

(2010) 07 CAL CK 0034

Calcutta High Court

Case No: F.A. 337 of 2007

Saswati Chattopadhyay (nee
Saswati Mukherjee)

APPELLANT

Vs

Avik Chattopadhyay

RESPONDENT

Date of Decision: July 14, 2010

Acts Referred:

- Evidence Act, 1872 - Section 106
- Hindu Marriage Act, 1955 - Section 10, 12, 12(1), 12(2), 13
- Special Marriage Act, 1954 - Section 25(1), 25(3)

Hon'ble Judges: Kalyan Jyoti Sengupta, J; Kalidas Mukherjee, J

Bench: Division Bench

Advocate: S.P. Roy Chowdhury, Probal Kumar Mukherjee and Sukanta Chakraborty, for the Appellant; Saktinath Mukherjee, Saptangshu Basu, S.P. Mukherjee, Paritosh Sinha, Amitava Mitra, Urbosi Banerjee and Dolon Dasgupta, for the Respondent

Judgement

K.J. Sengupta, J.

The above appeal was preferred against the judgment and decree dated 27th December 2006 passed by the learned Principal Judge, Family Court at Kolkata. By the impugned judgment and decree learned trial Judge has declared that the marriage between the Appellant and the Respondent solemnized on 27th December 2006 is null and void.

2. The above matrimonial action was initially brought by the Respondent/Petitioner in the Court of the District & Sessions Judge, Delhi which was registered as H.M.A.P. Case No. 729 of 2002. The said suit was filed u/s 12(1)(c) of the Hindu Marriage Act, 1955 (hereinafter as the said Act) alternatively for dissolution of marriage u/s 13(i)(a) of the said Act.

3. The short fact leading to filing of the suit is stated hereunder:

The marriage between the couple was negotiated one and the negotiation was preceded by an advertisement in National Daily in the newspaper in English on 23rd August 1998 issued by the father of husband/Respondent asking for a suitable bride who would be well educated, fair, very beautiful, Brahmin girl, not exceeding age of 24 and height not less than 160 c.m. very good family. The said advertisement was responded by the father of the Appellant by letter dated 25th August 1998 disclosing amongst others that the requirements in the said advertisement are fulfilled by his daughter and his family is a conservative Brahmin family maintaining strict discipline in all sphere of life. It is also disclosed that the family of the Appellant's father is a middle class one and has been maintaining social value and culture. After the said response there has been negotiation with mutual visits of their respective members of the families for long 18 months. In course of discussion everything was disclosed about the bride but very essential and material things which is discussed later on were not disclosed. On 25th January, 2000 the couple were married in accordance with the Hindu rites and ceremonies followed by immediate registration under the said Act 1955. At the time of registration in the declaration form with regard to the status of the bride the word "divorcee" and "widow" were struck out which represented and/or meant the girl was unmarried. After marriage the married couple returned to Delhi being the matrimonial home. However, barely after one month of stay the Appellant started disliking matrimonial house. She started writing letters to her parents expressing her unwillingness to stay in Delhi complaining many things against parents of the Respondent. After a few months thereafter, July 2000 there has been discernable manifestation of unwillingness of the Appellant to continue with the marital life, and expressed her desire to leave Delhi as early as possible. However, it was not disclosed the reasons for her unwillingness. Everything was kept in dark. The Appellant refused to discharge her conjugal obligation and started behaving in such a manner that the parents as well as the Respondent were absolutely surprised and shocked. During three months she perpetrated mental cruelty and she refused to meet the Respondent's reasonable conjugal need. She had been persistently refusing without any reason whatsoever to have cohabitation and as a result the said marriage was not consummated. She frequently wrote letters to her parents making false allegation of alleged mental torture, demand of dowries against the Petitioner/Respondent and his parent. She expressed in complete breach of marital obligation her intention to leave matrimonial home to join services. Despite repeated entreatment and persuasion the Appellant did not pay heed to the Respondent's words. The Respondent/husband tried to persuade even cajole unsuccessfully the Appellant in all possible manner so that normal conjugal life could be led. The Appellant's parent during the month of August 2001 visited Delhi however, they could not help at all to solve the problem. This problem between the couple continued and the act of mental cruelty reached its climax when the husband/Respondent fell sick and he was diagnosed suffering from Tuberculosis. At that juncture even the Appellant decided to leave Delhi for Calcutta and the

Respondent had to accompany her despite illness in November 2001. During train journey the Appellant for the first time divulged that her father forced her to leave one Sudip and to marry Respondent. On reaching Calcutta the Respondent accompanied Appellant to reach her at her father's place. The Respondent enquired his father-in-law about Sudip however, no answer was given by him. The Respondent/husband however did not stay at her father's place and he moved to a hotel and stayed there. Since then the Respondent/husband severed all connections with the Appellant and with in-laws and never visited their house. Thereafter the Respondent being utterly shocked dejected as he was kept completely in dark about the identity of Sudip and the relationship of the Appellant with him, he came back Delhi by the next train. Having failed to ascertain any information about the identity of Sudip vis-à-vis relationship with the Appellant which was disclosed during the train journey he engaged a private detective agency to find out and for the first time in or about December 2001 it was discovered that there had been previous marriage of Appellant with Sudip. At the time of the marriage or subsequently thereafter there has been no disclosure of such fact. Thereafter further information and enquiry revealed that earlier marriage was dissolved by decree of annulment almost by consent. This fact was also never disclosed either at the time of marriage or subsequently.

4. In the written statement the aforesaid fact has been denied and disputed. It was denied specifically that anything material to marriage was suppressed. It was denied specifically that factum of earlier marriage was not disclosed. It is further stated that her parents disclosed everything that there has been a marriage on paper and it was dissolved by Court by passing a decree. She never lived or cohabited with Sudip despite marriage. After having known everything the parents of the Respondent/husband agreed to proceed with the marriage so also the Respondent. It is specifically stated that three days after marriage she told about past incident of earlier marriage to him and despite having knowledge he accepted her as wife. Actually the instant suit has been filed with oblique motive. Immediately after marriage the parents of the Respondent wanted to have more money and demanded of the father of the Appellant to transfer a substantial amount from her father's bank account to the bank account of the Respondent/husband. Having failed to achieve this purpose the present suit has been filed.

5. It is specifically averred that the suit is barred by limitation as it was not filed within one year from the date of discovery of the alleged fraud. Besides that it is also pleaded that despite having disclosure of the said fact the Respondent continued with conjugal life and thereby the Respondent/husband has condoned lapses. Thus, the suit is also hit by the principle of estoppel, acquiescence etc.

6. On transfer of the said suit to the Family Court at Calcutta the hearing was started. The learned trial Judge framed the following issues:

(i) Is the case maintainable in its present form?

(ii) Has the Petitioner/husband any cause of action for the instant suit?

(iii) Has the consent of the Petitioner/husband been obtained by practicing fraud upon him prior to registration of the marriage under the provision of Hindu Marriage Act 1955?

(iv) When was the nature and the full extent of the fraud committed discovered by the Petitioner/husband?

(v) Is the relief of nullity of marriage barred by limitation in the facts and circumstances of the instant case?

(vi) Whether Petitioner condoned the matrimonial offence committed by the Respondent?

(vii) Is the Respondent/wife guilty of acts and commission, and omission amounting to inflicting of mental and physical cruelty upon the Petitioner/husband?

(viii) Is the Petitioner entitled to a decree as prayed?

(ix) To what other relief or reliefs the parties is entitled to in law and in equity?

7. appears that the learned Judge decided the matter on issue Nos. (i) to (vi) however did not feel necessary to decide and answer issue No. (vii) as it was relatable to alternative relief prayed for.

8. learned trial judge on receiving evidence and appreciating the same has granted decree of annulment of the marriage and came to the conclusion that there has been suppression of the relevant fact with regard to the pre-marital status of the Appellant and such relevant fact goes to root of the matrimonial relationship. Hence the relief was granted.

9. appears from the records that Respondent/husband in order to prove his case examined himself as the first witness and his father being the second witness. Similarly, the Appellant also examined herself and her father as witness to defend the case.

10. While going through the discussion and reasoning in the judgment it appears that the learned trial Judge did not believe the testimony of the Appellant at all and accepted the version of the Respondent/husband.

11. Mr. Shyama Prassana Roychowdhury, learned Senior Advocate appearing with Mr. Prabal Mukherjee while highlighting relevant portion of the statement and averment of the petition as well as the written statement submits that it is an admitted fact that the marriage between the parties took place upon prolonged negotiation, discussion and understanding between the parties and the documents being the exhibits in this respect clearly bear out this fact. It is an admitted position also that there had been prior marriage of the Appellant with one Sudip Mukherjee which was solemnized under the Special Marriage Act, 1954 and such marriage was

dissolved by a decree of annulment, substantially on contest. Therefore, he submits that legal effect of decree of annulment of marriage is not same as that of decree of divorce, which presupposes not only a valid marriage but also consummation thereof. Earlier decree of annulment was passed on the ground of non-consummation of the marriage. As such in the eye of law it was no marriage at all after decree being passed. It was merely a marriage on paper. The learned Family Court while passing earlier decree relied on admission of the previous husband that there was no consummation by reason of the fact that they did not live for a single day as a husband and wife.

12. In other words, once the decree for annulment is passed the parties get back their previous status of bachelor and spinster. He thus wants to draw distinction between the decree of divorce and decree of annulment contending that in case of decree of divorce the status of the parties cannot be said to be bachelor or spinster rather both are divorcee.

13. He submits that in this context legally it is not incorrect to describe Swasati was a spinster. So it cannot be said to be any misrepresentation nor there was any scope of suppression of any fact which is material to the subsequent marriage took place between the parties.

14. He submits that learned Trial Judge should have dismissed the suit as the same is barred under the provision of Section 12(2)(a)(b) of the said Act, by reason of the fact three days after the marriage the Appellant Saswati divulged everything to Sudip including her earlier marriage. This disclosure of fact is also reflected and recorded not only in oral testimony of Swasati but also in a letter addressed by Sudip himself on 21st November 2000 to the mother of Swasati, exhibit (1). It is specifically admitted in this letter the correctness of the contents whereof are not denied and disputed at all, that Swasati had told him everything about her past life. Therefore, his knowledge came to being from that date, whereas instant suit has been filed in the year 2003. Under the aforesaid provision of the law no petition of this nature can be entertained after the expiry of one year from the date of discovery of such fraud.

15. Even assuming if the suit is held not to be barred as aforesaid marriage is the culmination of continuous negotiation of one and half years from the date of advertisement issued by the father of Abhik in the Statesman Daily on 22nd July 1998. It was specifically told by the father of Swasati to the parents of Sudip everything about her past life, career, etc. It will appear from the evidence that certified copy of the decree of annulment was also shown to them. Despite having knowledge they proceeded with the matter hence there has been no suppression or concealment of any material fact. If the aforesaid fact of prior marriage and passing of decree of annulment thereof in the eye of law or factually is a material within the meaning of Section 12(c), on merit it is evidenced without any doubt whatsoever that with full knowledge of the aforesaid fact the parents of Abhik as well as Abhik

and their relations proceeded with negotiation and ultimately all of them out of their own volition agreed to take Saswati as bride of Abhik.

16. Alternatively he argues that the letter (exhibit 1) written by Abhik to the parents of Saswati will establish that even in spite of having knowledge of the past life of Saswati, Abhik settled and accepted the position and acquiesced in this marriage. Therefore, by his own act and conduct he has accepted and/or condoned this lapses allegedly took place prior to marriage. The contemporaneous manifestation of the mind of Abhik as recorded in his letters written galore to the parents of Saswati that he had and has intention to accept, indeed accepted Saswati as being wife. Therefore, the learned Trial Judge did not appreciate this case in this direction.

17. He further submits that the learned Trial Judge has improperly disbelieved testimony of Saswati and accepted the version of the Respondents. Moreover, it will appear from the petition and the case made out therein, is contradictory and inconsistent as a prayer for annulment of marriage on the one hand and the decree for divorce on the other hand on the alleged ground of mental cruelty cannot run side by side; while making out a case for divorce u/s 13 the Respondent has really abandoned his case for decree of annulment.

18. According to him aforesaid principle of law has been settled in case of [Dr. N.G. Dastane Vs. Mrs. S. Dastane](#), .

19. Mr. Roychowdhury then relied on the decision of the Division Bench of this Court in case of Shri Pranab Biswas v. Srimati Mrinmayee Dassi and Anr. reported in (1976) CHN 119. In this case the proceedings u/s 12(2)(b)(ii) was initiated after waiting for three years. So in that case likewise this one was dismissed as it was initiated beyond the prescribed period provided in Section 12 of the said Act. Therefore, the appeal should be allowed and decree should be set aside.

20. Mr. Sakti Nath Mukherjee learned Senior Advocate appearing with Mr. Saptangshu Bose learned Senior Advocate appearing for the Respondent husband, submits that the learned Trial Judge while granting decree of annulment of marriage on appreciation of fact and applying the appropriate law and the same does not call for any interference. He urges it will appear from oral and documentary evidence that at no point of time until in the month of October 2001 the Appellant divulged that she had pre-marital relationship with one Sudip during the train journey from Delhi to Kolkata, and it was the first ever knowledge of the Respondent/husband that before marriage another young man was in her married life. On coming to Kolkata on that occasion Avik took Swasati to her parents' place and he inquired about Sudip vis a vis connection with Appellant before their marriage. Having found no specific answer or clarification he engaged a private investigator namely Pankaj Saraf to investigate into the matter. It is appropriate to mention that after leaving Saswati at that time at her parents' place he did not stay with Saswati and rather he had chosen to stay at Hotel, Hindusthan. On 27th March

2002 the said Pankaj Saraf by sending Mail informed that there had been previous marriage between Sudip and Saswati and he also supplied the relevant documents. Thus it is for the first time with all certainties his client came to know that there had been concealment of material fact before or even at the time of marriage, and immediately thereafter the present matrimonial suit was filed in the appropriate Court at Delhi. Under such circumstances the suit was filed perfectly within the period as aforesaid.

21. He submits that at the negotiation stage two documents are very vital one is exhibit (2) being the advertisement issued on 23rd August 1998 published by Avik's father and another is exhibit (1) the letter written in response to the said advertisement by Saswati's father. In the advertisement it is clearly mentioned that choice of bride would be a well educated, fair, very beautiful Brahmin girl and there is no mention for divorcee and not having any background of prior marriage. In response to the said advertisement by exhibit (1) the father of Saswati disclosed that she was only daughter, aged about 22 years and she has done M. Sc., she was good looking, very fair, well mannered, extremely simple. He also disclosed about his family history and his own history. It has been specifically mentioned that his family being a middle class one, they still maintain ancient values and culture. In this long letter nowhere it has been disclosed that there has been a marriage with another boy and such marriage has been annulled by a decree of annulment passed by a competent Court of law. It appears that until the marriage took place there have been correspondences between two families of the parties and these letters and correspondences have been exhibited and there is no whisper about the incident of earlier marriage followed by annulment thereof.

22. He further submits that in course of examination of witnesses neither Saswati nor her parents denied the factum of previous marriage but claimed there has been full disclosure when there has been successive meetings between two groups. The testimony of Saswati has not been accepted by the learned Trial Judge as there are legally acceptable reasons to disbelieve the testimony of Saswati.

23. He submits further that story of disclosure of Swasati about the first marriage within three days after marriage is absolutely false particularly as she was deposing before the learned Trial Judge she was confronted with the papers filed by her to get a decree for annulment of the marriage with Sudip. She admitted that she had a love affair with Sudip. Actually the marriage with Sudip was solemnized and registered previously validly and lawfully at that time both Sudip and Swasati were adult and in presence of witnesses her marriage with Sudip took place. However, she divulged this factum of marriage to her parents after Sudip left Kolkata for America and she on her own went to Sudip's house and stayed there for more than one month in the previous matrimonial home with the parents of Sudip. As a matter of fact she wanted to stay there permanently. Even she lodged a complaint with the Muchipara police station against her parents who were disturbing her for stay at

Sudip's house. This act and conduct of Swasati is borne out by the contemporaneous records and documents but at the time of filing of the application for annulment of marriage she narrated different version that she was forced to sign papers for solemnization and registration of marriage. In the written statement Sudip had denied all these, but he was not agreeable to keep the marriage intact and he consented to decree being passed.

24. Taking note of above documentary evidence it was the findings of the learned Trial Judge that it would be unsafe to rely on a testimony of a person who conveniently takes shifting stand before the Court of law suiting to her own situation. His contention is that letter of Avik dated 2nd October 2000 addressed to Saswati's mother has to be read in the correct perspective. In this matter as the learned Trial Judge has correctly found no where it is mentioned that Saswati has divulged the factum of earlier marriage with Sudip and also annulment of the same. In the oral evidence Avik made it clear that three days after marriage Saswati told Avik about her affairs with another boy. Having learnt this Avik asked whether such relationship still persisted in her mind or not and further whether such infatuation would come in the way of their marital relationship or not, as he was assured that it would not affect adversely their marriage, so Avik accepted this thing. It was this story conveyed to Saswati's mother by the said letter. Accordingly cohabitation of Avik with Saswati even after writing this letter does not amount to condonation of the matrimonial offence or acquiescence of any matrimonial wrong done by Saswati.

25. He submits that she even at the time of the marriage suppressed above fact, as in the application for registration of marriage before the Hindu Marriage Officer in the column of the status of the bride she declared that she was unmarried. Had there been disclosure during negotiation about earlier marriage with Sudip then in the application form such true statement would have been mentioned. Therefore, it goes on to show either before marriage or at the time of solemnization thereof aforesaid relevant fact was suppressed and had there been disclosure his client would not have agreed to marry. According to him declaration of the earlier marriage was preeminently required to be divulged by Saswati, as she was an adult at the time of marriage so also Avik. Disclosure of this information by any other person either before or at the time of the marriage is not at all relevant or material. When evidence of Swasati has been disbelieved and rightly so, by the learned Trial Judge in the eye of law burden of proof had not been discharged that there has been full disclosure of material fact or circumstances concerning the Appellant. We find from the judgment under appeal the learned Trial Judge has not caused any failure of justice by shifting the burden. The learned Trial Judge has come to a clear finding that Appellant/wife and her parents did not disclose the marital status of the wife that she had a previous marriage. In this case the burden of proof does not rest with the Plaintiff/husband but with the wife/Respondent.

26. According to him legal requirement with regard to proof of matrimonial offence is that it is not necessary and indeed impossible to prove the issue by any direct evidence. In few cases such proof is obtainable. In support of this legal proposition he has relied on the decision of the Supreme Court reported in [Earnest John White Vs. Mrs. Kathleen Olive White and Others.](#) .

27. He further submits that pre-marital status of a party to a marriage to a counterpart before or at the time of marriage is a material fact and non-disclosure thereof affords the ground for annulment u/s 12(1)(e) of the Act. He has referred to a decision of the Delhi High Court reported in AIR 1987 Del 285 (Rajinder Singh v. Smt. Promilla). He urges hence, appeal be dismissed.

28. Decision with reasons On hearing all the learned Counsels for both the parties and taking note of the judgment impugned it appears to us that following are the admitted position.

29. There had been marriage between Saswati and one Sudip before the Marriage Registrar on 30th July 1997. After this marriage Sudip remained in Kolkata till 5th August 1997 and then left for USA. From 21st October 1997 to 5th January 1998 Saswati stayed in the matrimonial home namely at the house of the parent of Sudip. On 5th January 1998 Saswati left the said place.

30. It appears from the records there has been admitted documentary evidence that Saswati loved Sudip and she has also in her evidence in this proceeding without any hesitation admitted so. Her love with Sudip was reflected in a letter dated 27th October 1997. The text and tenor of the letter appears to be romantic feeling of newly wed bride towards her husband. On 23rd March 1998 Saswati made an application u/s 25(i) and 25(iii) of the Special Marriage Act for annulment of the marriage with Sudip. On 22nd July 1998 the learned Family Court passed decree for annulment of the marriage. It has been held by the Delhi High Court in case of Rajendra Singh reported in AIR 1987 Del 23 in paragraph 23 that:

... In our opinion the pre-marital status of a party is a material fact which the other party must know before imparting consent for marriage. It may not be a very vital factor when both the parties are divorcees or there is a history of both of them being previously married. But in a case where one of the parties is previously married and the other is unmarried it becomes a relevant aspect to be considered by the party who is unmarried. A party is under an obligation to disclose whether he was previously married or not. If so what is the position of the previous spouse?

31. We endorse the same view here also. Saswati's marriage with Sudip took place after a prolonged domestic love and they loved each other as they happened to be related with each other. Their romance and love was so deep and closed that it was concealed from the parents of Saswati as they would not accept Sudip being a befitting match to Saswati. After marriage her love continued with Sudip which is reflected by her act and conduct when she without the permission of her parents

surprisingly took shelter to the house of Sudip's parents and stayed there for a couple of months and indeed she wrote letter to her former husband. There is no denial of the fact that solemnization and registration was lawful and valid. But the decree for annulment was passed on the ground for non-consummation of the marriage. It is thus clear that factum of earlier marriage though declared annulled cannot be disputed nor effect of the same for entering into the subsequent marriage can be ignored with the logic that once the decree of annulment of marriage is passed she is resorted to her status of spinster.

32. The contention of Mr. Roychowdhury that decree of divorce u/s 13 or for decree for judicial separation u/s 10 of the Hindu Marriage Act is not synonymous with the decree for annulment of marriage cannot be disputed legally. In the eye of law it is true the Plaintiff cannot be said to be a divorcee but at the same time she cannot be ascribed to the status of unmarried. We hold that there has been a marriage factually and legally of Swasati with Sudip, and decree of annulment has no consequence as regard the status of a bride or for that matter of a groom for entering into second marriage, since Avik was confirmed bachelor.

33. The learned Trial Judge on analyzing evidence has found that neither the parents of Saswati nor Saswati herself made disclosure of the fact of earlier marriage or annulment thereof. Section 12(1)(c) which is reproduced hereunder:

12 (a) ...

(b)

(c) ... that the consent of the Petitioner, or where the consent of the guardian in marriage of the Petitioner was required u/s 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 (emphasis supplied) concerning the Respondent; or....

34. On careful reading of the said Clause (c) Section 12(1) it will appear that both the parties in case of adult (here it is so) are obliged to divulge mutually and unequivocally the material fact or circumstances to each other before or at least at the time of marriage so much so element of deception is ruled out. The words material fact or circumstances have not been defined or specified. We think it cannot be inflexibly or specifically laid down. It varies from one family to another, according to culture, ethos and social system in ages and situation. For example in a conservative family having attachment with puritan society in a marriage inevitable and unerring expectation is that both the bride and groom must not have any record of prior marriage in any sense nor will have any marriage in any sense, not even any premarital affairs with other boy or girl (as the case may be). They cannot think of even marrying outside their caste and community, conversely, a family with liberal and cosmopolitan approach, thought, particularly in urban area will not mind

in case of marriage even having knowledge of background of prior marriage or premarital affair with other counter sex outside their caste and community. In case of former, concealment of caste, community or background of prior marriage or premarital affairs before or at the time of marriage is obviously extremely material and it amounts to fraud in obtaining consent.

35. In this case evidence is more than adequate, almost on admission that both the sides believe and practise in conservative ideas as far as marriage match is concerned and they believe marriage is sacramental act and mutual reposing of matrimonial trust and confidence. We think in this circumstance background of prior marriage albiet annulled, is material fact, disclosure of such fact before or at the time of marriage was absolutely essential. In other words concealment of this fact is an act of deception. In order to develop matrimonial trust, confidence at the time of marriage or subsequently it is essential minds of the groom and bride would be open and waiting to accept each other absolutely, and closely so much so there would be no room in their minds for any one else.

36. It is the case of the Respondent/Plaintiff that there has not been any disclosure of fact at the time of negotiation before or at the time of solemnization of the marriage, about the earlier marriage. The factum of occurrence of previous marriage is within the special knowledge of Saswati, hence it was her obligation to disclose it since she was adult, or for that matter her parents. They have failed to discharge the burden u/s 106 of Evidence Act. On the contrary, it has been noticed by the learned Trial Judge that the parents of the Appellant or the Appellant herself in a bid to conceal above material fact described meaningfully her status as unmarried in the application for registration under Hindu Marriage Act. Therefore, such representation before the Marriage Officer as well as Avik amounts to misrepresentation to put it mildly incorrect information. Under such circumstances Avik believed such representation to be true and correct, when it was made before a public servant there is no reason to disbelieve. Next contention is whether this knowledge of Avik is very vital as far as maintainability of this action is concerned. Since Sub-section (2) of Section 12 of the said Act had specifically provided with negative words that presentation of petition for annulment of Hindu Marriage is forbidden after expiry of one year after fraud had been discovered. The marriage between Saswati and Avik took place on 25th January 2000, on 12th February 2001 they together went to Delhi. Within three days after marriage, it is urged, that Saswati is said to have divulged about the previous marriage. It is her oral evidence and Mr. Roychowdhury forcefully submits this evidence as far as point of limitation is concerned is relevant.

37. He submits that her evidence should have been accepted by the learned Trial Judge and if it is accepted to be true then action is barred by limitation.

38. Mr. Saktinath Mukherjee has correctly pointed out that when the learned Trial Judge having watched demeanour has disbelieved testimony of Saswati, the appeal

Court going by the record should not believe her. Even going by the records we unhesitatingly come to the same conclusion as the learned Trial judge did. It is very risky to believe the witness who is prone to take shifting stand according to her chosen situation and circumstances. It appears from the records that she voluntarily with the help of friends and acquaintance married lawfully Sudip who came down from America for the marriage. She thereafter without informing her parents and concealing the fact of marriage went to the house of Sudip's parents and stayed there for the period as stated above. She wrote letter to Sudip to America as a newly married wife does to her husband. She made complaint against her parents so that her marriage life with Sudip is not disturbed by them. After all this she filed the application for annulment of marriage against Sudip making incorrect allegations mentioning there has been forceful marriage before the Marriage Officer. In this proceeding she has not hesitated to tell that she loved Sudip. She even made incorrect representation by necessary implication before the Hindu Marriage Officer that she is unmarried. Under such circumstances the person who is always taking contradictory and shifting stand before various authorities and does not hesitate to make incorrect statement before the responsible officers including the judicial one, cannot be trusted, to write any judgment in any proceeding wherein she is a party. We therefore, hold that the learned Trial Judge has rightly disbelieved her. If her testimony goes then nothing remains to prove disclosure of pre-marital status before marriage being solemnized. We fail to understand if this material information was divulged before marriage during negotiation as claimed by the Appellant and her father, then why it was at all necessary to repeat the same three days after marriage. On the contrary it suggests unmistakably that there was no disclosure before or at the time of marriage. It is an afterthought endeavour to misdirect the Courts.

39. Mr. Mukherjee has rightly stated that for the first time during train journey from Delhi to Kolkata on or about 13th October 2001 Avik came to know about the earlier Marriage of Swasati as she disclosed her relationship with Sudip.

40. We think that had there been an honest intention to disclose this material fact of earlier marriage of Swasati then her parents ought to have mentioned this fact in the letters and correspondences exchanged between two groups on several occasions. It appears from the records that both the parties were in habit of making correspondences even on small issues. So it is not understood as to why Saswati's father did not divulge very important aspect enclosing the copy of the certificate of registration of earlier marriage and copy of the decree of annulment thereof. Responsible and educated person is expected in normal course of event to divulge the same.

41. We are, therefore, inclined to accept as had been found by the learned Trial Judge correctly that Avik discovered the factum of earlier marriage as mentioned hereinabove. Prior thereto he had no knowledge though Mr. Roychowdhury wants

us in vain to accept the version of testimony of the father of Saswati as we have already held that the responsibility of disclosure of vital fact was rested with Saswati not with her father. On the question of condonation of matrimonial offence we are of the view after discovery of the factum of earlier marriage it appears from evidence that Avik did not stay with Saswati and she has been left behind by Avik at her father's place not to speak of cohabiting with her. After reaching Kolkata and after having come to know the relationship with Sudip he approached the father of Saswati to inquire about Sudip. When he did not get any information he left his father-in-laws house and stayed in Hotel Hindusthan. Thus we are left no alternative but to hold that the point of limitation will start running from 27th March 2002 when he came to know with all particulars from Pankaj Saraf. It is submitted by Mr. Roychowdhury because of non-examination of Pankaj the evidence of Avik is of no value. We are unable to accept this contention as there is no reason to disbelieve Avik as he himself came to know this fact of earlier marriage and he can say alone. Of course the testimony of Pankaj could have corroborative value but when the evidence of one witness is good enough no corroboration is required. Much has been told about the said letter of Avik dated 21st October 2000 urging particularly that in this letter Avik knew everything about past life of Saswati. Mr. Mukherjee has rightly stated that the learned Trial Judge has correctly found in the text of the said letter, that nothing is mentioned that he had been told about the existence of earlier marriage with Sudip followed by annulment of the marriage. In the cross-examination of Avik it has not even been suggested referring to this letter, that he knew about the factum of earlier marriage so as to non-suit this matrimonial proceeding on account of the period of limitation as mentioned in the said Sub-section (2) of Section 12 of the said Act. We have carefully gone through the text of the said letter dated 21st October 2000 wherefrom it appears that he had written to mother-in-law as a sensible son in law that they are adjusting together after marriage and she had told about her premarital and past relationship and affairs with another boy. Such relationship would not affect their marital relationship adversely. Pre-marital affairs with a boy without any thing more, is one thing and pre-marital affairs culminates in lawful and valid marriage is another thing. Avik is a bachelor admittedly and Saswati was not a spinster in legal sense as she had been married earlier, at least she cannot be termed to be unmarried. The earlier marriage of Saswati was preceded by prolonged courtship from adolescence and that too beyond the knowledge of the parents of Saswati. It is quite natural that a married girl though there has been an annulment of marriage subsequently under pressure of her parent, cannot easily and quickly shed off her affinity, fondness and desire for union with the first man in her life and it is very difficult if not impossible to forget as there is no history of torture or misbehaviour by the first self chosen husband, therefore it is quite natural justified that suspicion of passion of Saswati for Sudip could always be in the mind of Avik. Hence the decision of the Supreme Court in the case of [Dr. N.G. Dastane Vs. Mrs. S. Dastane](#), is not at all applicable because the said matrimonial suit was filed for judicial separation on the ground of cruelty and in this

context the exposition of law with regard to condonation of matrimonial offence was made. Here on fact there was no scope for condonation of matrimonial offence as immediately after discovery of the concealment Avik never cohabited with Saswati.

42. The division Bench judgment of this Court in the case of Shri Pranab Kumar Biswas v. Srimati Mrinmayee Dassi and Anr. reported in 1976 (2) CHN 119 is an inapposite citation by reason of the fact that in that case suit was filed after three years from the date of discovery of pregnancy of the bride by a person other than lawfully married husband, on that ground matrimonial action was dismissed.

43. Mr. Roychowdhury has said there has been an effort for conciliation and settlement during pendency of the Transfer Petition before Supreme Court. In our view any effort made during pendency of matter does not operate as abandonment or relinquishment of the original plaint and the same is always without prejudice to the right and contention of the parties unless such effort is translated into action by making suitable application before the Court. We therefore, did not find any merit in the appeal and any reason to interfere with the judgment of the learned Trial Judge which in our view is well reasoned and considered on all points. Hence we dismiss the appeal, however without any order as to costs.

I agree.