

IN THE HIGH COURT OF DELHI AT NEW DELHI

Through: Mr. PBA Srinivasan, Mr. Sumit Swami & Ms. Srishti Bansal, Advocate

Versus

Our Client...

Through: Mr. Neha Batra, Ms. Ishika Jain & Ms. Rakhee Gupta, Advocates.

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKA

HARISH VAIDYANATHAN SHANKAR J. 1. This appeal has been filed under Section 19 of the Family Courts Act, 1984, challenging the Judgement dated 19.01.2024 1, passed by the learned Family Court Judge, Rohini (North) District Courts 2, in the matter of "Shweta Pareek née Bhatt vs. Sameer Pareek" bearing H.M.A. No.126 of 2017, whereby the learned Family Court allowed the Petition filed by the Respondent herein under Section 12(1)(c) of the Hindu Marriage Act, 1953. Impugned Judgement Family Court HMA ISSUE IN HAND: 2. By way of the Impugned Judgment, the learned Family Court has annulled the marriage between the parties under Section 12(1)(c) of the HMA, and accordingly issued a decree to that effect. The primary terms on which the learned Family Court has deemed it necessary to annul the marriage are: (i) The concealment by the Appellant of the fact of his prior marriage, and (ii) The discrepancy in the salary figures that had been set out by the Appellant. 3. These findings were based on an analysis of the online profile of the Appellant on the matrimonial portal "www.shaadi.com" and on the basis of which the Respondent herein had responded to the advertised profile of the Appellant

CONTENTIONS OF THE APPELLANT:

4. Learned counsel for the Appellant would submit that: (i) The learned Family Court has come to incorrect conclusion that there was concealment by the Appellant of the marital status; and in support of the same, he would seek to canvass that the Respondent herein was well aware of the Appellant's previous marriage, as the same had been disclosed to her, and for this purpose, particular reliance is placed on the meeting held on 16.11.2014 at Cafe Coffee Day between the Appellant, the Respondent, and the Appellant's sister, during which the fact of the Appellant's earlier marriage was not only revealed but also discussed in detail. (ii) The proceedings under Section 12(1)(c) of the HMA seeking annulment of marriage is belated/barred by limitation, insofar as, at least on the date of the complaint filed by the Respondent in the C.A.W. Cell, Prashant Vihar, Delhi, on 27.01.2016, which culminated in the registration of an FIR and from the said FIR No. 0401/2016 dated 12.05.2016, it is evident that there existed some doubt in the mind of the Respondent, as regards the Appellant being previously married. He would thus submit that the filing of the annulment petition on 21.08.2017 is belated. (iii) Placing reliance upon various chat messages exchanged between the parties, he would contend that, it is clear that the marital relationship between them was cordial and harmonious, and the case set up by the Respondent is not bona fide. (iv) He further refers to the assertions made by the Appellant in the pleadings, which have also been reproduced in the Impugned Judgment at paragraph Nos. 12 and 25, and draws the Court's attention in particular to the following extract: "12. The opening statement on behalf of the petitioner is that

the respondent has committed three-fold frauds with the petitioner. The first fraud was mentioning his incorrect marital status. The second fraud is regarding his incorrect date of birth / horoscope. The third fraud is regarding his incorrect income. It is argued that the respondent has admitted that his marriage with the petitioner was solemnized through matrimonial website Shaadi.com. He has also admitted that his profile mentions his marital status as "never married". In the profile of the petitioner, she specifically mentioned that she was searching for the match who was never married. Due to the fact that the respondent has shown his status as "never married", his profile was suggested to the petitioner through a filtration process. It is submitted that the respondent has come up FIR. with a cock and bull story of the respondent informing the petitioner about his first marriage / divorce during the physical meeting between the parties on 16.11.2014 at CCD. It is argued that the petitioner was completely kept in dark about the first marriage. Ld. Counsel for the petitioner highlighted paragraph no. 3 (qq) of the petition filed by her under PWDV Act proved as Ex. PW-1/5 to demonstrate that at the time of filing the said petition in February 2016, the petitioner had some suspicion that the respondent was married earlier and she clearly stated that she was trying to ascertain the said fact. My attention has further been drawn to the reply to the said paragraph filed by the respondent Ex. PW-1/13 wherein he stated "It is submitted that the respondent no. 1 was unmarried, was very much in the clear and unambiguous knowledge of the complainant and her family members who had undertaken their detailed diligence and investigation before going ahead with the alliance". It is argued that in the said reply dated 18.07.2016, the respondent nowhere mentioned about his first marriage and rather asked the complainant (the petitioner herein) to be put to strict proof of her allegations. When the petitioner collected the proof of the first marriage of the respondent, he has come up with a false story of 16.11.2014 through a false and planted witness in the form of his real sister / RW-1, It is argued that the petitioner has duly discharged the burden of proof of the fact that the respondent has misrepresented about his marital status and the onus shifted on the respondent to prove that there was no fraud. The respondent failed to discharge this burden and the petitioner is entitled to a decree. Ld. Counsel for the respondent firstly argued that the matrimonial profile of the respondent marked as Ex. PW-3/1 has not been proved as per law because the certificate was 65 B Evidence Act (Ex. PW-0/3) is not fulfilling the conditions of the law. It is argued that under Sub Section (v) of Section 65 B of the Indian Evidence Act, all the three conditions must be fulfilled in the certificate namely (a) identifying the electronic record and describing the manner in which it was produced, (b) giving the particulars of the device involved in the production of the electronic record and (c) dealing with any of the matters to which a condition mentioned in Sub Section (ii) relate. It is argued that since the certificate Ex. PW-3/3 does not fulfill the conditions provided by law, the matrimonial profile of the respondent could not be proved. As a necessary corollary, the petitioner could not prove on record that the respondent has shown himself "never married" in the matrimonial profile. Reliance has been placed by Id. counsel on a judgment Arjun Pandit Rao Kotkar Vs. Kailash Ushan Rao Gorantyan (2020) 7 SCC 25. Ld. Counsel for the petitioner highlighted the reply to the above assertion that was given by the respondent herein in his reply Ex. PW- 1/13, which is reproduced as follows: "3 (qq) 2 (ss)..... It is submitted that right from day one the complainant was aware of each and every details of respondent no. 1 vis a vis his bank account details, online account password, debit cards, credit cards etc. It is also denied that any such fraudulent details much less birth details qua the respondent no. 1 ever existed. It is also denied that the respondent no. 1 -had concealed any of his status at the time of marriage from the complainant or her family as is being falsely alleged now with ulterior motives. It is submitted that the respondent no. 1 was unmarried, was very much in clear and unambiguous knowledge of the complainant and her family members, who had undertaken their detailed diligence and investigation before going ahead with the alliance... The respondent urge to this Hon'ble Court that the complainant be put to strict proof in his regard.....

(v) He would contend that the conclusion drawn by the learned Family Court with reference to the pleadings and in particular the use of the word "unmarried" is an error in the understanding of the learned Family Court insofar as it was the Appellant's intent to convey that at the point in time when he married the Respondent herein, he was not married to anyone else. (vi) He would further contend that the particulars as set out in the profile were unknown to him, as the profile had been created by his parents, who were unaware of his marriage and subsequent divorce. CONTENTIONS OF THE RESPONDENT: 5. Per contra, learned counsel for the Respondent would submit that: (i) The said explanation of the Appellant in respect of the usage of the word "unmarried" is completely unacceptable and is being canvassed for the first time. She would further submit that there is a clear difference between the use of the word "unmarried" and "divorced". (ii) The most important aspect that needs to be considered is the profile of the Appellant on the basis of which the Respondent herein was, so to speak, induced, to enter into matrimony with the Appellant herein. She would rely and stress upon the conclusions of the learned Judge in the Impugned Judgment with respect to the finding that the Appellant had clearly committed a fraud by representing himself to be not married and also that he was earning an amount which was far above what was the truth. ANALYSIS: 6. We have gone through the records of the Appeal and also heard the learned counsels for the parties at length. 7. Having considered the matter, this Court finds that the present case squarely attracts the provisions of Section 12(1)(c) of the HMA, which reads as follows: "12. Voidable marriages. - (1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely: (a) that the marriage has not been consummated owing to the impotence of the respondent; or

(b) that the marriage is in contravention of the condition specified in Clause (ii) of Section 5; or (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, the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or to any material fact or circumstances concerning the respondent); or (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner. (2) Notwithstanding anything contained in Sub-section (1), no petition for annulling marriage (a) on the ground specified in Clause (c) of Sub-section (1) shall be entertained if (i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or (ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered; (b) on the ground specified in Clause (d) of Sub-section (1) shall be entertained unless the court is satisfied (i) that the petitioner was at the time of the marriage ignorant of the facts alleged; (ii) that proceedings have been instituted in the case of a marriage solemnized before the commencement of this Act within one year of such commencement and in the case of marriages solemnized after such commencement within one year from the date of the marriage; and (iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the said ground.

Prior to the Marriage Laws Amendment Act of 1976 Clause (c) of Sub-section (1) of Section 12 of the Act read as under: "That the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner is required under Section 5, the consent of such guardian was obtained by force or fraud." The words 'force' and 'fraud' have not been defined in the Act. Section 17 of the Indian Contract Act defines the word 'fraud' in the following terms: Fraud-means & includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with

intent to deceive another party thereto or his agent, or to induce him to enter into the contract: (1) The suggestion, as to a fact, of that which is not true, by one who does not believe in to be true, (2) the active concealment of a fact by one having knowledge or belief of the fact; (3) a promise made without any intention of performing it; (4) any other act fitted to deceive; (5) any such act or omission as the law specially declares to be fraudulent.

Explanation - Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such (that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself equivalent to speech. The term 'fraud' used in Clause (c) cannot be given the same meaning as defined under Section 17 of the Contract Act. The expression 'fraud' used in Clause (c) does not speak of fraud in any general way or that every misrepresentation or concealment is fraudulent, A marriage under the Hindu Law is not purely a contract. A reading of Section 5 & 7 of the Act makes it clear that a Hindu Marriage has both religious as well as secular aspects. Therefore, the marriage has to be treated both as sacrament and as a contract. It is a sacrament because certain customary rights and ceremonies as described in Section 7 of the Act have to be performed for the completion of marriage. It is a contract as Section 5 of the Act deals with the capacity of the spouse to enter into an alliance for a marriage. The words 'force' and 'fraud' that are contemplated in Clause (c) are as to the nature of the ceremonies or as to the material facts or circumstances concerning the respondent. If the consent of a party to the marriage is obtained by practicing fraud as to any material fact or circumstance concerning the respondent the marriage can be annulled under Clause (c). The word 'fraud' used in this clause connotes deception or misrepresentation. If there is a misrepresentation or concealment of a material fact concerning the respondent then the provision contained in Clause (c) would definitely be attracted for annulling the marriage. What is a misrepresentation or concealment of a material fact depends upon the facts and circumstances of each case. The material fact is that vital and important fact which would induce or influence the mind of a party to give or withhold the consent to marry. The fraud or misrepresentation need not necessarily be at the time of marriage, it can be one made even before marriage. 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? In the present case the appellant is contending that he had legally divorced the first wife, Balbir Kaur by means of a customary divorce but on the other hand Balbir Kaur is asserting that she is still the legally wedded wife of the appellant and there was no legal divorce. The appellant was obliged to disclose to the respondent about the factum of his previous marriage and the alleged divorce by custom. If any. This is an admitted case of the parties that the respondent was a virgin. The previous marriage of the appellant with Balbir Kaur was a material fact concerning the appellant which was intentionally suppressed and was not disclosed to the respondent. The case of the respondent is that she was a virgin and she would not have consented to marry the appellant had she known the fact that the appellant was previously married to Balbir Kaur. The counsel for the appellant relied upon *Raja Ram v. Deepabai*, (AIR 1974 MP 52) in support of his contention that the concealment of the fact that the appellant had been once married to another woman could not be a ground for annulment of the marriage. We have perused the authority relied upon by the learned

counsel for the appellant, in this case Clause (c) of Sub-section (1) of Section 12 of the Act as it stood prior to the amendment of 1976 was interpreted. Clause (c) prior to amendment read as under:

"THAT the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner is required under Section 5, the consent of such guardian was obtained by force or fraud." After the amendment of 1976 there is a radical change in Clause (c) and the following words have been added: "as to the nature of the ceremony or to any material fact or circumstance concerning the respondent". (emphasis supplied) 15. We would like to observe that both these judgments have been quoted by the Appellant in support of his contentions. Upon closer examination, in fact, these judgments appear to indicate the opposite. The conspectus of our reading of these judgments would lead us to conclude that misrepresentation or concealment of a material fact is dependent on the facts and circumstances of each case and that there can be no common standard adopted for the purpose of determining misrepresentation or concealment. The material fact is one that is vital and important, which would form the ultimate basis for influencing or inducing a person to either consent or withhold such consent to a marriage

16. A Division Bench of the Allahabad High Court, in *Kajal Kiran Gupta v. Raj Kumar* 8, examined the legal issue in question as follows: "12. The term "Fraud" in the context of Section 12(1)(c) of the Act, 1955 was interpreted by the Hon'ble Bombay High Court in the case of *Raghunath Gopal Daftardar vs Vijaya Raghunatha Gopal Daftarda*: 1971 SCC OnLine Bom 52. It culled out a distinction between the term "fraud" as appearing in Section 17 as appearing in Section 17 of the Indian Contract Act, 1872 and in Section 12 of Act, 1955 by observing that marriage under Hindu Law is treated as a „Sanskara, or a sacrament and not a mere civil contract. The term "fraud" as used in the Act, 1955 is not a "fraud" in any general way and that every misrepresentation or concealment would not be fraudulent. If the consent given by parties is a real consent to the solemnization of marriage, then the same cannot be circumvented by alleging fraud. Similarly, in the 2024 SCC OnLine All 5349 case of *Harbhajan Singh vs Shrimati Brij Balab*: 1963 SCC OnLine Punj 139, it was observed that „fraud, as a ground for annulment of marriage under the Hindu law is limited to those cases where the consent for marriage was obtained by some deception. Thus, under the Hindu Law, not every misrepresentation or concealment of a fact shall amount to "fraud" as envisaged under Section 12(1)(c) for annulment of a marriage. The fraud must be material as to the nature of ceremony or to any material fact or circumstance concerning the respondent and thus, at this point it is pertinent to consider what would tantamount to a material fact. The meaning of "material fact" or "circumstance concerning the respondent" is difficult to define with certainty. However, it would be reasonable to say that fact or circumstance which is of such a nature that it would be material or relevant to the consent for marriage would be a material fact or circumstance in terms of Section 12 (1) (c) of the Act, 1955. A fact, which if disclosed, would result in either of the parties not consenting to the marriage, would be a material fact. Such a material fact must be in respect of the person or the character of the person. (emphasis supplied) 17. In the present case, the learned Family Court rightly identified two determinative factors, the fact of the Appellant's prior marriage and his stated salary. Both these factors are of such decisive importance in a person's matrimonial decision-making process that their concealment squarely falls within the meaning of a "material fact or circumstance", the suppression of which renders the resulting marriage liable to annulment. 18. We must note that, though the learned Family Court did not examine this aspect, we consider it necessary to emphasize, another critical aspect, which is the fact that the Appellant has a child from his earlier marriage. We believe that such a circumstance is profoundly material to any prospective spouse's decision on whether to marry. Even if one assumes that the mere fact of a prior, now-dissolved marriage might not always be decisive, the existence of a child, in our view, could carry significant weight for making a decision 19. On the question of whether concealing a subsisting prior

marriage constitutes a valid ground for annulment, this Court has already pronounced in *Rajinder Singh v. Pomila* (supra). 20. As regards the other contention pertaining to misrepresentation of salary, the same is, in our considered opinion, squarely covered by the judgment of *Anurag Anand v. Sunita Anand*⁹, and the Impugned Judgment, in paragraphs 40 to 42 thereof, has rightly placed reliance on the said decision while dealing with this aspect. The relevant excerpt of the impugned judgment is produced below: "40. The case of the petitioner is that the respondent has also misrepresented about his income. His matrimonial profile mentions that his income is USD 200k and above whereas his income was later on found to be much less. It is argued by Ld. counsel for the petitioner that the petitioner is a highly educated girl who was very well placed in her life. She wanted a match according to her status and ambitions and the income of the respondent projected in his matrimonial profile was one of the key factors for having agreed to the matrimonial alliance with the respondent. It is argued that the respondent admitted in his cross-examination that in 2014 (the year of marriage between the parties), his annual gross salary was between 120k-130k USD. It is argued that the misrepresentation about the income amounts to fraud. Reliance in this regard has been placed in the judgment *Anurag Anand Vs. Sunita Anand* 1997 AD (Delhi) 37 FAO No.74 of 1996, decision dt. 11.10.1996. 41. Ld. counsel for the respondent refuted the above arguments and contended that the respondent did not misrepresent about his income at any point of time and he fairly deposed in his cross- examination that his income at the time of marriage was between 120k-130k USD. It is again argued that the matrimonial profile was posted by the parents of the respondent who may not be aware about the exact income of the respondent. 42. I have considered the foregoing submissions. In the case of *Anurag Anand Vs. Sunita Anand* (Supra) relied by the petitioner, the Hon'ble Delhi High Court observed that where matrimonial alliances are made through exchange of bio-datas, it becomes necessary for the parties to give correct bio-datas and to ensure that it does not contain inflated or false information. The court held that falsity about the monthly income and property status is fraud within the meaning of Section 12 of HMA. In the case in hand, it is admitted fact that the petitioner is a highly qualified girl 1997 AD (Delhi) 37, F.A.O. No. 74 of 1996 who has stayed in USA for about a decade prior to her marriage. The income of the prospective husband is a material fact for such a girl to decide whether to go for an alliance with the person or not. The matrimonial profile of the respondent clearly mentions his income as USD 200k. The respondent admitted in his cross examination that at the time of the marriage, his income was 120k- 130k USD. Meaning thereby that matrimonial profile was projecting an inflated figure of the income of the respondent. In given facts and circumstances, the misrepresentation

about the income amounts to fraud within the meaning of Section 12 of HMA. The petitioner is entitled to a decree of nullity on this score as well." 21. We are also of the considered view that, assuming arguendo that the Appellant's online profile was created by his parents, the Appellant cannot seek to contend that he was unaware of the contents of the same. 22. The Appellant has corresponded using the chat option provided for in the Portal and would certainly have ample opportunity to view, and if required, review the details set out therein. The Appellant has chosen to never do so. We also take judicial notice of the fact that online matrimonial portals have, as an option, when it comes to marital status, "Divorced" as one of the options. There was clearly no correction made to the profile at any time before the marriage took place and, as is manifest, no attempt was made on the part of the Appellant, to clarify or reveal the exact status post the marriage. The Appellant's profile deliberately held out that the Appellant had been "Never Married" and would therefore, constitute "....a material fact or circumstance", the concealment of which would fall foul of the provisions of the Statute. 23. In view of the above facts, circumstances, and settled principles of law, we find no merit in the present Appeal. There is no infirmity in the

Impugned Judgment warranting interference. The Appeal is, accordingly, dismissed. 24. The present appeal, along with pending application(s), if any, is disposed of in the above terms.

ANIL KSHETARPAL, J. HARISH VAIDYANATHAN SHANKAR, J. AUGUST 20, 2025/tk/sm/kr