

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.70 OF 2016

Santosh Subrao Ghodake

...Appellants/
Applicants

Versus

Sadhana Santosh Ghodake

...Respondents

Mr. Kedar P. Lad for the Appellant.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : JANUARY 12, 2024

P. C. :

1. The Second Appeal has been preferred being dissatisfied with the Judgment dated 29 May, 2015 passed by the District Judge, Kolhapur in Regular Civil Appeal No. 93/2009 dismissing the Appeal and confirming the Judgment and Decree of the Joint Civil Judge, Senior Division in Hindu Marriage Act, Petition No. 236 of 2003 and dismissing the Application seeking dissolution of the marriage under Section 13 and Section 12 (i)(c) of the Hindu Marriage Act, 1955.

2. The facts of the case are that the Petition No. 236 of 2003 was filed by the Appellant seeking divorce. It was pleaded that on 16th May, 1991 the parties were married according to Hindu Vedic Rites and subsequently son was born on 28th May, 1992. As regards the cruelty, it is

pleaded that the Respondent used to insult the mother and sister of the Petitioner and during the pregnancy, the Respondent did not take the medicine by saying that she did not want the child and she will not maintain the child. Even after birth of child the Respondent failed to take proper care of the child. Certain incidents of cruelty taken place in May and June, 2002 have been cited by the Appellant to show that the Respondent had treated his mother and sister with cruelty. The Trial court after appreciation the evidence on record, dismissed the Petition as against which the Appeal filed was dismissed by the Appellate Court.

3. Heard Mr. Lad, learned counsel for the Appellant.

4. Learned counsel for the Appellant submits that the Petitioner did not disclose her correct date of birth, which according to the Appellant is December, 1962, at the time of the engagement and thus his consent was obtained by fraud by showing the date of birth on 1st November, 1965. He submits that if the real date of birth would have been known to the appellant he would not have agreed for the marriage and as such, his consent was obtained by fraud. As regards the acts of cruelty, he would submit that the Respondent has treated his mother and sister with cruelty and also submits that the Respondent has not taken care of the child which caused him mental agony. The substantial question of law according to him, is the perversity in the findings of the Trial Court and

the Appellate Court on aspect of fraud.

5. Considered the submissions and perused the record.

6. The Trial Court after appreciating all evidence, dismissed the Petition and the Appellate Court re-appreciation of evidence has confirmed the finding of the Trial court. It is well settled that in Second Appeal unless there is a perversity in findings demonstrated, no substantial question of law would arise and there cannot be any re-appreciation of question of fact.

7. In the present case, as far as the annulment of marriage which is sought on the ground of Section 12 (i)(c) of the Hindu Marriage Act is concerned, it is necessary for the Appellant to plead and prove the suppression of fact of the correct date of birth and also that his consent had been obtained by fraud and secondly, that the fact which is suppressed his material fact. It is also necessary for him to plead the date when the said fact came to his knowledge and the fraud was discovered as the petition is required to be filed within a period of one year from the disclosure of the fraud.

8. In the present case, on the basis of evidence, the Trial Court has come to a finding that the Appellant has not established that his consent was obtained by fraud and that petition has been filed within a period of

one year from disclosure of fraud. The finding of the Trial Court has been upheld by the Appellate Court. The marriage has been performed in the year 1991 and after period of almost 12 years the Petition was filed seeking annulment of marriage under Section 12(i)(c) of the Hindu Marriage Act. When the material ingredients were not pleaded and established, no decree of annulment of marriage can be passed. As regards the incidents of cruelty, the Appellate Court has rightly considered that the incidents are not proved as the Appellant has failed to examine his mother and sister. The Appellate Court has considered the evidence of the witnesses and have found them to be interested witnesses. The First Appellate Court has therefore on the basis of evidence rightly held that the incidents which are cited are general wear and tear of marital life and cannot be said to be a nature of cruelty of the Appellant to file a decree of divorce.

9. Form the concurrent findings of the Trial Court and the Appellate Court, I am of the view that the evidence has been rightly appreciated by the Appellate Court and there is no perversity. Hence, and no substantial question of law arises.

10. Appeal stands dismissed.

(SHARMILA U. DESHMUKH, J.)