



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No. 138 of 2018

- P. Venkat Rao S/o. P. Ramarao, Aged About 54 Years R/o Railway Quarter No. 103/4, (Behind Railway Reservation Office), Railway Colony, District Durg Chhattisgarh.

---- **Appellant**

Versus

- Smt. P. Padmavati W/o P. Venkat Rao, Aged About 50 Years R/o Railway Quarter No. 103/4, (Behind Railway Reservation Office), Railway Colony, District Durg Chhattisgarh

---- **Respondent**

For Appellant	: Shri Srinivas Rao, Advocate
For Respondent	: Shri Shashank Thakur, Advocate

Hon'ble Justice Shri Goutam Bhaduri

Hon'ble Justice Shri N.K. Chandravanshi

Order On Board

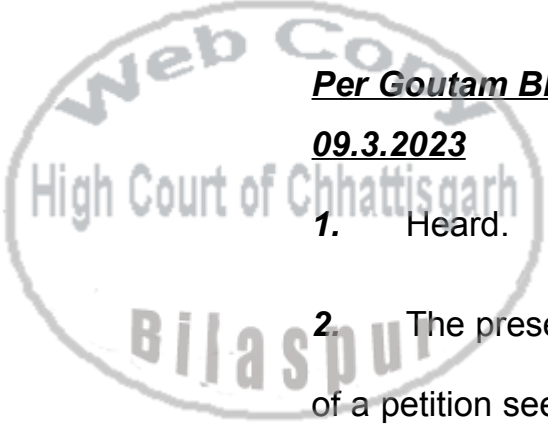
Per Goutam Bhaduri, J

09.3.2023

1. Heard.

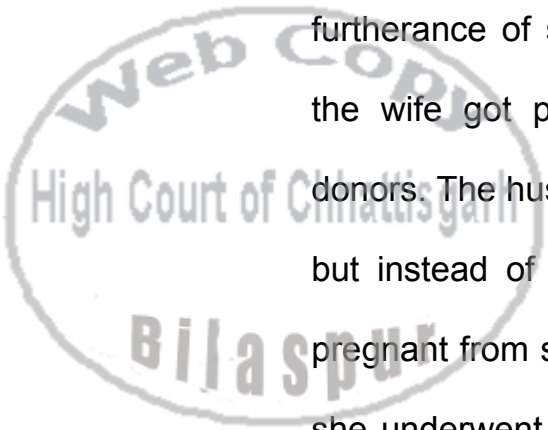
2. The present appeal is by the husband against the dismissal of a petition seeking divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. The dismissal order was passed in Civil Suit No.98A/2015 by Third Additional Principal Judge, Family Court, Durg on 07.5.2018.

3. The brief facts in this case are that the appellant was earlier married and got divorced from his first wife in the month of July 2010. From the first marriage a son was born, who was aged about 10 years at time of second marriage. The husband stated that to secure future prospect and to provide parenthood to the son, the husband again married with respondent P. Padmavati on





06.3.2011 at Arya Samaj, Bhilai. The husband stated that before the second marriage, past was disclosed to the second wife including about the son. It is further pleaded that before the second marriage he went through vasectomy (Nasbandhi) as he did not want any further child in future. The respondent/wife also acceded to such arrangement to accept son from the first wife to be their only son. The husband further alleged that after two years of marriage, things went normally but subsequent to it, the wife expressed her desire to have a child. Being objected by husband, the son was subjected to torture and pressure was exerted on the husband to have a child of their own. In furtherance of such object, by way of IVF (In Vitro Fertilization) the wife got pregnant from the eggs and sperms of outside donors. The husband alleges that he wanted to donate his sperm, but instead of taking the sperms of the husband, the wife got pregnant from sperms of unknown donor. After she got pregnant she underwent the treatment for removal of extra embryo in her womb and eventually twin daughters were born on 23.9.2014. Subsequent to it, atmosphere at home became totally hostile and the wife in front of the friends used to make sarcastic comments on the husband that he is not capable to give birth to child. The husband further alleged that the wife used to abuse and extend the threat that the husband would be inculpated in some false case, therefore, under these circumstances, the husband kept silence and eventually they started living in the same house but separately with different kitchen, having different source of



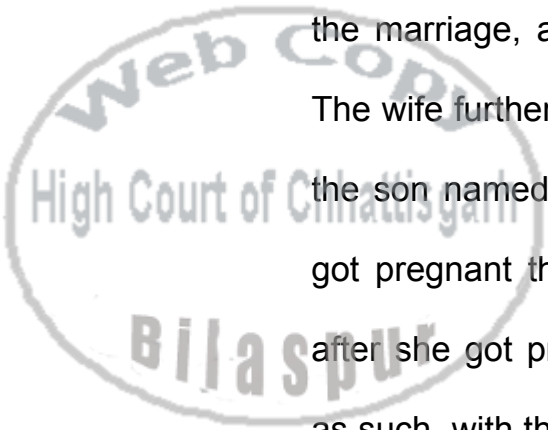


access. The husband stated that because of the abuse and mental cruelty meted out to the husband by the wife, as she got pregnant by sperm of outside donor, he is entitled to divorce as they cannot go along further.

4. Per contra, the wife alleges that when the proposal for marriage was considered because of the fact that the husband had gone through vasectomy, her family members initially refused to marry him, but husband promised that after the marriage he will get himself operated to have a child and on such assurance & promise, the marriage was performed. Non-applicant/wife further alleged that she was in service and was a working lady but after the marriage, as per the wish of the husband, she left her job.

The wife further stated that she has no degree of discomfort with the son named Mukul and with the consent of the husband she got pregnant through IVF procedure. It was further stated that after she got pregnant, three embryos were found in the womb, as such, with the consent of the husband, she again got operated to remove one embryo. The allegation of use of abusive language and sarcastic comment against the husband were denied and stated that the husband is not entitled for any divorce on the ground stated in the application.

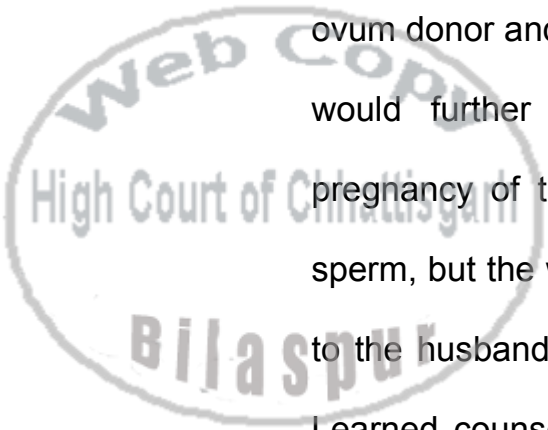
5. The husband examined himself and one witness SRB Krishna (PW-2) and the wife examined herself alone. The learned Family Court dismissed the application for divorce holding that neither cruelty has been proved nor it has been proved that the husband promised the wife to begot a child after the marriage





and the application was dismissed.

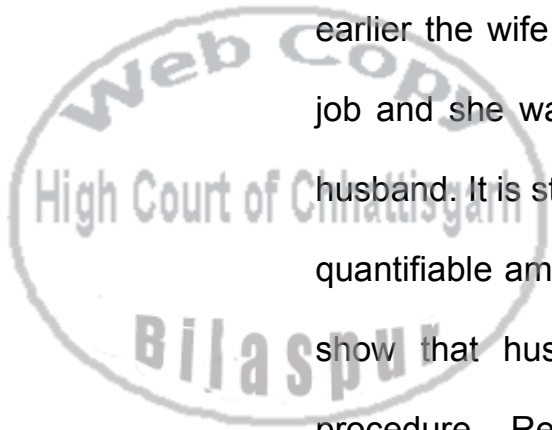
6. Learned counsel for the appellant/husband would submit that the husband being a divorcee, the marriage was performed on the condition and promise that from the second marriage they would not have a child. But subsequently, the wife started creating pressure and resorted to cruelty with the son from the earlier marriage. He would submit that under those circumstances, the husband succumbed to the pressure and agreed for a child through IVF procedure and went to the IVF Clinic, but despite the fact he underwent biopsy to confirm that he has normal sperm count but the wife got pregnant from outside ovum donor and sperm donor and the embryo was implanted. He would further submit that the husband consented for the pregnancy of the test tube baby with the donation of his own sperm, but the wife created undue pressure & without information to the husband got herself pregnant by sperm of outside donor. Learned counsel for the appellant further would submit that the documents so filed by the wife would show that on the date of the IVF treatment, the husband was at his duty which goes to show that signature of the husband was obtained on the blank paper by creating undue pressure by the wife. He would submit the entire conduct of wife to get pregnant by sperm of outside donor despite the husband was capable to give sperm, amounts to mental cruelty and apart from the fact, the statement of the husband would show that child from the first marriage was subjected to immense cruelty and torture. Consequently for abusive behaviour





and mental cruelty, the husband is entitled for a decree of divorce.

7. Per contra, learned counsel for the respondent/wife would submit that the document of IVF treatment would go to show that the husband was the consenting party to such pregnancy from sperms of outside donor. He would submit that on the earlier occasion while treatment was going on, no complaint was made either before any of the authorities or before any of the members of the family that such undue pressure was created by the wife, but on the contrary, evidence would show that he repeatedly visited the hospital for a number of times. Therefore, theory of threatening is automatically nullified. He would further submit that earlier the wife was working and after the marriage, she left her job and she was completely dependent upon the income of the husband. It is stated that the IVF treatment for pregnancy involves quantifiable amount which was paid by the husband which would show that husband was the consenting party to the entire procedure. Referring to the documents filed by the husband in the proceeding under Section 125 CrPC which is placed before this Court, learned counsel would submit that the documents would lead to show that he has consented to the entire treatment procedures. So far as the cruelty to the son as has been alleged, has not been proved by any evidence as the son was not examined before the Court. After reading the statement of the husband and the wife, it is submitted that in the circumstances, finding of the Court is well merited which does not call for any interference by this appellate Court.



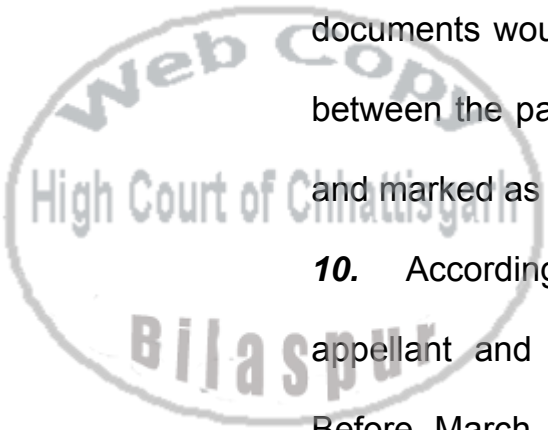


8. We have heard the learned counsel for the parties and perused the documents.

9. Before this Court certain documents have been filed which relates to IVF treatment. The husband in the submission has admitted those documents, which were filed by him in the proceedings under Section 125 CrPC by the wife. The authenticity of the documents are not disputed by the husband and are admitted but the stand is taken that signature on said consent letter during treatment was obtained by undue pressure. We would like to deliberate on this issue of undue pressure subsequently. For the reasons that the admission of the documents would be necessary for adjudication of the real issue between the parties, consequently they are admitted in evidence and marked as Ex-D/7.

10. According to the averments of the parties, for both the appellant and the respondent, it was their second marriage. Before March 2011 both the parties were divorcees and the appellant had a son from earlier marriage. According to the husband, second marriage was performed with a condition that the husband had undergone vasectomy and they would not have a further child from the second marriage. The wife in her written statement has denied the same.

11. Under the Hindu religion, the marriage had assumed the sacred character of sacrament. The personal thought of marriage was a prime necessity for that alone could enable a person to discharge properly his religious and secular obligation. To make it





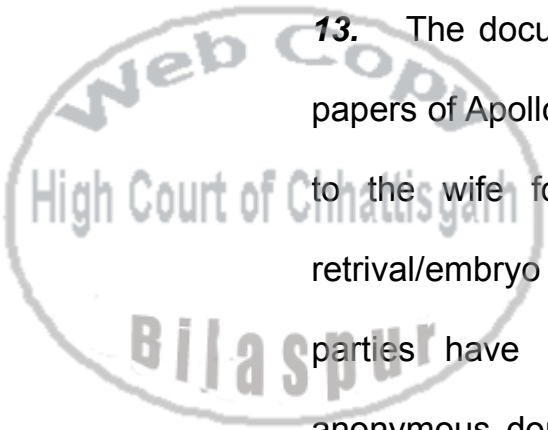
say it otherwise, the marriage is necessarily a basis of social organisation and the foundation of important legal rights and obligation. The importance and imperative character of the institution of marriage needs no comment and in Hindu Law marriage is a Sanskar. Therefore, presumed contract as has been stated by the appellant/husband that the second marriage was performed on the condition that they would not have a child from the second marriage cannot be a barrier as a valid sacred promise, if not performed, will assume the character of cruelty. Under the Hindu law, marriage is not a contract. Therefore, the alleged promise as projected by the husband that they would not have a child from the second marriage cannot be given a priority over the sacrament or sanskar to have family. The alleged promise also cannot be pressed into motion against the human conduct if a lady after the marriage expects to have her own child. The role narrated by husband of contract of not to have child even after marriage is bound to be somnolent. A birth die is cast by nature. To deprive a woman from motherhood as a pre-condition for marriage cannot be given a priority. The type of condition set forth by husband only adds gloomy atmosphere to a married life as against a cheer by a child. Therefore, a demand to have child by wife from husband cannot be constituted a cruelty.

12. The husband further stated that after the marriage on pressure being exerted by wife he agreed to have a child by IVF procedure. The evidence shows that to have pregnancy both the husband and the wife visited Apollo Hospital, Bhilai. Stating a



particular date 08.11.2013, husband states that he was pressurized mentally to the extent that he succumbed to the demand of wife to have child by IVF. The documents which are placed on record and admitted shows that both the husband and wife visited the hospital. Certain reports have been exhibited. Biopsy report of husband is also filed as Ex-P/3-C which shows that the husband had potential enough and no infirmity was found in the testicular biopsy, meaning thereby he was capable to produce a child. According to the statement of the husband he signed certain consent letters and the statement would show that he never objected to sign such documents.

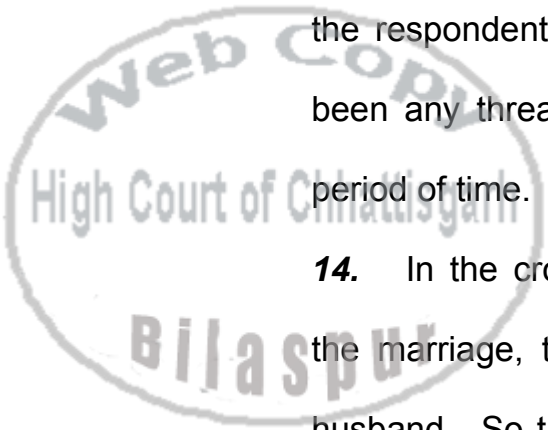
13. The documents which are filed here and exhibited are the papers of Apollo BSR Hospitals, wherein IVF treatment was given to the wife for pregnancy. The consent form for oocyte retrieval/embryo transfer would show that on 29.01.14 both the parties have consented for anonymous donor oocyte and anonymous donor sperm. Back side of the said consent letter bears the signature of both the appellant and the respondent and they have admitted that they have been explained clearly regarding the procedure undergoing and they opted for following options: (1) Fertilization of my egg with donor's sperm (2) Transfer of anonymous donor's embryo. The appellant says that on that date he was on duty and was not present in person. Reference was made to Ex-P/14C, a duty certificate of 29.01.2014. The duty certificate when carefully examined does not show that at what time the appellant reached to the office,





however, it shows that he left the office at 5.00 pm. Document of treatment on 29.01.14 whereby consent was given was of between 11.00 am to 11.30 am, therefore, the duty certificate cannot be given a precedent to hold that husband was not present on the day to give consent for IVF treatment on 29.01.2014. Further more, the conduct of the appellant/husband may be gathered from the fact that in his statement he admitted that he has not made any complaint to any of the authorities that his signatures were obtained by undue pressure. Subsequent conduct and series of act would show that the husband visited the hospital many a times over the span of period. The submission of the respondent appears to be logical to the fact that had there been any threatening, that could not have lasted so long for a period of time.

14. In the cross-examination, the husband admitted that after the marriage, the wife left the job and was dependent on the husband. So the normal inference would be that the husband has paid the medical bills of the wife. Conduct of the parties further would show that after the wife got pregnant and it was detected that she had three embryos, out of it one was removed for which they travelled to Delhi to the experts. The husband also accompanied. This would also lead to show that he was the consenting party to the entire initiation which was at the behest of both the husband and wife. Submission of the husband that despite he was capable to donate the sperm, the wife got pregnant from outside donor is superseded by the consent given

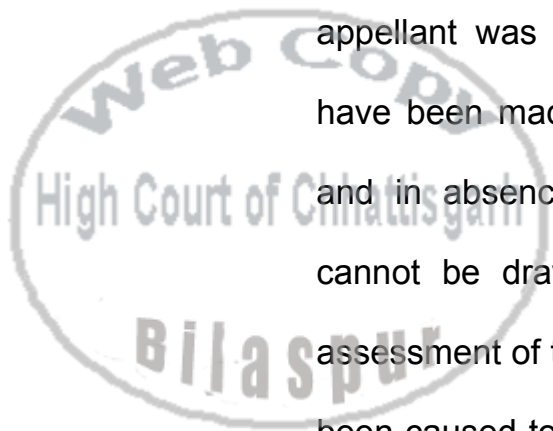




by the husband during the IVF treatment wherein husband & wife both agreed that pregnancy may be carried out by anonymous donor's sperm. Analysis of the evidence therefore, would show that after some time of the marriage, both agreed to have a child for which they resorted to IVF and during said treatment, the husband also cooperated but it was after the birth of the twin girl children, the dispute arose in between the parties.

15. The husband further stated that his son from the first wife namely, Mukul was subjected to cruelty but the same is denied vehemently by the wife. Mukul has not been examined before the Court, therefore, best evidence which was available to the appellant was withheld and only when the counter allegations have been made which could have been clarified by third party and in absence of any evidence, inference of cruelty further cannot be drawn. Therefore, we are of the view that after assessment of the entire evidence, no cruelty was proved to have been caused to the husband, as a result, he is not entitled to get the decree of divorce.

16. Along with taking document on record, a copy of the order of the Family Court under Section 125 CrPC is placed which reflects the salary of the appellant as Rs.1,16,298/- for January 2021. Out of that Rs.14,000/- being paid to the first wife for maintenance. The learned Family Court has granted Rs.4,000/- to the wife as maintenance and Rs.2,000/- each to the two girls. Since it is not disputed before us that the wife is not working, we deem it proper to grant maintenance of Rs.14,000/- per month to





the wife, which would be deducted at the source and would be paid to the wife.

17. Accordingly, the appeal fails with aforesaid directions.

18. A decree be drawn accordingly.

SD/-

(Goutam Bhaduri)

Judge

SD/-

(NK Chandravanshi)

Judge

Bini





Head Note

As a pre-condition for marriage contract to deprive a woman from motherhood cannot be given effect to. It would be inhuman. Marriage is sacrament, not contract in Hindu Law.

विवाह अनुबंध की पूर्व शर्त कि महिला मातृत्व से वंचित रहेगी, ऐसी शर्त को क्रियान्वित नहीं किया जा सकता है । यह अमानवीय होगा । हिंदू विधि में विवाह एक संस्कार है, न कि अनुबंध ।

