

Mat 294/24 (CIS 294/24)

Order dated 06.03.2026

Today is fixed for passing exparte order, as such, the record is taken up.
The petitioner has filed memo of appearance through ld. Counsel.

This is a suit praying for decree of nullity of marriage by declaring the marriage between the petitioner and the respondent dated 17.01.2023 being null and void.

The brief fact of the petitioner's case is as follows:-

The petitioner/ wife and the respondent /husband are both Hindus by religion. The marriage between the petitioner/ wife and the respondent/ husband was solemnized on 17.01.2023 before the marriage registration officer under Special Marriage Act.

It is asserted, since solemnization of marriage the parties are residing separately. The petitioner/wife never went to her matrimonial house after registration of marriage since the respondent/husband did not intend to take the petitioner/wife to the matrimonial house. The marriage between the petitioner/wife and the respondent/husband never consummated due to willful refusal by the respondent/husband. There is psychological incompatibility and cultural differences between the petitioner and the respondent. Thus, the parties could not adjust with each other. According to the petitioner the marriage became voidable due to willful refusal on the part of the respondent after registration of marriage.

According to the petitioner the cause of action to file this case arose on 17.01.2023 and continuing since thereafter.

The petitioner has prayed for a decree of nullity to declare the marriage solemnized with the respondent on 17.01.2023 be null and void.

The petitioner's evidence

In order to prove his case the petitioner, Smt Payel Saha examined herself as P.W. 1 and her elder sister Smt Ruma Saha as PW 2.

The petitioner has exhibited following documents :-

1. The original Marriage Certificate of the marriage between Payel Saha and Suman Barik as exhibit 1.

Decision with reasons

The point for determination in this case is whether the marriage between the petitioner and the respondent has not been consummated owing to the willful refusal by the respondent to consummate the marriage.

Section 25 of The Special Marriage Act lays down the provisions by which a marriage can be declare to be a voidable marriage and may be annulled by a decree of nullity:-

(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);

Provide 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:

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.

It is the settled principle of law that the petitioner has to prove his case on the strength of witness and documentary evidence. Any witness in the case of the respondent do not entitled the petitioner to get a decree as prayed for.

The petitioner was examined as P.W. 1 and the examination-in-chief filed by the P.W. 1 is a replica of the plaint case. The petitioner as P.W. 1 submitted in evidence that she was married with the respondent 17.01.2023 before the Marriage Registrar. The petitioner never resided with the respondent after their marriage and the marriage was never consummated due to willful refusal by the respondent. It is asserted that the petitioner and the respondent never cohabited with each other. It is further submitted that the marriage was never consummated due to psychological incompatibility and cultural differences.

The petitioner has exhibited the original Marriage Certificate dated 17.01.2023 which is marked as exhibit 1. It appears therefrom that the petitioner/wife was married with the respondent/husband on 17.01.2023 under section 13 of Special Marriage Act. The said certificate bears the signature of both the petitioner and the respondent. It has been issued by the Office of the Registrar General of Marriages, West Bengal. It is in the nature of public document. Reliance can be placed on it for the purpose of ascertaining a legal valid marriage between the petitioner and the respondent. It can be safely gathered from the evidence that it was a conscious decision of two adults to marry. There was not fraud on the part of either parties.

It appears that the petitioner is claiming annulment of marriage on the grounds of "willful refusal" by the respondent wife to consummate the marriage. As per the case of the petitioner, she never refused to consummate the marriage. She is ready and willing to keep the relationship. However, the respondent husband is resisting the conjugal relation willfully. The evidence adduced by the petitioner reveals that the respondent is disinterested to lead a conjugal life with her. Thus, the aspect of "willful refusal" by the respondent husband has been established through the unchallenged testimony of the petitioner.

Here it is found that the respondent is not contesting the instant case. And the court do not find reason to disbelieve the facts asserted by the petitioner in her application and evidence. The rule of evidence is inflexible that when deposition made in examination in chief is not cross examined by the adversary it leads to presumption in law that the correctness where of has been impliedly accepted. In the aforesaid premises, this court is of the view that the petitioner is entitled to get relief.

As a result the case succeeds.

Hence, it is,

Ordered

That the case is decreed exparte without cost.

The petitioner is entitled to get decree as prayed for.

That the marriage between the petitioner Smt Payel Saha and the respondent Sri Suman Barik solemnized on 17.01.2023 is hereby annulled by a decree of nullity of marriage.

Addl. Dist. & Sessions Judge,
FTC-I, Alipurduar.

Additional Dist. & Sessions Judge,
1st Fast Track Court, Alipurduar.