

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE, 2ND COURT
SERAMPORE, HOOGHLY**

Present : Mr. Nayyar Azam Khan
Additional District Judge, 2nd Court,
Serampore, Hooghly,
J.O Code No.WB01302.

Matrimonial Suit No. 669 of 2022

Sri Suman Chatterjee Vs Smt. Sumi Mahato

**Order No. 27
Dt 04.8.2026**

Today is fixed for ex parte argument and passing order.

Petitioner is present before this court and has filed his hazira.

Argument is heard ex parte from the side of the petitioner.

The record is now taken up for passing order.

The matter has germinated from an application under section 25 of the Special Marriage Act, 1954 for annulment of marriage by a decree of nullity which has been filed by the petitioner/husband against his wife on 25.8.2022.

In the said application, it has been contended that the marriage between the petitioner and the respondent was registered on 17.01.2017 according to Special Marriage Act, 1954 before the concerned Marriage Officer in Uttarpara, District Hooghly and after registration of their marriage, the petitioner began to live separately at 56, Malir Bagan Makhla, Post Office Makhla, P.S Uttarpara, Dist. Hooghly and the respondent began to live separately at 18 Sandilya Para, Makhla, P.S Uttarpara, Dist. Hooghly. After registration of marriage the marriage between the petitioner and the respondent was not consummated owing to the willful refusal on the part of the respondent. Both parties never stayed as husband and wife for a single day and their marriage was not consummated owing to the willful refusal of the respondent to consummate the marriage due to which the petitioner was forced to institute the present suit for declaration of nullity of their marriage against the respondent.

After the filing of the case, the respondent appeared and filed written statement before this Court in this suit but she did not take steps on one fixed date for which she was show caused as to why the matter would not be heard ex parte against her. Subsequently she did not take file her show cause reply on the date fixed for the same due to which the case was fixed for ex-parte hearing against the respondent by order dated 08.6.2025.

In support of his case, the petitioner adduced his evidence on oath as P.W.1 by filing examination-in-chief wherein he stated the facts that the petitioner and the respondent never lived under one roof as husband and wife and that their marriage was not consummated due to

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the willful refusal of the respondent to do so to the tune of his pleading and he prayed for a decree for nullity. After the closure of evidence, learned advocate for the petitioner has submitted that the petitioner has proved one of the grounds of voidable marriage and prayed for annulment of the said marriage by decree of nullity accordingly.

Having heard the counsel of the petitioner and after going through the materials on record, it appears that the petitioner and the respondent never lived under one roof as husband and wife and thereby their marriage was not consummated owing to the willful refusal of the respondent to do so which facts have been proved by the evidence adduced by the petitioner/husband of himself as P.W.1. The oral testimony of the petitioner/P.W.1 has not been challenged by the respondent who did not bother to contest this suit. In this context, it is profitable to refer to one judgement on the evidentiary value of the unchallenged testimony of a witness.

In the case of **Rajinder Pershad (Dead) by LRs. Vs. Darshana Devi**, reported in **(2001) 7 Supreme Court Cases 69**, the Hon'ble Supreme Court discussed the scope of sections 138 and 146 of the Indian Evidence Act 1872, which is set out as follows :

"6. *The law is well settled that where the evidence of a witness is allowed to go unchallenged with regard to any particular point it may safely be accepted as true* ".

On careful scrutiny of the aforesaid enunciation of law as to the evidentiary value of the unchallenged testimony of a witness, it appears that the same can be accepted as true and can be relied upon in adjudicating the case. In the case in hand, the petitioner has categorically pleaded that the marriage between himself and the respondent was not consummated due to the willful refusal of the respondent to do so and the same has been proved by adducing evidence on the touchstone of preponderance of probabilities.

Under Section 25 of the Special Marriage Act, 1954, *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*

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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: 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 the present case, the marriage in question is voidable and can be annulled by a decree of nullity as the marriage was not consummated owing to the willful refusal of the respondent to consummate the marriage.

Accordingly, the petitioner is entitled to a decree of nullity as enumerated under section 25(i) of the Special Marriage Act, 1954.

On consideration of the entire case, I do not find any scintilla of doubt as regards connivance between the parties and or any impediment under the law to decide the present case.

It is, therefore,

O R D E R E D

that Matrimonial Suit No. 669 of 2022 be and the same is allowed ex-parte against the respondent.

However, there is no order as to costs.

The marriage between the petitioner **Sri Suman Chatterjee** son of Late Kamal Chatterjee and the respondent **Smt. Sumi Mahato**, daughter of Sri Chandu Mahato dated 17.01.2017 is hereby annulled by a decree of nullity.

A copy of the order be supplied to the petitioner at free of cost.

The instant case is thus disposed of.

Dict. & corr. by me.

Sd/-

Addl. District Judge, 2nd Court,
Serampore, Hooghly.

Sd/-

Addl. District Judge, 2nd Court,
Serampore, Hooghly.