

**THE HIGH COURT OF MADHYA PRADESH****AT GWALIOR***BEFORE***HON'BLE SHRI JUSTICE VIVEK RUSIA****&****HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI****ON THE 16th OF AUGUST, 2024****FIRST APPEAL No. 1950 of 2023*****MAYANK CHATURVEDI****Versus****SMT. MOHINI DUBEY*****Appearance:**

Shri Prakhar Dhengula learned counsel for the appellant.

**J U D G M E N T*****Per: Justice Rajendra Kumar Vani***

Appellant-husband has filed this appeal under Section 28 of the Hindu Marriage Act, 1956 (hereinafter referred to as the "Act"), against the judgment dated 14/06/2023 passed by Additional District Judge, Lahar, District Bhind in Case No.RCS/HM/23/2022 whereby the application filed on behalf of the appellant under Section 12 of the Hindu Marriage Act 1955(hereinafter referred to as the "Act") for annulment of marriage has been rejected.

2. Facts of the case in short are as follows:

The marriage of the appellant and respondent-wife was solemnized on

20/1/2022 as per Hindu customs and rituals. After marriage, respondent-wife went to her maternal home along with *Stridhan* to attend the marriage ceremony of her brother on 24.1.2022 and thereafter did not return to her in-law's house. When the appellant went to take her back on 27.1.2022, the respondent-wife refused to go with him saying that she had solemnized marriage with him under pressure from her parents. Thereafter, again on 1.2.2022 appellant along with other relatives went to the parental home of the respondent/wife where he got information that she left the house of her parents because of some quarrel and the police sent her to One Stop Center. The appellant visited One Stop Center along with his relatives and friends, however, she refused to go with the appellant. Faced with this situation, the appellant returned. Respondent No.2 (father of respondent-wife) deliberately concealed the factum regarding the previous relationship of respondent-wife with one Sonu Chauhan. In view of the aforesaid facts and circumstances, the appellant-husband filed a petition under Section 12 of the Hindu Marriage Act before the concerned Court.

3. Respondent No.1/wife did not appear before the Court below even after service of notice and she was proceeded ex-parte. Respondent No.2 (father of respondent No.1) filed a reply by denying averments and submitted that he had been informed by respondent No.2 that she was not ready to marry with appellant. When respondent No.1-wife came to her parental home to attend the marriage ceremony of her brother on 24.1.2022, she said that she did not want to go back to her in-law's house because she

does not like the appellant, she likes some other person; therefore, she clearly refused to go with the appellant.

4. After appreciating the evidence that came on record, learned Court below has dismissed the petition under Section 12 of the Hindu Marriage Act. Hence, this appeal is preferred by the appellant against the impugned judgment dated 14.6.2023.

5. Learned counsel for the appellant submits that the impugned judgment passed by the learned Family Court is unjust, arbitrary and bad in the eyes of law. Respondent No.1-wife was pressured by her parents to get married with the appellant. It is further submitted that respondent No.1-wife's intention of not to have a physical relationship with the husband would undoubtedly amount to cruelty due to non-consummation of marriage under Section 12(1)(a) of the Hindu Marriage Act. It is further submitted that respondent No.2 never appeared in the witness box, on the contrary, he informed that respondent No. 1 had eloped with her lover Sonu Chauhan, even the learned trial court has failed to consider this factual aspect which *prima facie* makes a case of fraud with the appellant and forceful consent of respondent No.1. Both the conditions as required under Section 12(1)(c) are available on record but still the learned Court below rejected the claim of the appellant. It is further submitted that respondent No.1 never appeared in the trial Court after the paper's publication and she remained ex-parte. Hence, prayed for allowing the appeal by setting aside the impugned judgment. The

respondents in this case were also remained absent even after due service of notice upon them.

6. Heard the learned counsel for the appellant.

7. The application is filed under Section 12(1)C of the Act. It would be apposite to reproduce the relevant subsection C of section 12(1) of the Act which reads as under:

*(c)that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978), the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent; or*

8. The evidence on record is to be examined first. The sole witness/ appellant Mayank Chaturvedi (PW-1) has examined himself and he has submitted documents Ex.P/1 and Ex.P/2 which are invitation cards for the marriage solemnized on January 2022. He stated in his statement that after the solemnization of marriage on 20.1.2022, respondent No.1 left her matrimonial house on 24.1.2024 to attend the marriage ceremony of her brother. On 27.1.2022 when he went to bring her back she denied but her father (respondent No.2) told him that he would make her understand and then the appellant may take her back. On 1.2.2022 he again went to bring back respondent No.1, but again she denied and he got information that the

marriage of respondent No.1 with him was made forcibly without the consent of respondent No.1. She was having an affair with Sonu Chauhan. He also came to know that respondent No.1 was sent to One Stop Center with the help of police and police took her statement in which she stated that her marriage was solemnized without her consent and she had eloped with one Sonu Chauhan.

**9.** Appellant Mayank did not file any documentary evidence about the statement as deposed by him. He did not disclose from where he got the information as stated by him in para-3 and 4 of his statement. He could disclose the name of the person from whom he has received the information and/or filed documents which are the source of such information, even so called police statement given by respondent No.1 has also not been filed by the appellant before the trial Court. No satisfactory explanation has been put forth by the appellant for such omission. Omission to adduce such information before the trial Court renders his statement unworthy to believe. In the absence of such evidence it cannot be said that prior to solemnization of marriage, respondents have committed fraud with the appellant by suppressing information with regard to her unwillingness to marry with the appellant.

**10.** It is undisputed that respondent no.1 remained absent before the Trial Court even after due service upon her. Respondent No.2 has filed his reply but has not tendered his evidence; therefore, in the absence of evidence, his

reply cannot be read against the evidence tendered by the appellant.

**10-A** If for the sake of argument reply of respondent No.2 is considered it reveals in additional averments in para-10 to 14 that at the time of marriage, respondent No.1 told him that she was not ready for marriage but he thought that it was because of natural shyness and he did not pay any heed towards it. Till the finalization of the date of marriage, respondent No.1 has never intimated to him that she likes another person. He also did not have such knowledge; therefore, he could not intimate the appellant accordingly. Rather he tried to convince respondent No.1 by saying that she was ruining her matrimonial life and that if she did not go to her in-law's house, she may be defamed in the society. She, however, has denied to go with the appellant. The entire additional averments made by respondent No.2 before the Trial court reveal that he did not have any knowledge prior to the marriage about the reluctancy of respondent no.1 to live with the appellant.

**11.** It was incumbent for the appellant to produce the best evidence before the trial Court to prove the factum of fraud committed by respondents. The reply, on which the appellant has put reliance, to some extent, does not reveal that respondent No.2 had himself prior information as regards the reluctancy or unwillingness of respondent No.1 to marry with the appellant. Therefore, as per the reply of respondent No.2 no fraud is said to be committed with the appellant as provided under Section 12(1)C of the Hindu Marriage Act. In this regard, the decision of the Bombay High Court

in the case of *Raghunath Gopal Daftardar Vs. Vijay Raghunath Gopal*

*Daftardar in 1971 SCC Online Bom 52: (1971) 73 Bom LR 8 40: AIR 1972*

*Bom 132* is referable, relevant para- 13 to 19 of the judgment reads as

under:

**13.** This Act also does not define fraud and, therefore, it is of no assistance to us in this case. But it is well settled under the Indian Divorce Act that fraudulent misrepresentation in inducing consent to marriage does not vitiate a marriage. I have not been pointed out any decided case under the Indian Divorce Act, 1869, which lays down that non-disclosure, or concealment of a fact and/or misrepresentation of a fact amounts to fraud. It seems to me, therefore, that even under the Indian Divorce Act, of 1869, the definition of ‘fraud’ given in s. 17 of the Indian Contract Act does not appear to apply. It is true that this High Court has held in *A. v. B.* [(1952) 54 Bom. L.R. 725.] , that a Hindu marriage is also a civil contract. But at the same time, the learned Judge (Tendolkar, J.) has held in that case that a Hindu marriage is also a sacrament. The Hindu Marriage Act, 1955, does not depart from this position, under the Hindu Law. I am, therefore, of the opinion that s. 17 of the Indian Contract Act, 1872, does not apply to a case of fraud under s. 12(1)(c) of the Hindu Marriage Act, 1955.

**14.** The question still remains what then is the meaning of the word “fraud”. *D. Tolstoy on the Law and Practice of Divorce*, 6th edn., has expressed thus (p. 112):

“...The test in all cases is whether there is real consent, not only to marry but also to marry the particular person. But provided such consent exists, it is immaterial whether it is induced by a fraudulent misrepresentation;”

**15.** Similarly, *Rayden on Divorce*, 10th edn., at page 98, says that

“...fraudulent misrepresentation, or concealment, does not affect the validity of a marriage to which the parties freely consented with a knowledge of the nature of the contract. But if a person is induced to go through a ceremony of marriage by threats or duress, or in a state of intoxication, without any real consent to the

marriage, it is invalid: in all such cases the test of validity is real consent to the marriage.”

**16.** Latey on Divorce, 14th edn., at page 19, also observes that

“Misrepresentation or concealment of facts which if known to one of the parties might have prevented his or her marriage does not invalidate a marriage, providing that there were free consent.”

**17.** Coming to the authors on Hindu Law, Derrett in his Introduction to Modern Hindu Law, 1963 edn., at page 193, says thus:—

“...If in fact the marriage would have been agreed to even had the facts been known, it seems that the marriage cannot be annulled, nor, it seems, in even stronger cases where full disclosures would have prevented the marriage; for fraudulent misrepresentation or concealment does not affect the validity of a marriage to which the parties freely consented with knowledge of its nature and with the clear and distinct intention of entering into the marriage in question.”

**18.** Similarly, in Mulla's Hindu Law, 13th edn. at page 682, we have these observations:

“...A person who freely consents to a solemnization of the marriage with the other party in accordance with customary ceremonies, that is, with knowledge of the nature of the ceremonies and intention to marry, cannot raise an objection to the validity of the marriage on the ground of any fraudulent representation or concealment. The test to be applied is whether there was any real consent to the solemnization of the marriage.”

**19.** It would thus be seen that the word “fraud” used in s. 12(1)(c) of the Hindu Marriage Act does not speak of fraud in any general way, nor does it mean every misrepresentation or concealment which may be fraudulent. If the consent given by the parties is a real consent to the solemnization of the marriage, the same cannot be avoided on the ground of fraud. The marriage, therefore, solemnized under the Hindu Marriage Act cannot be avoided by showing that the petitioner was induced to marry the respondent by fraudulent statements relating to her health.

**12.** The judgment of Punjab and Haryana High Court in **Surjit Kumar**



**vs. Raj Kumari 1967 AIR PUNJ 172** is also referable relevant part of which reads as under:

“...Past illicit relations of a girl with some man may per se not be a factor taken into consideration by all persons agreeing to enter into a marriage tie. This is not a circumstance, which, in all cases, would result in breakage of the marriage negotiations. Can then it be said that the relations were under any obligation to disclose about the girl's past unchastity? I think, the answer must be ‘no’. Merely keeping quiet about such history would not, therefore, lead to a conclusion that the consent to marriage had been obtained by fraud. Relations of the girl cannot, without any enquiry on this behalf, be expected to speak about every event in the girl's past life. Of course, if an enquiry had been made of them and they had given a wrong or an evasive reply, things may have been different. But that is not the appellants case...”

13. Applying the said ratio to the present case, in the backdrop of the aforesaid discussion, it is not found proven that any fraud has been committed by the respondents as provided in section 12(1)C of the Act 1955. It is trite law that the plaintiff has to prove his/her case on the basis of cogent and reliable evidence, he/she cannot take the benefit of weaknesses of the defendant. On this principle and the principle of preponderance of probability, the plaintiff has failed to prove his case. The Trial Court has rightly given the finding on the issues upon proper appreciation of evidence, no ground is made out to interfere with the judgment and decree of the trial Court.

14. Resultantly, by affirming the findings of the trial Court, this appeal filed on behalf of the appellant is hereby dismissed as being bereft of merit. It is needless to mention here that the appellant is free to file appropriate

proceedings before the competent court under the provisions of the Hindu Marriage Act on the grounds available to him.

**(VIVEK RUSIA)**  
**JUDGE**

**(RAJENDRA KUMAR VANI)**  
**JUDGE**

Ahmad