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HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 55 of 2023

Judgment Reserved on : 24.07.2025

Judgment Delivered on : 14.08.2025

Anil Thosar S/o Lt. Trayambak Thosar, aged about 45 years, R/o EWS 683, Vaishali Nagar, Bhilai, Tehsil and District Durg Chhattisgarh.

...Appellant

versus

Neeta Thosar W/o Anil Thosar, Aged About 35 Years, R/o Vaaygaon, Tehsil Bhaatkulee, District Amravati Maharashtra.

... Respondent

(Cause-title taken from Case Information System)

For Appellant	:	Mr. Tapan Kumar Chandra, Advocate
For Respondent	:	Mr. Pushkar Sinha, Advocate

Hon'ble Smt. Rajani Dubey, Judge

Hon'ble Shri Amitendra Kishore Prasad, Judge

C A V Judgment

Per Amitendra Kishore Prasad, J.

1. By filing this appeal, the appellant has challenged the impugned order dated 04.01.2023 passed in Civil Suit No.171/2022 by the learned Third Additional Principal Judge, Family Court, Durg,

Chhattisgarh, whereby the application under Section 12 of the Hindu Marriage Act, 1955 (for short, 'Act of 1955') was dismissed.

The appellant has prayed for following relief:-

“It is therefore, prayed that, this Hon'ble Court may kindly be pleased to allow this appeal and set aside the impugned order dated 04-01-2023 (Annexure A-1), and passed the decree in favor of the appellant in the interest of justice.”

2. Brief facts of the case, are that, the marriage between the appellant and the respondent was solemnized on 03.03.2008 at Bhilat, District Durg (C.G.), as per Hindu rites and customs. From the wedlock, two daughters were born, namely Ms. Amrita, aged about 11 years, and Ms. Pranali, aged about 5 years. Before the marriage, the respondent and her family members represented that she was physically and mentally healthy and as such, the appellant consented to the marriage. However, after the marriage, the appellant noticed abnormal behavior on the part of the respondent, such as shouting, damaging household items, using abusive language, and beating the children without reason. On enquiry, the respondent was found to be taking psychiatric medicines, though she initially claimed they were multivitamins. The appellant later got her medically examined, and she was diagnosed with schizophrenia, a serious mental illness. The

appellant claimed that this condition existed since birth and was deliberately concealed by the respondent and her family. Despite several efforts to manage her condition and seek reconciliation, the respondent eventually left the matrimonial home in October 2018 with one of the daughters and never returned.

3. Thereafter, the appellant filed a application under Section 12 of the Act of 1955, seeking annulment of marriage on the ground of fraud and, in the alternative, sought divorce on the ground of cruelty. The matter was registered as Civil Suit No.171/2022 before the Family Court, Durg. Despite repeated notices, the respondent failed to appear, and was proceeded exparte on 06.07.2022.
4. Thereafter, the appellant led evidence and examined witnesses. The learned Family Court, after considering the pleadings of the appellant-husband and evaluating the evidence adduced by him, dismissed the application for divorce vide order dated 04.01.2023 on the ground that the appellant has failed to prove that the respondent was suffering from Schizophrenia since birth.
5. Mr. Tapan Kumar Chandra, learned counsel for the appellant submits that the respondent and her family members deliberately suppressed the material fact regarding her mental illness i.e. Schizophrenia, which she had been suffering from since birth. This suppression of a serious mental disorder at the time of marriage amounts to fraud within the meaning of Section 12(1)(c)

of the Act of 1955, rendering the marriage voidable. He further submits that the appellant has duly proved the allegation of cruelty against the respondent-wife. It is contended that although the marriage between the parties could not be annulled under Section 12 of the Act of 1955 due to certain evidentiary shortcomings, the learned Family Court erred in holding that the ground of cruelty was not established. It is contended that the appellant had specifically alleged that the respondent-wife was suffering from mental illness, namely Schizophrenia, and in support thereof, had stated that he had taken her for treatment to Dr. Sigdar and Dr. Ashok Trivedi, both psychiatrists. However, the learned Family Court held that merely filing prescriptions was insufficient to prove the illness, particularly in the absence of examination of the concerned doctors as witnesses. It has been also submitted that the appellant's evidence regarding the mental condition of the respondent-wife remained unrebutted, as the respondent-wife failed to appear before the Court to contest the proceedings or to disprove the allegations. In such circumstances, it is urged that the evidence adduced by the appellant ought to have been accepted as sufficient proof. The prescriptions filed by the appellant were never challenged by the respondent-wife and, therefore, could not be disregarded in the absence of rebuttal. It has been further submitted that the appellant succeeded in proving the mental illness of the respondent-wife, and the learned Family Court committed an error in disbelieving his unchallenged

testimony and documentary evidence. It has been contended that despite several opportunities and service of notices, the respondent failed to appear before the learned Family Court, and was accordingly declared *ex parte*. The appellant led cogent and un rebutted evidence in support of his case. In such circumstances, the learned Family Court ought to have accepted the un rebutted testimony of the appellant and his witnesses. It has been argued that during a community meeting held on 17.08.2018, the father of the respondent himself admitted that his daughter was suffering from a mental illness and accepted responsibility. It is also pointed out that the respondent voluntarily left the matrimonial home in October 2018 and has not returned to cohabit with the appellant since then, which also reflects desertion without reasonable cause. In light of the above submissions, it is prayed that the impugned order dated 04.01.2023 passed by the learned Family Court be set aside, and the marriage between the parties be declared voidable and annulled under Section 12 of the Act of 1955 or in the alternative, a decree of divorce on the ground of cruelty and desertion be granted under Section 13(1) (ia) and (ib) of the Act of 1955.

6. On the other hand, Mr. Pushkar Sinha, learned counsel appearing for the respondent opposes the submissions of learned counsel for the appellant and submits that the appellant has made vague and unsubstantiated allegations regarding the mental health of the respondent. No reliable medical evidence has been produced on

record to conclusively prove that the respondent was suffering from Schizophrenia since birth. He further submits that the allegation of fraud is baseless as he has failed to prove any deliberate concealment of mental illness by the respondent or her family members prior to the marriage. It is contended that the appellant continued to live with the respondent for nearly 10 years, during which time two children were born out of the wedlock. The long cohabitation and birth of children clearly indicate a valid marital relationship, and the delay in approaching the court is fatal to the appellant's case under Section 12 of the Act of 1955. It is further contended that the respondent was declared *exparte* without ensuring proper service of notice and opportunity to defend. The trial was one-sided, and the respondent reserves her right to challenge the *exparte* proceedings separately. The allegations of cruelty are general in nature and not supported by any independent witness. The respondent left the matrimonial home only due to constant harassment by the appellant and his family, not voluntarily. Therefore, the learned Family Court rightly dismissed the appellant's application, and no interference is warranted in the impugned order and decree passed by the learned Family Court.

7. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

8. A perusal of the impugned order would go to show that the learned Family Court has rejected the application filed under Section 12 of the Act of 1955, on the premise that the appellant has failed to substantiate his allegations through cogent and legally admissible evidence. The Family Court has observed that although the appellant has produced certain medical documents and prescriptions purportedly indicating that the respondent was suffering from schizophrenia, the same were not proved in accordance with law, as the concerned medical professionals were neither summoned nor examined as witnesses. The Court further noted that no expert opinion was brought on record to establish that the respondent had been suffering from schizophrenia since birth or at the time of marriage, which is essential to attract the provisions of Section 12(1)(b) or 12(1)(c) of the Act of 1955.
9. Moreover, the Family Court has taken into consideration that the appellant and respondent had lived together for a substantial period of time i.e. approximately ten years and they had two children out of the wedlock, which demonstrates that the marital relationship had been sustained for a considerable duration without any immediate legal objection. The Family Court also found it significant that no independent witnesses, including neighbors or family members, were examined to corroborate the allegations of abnormal behavior or cruelty attributed to the respondent. The Family Court concluded that the appellant has

failed to discharge the burden of proof and thus, was not entitled to a decree of annulment or divorce on the grounds pleaded by him before the Family Court.

- 10.** From the material available on record, it is evident that the appellant-husband has alleged that the respondent-wife was suffering from a serious mental illness, namely Schizophrenia, even prior to the marriage, and that the same was knowingly concealed by the respondent and her family members. However, a perusal of the record shows that, except for certain medical prescriptions, no substantive or expert medical evidence has been adduced to establish the mental condition of the respondent-wife either before or after the marriage.
- 11.** Though the appellant claimed that the respondent was treated by psychiatrists Dr. Sigdar and Dr. Ashok Trivedi, he failed to examine either of the doctors in support of his case. There is no certificate of diagnosis or any clinical record produced on record that can conclusively prove that the respondent was suffering from Schizophrenia or any other mental illness to such an extent that would render the marriage voidable under Section 12(1)(b) of the Act of 1955.
- 12.** In matrimonial proceedings seeking annulment of marriage on the ground of mental incapacity, it is incumbent upon the petitioner to establish, through clear and convincing evidence, that the respondent was suffering from a mental disorder of such a nature

or to such an extent as to be unfit for marriage and procreation of children. In the absence of any medical expert's testimony, and without any clinical diagnosis confirmed by competent witnesses, such a serious ground cannot be accepted as proved.

13. In the matter of **Sm. Anima Roy v. Probodh Mohan Roy (1968 SCC OnLine Cal 89)**, it has been held that in proceedings under the Hindu Marriage Act, where mental illness is pleaded as a ground for divorce or annulment, it is essential to establish that the mental disorder is of such a kind and extent that it is not only incurable, but also renders the spouse unfit for marital obligations. In the absence of medical expert testimony and without examination of treating doctors, the Court cannot draw such conclusions merely based on assumptions or prescriptions. The Supreme Court further emphasized that the burden of proof rests heavily upon the party seeking annulment or divorce on such a ground, and that the standard of proof in such matters is higher, given the consequences attached to severing a marital tie.
14. Further, in the matter of **R. Lakshmi Narayan v. Santhi, (2001) 4 SCC 688**, the Hon'ble Supreme Court has held that suppression of a serious mental disorder at the time of marriage constitutes a valid ground for annulment under Section 12(1)(c) of the Act of 1955.
15. The law is now well settled that in proceedings under Section 12 of the Hindu Marriage Act, 1955 the burden lies heavily on the

appellant to prove the foundational facts justifying annulment of marriage. The mere filing of prescriptions or absence of rebuttal by the respondent does not absolve the appellant from discharging the burden of proof through cogent and trustworthy evidence. (see: ***X v. Y, 2024 SCC OnLine SC 1654***).

16. In the present case, although the respondent-wife remained ex parte, the appellant-husband was still required to prove his case on the strength of his own evidence. It is a settled principle that non-appearance of the opposite party does not amount to admission of allegations, and the appellant must discharge the legal burden of proof independently.
17. Furthermore, although the appellant-husband has made specific allegations regarding the respondent-wife's mental illness, i.e., schizophrenia, he has failed to substantiate those claims with reliable and admissible evidence.
18. It has been transpires from the record that, apart from filing certain prescriptions, the appellant did not examine any of the treating doctors to prove that the respondent was suffering from such mental disorder at the time of marriage. The documents filed remain unproven and cannot be treated as substantive evidence in absence of medical expert testimony.
19. In light of the above discussion, this Court is of the considered opinion that the appellant-husband has failed to discharge the burden of proof required to seek annulment of marriage under

Section 12 of the Hindu Marriage Act. The findings of the learned Family Court, which dismissed the appellant's application after a thorough appreciation of the evidence, are found to be just, proper, and in accordance with law and therefore, warrant no interference in appeal.

- 20.** In the result, we find no merit in the present appeal. Accordingly, the appeal is **dismissed** and the order and decree dated 04.01.2023 passed by the learned Family Court, Durg in Civil Suit No. 171/2022 is hereby affirmed. There shall be no order as to cost(s).

Sd/-
(Rajani Dubey)
Judge

Sd/-
(Amitendra Kishore Prasad)
Judge