

(2014) 03 CAL CK 0050

Calcutta High Court

Case No: F.A. 159 of 2012

Tapas Singha

APPELLANT

Vs

Mitali Paul

RESPONDENT

Date of Decision: March 13, 2014**Acts Referred:**

- Special Marriage Act, 1954 - Section 25, 25(i)(iii), 25(iii), 31, 31(1)(iia)

Citation: (2014) 2 CALLT 327 : (2014) 4 CHN 203 : (2014) 2 DMC 868 : (2014) 3 WBLR 553**Hon'ble Judges:** T.K. Dutt, J; Shib Sadhan Sadhu, J**Bench:** Division Bench**Advocate:** Partha Ghosh and Shamik Chatterjee, Advocate for the Appellant; Probal Kr. Mukherjee and Shebatee Datta, Advocate for the Respondent

Judgement

Tapan Kumar Dutt, J.

This Court has heard the learned Advocates for the respective parties and has also considered the materials on record. The facts of the case, very briefly, are as follows:

2. The respondent in the present appeal had filed the Matrimonial Suit No. 343 of 2002 in the Court of the learned District Judge, Barasat, North 24-Parganas which was subsequently re-numbered as Matrimonial Suit No. 121 of 2009 and it was placed for hearing before the learned Additional District Judge, 1st Court, Barasat, North 24-Parganas. The said suit was filed by the respondent against the appellant praying inter alia for a decree of nullity of marriage between the parties and the marriage be dissolved accordingly. In the petition for annulment of marriage which was filed u/s 25(i)(iii) of the Special Marriage Act, 1954, the respondent had alleged that at the time when the respondent was about 20 years of age, she had met the appellant and at that point of time the respondent was only a college student. She has also alleged in her petition that the appellant had developed some kind of intimacy with the respondent and the respondent was impressed by the way the appellant had portrayed himself before the respondent inasmuch as the appellant

had stated to the respondent that the appellant is a big businessman holding different types of business situated at Raniganj, Asansole and that the appellant had four trucks, a private car and his own dwelling house. It was the case of the respondent that the respondent became impressed upon such disclosures made by the appellant and she fell in love with the appellant. It was the case of the respondent that the appellant took undue advantage of such weakness of the respondent and took the respondent to some place and compelled the respondent to put some signatures on blank forms which later on turned out to be steps taken for registration of a marriage under the Special Marriage Act, 1954. It was the case of the respondent that the respondent had no consent to such marriage but the appellant induced the respondent to believe certain things which the appellant knew was false and, therefore, the appellant had committed fraud on the respondent. Even with regard to the alleged educational qualification of the appellant, the respondent had alleged that the appellant had made false representations. It further appears from the petition filed by the respondent for annulment of marriage that the father of the respondent at the material point of time was an officer of the C.I.S.F. and he stood in the way of the appellant's father operating an illegal trafficking of coal business and, thus, the appellant intended to put the respondent's father in trouble and according to the respondent the appellant thus committed such coercion and fraud on the respondent and somehow managed to obtain the marriage certificate.

3. The appellant had contested the said Matrimonial Suit by filing a written statement and additional written statement as the plaint was also amended. The appellant has denied the material allegations made in the plaint but it appears from the additional written statement that the appellant insisted in making a statement that the appellant is the owner of more than one trucks and the appellant is also the owner of a private car and the trucks were used for carrying coal. The appellant has also stated in his pleadings that the appellant is a confirmed businessman having coal supply business. According to the appellant the respondent had given valid consent to the said marriage which purportedly took place on 18.4.2001. The appellant prayed that the suit should be dismissed. It may be mentioned that the appellant had also taken a point that the learned Trial Court had no jurisdiction to try the suit as the date on which the suit was filed i.e. 21.3.2002 the amendment to the section 31 with regard to the wife's right of filing a suit in the territorial jurisdiction of the Court in which jurisdiction she happens to reside did not come into force, that is to say, section 31(1)(iia).

4. Two witnesses adduced evidence on behalf of the respondent including the respondent herself and the respondent's father. On behalf of the appellant the appellant only adduced evidence in his behalf.

5. The learned Trial Court by the impugned judgment and decree has decreed the said suit on contest by granting a decree of nullity by annulling the marriage

between the parties. The learned Trial Court came to the specific finding that it is crystal clear from the evidence on record that the consent of the respondent was obtained by the appellant for marriage by coercion as well as fraud. The learned Trial Court found that the respondent was impressed by the appellant boasting of the master's degree and the business of transport, four trucks and ownership of double storied building etc. The learned Trial Court further found that the residence of the appellant was various in nature and that he had no fixed abode as his place of residence. The learned Trial Court found that the appellant had got his PAN Card and had filed his Income Tax Return very belatedly i.e. only in the year 2009-10 i.e. during the pendency of the suit. The learned Trial Court also found that the appellant could not produce any papers in support of his claim that he was the owner of four trucks and coal business or in support the appellant's claim that he was financially a very solvent man. The learned Trial Court found that the appellant had only passed Higher Secondary examination and nothing more. It is the specific finding of the learned Trial Court that the representations made by the appellant to the respondent did cause an impression upon the respondent and the appellant had committed fraud upon the respondent who was only a college going student at the material point of time. The learned Trial Court was of the further view that the marriage between the parties was not consummated.

6. The learned Advocate appearing on behalf of the appellant submitted that his main point in this appeal is with regard to the lack of territorial jurisdiction of the learned Trial Court as according to the said learned Advocate, since the suit was filed on 21.3.2002 and the Clause (1) (iia) to the said sub-section of Section 31 of the said Act of 1954 was introduced only on 23.12.2003, the learned Trial Court could not have granted a decree for annulment of marriage. The said learned Advocate submitted that such point was taken in the written statement and, therefore, it cannot be said that the appellant had not objected to the territorial jurisdiction of the learned Trial Court. The said learned Advocate submitted that no retrospective effect can be given to the said amendment of Section 31 of the said Act of 1954. He placed a judgment reported at [Smt. Jeewanti Pandey Vs. Kishan Chandra Pandey](#), and referred to paragraph 13 of the said reports. On perusal of the said paragraph 13 of the said reports, it appears to us that the Hon"ble Apex Court was considering the implication of the word "resides" and the Hon"ble Apex Court was pleased to come to the conclusion that by the word "resides" one means the actual residence of the party concerned. We do not see how such reports can be of any assistance to the appellant in the present case as the point involved in the present case is quite a different one. It may be noted here that the learned Advocate for the appellant had initially attempted to make his submissions on the merits of the case also but subsequently it appears to us that he was not very keen on pressing any point on the merits of the case. This is so because the said learned Advocate had wanted to rely upon certain photographs which were filed in the records but on scrutiny it appears that such photographs were not tendered in evidence and such

photographs were not marked exhibits. It may be noted here that it will appear from the cross-examination of the appellant that he even could not show any documents in support of his alleged permanent address at Burdwan. In evidence he stated that he cannot even mention the number of the premises where he used to allegedly reside. He further stated that he cannot even mention the name of the road on which such premises was situated. He could not file any rent receipts. It appears from the records that the appellant has been shifting his residence from one place to another as found by the learned Trial Court. The reason for such different places of residence is not very clear to this Court. He even stated in his evidence that he could not file any document to show that he had any business or he was a solvent person. He stated in his cross-examination that he could not file papers in support of his claim of ownership of four trucks or selling the said four trucks. It was suggested to the appellant in cross-examination as to whether or not he was engaged in the business of being a coal mafia and coal racketeer. Of course, the appellant had replied that it is not such a fact.

7. The learned Advocate appearing on behalf of the respondent submitted before this Court that the judgment was delivered by the learned Trial Court in the year 2011 i.e. about eight years after the amendment of section 31 of the Act of 1954 took place and the suit has proceeded all through till its ultimate culmination. The said learned Advocate for the respondent submitted that section 31 of the said Act of 1954 deals with only procedure and it is a section which prescribes the Court in which a petition under the said Act should be filed. The said learned Advocate submitted that it is true that on the date of filing of the petition the amendment did not take place but about one and half years later such amendment came into force and by that time the learned Trial Court which decided the case had jurisdiction to entertain such petition. The said learned Advocate submitted that if one looks into the provisions of section 25 of the said Act, particularly, the last proviso to the said section it will appear that it has been stipulated in the said proviso that when a case is made out in terms of section 25(iii), the Court cannot not grant a decree if Clauses (a) and (b) of the said proviso become applicable in the case; otherwise, the learned Trial Court had no difficulty in passing the decree for annulment of marriage. The said learned Advocate submitted that in the instant case the suit was filed within one year from the date of discovery of the fraud and the respondent did not live with the appellant after such discovery of fraud or even before that.

8. Having considered the relevant provisions of the said Act of 1954 into consideration, we find that it is true that when the suit was filed the amendment of section 31, as aforesaid, did not take place but during the pendency of the suit, such amendment took place and by virtue of such amendment the learned Trial Court did get jurisdiction to entertain the petition under the Special Marriage Act, 1954. Reading sections 25 and 31 together it appears to this Court that there was no bar for the learned Trial Court in deciding the suit, after the amendment, on the date of which the suit was ultimately decided. It cannot be said that the learned Trial Court

lacked inherent jurisdiction even after the amendment came into operation. It is only a procedural matter contemplated in section 31 of the said Act of 1954 and it will not be proper at this stage after the parties have fought for about 12 years to relegate the parties to a fresh suit. The learned Trial Court has considered the entire evidences on record and come to the findings on the merits of the case. We are of the view, having perused the materials on record, that the learned Trial Court was quite justified in coming to its findings on the merits of the case. We do not see any reason to hold that the learned Trial Court had no jurisdiction to pass a decree which has been challenged in the instant appeal. On the merits of the matter also the learned Trial Court is fully supported by the materials on record.

9. We thus do not find any merit in the instant appeal. The instant appeal is dismissed.

10. There will, however, be no order as to costs.

11. Let the lower court records be sent back to the learned Court concerned immediately.

12. After the aforesaid judgment is delivered, the learned Advocate for the appellant prays for stay of operation of the aforesaid judgment.

13. The learned Advocate for the respondent vehemently opposes such prayer.

14. Such prayer for stay is considered and refused.

Urgent certified xerox copy of this judgment, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

Shib Sadhan Sadhu, J.

I agree.