



\$~16

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 12th September, 2023*

+ **MAT.APP.(F.C.) 204/2023**

JASBEER

..... Appellant

Through: Mr.Vijay Datt Gahtori, Advocate.

Versus

NISHTA DAWAR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. An Appeal under Section 19 of Family Court Act, 1984 has been preferred against the judgment dated 27.02.2023 dismissing the petition for annulment of marriage on the ground of fraud under Section 12(1)(c) of the Hindu Marriage Act, 1955 (*hereinafter referred to as 'HMA'*) filed by the appellant/ husband.
2. The parties got married at Arya Samaj Mandir on 23.11.2019 as per Hindu customs and rites but their marriage was never consummated. Their marriage was registered at the office of District Magistrate, Model Town. The parents of the parties were not aware about their marriage.
3. The appellant/ husband was working as a Beautician and wanted a wife who was in the same business line. The respondent/ wife represented herself to be an expert in Beautician line working in a reputed Firm and



getting handsome salary aside from having income from other sources. She also claimed that her family had high “qualities” (*sic.*). The respondent also promised that after the marriage she shall arrange suitable business accommodation in nearby area of Jahngirpuri. She also stated that her parents had purchased a house in her name and that they shall run the business together from the said accommodation after six months of the completion of some formalities that remained to be completed. Believing her representations to be true the appellant/ husband was emotionally blackmailed and gave a proposal for marriage, which was accepted by the appellant.

4. The appellant claimed that though respondent had assured that she would be joining the profession of Beautician with the appellant, but she subsequently absconded. The appellant came to know in August, 2020 that the respondent did not has the requisite qualification and had fraudulently represented herself to be in the Beautician line. She had given wrong particulars of information with an intent to mislead and had obtained his consent on false information. The consent is claimed to have been induced under undue influence by taking advantage of wrong information. The consent to the marriage was claimed to be fraudulent and hence, the marriage was claimed to be a nullity. The appellant thus, sought annulment of marriage under Section 12(1)(c) of HMA.

5. The respondent was duly served through summons on 01.04.2022, despite which she failed to appear and contest the petition and was proceeded ex-parte vide Order dated 04.11.2022.

6. The appellant examined himself as PW1 in support of his assertions and tendered his evidence by way of affidavit Ex.PW1/A. The learned



Judge, Family Court found that though the appellant had claimed that false and incorrect information was furnished by the respondent, but he was unable to lead any cogent evidence either by way of corroborative material or any document and thus, dismissed the petition.

7. Aggrieved the present Appeal has been preferred.

8. **Submissions heard.**

9. The appellant herein has himself asserted that he had a love marriage with the respondent at Arya Samaj Mandir on 23.11.2019 without the knowledge of their parents. It is also the case of the appellant that the marriage was not consummated and the respondent absconded thereafter.

10. The appellant has asserted that his consent was obtained under undue influence by furnishing wrong information by the respondent who claimed herself to be in the line of Beautician and had assured that they both would start up the business of Beautician in a property that was owned by the respondent.

11. Section 12 (1)(c) of the Hindu Marriage Act, 1955 deals with annulment of marriage on the ground stated therein. It reads as under :

“that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner [was required under Section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 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 circumstance concerning the respondent].”

12. The term “fraud” has not been defined in the Act. Under the Hindu Marriage Act not every kind of misrepresentation or concealment of fact can be termed as fraud as envisaged under Section 12 of the Act. Clause ‘c’ of



Section 12(1) of HMJ thus provides that the marriage may be annulled by a decree of nullity if:

- (i) *the consent of the petitioner is obtained by force or by fraud;*
- (ii) *such force or fraud must be to “the nature of the ceremony” or as to “any material fact or circumstance concerning the respondent”.*

13. ***Mulla, in Principles of Hindu law, 11th Edition***, deals with this aspect at page 739 and observes that by way of illustration, the concealment of a fact that the wife had been in a “naikin” by profession and even in the keeping of more than one person prior to the marriage was not a fraud if there was consent to the marriage. So long as the person “freely consents” to solemnization of the marriage in accordance with customary ceremonies, understanding the nature and having an intention to marry, objection as to the validity of marriage on the ground of fraudulent representation or concealment cannot be taken subsequently. The marriage cannot be avoided by showing that the petitioner was induced to marriage by fraudulent statements relating to family or fortune, caste or religion or age or character of the respondent. Where, however, a party is kept under the impression that what is being performed is only a betrothal or there is a deception as to the identity of the other person, then it would amount to fraud giving a cause for annulment of marriage.

14. In *Anath Nath De vs. Smt. Lajjabati Devi*, AIR 1959 Cal. 778, the Calcutta High Court explained that the question of consent of the parties to the marriage arise at two stages ; *firstly* at the time when the parties consent to solemnize the marriage and *secondly*, at the time when the marriage itself is solemnized. The Hindu Marriage not being a contract, the consent at the first stage though obtained by fraud, cannot affect the validity of the



marriage. The consent at the time of solemnization of marriage is the material consent and if it is obtained by fraud, it affects the validity of the marriage.

15. Similar view was expressed by Punjab & Haryana High Court in the case of Harbhajan Singh vs. Smt. Brij Balab, AIR 1964 Punjab 339, wherein it was further observed that in case of a marriage under Hindu law fraud is not used in a general way and the marriage cannot be dissolved by on every misrepresentation or concealment. If the term “fraud” was to be interpreted in accordance with Indian Contract Act, then it would become impossible to maintain the sanctity of marriage. By way of illustration, it was stated that if a respondent is a person of Bad Character before the solemnization of marriage, it cannot be termed as a fraud. The legislature did not intent that the past conduct of the respondent except what is mentioned in Section 12 of the HMA, should become a ground for dissolution of marriage.

16. Similarly, Bombay High Court in Raghunath vs. Vijaya, AIR 1972 Bom. 132 observed that term ‘fraud’ used in Section 12(1)(c) of the HMA does not speak of fraud in any general way, nor does it mean every concealment or misrepresentation may be considered as fraudulent. If the consent is given to the solemnization of marriage, the same cannot be avoided on the ground of fraud.

17. In Sujatha vs. Hariharan, 1995 (II) M.L.J 327 DB of Madras High Court observed that to constitute a “fraud” under Section 12(1)(c) of the HMA there must be an abuse of confidential position, some intentional imposition or some deliberate concealment of material facts which are the fundamental basis of the marriage contract.



18. The meaning of material fact or circumstances concerning the respondent was examined in the case of Pradeep s/o Namdeorao Ambhore vs. Pallavi Pradeep Ambhore 2017 (6) Mh.L.J., where the moot question was whether the concealment of the wife suffering from sickle cell anemia, amounted to material fact or circumstance. It was observed that while it is difficult to define with certainty what amounts to a material fact, it is safe to say that a fact or circumstance which is of such a nature that was likely to interfere with the marital life of the parties, then it is material fact or circumstance. Such a material fact or circumstance must be in respect of a person or the character of the person and it is immaterial whether it is curable or not. Further, a fact crucial to the extent that if disclosed would result in either of the parties not consenting to the marriage, would also be termed as a material fact.

19. In this backdrop we may examine the facts on which the appellant has claimed that his consent was obtained by misrepresentation and undue influence thereby entitling his marriage to be declared as nullity. His main claim is that before the marriage the respondent had represented that she was in the line of Beautician business and that she could arrange for suitable premises for setting up their business of Beautician in the property owned by her father and that they could run their business jointly. The alleged representation claimed to have been made by the respondent are neither related to the nature of the marriage ceremony nor was of the nature that could have interfered with the marital life of the parties.

20. It is significant to observe that as per the appellant himself, they were known to each other and had a love marriage, any representation by the respondent about her having sufficient means for setting up of a business,



cannot be said to be of the nature as would amount to fraud or concealment of material fact entitling the appellant to a decree of nullity. The learned Judge, Family Court has also found that no documentary or corroborative evidence had been led by the appellant to substantiate his assertions. He was unable to prove his averments on the basis of which he was seeking a decree of nullity.

21. We find that neither on facts nor under law the appellant has been able to show that the alleged representation by the respondent could be termed as misrepresentation or fraud of the kind defined under Section 12(1)(c) of the HMA. We accordingly, dismiss the Appeal as being without merit.

22. The pending applications, if any, also stand disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 12, 2023

va