mr. Nikhilesh K. Tungar – Advocate for the appellant
Mr. Mahesh V. Ghatge – Advocate for respondent

.....

CORAM : MANGESH S. PATIL

AND

NEERAJ P. DHOTE, JJ.

RESERVED ON : 1 DECEMBER 2023

PRONOUNCED ON : 8 DECEMBER 2023

JUDGMENT [PER : Neeraj P. Dhote, J.] : -

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties. Perused the papers.
2. These are the Appeals under Section 39 of the Special Marriage Act, 1954 [hereinafter referred to as “the Act”], against the common Judgment and Order dated 05.08.2022 passed by the Family Court, Parbhani, in Petition No. A-45/2020 and Petition No. A-46/2020, dismissing the Petition No. A-45/2020 and allowing the Petition No. A-46/2020, with a direction to the Appellant to resume cohabitation with the Respondent within sixty days, failing which the Respondent shall be at liberty to take recourse to the provisions of law.
3. The Petition No. A-45/2020 was filed by the wife for decree of nullity of her marriage under Section 25(iii) of the Act and the Petition No. A-46/2020 was filed by the husband for restitution of conjugal rights under Section 22 of the Act.
4. The order dated 04.07.2023 in both the Appeals shows that, time was granted to the Advocates of both the sides to take instructions from the litigating parties as to whether these appeals should be referred to the Mediator at the High Court level. The order dated 29.08.2023 in both the appeals shows that the wife was not ready

to go for mediation as she was claiming declaration in respect of nullity of the marriage, though the respondent was ready to go for mediation.

5. The Appellant is the wife and the Respondent is the husband. The parties are referred to as per their nomenclature in the Appeal.

6. It is submitted by the learned advocate for Appellant that the marriage between the parties was not consummated. He further submitted that consent of the Appellant for the marriage was obtained by coercion and fraud. He would submit that the learned trial Court did not appreciate the evidence available on record which would sufficiently establish that the marriage was never consummated between the parties and the consent of Appellant for the marriage was not voluntary. He submitted that therefore, the impugned Judgment and Order needs to be quashed and set aside.

7. It is submitted by the learned advocate for Respondent that Appellant had approached the Family Court with incorrect pleadings and her cross-examination could not discard the version of the Respondent. He submitted that the learned Family Court has rightly passed the impugned Judgment and Order.

8. Though in the appeal, the Appellant has raised the ground of non-consummation of her marriage with the respondent, it is clear from the papers on the file that the petition was filed for decree of nullity of marriage on the ground of consent being obtained under coercion or fraud i.e. under Section 25(iii) of the said Act. The petition filed before the trial Court is silent of the pleadings for annulment of marriage on the ground of consummation of marriage which is governed by Section 25(i) of the Act. It is needless to state, that in the absence of specific pleadings about annulment of her marriage on the ground of non-consummation, no evidence could have been led. The relevant Section 25 of the said Act reads as under : -

“25. Voidable marriages. - Any marriage solemnized under this Act shall be voidable and may be annulled by a decree of nullity if -

- (i) the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage; or
- (ii) the respondent was at the time of the marriage pregnant by some person other than the petitioner; or
- (iii) the consent of either party in the marriage was obtained by coercion or fraud, as defined in the Indian Contract Act, 1872:

Provided that, in the case specified in clause (ii), the Court shall not grant a decree unless it is satisfied-

- (a) that the petitioner was at the time of the marriage ignorant of the facts alleged;
- (b) that proceedings were instituted within a year from the date of the marriage; and
- (c) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree:

Provided further that in the case specified in clause (iii), the

Court shall not grant a decree if-

- (a) proceedings have not been instituted within one year after the coercion had ceased or, as the case may be, the fraud had been discovered; or*
- (b) the petitioner has with his or her free consent lived with the other party to the marriage as husband and wife after the coercion had ceased or, as the case may be, the fraud had been discovered.”*

9. Accepting the petition and the evidence as it is, there is nothing to show/establish that there was non-consummation of the marriage owing to the wilful refusal of the respondent/husband to consummate the marriage. Even if for the sake of argument it is accepted that the petition was on the ground of non-consummation of her marriage, the same is not established before the Court below. Even if the evidence of Appellant of not willing to undergo medical test is ignored, the remaining evidence falls short of establishing the ground of non-consummation. The necessary ingredients of the Section 25(i) of the Act are not made out or proved by the Appellant. Thus, the ground of non-consummation of marriage fails.

10. The other ground is that the consent of the Appellant for the marriage was obtained under coercion or fraud. The evidence on record shows that Appellant examined herself and her father in support of her case whereas; the respondent examined himself, the lady Police Constable as defence witness no. 2 at Exh. 81 and his friend as defence witness no. 3 at Exh. 83 in Petition No. A-45/2020. The evidence

available on record nowhere establishes that there was any coercion or fraud practiced by Respondent on Appellant to seek her consent for the marriage.

11. The evidence of lady Police Constable shows that when she was on duty at Ahmedpur on 11.04.2017, the police from Parbhani brought Appellant and Respondent with them and the statement of appellant was recorded in her presence and she identified said statement at Exh. 57. Her evidence shows that, in the statement Appellant had stated that, she had accompanied Respondent willingly and that she would go back to the Respondent after her examination was over. The cross-examination of this witness no. 2 could not create dent in her examination-in-chief.

12. It was a marriage registered under the Act which mandates a prior notice under Section 5 of the Act, which was duly complied with before the marriage was duly registered. The time of a month before the marriage and fact that the matter had reached the police about two months thereafter coupled with the conduct of the appellant and her parents in never seeking to register any crime for alleged performance of marriage by resorting to coercion are the additional circumstances to discard appellant's stand/case about the manner in which the marriage was performed.

13. The scrutiny of the evidence led by the parties nowhere proves that the Appellant's marriage with the Respondent before the Registrar of the Marriage was under coercion or fraud. The necessary ingredients of the Section 25(iii) of the Act are not proved by the Appellant. Consequently, the ground of consent by coercion or fraud also fails.

14. The Family Court considered all the aspects of the matter and the observations/findings are consistent with the evidence available on record. Even on re-appreciation of the evidence led before the Court below, no other inference or conclusion is possible than the one arrived at by the Court below. Hence, we pass the following order : -

ORDER

- [i] The Family Court Appeals No. 19 of 2023 and 22 of 2023 are dismissed with no order as to costs.
- [ii] Decree be drawn up accordingly.
- [iii] The Record and Proceeding of the Petitions No. A-45/2020 and A-46/2020 be sent back to the Family Court, Aurangabad.

[NEERAJ P DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE