

2024:PHHC:148955-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-5225-2024 (O&M)

Date of decision: 13.11.2024

Ajay Kumar

....Appellant

Versus

Renu Bala

....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Pankaj Maini, Advocate, for the appellant.

SUDHIR SINGH, J.

The present appeal has been filed against the judgment and decree dated 06.09.2024 passed by the learned Additional Principal Judge, Family Court, Hoshiarpur, Camp Court, Garhshankar whereby the petition under Section 12 of the Hindu Marriage Act, 1955 (for brevity 'the Act') filed by the appellant-husband seeking a decree of annulment of marriage, has been dismissed.

2. The aforesaid petition had been filed by the appellant-husband, *inter-alia*, asserting therein that his marriage with the respondent-wife was solemnized on 16.06.2019, according to Hindu rites, but no child was born out of the said wedlock. It was averred that the appellant-husband had been residing in U.K. for the last 15 years and was

searching for a suitable match and when he met the respondent-wife and her family, he clearly told them that he needed a qualified match, so that she could also go to U.K. It was further pleaded that the respondent-wife belonged to a poor family and all the expenses of the marriage were borne by him. It was, later on, revealed that the respondent-wife and her family members had lied about her education and age. As per Aadhaar card and school certificate, the respondent-wife was aged 40 years and thus, it was pleaded that the consent of the appellant-husband was obtained by way of a fraud. It was further pleaded by him that before marriage, he had inquired on telephone from the respondent-wife about her health issues, but he was never told about the infertility of the respondent-wife. After the marriage, both the parties underwent medical examinations, wherein the health of the appellant-respondent was found good, but it was found that the respondent-wife was not producing eggs and had many cysts in her ovaries, making it impossible to conceive. The appellant-husband took her for a second opinion at Ludhiana, where a similar medical opinion was given. When the IVF treatment of the respondent-wife was going on, the father of the respondent-wife told them that they should first go abroad and then, have the children. It was further alleged that in the beginning of the marriage, the appellant-husband had no idea about the closeness of the respondent-wife and her sister's husband (Rajendra Sharma). However, when the appellant-husband was asleep, she would talk on phone with her brother-in-law and also did video calling showing her naked body. It was

further alleged that the respondent-wife used to make phone calls to her brother-in-law from bathroom while having a shower. She would blatantly and openly talk about sex and asked the appellant-husband, as to why he could not carry on having sex for five hours. It was further pleaded that the respondent-wife used to extract huge amount of money from the appellant-husband on the pretext of getting medical treatment. Terming the aforesaid acts as cruelty and fraud, a decree of divorce was sought by the appellant-husband.

3. Upon notice, the respondent-wife entered appearance and filed her written statement admitting the factum of marriage. It was asserted that the appellant-husband was well aware about the age and qualification of the respondent-wife. The allegations regarding the health issues of the respondent-wife were denied being false. The medical investigation of the respondent-wife, allegedly got done by the appellant-husband at Jalandhar, was denied. As regards the allegation of relationship between the respondent-wife and her brother-in-law (Rajendra Sharma), it was pleaded that said Rajendra Sharma was aged 60 years and she had no relationship with him as alleged. It was, thus, alleged that the sole aim of the appellant-husband in filing the divorce petition was to get rid of the respondent-wife. Accordingly, a prayer for dismissal of the petition was made.

4. From the pleadings of the parties, the Family Court framed the following issues:-

1. Whether the marriage performed between the parties is null and void U/S 12 of the H.M. Act? OPP.
2. Whether petition is not maintainable? OPR

3. Whether petitioner has not come to the court with clean hands and has suppressed the material facts from the court, if so, its effect? OPR
4. Whether the petitioner is stopped by his own act and conduct from filing the present petition? OPR.
5. Relief.

5. In evidence, the appellant-husband himself appeared in the witness box as PW-1. On the other hand, the respondent-wife did not lead any evidence and ultimately, her evidence was closed by order.

6. After hearing the contentions of both the parties and considering the evidence brought on record, the learned Family court dismissed the petition seeking decree of nullity of marriage.

7. Learned counsel for the appellant-husband has vehemently argued that the appellant-husband has led cogent and convincing evidence before the learned Family Court to prove the fraud committed upon him by the respondent-wife and her family members. It is further argued that the allegations regarding infertility and the relationship between the respondent-wife and her brother-in-law (*jija*) were also proved on record, but the learned Family Court has failed to take the same into consideration. It is, thus, argued that the impugned judgment and decree passed by the learned Family Court, is liable to be set aside.

8. We have heard the learned counsel for the appellant-husband and have also gone through the impugned judgment and decree passed by the learned Family Court.

9. The only question that arises for consideration before this Court is as follows:-

“Whether the impugned judgment and decree passed by the learned Family Court requires any interference by this Court?”

10. So far as the allegations regarding concealment of the age of respondent-wife were concerned, it was found by the learned Family Court that the appellant-husband had an opportunity to inquire about the age of the respondent-wife from her testimonials. It was, therefore, found that the matrimonial fraud being altogether different from the contractual fraud, it could not be said that any fraud, in this regard, was played with the appellant-husband. As regards the issue of infertility, it was found that it was the stand of the appellant-husband himself that the respondent-wife was using contraceptive during sexual intercourse with him and he had also pleaded that she was infertile. Thus, it was observed that no woman shall use contraceptive when she knows that she is infertile. It was found that the appellant-husband could not prove that the respondent-wife had concealed the factum of infertility from him. As the petition was filed under Section 12 of the Act, it was found by the learned Family Court that the alleged extra marital relationship of adultery was no ground to grant a decree under Section 12 of the Act. Under issue no.4, it was found by the learned Family Court that the medical treatment provided to the respondent-wife by the appellant-husband was indicative of the fact that the parties were trying to have a baby in a natural way and as the age of the respondent-wife was mentioned as 39

years in the medical documents, the same was within the due knowledge of the appellant-husband. While relying upon the judgment passed in **Mohinder vs. Bikkar Singh**, 1979 P&H 248, it was found that even a single act of sexual intercourse after discovery of fraud, will be fatal to the petition under Section 12 of the Act. Thus, it was held that the appellant-husband was stopped from filing the divorce petition.

11. As noticed above, the petition filed by the appellant-husband was under Section 12 of the Act. It was the pleaded case of the appellant-husband that the respondent-wife had concealed from him, her age as also the factum of her being infertile, but as noticed above, the learned Family Court, on the basis of the evidence on record, did not find any substance in the said averments. Even before this Court, the learned counsel for the appellant-husband could not dispute the aforesaid finding by raising any convincing arguments, except the one raised before the learned Family Court.

12. We find that the findings recorded by the learned Family Court are based on the evidence on record and no case is made out to interfere with the same. It could not be pointed out that any evidence has been misread or not taken into consideration by the learned Family Court while passing the impugned judgment.

13. No other point has been urged.

14. In view of the above, we do not find any illegality or perversity in the findings recorded by the learned Family Court.

Accordingly, finding no merit in the present appeal, the same is hereby dismissed

15. All pending applications(s), if any, shall also stand disposed of.

**(SUDHIR SINGH)
JUDGE**

**(JASJIT SINGH BEDI)
JUDGE**

13.11.2024
Ajay Prasher

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| - | <i>Whether speaking/reasoned:</i> | <i>Yes/No</i> |
| - | <i>Whether reportable:</i> | <i>Yes/No</i> |