

2025:PHHC:032977-DB



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

FAO-773-2025 (O&M)

Date of decision: 06.03.2025

KALPNA NAGAR

.....Appellant

Versus

PRASHANT SINGER

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present:- Ms. Gayatri Puri, Advocate with
Ms. Komal Sharma, Advocate for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 08.11.2024 passed by learned Additional Principal Judge, Family Court, Gurugram (for short the 'Family Court'), whereby the petition under Section 12(1)(a) of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the appellant-wife, has been dismissed.

2. The aforesaid petition had been filed by the appellant-wife, *inter alia*, averring therein that her marriage with the respondent-husband was solemnized on 14.02.2019. It was further asserted by her that the respondent-husband was unable to consummate the marriage due to his incapacity. It was further alleged

that the marriage was solemnized on the basis of fraud and the respondent-husband had concealed his impotency. The respondent-husband was a habitual drunkard and was suffering from physical and mental disorder and it was impossible for her to live with him. He used to become infuriated whenever approached for the purpose of sexual consummation of the marriage. She had discovered that he was taking medicines of hormonal deficiency, depression, neuropathy, hepatomegaly with grade-II, and was also taking medicines for erectile dysfunction. He used to hurl abuses upon her in the presence of his mother. She was kept as a prisoner in the matrimonial home and was not allowed to go anywhere. On 20.04.2019, when the appellant-wife came to Gurugram for her M.A. (Psychology) project, the respondent-husband started doing her character assassination over the phone and had also made derogatory remarks against her. She went back to her matrimonial home on 14.05.2019 and with the permission of her in-laws, she went to Hyderabad to meet the respondent-husband, but his behaviour towards her remained cold. The respondent-husband was a chain smoker and when she had requested him to quit smoking, he started abusing her. Owing to the aforesaid behaviour of the respondent-husband, she came back to her parental house at Gurugram on 14.06.2019. Her parents had tried to resolve the matrimonial disputes between the parties, but all in vain.

3. Upon notice, the respondent-husband entered appearance and filed his written statement. He had claimed that the appellant-wife had not come to the Court with clean hands and the divorce petition had been filed by her to harass and humiliate him. He further claimed

that the marriage had been consummated. The remaining averments were denied.

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

- “1. Whether the marriage between the parties is liable to be annulled, as prayed for? OPP
2. Whether the petition is not maintainable? OPR
3. Relief.”

5. In evidence, the appellant-wife appeared as PW-1 and had also examined PW2-Dr. Inamicazam, Consulting Physician, besides tendering document Ex.P1 to P3; Mark-1 and Mark-Z. On the other hand, the respondent-husband examined himself as RW1.

6. The learned Family Court after taking into consideration the rival contentions and evidence on record, dismissed the petition, as noticed above.

7. Learned counsel for the appellant-wife has vehemently argued that once, it was established by the appellant-wife on record that the respondent-husband was suffering from erectile dysfunction and due to the said reason the marriage was not consummated, the very approach of the learned Family Court in dismissing the petition filed by the appellant-wife is legally unsustainable. It is further argued that the sole case of the appellant-wife was that due to the physical incapacity and impotency of the respondent-husband, the marriage could not be consummated and the said averments and the evidence

led in this regard, could not be controverted by the respondent-husband and, thus, it was incumbent on the part of the learned Family Court to grant the decree of divorce under Section 12(1)(a) of the Act. It is further argued that once, the document regarding the medical treatment of the respondent-husband was produced and proved on record (may be in the form of mark document), and there was no counter to that, the learned Family Court ought to have considered the same to allow the petition filed by the appellant-wife. In support of the said assertions, the learned counsel for the appellant-wife contends that the mark document could always be referred to and relied upon for the ancillary purposes and as in the instant case, the said document was regarding the medical treatment of the respondent-husband (including the erectile dysfunction). It is further argued that the appellant-wife had examined PW2- Dr. Inamicazam, Consulting Physician, who had supported the medical prescription i.e., mark-Z and in the face of the said evidence, there was nothing on record on behalf of the respondent-husband to counter the allegations regarding his physical incapacity.

8. We have heard the learned counsel for the appellant-wife and have also gone through the impugned judgment and decree.

9. The only question that arises for consideration by this Court is whether the impugned judgment and decree passed by learned Family Court, requires any interference.

10. It may be noticed that the appellant-wife had sought the decree of divorce under Section 12(1)(a) of the Act, pleading therein

the physical incapacity of the respondent-husband. She had examined herself as PW1 and had also examined PW2- Dr. Inamicazam, Consulting Physician. However, it has been found by the learned Family Court that she did not examine the doctor who had conducted medical examination of the respondent-husband and in the absence thereof, it could not be said that she had proved the physical incapacity of the respondent-husband. Moreover document Mark-Z, was not an exhibited document and the same was merely a prescription. It was also found that it was not clear as to whether the said document was in respect of the respondent-husband or any other person. Further, the learned Family Court has found that there was no direct evidence in respect of the physical incapacity of the respondent-husband. Still further it was observed by the learned Family Court that no application had been moved by the appellant-wife for medical examination of the respondent-husband. The authorities relied upon by and on behalf of the appellant-wife were distinguished by the learned Family Court observing therein that there was no medical evidence sufficient to prove that the respondent-husband was suffering from erectile dysfunction.

11. We find that a spouse seeking divorce must prove the grounds pleaded by way of cogent and convincing evidence. In the instant case, it was for the appellant-wife to prove that the respondent-husband was suffering from erectile dysfunction by leading cogent and convincing evidence. However, she did not examine the concerned doctor who had allegedly medically examined the respondent-husband. She did not also make any endeavour to move an

application in respect of the medical examination of the respondent-husband. The medical prescription i.e., Mark-Z was not relied upon by the learned Family Court being a mark document and moreover it was observed by the learned Family Court that the said document did not indicate the identity of the person, who had been treated for erectile dysfunction.

12. We find that the appellant-wife had failed to lead any cogent and convincing evidence in respect of the physical incapacity of the respondent-husband. Thus, the findings recorded by the learned Family Court cannot be said to be suffering from any illegality or perversity.

13. No other point has been urged.

14. Finding no merit in the present appeal, the same is hereby dismissed.

15. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[SUKHVINDER KAUR]
JUDGE

06.03.2025
himanshu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No