

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, 1ST COURT
AT ALIPORE, SOUTH 24-PARGANAS

MATRIMONIAL SUIT NO. 1390 OF 2025

Present : Sri Rajesh Chakraborty (JO Code-WB00764)

Additional District Judge, 1st Court, South 24 Pgs at Alipore

SWEETY ROY

Wife of Satyabrata Pathak,
Daughter of Sanjib Kumar Roy,
Residing at 259, Upen Banerjee Road,
P.O. Parnasree Pally, P.S. Parnasree,
Kolkata – 700060.

...Petitioner/Wife

-Versus-

SATYABRATA PATHAK

Son of Debabrata Pathak,
Residing at Paschim Para, Barabelun,
G.P. Barabelun-I, Block Bhatar,
P.O. Kajurdihi, P.S. Bhatar,
District Purba Bardhaman, PIN – 713158.

...Respondent/Husband

Date of delivery of Judgement: 10.08.2026

JUDGMENT

The present matrimonial suit has been instituted by the petitioner/wife under Section 25(i) of the Special Marriage Act, 1954 seeking annulment of her marriage with the respondent/husband by a decree of nullity on the ground that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the same.

The suit has been contested by the respondent by filing written objection. Both parties have entered the witness box and, therefore, the controversy requires adjudication upon the pleadings and evidence led by the parties rather than upon any default or absence of contest.

The factum of marriage is substantially undisputed.

The petitioner and respondent were married on 20.12.2024 under the Special Marriage Act, 1954 before Marriage Officer Ekanki Batabyal. A certificate of marriage bearing No.

WB34200100010100002361-2024-161399 dated 20.12.2024 was issued in respect of the marriage.

The principal dispute concerns what followed thereafter and, more particularly, whether the marriage remained unconsummated owing to the wilful refusal of the respondent.

The petitioner's case is that after registration of the marriage, the parties returned to their respective residences and continued to maintain a visiting relationship without cohabitation. According to her, she repeatedly requested the respondent to take her to his matrimonial home at Barabelun so that they could commence their conjugal life, but the respondent did not accede to her request and subsequently flatly refused to continue the marital relationship.

The petitioner has also made allegations regarding misrepresentation of the respondent's income. According to her, prior to marriage the respondent represented that he was employed with MITPU, Pune and earning approximately Rs.60,000/- per month, whereas after marriage she discovered that his salary was only about Rs.27,000/- per month. She has further alleged that after marriage she came to know that the respondent maintained relationships with other women and that when she objected, he threatened her.

The foundation of the relief actually sought, however, is the petitioner's specific assertion that the marriage was never consummated because the respondent wilfully refused to consummate it.

The respondent entered appearance and contested the suit. In his written objection he denied the allegations concerning misrepresentation of income, illicit relationships, threats and wilful refusal to consummate the marriage.

The respondent contended that the marriage was an arranged marriage and that the petitioner and her family consented to it after considering his age, financial condition and other circumstances. According to him, after registration of marriage the parties went back to their respective parental residences.

The respondent sought to attribute the breakdown of the relationship to the petitioner. He alleged that the petitioner behaved rudely towards him and members of his family, acted according to her own wishes and told him that she did not want to live with him as husband and wife. He further alleged that the petitioner remained occupied on the telephone and that he came to know that she had a relationship with another individual.

Significantly, however, the respondent's own written objection contains an assertion of considerable importance to the determination of the present suit. While denying the petitioner's allegation that non-consummation resulted from his wilful refusal, the respondent himself pleaded that after the marriage the parties never cohabited and that the marriage was never consummated.

Thus, notwithstanding the controversy as to which spouse was responsible for the situation, the pleadings of both sides converge upon one material fact: the marriage has never been consummated.

Upon the rival pleadings, issues were framed regarding maintainability of the suit, existence of cause of action, whether the marriage remained unconsummated owing to the wilful refusal of the respondent, whether the petitioner is entitled to a decree of nullity and the consequential reliefs.

The petitioner examined herself as PW-1.

PW-1 tendered her examination-in-chief by affidavit and relied upon the original Marriage Certificate dated 20.12.2024 issued by Marriage Officer Ekanki Batabyal, which was marked Exhibit 1. Her Aadhaar Card was also produced and marked as an exhibit after verification with the original.

The Marriage Certificate provides documentary corroboration of the undisputed fact that the marriage between the parties was solemnized on 20.12.2024 under the Special Marriage Act, 1954.

More importantly, PW-1 maintained her substantive case regarding non-consummation. During cross-examination on behalf of the respondent, it was suggested to her that the statements made in her pleadings were false. She denied the suggestion. She was also confronted with the proposition concerning consummation of the marriage and categorically maintained that her marriage had never been consummated.

The significance of this evidence must be appreciated in the context of the respondent's own pleadings.

This is not a case where the petitioner alone asserts non-consummation and the respondent produces a positive case supported by evidence that the parties cohabited and consummated their marriage. The respondent's written objection itself states that after the registry both parties started living separately at their respective parental homes and, in his substantive pleading, admits that they never cohabited and the marriage was never consummated.

The respondent examined himself as DW-1. He tendered his examination-in-chief by affidavit and produced his Aadhaar Card. In cross-examination, his substantive response recorded in evidence was a denial of the suggestion that what he had stated in his pleadings was false.

Thus, the respondent has not furnished through his oral evidence any detailed account of matrimonial cohabitation which could demonstrate consummation of the marriage. Nor is there any documentary or other independent evidence showing that after registration the parties established a matrimonial home and lived together as husband and wife.

The Court is therefore confronted not with a serious factual controversy as to whether consummation occurred, but principally with a controversy as to responsibility for its non-occurrence.

Section 25(i) of the Special Marriage Act, 1954 provides for annulment of a marriage by a decree of nullity where the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage.

The provision thus requires something more than mere proof that sexual relations did not take place after marriage. Non-consummation must be attributable to a wilful refusal by the respondent.

The expression “wilful refusal” denotes a conscious and deliberate refusal to undertake the normal incidents of the matrimonial relationship. A marriage may remain unconsummated for various reasons which do not attract Section 25(i), including circumstances beyond the control of either spouse, temporary separation, illness or consensual postponement. The statutory requirement is fulfilled when the evidence establishes that consummation did not occur because the respondent deliberately declined to participate in the marital relationship despite a reasonable opportunity to do so.

The burden to establish the statutory ground initially rests upon the petitioner. The Court cannot annul a marriage merely because the parties agree that they no longer desire to remain married. Matrimonial status is governed by statute, and a decree of nullity must rest upon proof of one of the statutory grounds.

At the same time, matrimonial facts such as cohabitation, consummation and the circumstances in which spouses did or did not establish conjugal life ordinarily lie within their intimate personal knowledge. The Court is therefore required to assess the oral evidence, surrounding circumstances, admissions contained in pleadings and probabilities emerging from the conduct of the parties.

In the present case, the marriage was solemnized on 20.12.2024. It is admitted on both sides that after registration the parties returned to their respective residences. The respondent himself pleads that they thereafter continued to live separately and that their marriage was never consummated.

The petitioner's evidence is that she requested the respondent on different occasions to take her to his residence so that they could commence conjugal life, but he did not respond to those requests and ultimately refused to continue the marital relationship.

That assertion forms part of the petitioner's substantive case and has been affirmed by her on oath.

The respondent, despite contesting the suit, has not placed before the Court a convincing alternative factual account showing that he made genuine arrangements to establish a

matrimonial home with the petitioner or that he invited her to live with him and she refused.

His written objection alleges that the petitioner told him that she had no relationship with him and did not want to live with him as husband and wife. However, the respondent's evidence as DW-1 does not develop this allegation by providing particulars regarding when, where and in what circumstances such refusal was allegedly communicated. No communication, correspondence or other supporting material has been produced to demonstrate that the respondent desired cohabitation and that it was the petitioner who prevented consummation.

This deficiency assumes significance because the respondent admits the underlying fact of non-consummation but seeks to shift responsibility for it entirely upon the petitioner.

A bare counter-allegation is not sufficient to displace the petitioner's sworn evidence when the respondent has failed to place before the Court persuasive evidence of any affirmative effort on his part to commence conjugal life.

The respondent's allegation that the petitioner had an illicit relationship with another person also remains a mere allegation. No particulars or corroborative material have been brought on record to establish such accusation. Matrimonial adjudication cannot proceed on suspicion or general allegations regarding the character of a spouse.

Likewise, the petitioner's allegations regarding the respondent's alleged relationships with other women have not been independently proved and are not required to be adjudicated for deciding the present proceeding. The suit is under Section 25(i), and the Court must confine itself to whether the statutory ground of non-consummation owing to wilful refusal stands established.

The allegation concerning the respondent's income also does not require any conclusive adjudication in the present case. Whether he represented his monthly income to be Rs.60,000/- and actually earned Rs.27,000/- may have been pleaded as part of the background of the deteriorating relationship, but the petitioner has not sought a decree upon a separately established case of fraud requiring determination by this Court.

The case can and should be decided on the ground specifically contemplated under Section 25(i).

The admitted separate residence of the spouses immediately following the registration assumes importance in this context.

Marriage under the Special Marriage Act does not require a further social ceremony for its legal validity. Once the statutory marriage was solemnized before the Marriage Officer on 20.12.2024, the parties became husband and wife in law. Any contemplated social ceremony thereafter could not postpone the legal existence of the marriage or deprive either spouse of the expectation of commencing matrimonial life.

The evidence indicates that no matrimonial home was thereafter established by the parties.

The petitioner says that she desired commencement of conjugal life and repeatedly requested the respondent to take her to his residence. The respondent denies responsibility but simultaneously admits continued separate residence and non-consummation. His evidence does not satisfactorily explain what steps he took, despite being the husband and despite the subsisting marriage, to bring about cohabitation or consummation.

The Court cannot infer wilful refusal merely from silence or separate residence in every case. But the facts here have to be viewed cumulatively.

There was a legally solemnized marriage. The parties did not cohabit thereafter. The marriage admittedly remained unconsummated. The petitioner has positively testified that she requested the respondent to commence conjugal life and that he refused. Her testimony on the central fact of non-consummation remained firm in cross-examination. The respondent has produced no convincing evidence of an attempt on his part to establish matrimonial life or of any circumstance beyond his control which prevented consummation.

In these circumstances, the petitioner's version regarding wilful refusal appears more probable and convincing than the respondent's bare attribution of responsibility to her.

The standard in a matrimonial proceeding of this nature is not proof beyond reasonable doubt. The Court is required to determine the civil matrimonial controversy upon the preponderance of probabilities, while remaining satisfied that the statutory ground has genuinely been established.

On that standard, the evidence tilts clearly in favour of the petitioner.

There is another feature of the written objection which cannot be overlooked. The respondent first denies the petitioner's allegation that the marriage was not consummated owing to his wilful refusal, yet subsequently pleads that after marriage the parties never cohabited and that "the marriage was never consummated."

There is no inherent legal inconsistency in admitting non-consummation while disputing responsibility for it. But once non-consummation is admitted, the real question becomes why it occurred.

The petitioner has given a direct explanation supported by her testimony: she wanted to commence conjugal life and the respondent refused.

The respondent's competing explanation is not supported by comparable evidence. He has made allegations regarding the petitioner's behaviour and alleged relationship with another person, but such allegations have not been substantiated through evidence sufficient to establish that the petitioner herself deliberately prevented consummation.

The Court also notices that the written objection contains a curious position regarding relief. While the respondent has prayed for rejection of the petition and imposition of costs, the written objection also states that the respondent has no objection if the prayer of the petitioner is allowed.

Such a statement cannot, by itself, justify a decree of nullity. A marriage cannot be annulled under Section 25(i) merely because the respondent does not object to annulment. The statutory ground must independently stand proved.

The statement is nevertheless relevant in assessing the overall nature of the contest. It demonstrates that although the respondent disputes the allegations made against him, he does not seek preservation of the marital tie as an outcome of this proceeding.

The decree, however, is being granted not on consent but upon proof of the statutory ground.

The Court is satisfied that the petition has a cause of action. The marriage was solemnized on 20.12.2024 and, according to the evidence accepted by the Court, remained unconsummated thereafter owing to the respondent's wilful refusal. The continuing non-consummation and refusal supplied the petitioner with the factual foundation to invoke Section 25(i) of the Act.

The suit is also maintainable in its present form. The relief sought is one expressly contemplated by Section 25(i) of the Special Marriage Act, 1954, and no material has been brought before the Court establishing any legal bar to consideration of the petition.

The principal issue as to whether the marriage remained unconsummated owing to the wilful refusal of the respondent must accordingly be answered in favour of the petitioner.

The Court is conscious that annulment by decree of nullity is materially different from dissolution of marriage by divorce. Section 25 deals with a voidable marriage which remains legally effective until annulled by a competent Court. Therefore, the Court must be satisfied of the particular statutory circumstance rendering the marriage liable to annulment rather than merely determining that the matrimonial relationship has failed.

That requirement stands fulfilled here.

The original Marriage Certificate, Exhibit 1, establishes the marriage. The oral evidence of PW-1 establishes her case regarding non-consummation and the respondent's refusal. The respondent's own pleading independently admits that the parties never cohabited and that the marriage was never consummated. His evidence does not furnish a convincing rebuttal of the petitioner's account regarding the cause of such non-consummation.

The cumulative effect of the pleadings, oral evidence and admitted circumstances therefore establishes, on the preponderance of probabilities, that the marriage between

Sweety Roy and Satyabrata Pathak has not been consummated owing to the wilful refusal of the respondent to consummate the marriage.

The petitioner is consequently entitled to a decree under Section 25(i) of the Special Marriage Act, 1954.

The allegations exchanged by the parties regarding their respective conduct, income, alleged extramarital relationships and behaviour towards family members need not receive any final determination beyond what is necessary for disposal of the statutory claim. No finding upon such collateral allegations is required when the ground of non-consummation owing to wilful refusal has independently been established.

Accordingly, the suit succeeds.

Hence, it is

ORDERED

that Matrimonial Suit No. 1390 of 2025 be and the same is hereby decreed on contest, without costs.

The marriage solemnized between the petitioner, Sweety Roy, and the respondent, Satyabrata Pathak, on 20.12.2024 under the Special Marriage Act, 1954 before Marriage Officer Ekanki Batabyal, as evidenced by the Marriage Certificate bearing No. WB34200100010100002361-2024-161399 dated 20.12.2024, is hereby annulled by a decree of nullity under Section 25(i) of the Special Marriage Act, 1954 on the ground that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the same.

The matrimonial tie between the parties shall accordingly stand annulled in accordance with law upon the decree passed herein.

The parties shall bear their own costs.

Let the decree be drawn up accordingly.

Note in the relevant Register and CIS.

Dictated & Corrected by me

Additional District Judge,
1st Court, Alipore

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1st Court, Alipore