

Mat Suit no. 620/2022
CNR No. WBND0DC000635-2023

Petitioner Sri Bapan Das [Husband]

VS

Respondent Smt. Bina Debnath [Wife]

Present: A. CHAUDHURI, ADJ, FTC, Kalyani, Nadia. (J.O Code - WB00849)

Order No.- 15,

Date- 19.02.2024.

Petitioner files hazira.

The ld advocate on behalf of the petitioner is present.

Heard argument on ex parte.

The record is taken up for passing ex parte order.

One affidavit is filed on behalf of petitioner stating inter alia that no other matrimonial suit or proceedings has been pending or filed in any court of law between the same parties and no award or order or judgment has been passed by any competent court of law or any other authority concerned relating to the matrimonial dispute between the same parties.

One Sri Bapan Das, the petitioner of this case filed this suit u/s 25 of Special Marriage Act. 1954 for a decree declaring the marriage between the parties under the Special Marriage Act held on 24-09-2019 is null and void and prays for decree of nullity.

The petitioner's case in short is that both the parties to the suit are governed by Hindu Religion and their marriage was solemnized on 24-09-2019 as per Special Marriage Act 1954 before the Marriage Registrar Sanjib Kumar Bose at Kalyani and a Marriage Registration Certificate was issued being no.- WB33600400010300002702-2019-51196, Dated- 24-09-2019. After registration of the marriage the parties went their respective addresses and they never started living under the same roof as husband and wife. The marriage has not been consummated till date. After few days of marriage registration between the parties, the petitioner several time requested the respondent for social marriage but every time respondent avoid the petitioners proposal social marriage, he several time went to the fathers house of the respondent and requested the respondent as well as her parents for arranging social marriage but the respondent and her parents insulted the petitioner and his parent by using slang language and also threatened them by saying that if they come to the respondent fathers house the respondent will teach a good lesson and also threatened the petitioner and his parent that she will file false criminal case if they wanted to further talk with her. All the relatives friends and well wishers tried to reconcile the matter between the parties but all effort of petitioner and his parent went in vein. Lastly on 20-09-2022, the petitioner went to the fathers house of the respondent for negotiation of the marriage but the respondent refused to meet with them. After several request of the petitioner the

Contd.....(Page No.- 2)

respondent came out of her house and used slang languages to the petitioner and on protest by the petitioner the respondent became violent and beat the petitioner with fist blows and also throw sandals on the petitioner, who some how escaped from the hand of the respondent and went to the local Haringhata P.S. and informed the matter in writing. Till date the social marriage of the parties did not take place and marriage not consummated between the them due to willful refusal of the respondent and they have not resided together for a single day.

After receiving the case record from the Court of Ld ADJ, Kalyani the notice was issued upon the respondent through court as well as in registered post. S/R through court has not been served as not found, the registered post was duly delivered upon the respondent, a postal track report is filed to that affect by that petitioner. But respondent wife refrained to contest this suit by attending Court and filing W/O and the suit was run exparte against the respondent.

During the exparte hearing the petitioner closed his case after examining himself as P.W 1 and one Nisha Das was examined as P.W 2. The marriage certificate being no. WB33600400010300002702-2019-51196, Dated- 24-09-2019 was marked as Exhibit 1. The entire testimony of P.W 1 and P.W 2 remains unchallenged and unrebutted.

From the pleadings of the parties it appears that this court has jurisdiction to try the present suit. So far as the limitation is concerned, it appears that this suit was filed well within the time of limitations. It also appears that there is no defect of the parties. The plaint shows the cause of action. So the suit is maintainable in its present form and law.

The unchallenged and unrebutted testimony of P.W 1 and P.W 2 shows that the marriage between the parties were registered on 24-09-2019 as per Special Marriage Act. But since the said marriage and till date that marriage has not been consummated due to willful refusal on the part of the respondent/wife.

Now let me mention the ingredient of section 25 of Special Marriage Act, which states as
Section 25 in The Special Marriage Act, 1954

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 willful refusal of the respondent to consummate the marriage; or

(II) the respondent was at the time of the marriage pregnant by some person other than the petitioner; or

(III) the consent of either party to the marriage was obtained by coercion or fraud, as defined in the Indian Contract Act, 1872 (9 of 1872): Provided that, in the case specified in clause (ii), the court shall not grant a decree unless it is satisfied,—

(a) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(b) that proceedings were instituted within a year from the date of the marriage;

and

(c) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree:

(Page No.- 3)

Mat Suit no. 620/2022

Provided further that in the case specified in clause (iii), the court shall not grant a decree if,—

(a) proceedings have not been instituted within one year after the coercion had ceased or, as the case may be, the fraud had been discovered; or

(b) the petitioner has with his or her free consent lived with the other party to the marriage as husband and wife after the coercion had ceased or, as the case may be, the fraud had been discovered.

In this present case as per unchallenged evidence of Pw-1 and Pw-2 the marriage was registered on 24-09-2019 and the suit was filed on 30-09-2022 i.e. within that period the marriage has not been consummated. Question arises whether non-consummation of the said marriage was due to the willful refusal on the part of the respondent/wife or not. The respondent/wife having full knowledge about the ground raised by the petitioner/husband of willful refusal upon the shoulder of respondent/wife, she did not take any initiative to rebut the same. From the unchallenged and unrebutted testimony of PW- 1 and PW- 2 it is presumed that the willful refusal to consummate the marriage was on the part of the respondent/wife and the same is satisfied the ground to declare the marriage voidable and to annulled the same. Accordingly the suit succeeds.

C.F. paid is corrected,

Hence, it is

ORDERED

that the suit be and same is decreed exparte against the respondent. The marriage between the parties Sri Bapan Das (Husband) and Smt. Bina Debnath (Wife) dated 24-09-2019 under Special Marriage Act is declared as voidable and said marriage is nullified from the date of passing this order i.e 19.02.2024. The marriage Certificate being No.- WB33600400010300002702-2019-51196, Dated- 24-09-2019 ceases to have any effect from 19.02.2024

Office to draw decree as per law.

Dict. & Corr. by me,

Sd/- A. Chaudhuri
Addl. Dist. Judge, (FTC),
Kalyani, Nadia.

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Addl. Dist. Judge, (FTC),
Kalyani, Nadia.

