

**IN THE HIGH COURT AT CALCUTTA
(Civil Appellate Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

F.A. 21 of 2022

**Smt. Anindita Dutta Majumdar
Versus
Sri Santanu Ranjan Dutta**

For the Appellant : Mr. Indrajeet Dasgupta
Ms. Puspita Bhowmik

For the Respondent: Mr. Moni Sankar Chattopadhyay.

Heard On : 26.09.2024
Judgement Delivered On : 24.12.2024

Supratim Bhattacharya, J.:

1. Through the petition before the Trial Court the respondent/petitioner/husband had prayed for decree of nullity annulling the marriage held on 25.04.2012 in between the parties under Section 25 (i) and had also prayed for other relief /reliefs.
2. The Trial Court passed decree of nullity on contest and thereby annulled the marriage.
3. Being aggrieved by and dissatisfied with the judgment dated 07.10.2021 passed in Matrimonial Suit No. 169 of 2013, by the Ld. Additional District Judge First Court, Alipore, District- South-24-Parganas, the appellant/wife has preferred the present appeal.

4. The appellant /wife herein was the respondent while the respondent/husband herein was the petitioner before the Trial Court.
5. The matrimonial suit was earlier adjudged by the Trial Court on 04.08.2015 allowing the prayer for annulment of marriage. Against the said judgment the wife had preferred an appeal before the Hon'ble Court. A coordinate Bench of this Court had disposed of the said appeal being FAT No. 479 of 2015 on 08.03.2019 and remanded the said suit by passing the following:

“4. The suit is remanded to the trial court to be tried afresh. It is for the learned Judge to decide whether to hear it at the argument stage on the basis of the available evidence or to reopen the taking of evidence by the court. Such decision is left to the learned Judge. He is requested to redetermine the suit within six months of communication of this order.”

On remand the Ld. Trial Court adjudicated the *lis* by passing the impugned judgment after taking further evidence of the witnesses both on behalf of the petitioner/ husband and the respondent/wife.

6. Facts of the instant *lis*

From the pleadings in the petition filed by the husband (respondent herein) praying for annulment it transpires that the parties to the suit are by religion Hindu and their arranged marriage was registered on 25.04.2012 as per the Special Marriage Act, 1954. On 27.04.2012

and 29.04.2012 the wife refused to have physical relation with the husband. Thereafter on 29.04.2012 the parties left for Manali for honeymoon. It has been stated that there also the wife avoided the husband on the plea that she was not yet mentally prepared. The husband wanted to have discussion with the wife but the wife did not show any interest to the approach of the husband. The husband had once again tried to make things easier during the night of 02.05.2012 and had requested the wife to discuss about the matter but the wife kept silent and did not show any willingness. On 03.05.2012 the husband again tried to discuss the issue with the wife but the wife was stern, reacted harshly towards the petitioner and became abusive. On 22.09.2012 the wife went to her office. That evening, the father of the wife informed the husband that his daughter will not return to her matrimonial home that night as she has fallen sick and shall remain at his house. The husband went to his in-laws house and arranged for his wife's medical treatment. On the very next day when the husband intended to visit his in-laws house his father-in-law asked him not to come as there was no one to open the door which surprised and shocked the husband.

On the next day the husband got infected with Dengue and had to be admitted to the hospital. The respondent had recovered from illness but she did not visit her husband in the hospital. After recovery the husband went to his in-laws house and requested his wife to return

to his house but the wife refused. On 10.03.2013 once again the husband went to his in-laws house and requested her to return but she stated that the doctor has advised her to take bed rest for two months as such she is unable to go to her matrimonial home. The husband thereafter on several occasions tried to contact his wife over telephone but the wife on each and every occasion was reluctant on one pretext or the other to have conversation with the husband. All the attempts of the husband to bring his wife back failed. Finally, after the expiry of two months the husband went to the wife's house and insisted his wife to return to her matrimonial home. The wife for the first time directly revealed that as their marriage is an arranged marriage she has realized that she never liked the petitioner/respondent and will never be able to make any physical relation with him and that the petitioner is not a suitable husband for her. After coming to know the feelings of his wife the husband felt insulted and lost all the charm of life.

It has also been stated that the wife taking the alibi of illness left her matrimonial house. The entire episode was pre-planned with the active cooperation and knowledge of her parents. The husband has also stated that the marriage was not consummated owing to the wilful refusal of the wife. As the said marriage has not been consummated the husband has prayed for annulment of the marriage and a decree of nullity.

Per contra, the wife has stated that there was no approach from her husband as regards to physical relationship as such there is no question of refusal to have physical relationship. The wife has stated that the story of being intimate with her by her husband on the dates alleged is absolutely false. It has been stated that the husband being the only son, is always under the control and advice of his mother. He behaved strangely and did not use to respond to any situation. The appellant has claimed that her husband never tried to be intimate during the entire period of her stay at her matrimonial home and the said fact is known to the family members of her husband. She has stated that on 20.09.2012 she had fever regarding which she informed her husband, but her husband had not taken any step in this regard and the wife remained in her matrimonial home without treatment. Thus, in the morning of 22.09.2012 she left for her parental home wherefrom she was taken to a doctor by her father. She has further stated that her husband has indulged in falsehood as he did absolutely nothing for her treatment and has not paid a single penny. The petitioner was reported to be suffering with dengue by pathological report dated 24.04.2012 when she was still unwell and as such she could not visit him in the hospital. Her father had visited the husband at the Cosmos hospital, where her mother-in-law had treated her father rudely. Her father however remained in touch with the son-in law constantly till his son-in-law got fully cured.

7. The wife has further alleged that the mother-in-law used to check her bag when she went outside and had seized the key of her cupboard and locker on the very first day. It has also been alleged that the husband did not show any interest to consummate the marriage.

8. Mr. Indrajeet Dasgupta Ld. Counsel representing the appellant assisted by Ms. Puspita Bhowmik has submitted that

- i)** If the husband/respondent was so eager to have consummation of the marriage the husband should have prayed for restitution of conjugal rights, which the husband has never prayed for which proves the fact that the husband was not at all eager to have consummation of the marriage.
- ii)** He has further submitted that the allegation of separating the bed by the wife is absolutely false and there is no proof in this regard.
- iii)** He has further submitted that the Court has wrongly considered the deposition of the respondent to be an admission of the petitioner's case. During the cross-examination the wife has stated about not willing to stay with her husband only as a reaction to the husband abandoning her during her illness.
- iv)** The Ld. Counsel has further submitted that the appellant/wife has never made any false statement before the

court. Her truthful statements have been wrongly interpreted against her.

- v)** The Trial Court has been misdirected by its perception of there being weakness in the appellant's defence. Whereas it is settled law that the petitioner has to make out a case and cannot rely upon alleged weakness of the defence stated by the defendant to make out a case.

Relying upon the aforesaid facts and circumstances the Ld. Counsel has stated that the judgment and decree is unsustainable and has prayed for allowing the present appeal.

9. Mr. Moni Sankar Chattopadhyay Ld. Counsel representing the respondent /husband has submitted as follows:

- i)** That during cross-examination, the appellant wife has admitted the fact that the marriage has not been consummated, so from the evidence itself it is proved that there is non-consummation of the marriage.
- ii)** The Ld. Counsel has further stated that even today the husband is willing to stay with the wife.
- iii)** He has further submitted that there being admission on behalf of the wife so the question of stigma as regards to incapacity, or otherwise does not arise at all.
- iv)** He has further submitted that the wife has stated that she does not wish to stay with the husband as such there is no

question of keeping the marriage alive. If the said marriage is not terminated, keeping in view the admitted non consummation, it will create hardship to both the parties and will be a misery and horrible for the parties.

- v)** Ld. Counsel has further submitted that the husband has tried his level best on several occasions during the earlier days of the marriage to lead a peaceful life with his wife and had on several occasions even gone to his in-laws house to bring back his wife but the hostile attitude of his wife has resulted in a barren life. Being insulted on several occasions by his wife and her family members the husband has not preferred any application for restitution. As such not praying for restitution cannot be a ground for not granting the order of annulment of marriage on the ground of non-consummation, which in the instant case is an admitted fact.
- vi)** Relying upon the aforesaid facts and circumstances the ld. Counsel has submitted that the order passed by the Trial Court is a reasoned order and needs no interference.
- 10.** Thus, the moot point for consideration is as to whether the Judgment passed by the Ld. Trial Court is in accordance with law or not.
- 11.** To reach to the ultimate conclusion this court delves into the entire evidence on record. The husband has deposed that the wife

refused to have physical relation on 27.04.2012 and initially he thought that as their marriage had just taken place so his wife requires time. He has further deposed that on 29.04.2012 when they had gone to Manali for honeymoon he had tried to be intimate with his wife but there also his wife avoided him on the plea that she was not yet mentally prepared. He has further deposed that he wanted to have discussion with the respondent to overcome any uneasiness that may be prevailing, and they could come closer but his wife did not show any interest to such an approach. He has further deposed that on 02.05.2012 during the night he had once again requested his wife to discuss about the matter as to whether she has any problem but his wife kept silent and did not show any intention to cooperate. Once again on 03.05.2012 after returning from sightseeing he had again tried to discuss the issue with his wife but his wife treated him roughly and harshly. He has further deposed that whenever he tried to make his wife understand about the true meaning of marriage and relation between the husband and wife his wife had become abusive and had shown stern attitude towards him. He has also deposed that after returning from honeymoon at Manali the behaviour of his wife towards him became worse and his wife could not bear him. It has also been stated by him that his wife had separated her bed and had strictly asked him not to think of

any physical relation with her and also not to disturb her in this issue.

12. The husband during his cross-examination has deposed that the wife had gone to her paternal house because of her illness and thereafter he had tried to bring her back but failed and gradually he became frustrated and also aborted the process of discussion to solve the problem. From the evidence of the husband it also transpires that just after the marriage and till the period when the wife went to her in-law's house that is for a period of about 5 months, the tussle continued and it also transpires that after 3 to 4 months of their marriage the husband realized that the problem could not be solved, as a result he had informed about the problem to his family members and they had also tried to solve the dispute through discussion with the family members of his wife. The wife had left the matrimonial house voluntarily. It also transpires that the husband had visited his in-law's house to solve the dispute but the same has not been fruitful.

On venturing into the evidence of the wife it reveals that in the first line of her cross-examination the wife has stated that she is not willing to stay with her husband and she has also volunteered that she is stating so as because her husband had abandoned her during her illness.

The wife has also deposed that just after the very next day of their marriage she came to understand that her husband is not fit for her and it would not be possible for her to continue their marital life. She has also deposed that due to non-cooperation of her husband and his family members on the very next date of her marriage she was disturbed. She had tried on her part to consummate the marital life with her husband but she has failed. In the same breath she admits that she has not mentioned in her examination-in-chief that she had tried on her part to consummate the marital life. The wife has also deposed that she had not initiated any proceeding against her in-laws at the beginning. Only 5 years after residing at her parental house she lodged a criminal case against her husband and in-laws, before the Survey Park Police Station being No. 31 dated 17.02.2017 under Section 498A/406/34 of the Indian Penal Code. She has further admitted that she was not aware even about the death of her mother-in-law prior to the filing of the criminal case against her husband and her mother-in-law and has also volunteered that nobody had informed her about the death of her mother-in-law.

Thus, from the evidence of the parties it transpires that the husband has stated with details, mentioning the dates as regards to his approach towards the wife for consummating the marriage. Whereas the wife has stated once that she had tried on her part to

consummate the marriage which had failed. Such statement is also without reference to any details such as dates, place etc. The statement, therefore, when compared to the husband's statements in the deposition made with details, appears unacceptable. She has not stated anywhere else as regards to her approach for consummating the marriage.

Section 25(i) of the Special Marriage Act, 1954 states as follows:

“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”

From the aforementioned section it transpires that a marriage solemnized under the Special Marriage Act may be annulled by a decree of nullity subject to fulfilment of two conditions. One, if the marriage has not been consummated and secondly, that non consummation of the marriage is because of the wilful refusal of the respondent to consummate the marriage.

As regards the marriage being non-consummated, from the evidence of the parties it reveals that both the contending parties are ad idem on this issue that the marriage has not been consummated. So the issue of non-consummation is laid to rest

and there is no controversy as regards to non-consummation of the marriage.

- 13.** The next facet of the issue is whether non consummation of the marriage is because of the wilful refusal of the respondent to consummate the marriage.

While dealing with non-consummation of the marriage under Section 25 of the Special Marriage Act the Court is to see whether there is wilful refusal of the respondent to the suit to consummate the marriage.

On a holistic consideration of the appellant's oral evidence at the trial we find that during her examination-in-chief she has denied the allegations leveled by the petitioner. She has also leveled allegations against her mother-in-law that she was treating the appellant with cruelty. She has also stated about her father being subjected to rude behavior when he had gone to visit her ailing husband. She has flatly denied the assertions made by the petitioner that he had participated in her treatment when she was ill, paid the medical expenses, got himself medically examined to establish the fact that he was potent and competent to consummate the marriage.

During cross-examination, however, stark inconsistency emerged in the deposition of the appellant before the Trial Court casting a cloud of doubt over the credibility of her deposition. During cross-

examination she has flatly stated that she is not willing to stay with the petitioner. Firstly, the reason for such statement has been stated to be the fact that he abandoned her during her illness. Later she has stated that it is not possible for her to stay with the petitioner. As regards, the appellant going abroad without informing her husband, she has admitted to the same but by assigning a reason that she did not inform him as there was no contact between them. She has admitted to the case of the petitioner that after marriage they went to Simla and Manali for honeymoon. She has stated about going voluntarily. She has stated in specific terms as follows:

“Later on just after the very next day of our marriage I came to understand that the petitioner is not fit for me and it would not be possible for me to continue our marital life. ...

I have not mentioned in my affidavit-in-chief that I had tried on my part to consummate our marital life. ...”

Having stated so, she has made a vague and general assertion without any details whatsoever as regards the date, time or place, that she had tried on her part to consummate the marital tie with the petitioner but failed. Having made such statement, in the same breath she goes on to state that she has not mentioned in her affidavit-in-chief that she ever tried to consummate the marital life.

Though in examination-in-chief she has stated that the husband had not bothered to visit or take care when she was ill, in the cross-examination she has stated about the husband visiting the doctor during the course of her treatment.

In the cross-examination she has also admitted that she went to her paternal house and started to reside there from 22nd September 2012. Further, in cross-examination on 07.09.2021 she has stated that she used to take information about the health of her mother-in-law, thereafter she proceeds to state that she was not even aware about the death of her mother-in-law, which occurred on 02.01.2016. Oblivious of such fact she even proceeded to lodge a criminal complaint alleging torture by the mother-in-law. She has specifically stated that it is too late for reconciliation.

Having cast the responsibility of non-consummation or incompetence of the husband, in her further cross-examination on 15.09.2021 she has stated that she never went to hospital for his medical checkup. She has ended her cross-examination on that day by making a statement *"I have no objection to declare the marriage as void one on the ground of non consummation."*

Keeping in view the stark inconsistencies in the deposition, as noted above in the background when the appellant has expressed a specific no objection to declaration of marriage as void on the

ground of non-consummation, we are of the unambiguous opinion that the Trial Court was right in upholding the case of the petitioner and proceeding to decree the annulment of marriage on the ground of non-consummation.

In view of the admission of the wife recorded in her cross-examination and such admission being based on the circumstances wherein she found that the petitioner was not fit for her and that she could not continue matrimony with him, the question of casting any stigma upon either of the parties by going into the issue of one or the other being incompetent to consummate does not arise, moreso, since the present case is not one under Section 24 of the Act.

From the evidence adduced by the parties noted above it has transpired that the husband has time and again made endeavour to consummate the marriage but the wife has stated only once and that too evasively without any specific suggestion as to the fact of her initiative to consummate the marriage.

- 14.** Thus, from the discussions made above it is clear that there has not been any consummation of the marriage. Based on the convincing evidence backed by details at the trial we are inclined to accept the case of the husband that the appellant wife was unwilling to consummate the marriage. In spite of attempts by the husband there has been non consummation of the marriage. This

goes to prove wilful refusal of consummating the marriage by the respondent/ wife.

15. Thus, this Court is of the view that the impugned judgment does not require interference.

16. Thus, the instant appeal being **F.A. 21 of 2022 is dismissed without any cost.**

17. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

18. Urgent certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree,

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)