

District – South 24 Parganas.

***IN THE THIRD COURT OF ADDITIONAL DISTRICT JUDGE,
SOUTH 24 PARGANAS AT ALIPORE.***

*Present: Rajesh Tamang
Additional District Judge,
3rd Court, Alipore*

Matrimonial Suit No. 1567 of 2022

1. Mrs. Abhisikta Maitra nee Saha.....Petitioner.

V/S

2. Mr. Tanmoy SahaRespondent.

In the presence of,

Ld Advocate for Petitioner: Mrs. Saptarshi Dutta.

Ld Advocate for Respondent : Mr. Shilpi Das.

Date of delivery of Judgment: 17th day of July, 2023.

J U D G M E N T

This is an application u/s 12(1)(a) of Hindu Marriage Act, 1955 filed by Mrs. Abhisikta Maitra (hereinafter referred to as petitioner/wife) against Tanmay Saha (hereinafter referred to as Respondent/husband).

The marriage between the parties was solemnized on 24.01.2022 as per Hindu Customs and rites at 54/62, Raipur Road, PS.Netaji Nagar, Kolkata-700092 in presence of well-wishers and respective family friends within the jurisdiction of this Court.

After solemnization, petitioner went to her matrimonial house with her husband and they lived together as husband and wife at 8/83A, Netaji Nagar, PS-Netaji Nagar, Kolkata-700092.

That very day of “Fulsajya” the petitioner found that the respondent did not interest any physical relation or intimation with her and she further observed that respondent used to work as a Medical Representative and used to take extreme pressure and stress and the respondent used to show very less interest for the intimation and physical relation.

It is also stated that in the first week of February, 2022 the respondent had planned to spend time for short honeymoon trip and he booked tickets for Cochin/Ernakulam on 01.02.2022 from Kalkata and returned on 04.02.2022. The respondent was very caring in the said trip but when the petitioner want to have physical intimation the respondent made no effort to consummate the marriage.

After returning from honeymoon around 22.02.2022 the marriage was registered.

It is further stated that on 18.03.2022 they attended their close friend's birthday party and spent good quality of time. After that petitioner tried to convince the respondent to establish a physical relation but the respondent was unable to consummate or could not perform any physical relation with the petitioner as he was suffering from "erectile dysfunction". Thereafter, upon thinking and receiving the information from the people and through search the petitioner duly shared the link with the respondent but respondent did not receive well the said information and started denying the same. Then the respondent started to stay aloof. The petitioner was worried to have hurt the sentiment of the respondent and tried to become intimate but the same issue continued and respondent was not being able to consummate with the petitioner. The petitioner made several efforts to explain the respondent and also suggested the medical advise but the respondent became violent for such suggestion.

The petitioner knew that physical intimacy and consummation was one of the essences of marital bond but still in order to keep the relation of marriage alive booked to visit doctor but the respondent denied to go any stated that he had no interested to continue the bond further.

The petitioner therefore, stated that the marriage was never consummated and due to such indifferences and the behaviour of the respondent the petitioner moved to her parental house on 23.04.2022. The petitioner again with the said problem had difference of opinion with her parents and ultimately started to reside in separate accommodation.

Hence this petition with the prayer for decree of annulment of marriage dated 24.01.2022 and cancellation of registration of marriage dated 22.02.2022.

The respondent appeared and contested the suit and filed written statement denying the fact. It is stated that the respondent agrees that after prolonged rituals the respondent was truly tired and preferred to take rest. The respondent was in huge financial and work pressure during the wedding week. The respondent stated that he was unable to physical intimate and consummate the marriage with the petitioner for which the petitioner started to remain worried upon the said issue and time and again questioned the respondent. The petitioner always pressed to get medical advise and this made the respondent very much uncomfortable. The respondent after consultation from few of close friends reached out to have medical consultation and on 11.04.2022 he took medical consultation and was diagnosed with erectile dysfunction and premature ejaculation. Several medicines and test were prescribed and the respondent underwent the same on 26.04.2022 and he was advised to avoid smoking. Receiving the above information, the respondent emotionally broke down and mentally disturbed. The respondent admits that the marriage was not consummated and this led to growing difference between the parties. The respondent also prays for declaring the marriage as null and void.

Upon the pleading of both the parties the following issues were framed by the then Court:-

ISSUES

- 1. Whether suit is maintainable in its present form and prayer.*
- 2. Whether the suit is barred by estoppel, waiver and acquiescence ?*
- 3. Has the Petitioner/wife any cause of action for filing this suit?*
- 4. Whether the petitioner has been able to prove that the respondent failed to consummate the marriage?*
- 5. Is the petitioner entitled to get a decree for nullity of marriage on the ground of non-consummation of marriage ?*

6. To what other relief/ reliefs, if any, the petitioner/wife entitled to get in this suit?

After going through the issues and written statement, I am of the view that the issues are required to be re-casted.

1. whether suit is maintainable in its present form and prayer?.
2. Has the Petitioner/wife got any cause of action for filing this suit?
3. Whether the marriage between the parties was consummated?
4. Is the petitioner entitled to get a decree for nullity of marriage on the ground of non-consummation of marriage ?
5. To what other relief/ reliefs, if any, the petitioner/wife entitled to get in this suit?

In order to prove the case, the petitioner has examined herself as PW-1 and documents like certificate of marriage registration and Aadhaar card are marked as Exbt-1 and 2 respectively.

On the other hand the respondent has examined himself as DW-1 and the OPD ticket issued by RG Stone Hospital and photocopy of Aadhaar card are marked as Exbt-A series and B respectively.

DECISION WITH REASONS

Issue No. 1 & 2.

At the time of argument neither parties to the suit agitated regarding non maintainability and cause of action of the suit. For my satisfaction, I have gone through the pleadings of the parties and materials therein wherefrom I find that the petitioner has filed the suit for nullity of marriage on the ground that the respondent has erectile dysfunction and cannot consummate the marriage. The plaint disclosed the date of cause of action though the cause of action is a bundle of fact. On reading the plaint as a whole I find that the plaintiff has disclosed its cause of action properly and suit is maintainable.

Therefore, the issues no. 1 and 2 are decided in favour of the plaintiff.

Issue No. 3

This issue is taken up separately for the convenience of discussion. The petitioner has alleged that the respondent has physical

inability and their marriage was not consummated. It is also stated that the respondent has no ability or capacity to cohabit with the petitioner. It is also the allegation the husband delayed for medical examination as he had erectile dysfunction. Had he listen the petitioner in time the said disease would have been cured but he failed to do so.

Ld. Advocate for the petitioner submits that the husband has physical inability and is not able to satisfy the petitioner and could not consummate their marriage even when they went for honeymoon. The petitioner had tried her level best but failed. The respondent has admitted about his disease in his written statement. He has his problem but it is curable. The long time taken by the respondent to come to a conclusion about his dysfunction makes the petitioner to apply for annulment of marriage. Therefore, prays for passing necessary order.

The Ld. Advocate for the respondent, read out the written statement and submits that it is not fact that the respondent was not interested to have cohabitation. The respondent had arranged for honeymoon and they went for honeymoon but as the respondent has physical problem and he was in mental stress and his confidence level became low day by day. The respondent admits the fact that he has erectile dysfunction problem. As he could not satisfy the petitioner at this stage, the respondent also wants the marriage between the parties to be held as null and void.

The evidence on the part of the PW-1 is replica of her plaint and while she was cross examined, it was stated that she had asked her husband to go for doctor check up but the respondent did not agree. She had given sufficient time to her husband to recover himself from the problem.

The evidence on the part of DW-1 states that the respondent admits that after prolonged rituals he was truly tired and preferred to take rest on night of "Fulsajya". It is also admitted that he was unable to be physically intimate or consummate the marriage with the petitioner.

On perusal of the exhibit-1, the marriage certificate, it is seen that the marriage between the parties was registered as per Hindu Marriage

Act and their marriage was effect from 24.01.2022. Exbt-A series goes to show that the respondent had a problem of E.D and P.M.E.

The respondent himself as admitted that he has a problem of erectile dysfunctions and premature ejaculation. It is also seen that because of the problem and other reasons mentioned by the respondent, their marriage was never consummated. The evidence also goes to show that they have no physical intimacy or cohabitation after their marriage.

In the above circumstances, it is well said that the petitioner has established that the respondent has failed to consummate the marriage and the marriage was not consummated.

Thus the issue no. 3 is hereby decided in favour of the petitioner.

Issues No. 4 and 5

After discussing the above three issues, it is seen that the instant suit is maintainable in its present form and the petitioner has cause of action to file the present suit. It is also established that the marriage tie between the parties has not been consummated since from the beginning of the marriage and as such I find that there is no impediment to declare the marriage between the parties is voidable.

In the instant case, it is seen that the respondent having erectile dysfunction is not in a position to have conjugal intercourse which is one of the objects of the marriage. In a case decided under Hindu Law prior to coming into force of the present Act (Hindu Marriage Act. 1955), it was held by the Hon'ble High Court at Calcutta in the case of Ratan Moni Devi -Vs- Nagendra Narayan that marriage of a female with a male who was impotent and who had not been consummated the marriage was a nullity.

Capacity of sexual intercourse, must exists at least in posse, at the time of marriage, It is for this reason that impotency, by which it meant permanent and incurable impotency, existing at the time of marriage and continued until the institution of the proceeding for nullity is recognized as a ground for annulment of marriage.

Thus, the above issues are decided in favour of the petitioner.

In the result, the suit succeeds.

Court fee paid is found to be correct.

Hence, it is,

ORDERED

that the petition u/s 12 (1) (a) of the Hindu Marriage Act filed by the petitioner/wife is hereby allowed on contest against the respondent/husband without costs.

The marriage tie between the petitioner/wife and the Respondent/husband held on 24.01.2022 and registered on 22.02.2022 is hereby declared as voidable and is annulled by a decree of nullity. No order as to cost.

Dictated & Corrected by me.

*Additional District Judge
3rd Court, Alipore*

*Additional District Judge
3rd Court, Alipore*