



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

%

Reserved on: 8th August, 2023
Pronounced on: 18th August, 2023

+ **MAT. APP. (F.C.) 113/2022 with CM APPL.33160/2022**

ASSEM AGGARWAL Appellant
 Through: Ms.Neha Jain and Ms.Shivani
 Sharma, Advocates.

Versus

ASHI KUMAR Respondent
 Through: Mr.Prabhjit Jauhar, Advocate with
 Ms.Rosemary Raju, Ms.Gauri
 Rajput and Ms.A.Singh, Advocates
 with respondent in person.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Appeal under Section 19 of the Family Courts Act, 1984 has been filed by the appellant against the impugned Order dated 31.03.2022 vide which the application filed by the appellant under Order VII Rule 11 of the Code of Civil Procedure, 1908 was dismissed.
2. **The facts in brief** are that a petition under Section 12(1)(c) of the

MAT. APP. (F.C.) 113/2022

Page 1 of 14



Hindu Marriage Act, 1955 ('Act of 1955', in short) was filed for annulment of marriage on behalf of Ms. Ashi Kumar (*who was the petitioner in the petition before the learned Judge, Family Courts and shall be referred as 'respondent' in the present Appeal*). The respondent, a permanent resident of Ghaziabad got married to Mr. Assem Aggarwal, resident of New Zealand, (*who was the defendant in the petition before the learned Judge, Family Courts and shall be referred as 'appellant' in the present Appeal*) on 04.10.2009 according to Hindu Rites and Customs at Railway Officers' Club, Sardar Patel Marg, New Delhi.

3. The appellant at the time of marriage was staying at Le Meridian Hotel, New Delhi. Before marriage, it was represented by the appellant's family that they would demand no dowry and the respondent was also led to believe that after marriage, she would accompany the appellant to New Zealand.

4. On the next date of marriage i.e. 05.10.2009, respondent as per custom, went to her parental house at Ghaziabad and the appellant had promised to come on 06.10.2009 at her parental house for registration of marriage and completion of VISA formalities. However, as a part of conspiracy, neither the appellant nor his parents turned up. It was alleged that from very first day of negotiation for marriage, the appellant had started demanding cash of Rs.40 lakhs and a BMW car from the respondent. Since the respondent refused to accede to these demands, the appellant abused her and no cohabitation took place between them. It was alleged that the appellant did not complete the VISA formalities of the respondent since the dowry demands were not fulfilled. This act on the part of the appellant is claimed to be an act of fraud against the



respondent. It is further claimed that the entire conduct of the appellant indicated *mala-fide* intention to play fraud against the respondent and to grab handsome amount.

5. It was alleged that the appellant left for New Zealand before the scheduled departure date i.e. 22.10.2009 without informing the respondent and without completing the VISA formalities. It is further claimed that the appellant kept giving the respondent and her parents false assurances that they would resolve the entire disputes amicably in the period of 5 to 6 months. However, they were only buying time so that no legal action is initiated by the respondent. The calls made by the respondent were disconnected and the appellant refused to talk to the respondent.

6. The respondent then made a complaint against the appellant and his family members before the Special Police unit for Women & Children Cell (SPUW&C), Nanakpura, New Delhi on 07.09.2010. In compliance of the notice of the complaint of the respondent, Mr. Kamlesh Gupta filed some documents and a false story at the instance of the appellant before the official of the SPUW&C. The respondent was able to get the copy of those documents through RTI only on 06.07.2011. She then understood that a fraud has been played and she has been cheated by the appellant and his family members in order to grab huge dowry. The appellant left the country leaving behind the respondent to suffer for her entire life. The respondent thus sought annulment of marriage solemnized on 04.10.2009 with the appellant.

7. Though the appellant had filed a **Written Statement** before the learned Principal Judge, Family Courts but his defence was stuck off vide Order dated 03.04.2019. The **Issues were framed** and the evidence had



been recorded. The part final arguments were also addressed at which stage, the appellant filed the present application under **Order VII Rule 11 CPC** for rejection of the annulment petition filed by the respondent.

8. The learned Principal Judge, Family Courts vide her impugned order observed that the respondent had alleged fraud on the part of the appellant about which she came to know only on 06.07.2011. It is a mixed question of fact and law as to whether the respondent came to know about the fraud only on 06.07.2011 and the same cannot be considered *de-hors* the merits of the case. It was also observed that the plea of fraud in obtaining the consent of the respondent also requires appreciation of facts and evidence. Consequently, the application under Order VII Rule 11 CPC preferred by the appellant, was dismissed.

9. Learned counsel for respondent had vehemently contended that no reliance can be placed on the written statement or the defence of appellant as taken in his written statement. Whether there was any “*force*” or “*fraud*” exercised on the respondent, is a matter of evidence. This application for rejection at this belated stage of final arguments, is not only *mala fide* but also to unnecessarily delay the trial, and merits dismissal.

10. **The appellant in the Written Submissions** has reiterated his assertions made in the appeal.

11. **The respondent in the Written Submissions** has relied on several cases to argue that the application under Order 7 Rule 11 was rightly dismissed by the Ld. Family Court.

12. The respondent has relied upon *ITC Limited vs. Debt Recovery Appellate Tribunal and Anr.* (1998) 2 SCC 70 to argue that where the



issue of limitation has been framed and the evidence has been led and the plaintiff cross-examined, an application under Order VII Rule 11, CPC before the conclusion of the Trial Court for rejection of the plaint may not be maintainable. Such rejection of the plaint at the belated stage is erroneous.

13. The respondent has also relied upon the case of Ram Prakash Gupta vs Rajiv Kumar Gupta & Ors. (2007) 10 SCC 59, Shakti Bhog Food Industries Ltd vs Central Bank of India and Another 2020 SCC OnLine SC 482 and Karan Goel vs Kanika Goel 2020 SCC OnLine Del 1319, to argue that the application under Order VII Rule 11 CPC has to be determined only on the basis of the averments made in the plaint without reference to the Written Statement.

14. **Reliance has been placed on the above cases to argue that,** in light of a specific issue on limitation having already been framed by the Ld. Family court, the application under Order VII Rule 11 cannot be allowed. The issue is to be adjudicated upon only after the perusal of entire evidence adduced on record.

15. **Submissions heard.**

16. The first aspect for consideration is whether an application under Order VII Rule 11 CPC is maintainable at the stage of final arguments. It is a settled proposition of law that while determining the application under Order VII Rule 11 CPC, it is only the averments made in the petition which can be considered, *de-hors* the averments and the documents which may have been relied upon by the respondent. It is also settled that an application under Order VII Rule 11 CPC can be filed at any stage of trial, with the only rider being that the findings have to be confined to the



averments made in the petition and the documents so relied upon by the petitioner.

17. The Supreme Court extrapolated on how a plaint must be read in the case of T. Arivandandam vs. T.V. Satyapal (1977) 4 SCC 467. It was observed that there cannot be any compartmentalisation, desertion, segregation and inversion of the language to various paragraphs in the plaint. Further, where such meaningful reading of the plaint makes it clear that it contains merely an illusion of cause of action and no clear right to sue is disclosed, then powers of the court under Order VII Rule 11 should be exercised.

18. In ITC Limited (supra), the Apex Court held that the basic question to be decided while dealing with an application under Order VII Rule 11, CPC is whether the real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 of the CPC. Clause (d) of Order VII Rule 11 CPC makes it clear that if the plaint does not contain necessary averments relating to limitation, the same is liable to be rejected. It is the duty of the person who files an application under Order VII Rule 11 CPC to satisfy the Court that the plaint does not disclose how the same is within time.

19. Likewise in Hardesh Ores (P) Ltd. vs. Hede & Company (2007) 5 SCC 614, it was similarly observed that the plaint as a whole has to be read and it is not permissible to cull out a sentence or a passage and to read it out of the context or in isolation. It was further observed that a reference cannot be made to the allegations made by the defendant in the Written Statement for rejection of the plaint under Order VII Rule 11, CPC.



20. These principles have been reiterated in Raptakos Brett And Co. Ltd vs Ganesh Property (1998) 7 SCC 184 and Mayar (H.K.) Ltd. vs. Vessel M.V. Fortune Express (2006) 3 SCC 100.

21. In Shakti Bhog Food Industries Limited (supra), the Apex Court held that in order to consider an application under Order VII Rule 11, CPC the court has to look into the averments in the plaint and this exercise can be done by the Trial Court at any stage of the suit. Averments made in the Written Statement are immaterial and it is the duty of the court to confine itself to the averments/pleas made in the plaint. What needs to be looked into while deciding such an application, is only the averments contained in the plaint.

22. A Coordinate Bench of this Court in case of Karan Goel (supra) observed that a meaningful reading of the entire plaint must be made for the Court to satisfy itself as to whether the averments made therein if taken in their entirety, would result in the decree being made.

23. Consequently, the observations of the learned Principle Judge, Family Courts that since the entire evidence has been recorded and part final arguments have already been addressed, the application filed under Order VII Rule 11, CPC is highly belated, cannot be sustained in the light of the settled law.

24. Now, **coming to the merits**, the respondent herein had sought annulment of marriage on the ground of fraud under Section 12(1)(c) of the Act of 1955. The Section reads as under:-

“Section 12(1)...

(1) Any marriage solemnised, 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:

(a) XXX XXX XXX

(b) XXX XXX XXX

(c) *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... ”.*

25. Clause (c) of Section 12(1) of the Act of 1955 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 as to the “nature of the ceremony” or as to “any material fact or circumstance” concerning the respondent.

26. The term ‘*Fraud*’ in the context of Section 12(1)(c) was interpreted by the Bombay High Court in the case of Raghunath Gopal Daftardar vs Vijaya Raghunatha Gopal Daftarda 1971 SCC OnLine Bom 52. It culled out a distinction between the term ‘*fraud*’ as appearing in Section 17 of the Indian Contract Act, 1872 and in Section 12 of Hindu Marriage Act, 1955 by observing that marriage under Hindu Law is treated as a *Samskara* or a sacrament and not a mere civil contract. The term “*fraud*” as used in the Hindu Marriage Act, 1955 is not a “*fraud*” in any general way and that every misrepresentation or concealment would not be fraudulent. If the consent given by parties is a real consent to the solemnization of marriage, then the same cannot be circumvented by alleging fraud.



27. Similarly, in the case of Harbhajan Singh vs Shrimati Brij Balab 1963 SCC OnLine Punj 139, it was observed that ‘fraud’ as a ground for annulment of marriage under the Hindu law is limited to those cases where the consent for marriage was obtained by some deception. It could not have been the intention of the legislature to include every misrepresentation that can be alleged, as a ground for dissolving a marriage.

28. Thus, under the Hindu Law, not every misrepresentation or concealment of a fact shall amount to “*fraud*” as envisaged under Section 12(1)(c) for annulment of a marriage. The fraud must be material as to the nature of ceremony or to any material fact or circumstance concerning the respondent and thus, at this point it is pertinent to consider what would tantamount to a material fact.

29. The meaning of a “*material fact*” or “*circumstance 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 point was whether the concealment of fact of the wife having sickle cell anemia, amounted to a 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 the fact or circumstance which is of such a nature that it would likely interfere with the marital life of the parties, is a material fact or circumstance. Such a material fact must be in respect of the person or the character of the person and it is immaterial whether the same is curable or not. Further, a fact crucial to the extent that, if disclosed, it would result in either of the parties not consenting to the marriage, would also be a material fact.



30. In the present case, the only allegation of “*force and fraud*” that has been made by the respondent is that since the very first day of negotiation for marriage, the appellant and his family members had started making the demand for dowry. Immediately after the marriage, at Le Meridian hotel where the appellant was staying since he is a resident of New Zealand, he made a demand of Rs.40 lakhs and a BMW Car. When the respondent was unable to react favourably to these demands, the appellant did not get the formalities of her VISA completed and left for New Zealand on a preponed date without informing the respondent.

31. While the learned counsel for the respondent has vociferously contended that a complete fraud was played on the respondent but even on a specific query, he was unable to explain any “*force or fraud*” as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent. Neither the demand of dowry which according to the respondent had started ever prior to the marriage nor non-completion of formalities for the respondent to get her VISA for New Zealand, can be termed as fraud or force of the nature and character as defined in Clause (c) of Section 12(1) of the Act of 1955. Pertinently, neither the close scrutiny of the petition nor submissions of the respondent could establish any “*force or fraud*” as to the nature or character of the appellant to get the consent for marriage. There being no instance of force or fraud, the petition for annulment of marriage under Section 12(1)(c) of the Act of 1955 has to be held to be filed without disclosing any cause of action.

LIMITATION :

32. Learned counsel for the appellant has also asserted an additional



ground for rejection of petition on the ground that the petition for annulment filed by the respondent, was **beyond the period of limitation**.

33. Section 12(2) of the Act, 1955 provides the conditions to be satisfied for filing of the petition for annulment. Section 12(2)(a) reads as follows:

“(2)Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage (a) on the ground specified in clause (c) of sub-section (1) shall be entertained if— (i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered..”.

34. A careful reading of the petition shows that the alleged “*force and fraud*” came to the knowledge of respondent in the night of 06.10.2009 while the appellant was residing at Le Meridian Hotel, New Delhi. It is not in dispute that the marriage between the parties had lasted only for three days. In paragraph 26 of the annulment petition, the respondent has mentioned that ‘*all the acts of fraud against the petitioner were played by the respondent at Le Meridian Hotel, New Delhi*’ where he was residing at the time of marriage. It is clear that the alleged act of fraud/force came to the knowledge of the respondent on 05.10.2009 itself while the present petition has been filed after 25 months on 15.11.2011 which is clearly beyond the period of one year as provided under Section 12(2)(a) of the Act of 1955.

35. In a desperate attempt to bring the petition for annulment within limitation, learned counsel for the respondent has argued that the father of the appellant had submitted some documents and made a statement to the



official of SPUW&C pursuant to a Notice issued on the complaint of the respondent. She was not aware of the contents of the documents and the statement about which she became aware only when she was able to obtain the documents and the statement under RTI on 06.07.2011. It was asserted that since the fraud was divulged only on getting the documents through RTI, the present petition has been filed within three months and is therefore within limitation.

36. Interestingly, as already noted above, the alleged acts of fraud happened at Le Meridian Hotel, New Delhi immediately at the time of marriage in October 2009. No-where has respondent explained as to what was the fraud which got divulged to her from the documents and statement obtained through RTI on 06.07.2011. Needless to observe that the plea of RTI has been introduced merely to overcome the bar of limitation.

37. A comprehensive reading of the entire petition itself makes it abundantly evident that **firstly**, no cause of action has been disclosed in the petition for annulment of marriage on the ground of fraud or force and **secondly**, the petition has been filed beyond the period of one year from the date when the alleged fraud was discovered and the force ceased to operate.

38. The respondent has placed reliance upon ITC Limited (supra) to claim that since an issue in regard to petition being time barred in view of the Sub-Section 2 of Section 12 of the Hindu Marriage Act has already been framed and the evidence of the plaintiff has already been recorded, it would not be appropriate to reject the plaint at this belated stage of resorting to Order VII Rule 11, CPC.



39. In the present case, bare perusal of the averments in the petition itself shows that the alleged fraud was known to the Respondent since October, 2009 while the petition was filed in November 2011 i.e. after 25 months. The facts stare blatantly on the face and no amount of evidence can change the pleaded facts. Hence, limitation is not a question of fact and law that would require evidence. Hence, the judgement of ITC Limited (supra) is distinguishable on facts of the case. We, therefore, find that the petition of the respondent for annulment of marriage under Section 12(1)(c) of the Act of 1955 is not maintainable on the aforesaid grounds.

40. Before concluding, we are compelled to observe that scrupulous adherence to provisions of CPC especially provisions like Order VII Rule 11 CPC can curtail litigation like the present one, which aside from clogging the litigation that could have been nipped in the initial stage itself, also keeps the parties embroiled in litigation with a false hope of some relief, which is never to come their way. This not only leads to dejection amongst the litigants towards the system but also leads to prolonged acrimony between the parties which is not conducive to a robust judicial system and ultimately to a peaceful society. We hereby, direct that the Judges, Family Courts must make judicious use of the provision of law for expeditious disposal of petitions and to discard frivolous litigation at the threshold.

41. Accordingly, we set aside the impugned Order dated 31.03.2022 of the learned Principal Judge, Family Courts and allow the application under Order VII Rule 11 CPC and reject the petition under Section 12(1)(c) of the Act of 1955 filed by the respondent as not disclosing any



cause of action and being barred by limitation.

42. The present appeal is allowed with pending applications, if any, and are disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

AUGUST 18, 2023
akb