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YUVRAJ DIGVIJAY SINGH

v.

YUVRANI PRATAP KUMARI

May 2, 1969

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[J. C. SHAH AND C. A. VAIDIALINGAM, JJ.]

Hindu Marriage Act 1955 (*Act* 25 *of* 1955), *s.* 12—*Conditions for divorce on grounds of impotence, invincible repugnance to sexual act, and inability to consummate marriage though neither party proved impotent.*

C

The appellant married the respondent according to Hindu rites on April 20, 1955. Thereafter the parties lived together for three years but the marriage was not consummated. The appellant filed an application before the District Judge at Delhi on March 15, 1960 under s. 12 of the Hindu Marriage Act, 1955, praying that the marriage between himself and his wife, the respondent, being voidable may be annulled by a decree of nullity. He averred that his wife had an invincible and persistent repugnance to the act of consummation and that she was impotent. The

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District Judge and later the High Court concurrently found that neither impotence nor invincible and persistent repugnance to the sexual act were proved against the respondent. In further appeal to this Court,

HELD : (i) Though it is not usual for this Court to interfere on questions of fact, nevertheless, if the Courts below ignore or mis-construe important pieces of evidence in arriving at a finding, such finding is liable to be interfered with by this Court. [563 B]

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Earnest John White v. *Kathleen Olive White*, [1958] S.C.R. 1410, referred to.

However in the instant case the Courts below has neither ignored nor mis-construed important pieces of evidence when they came to the conclusion that the appellant's case, regarding the impotency of the respondent, could not be believed. [563 C]

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(ii) The case of *G.v.G.* [L.R. (1924) A.C. 349] could not help the appellant in the face of the High Court's finding that 'invincible repugnance to the sexual act' on the part of the respondent was not proved. [563 G—564 A]

(iii) The case of *G.v.G.* [L.R. (1912) P.D. 173] also could not help the appellant. In that case the Court without going into the question

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which party was impotent was satisfied that the couple could not consummate their marriage in the present or in the future and should not be tied up together for their lives in misery. The position in the present case was entirely different. Neither of the Courts below had found that the marriage could not be consummated in future and they had not also accepted the appellant's plea that the respondent had always resisted his attempts to consummate the marriage. [564 B—564 E]

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The appeal must accordingly be dismissed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 905 of 1968.

Appeal by special leave from the judgment and order dated August 25, 1966 of the Punjab High Court (Circuit Bench) Delhi in F.A.O. 132-D of 1961. A

I. N. Shroff and *Anand Prakash*, for the appellant.

S. T. Desai, I. M. Lal, S. R. Agarwal, Champat Rai and *E. C. Agarwal*, for the respondent. B

The Judgment of the Court was delivered by

Vaidialingam, J. This appeal, by special leave, is directed against the judgment dated August 25, 1966 of the Circuit Bench of the High Court of Punjab at New Delhi, confirming the judgment of the District Judge, Delhi, dismissing the petition filed by the appellant under s. 12 of the Hindu Marriage Act, 1955 (Act XXV of 1955) (hereinafter called the Act). C

At the conclusion of the hearing of this appeal on April 28, 1969 we had indicated our conclusion that no interference with the judgment of the High Court was called for and that the appeal is dismissed without any order as to costs. The detailed reasons for our decision were to be given later. Accordingly we hereby give our reasons for coming to the said conclusion. D

The appellant had married the respondent according to Hindu rites on April 20, 1955. After the marriage the parties lived together for about three years at various places such as Delhi, Alwar, Bombay and Europe and, according to the appellant, during this period the marriage was not consummated. The appellant filed an application before the District Judge at Delhi, on March 15, 1960 under s. 12 of the Act praying that the marriage between himself and his wife, the respondent, being voidable, may be annulled by a decree of nullity. In brief, the case of the appellant was that since his marriage he had made frequent attempts to consummate it, but, due to an invincible and persistent repugnance on the part of the respondent to the act of consummation, he had failed to achieve it and, as such, the marriage had remained unconsummated. He further averred that his wife, the respondent, was impotent at the time of the marriage and continued to be so until the filing of his petition. According to him the impotency of the respondent was responsible for the non-consummation of the marriage. E F G

The respondent-wife contested the application on various grounds. She emphatically denied that she had shown any repugnance whatever to the act of consummation of marriage. She further stated that she had lived with the appellant for about three years and had also accompanied him on his visit to England and H

A the Continent and, during that period she was always ready and prepared to give full access to the petitioner to her person for consummating the marriage. She specifically averred that the consummation could not take place because the appellant was suffering from some physical disability or impotency and that he never made any attempt at consummation. She repudiated the
B allegation that she was either impotent at the time of the marriage of that she was impotent at the time of institution of the proceedings. She reiterated that the appellant was physically and emotionally unable to consummate the marriage and he had made a false excuse of impotency of the wife as being the cause for non-consummation of the marriage. She further stated that the
C appellant was physically and sexually impotent and, consequently, unable to perform the normal sexual functions and, in view of this, he had never expressed his willingness, by his conduct or behaviour, to consummate the marriage, even though the parties lived together for a number of years and had occupied the same bed in the same room.

D It will therefore be seen that while the appellant filed the application on the ground that the respondent was impotent, the respondent, in turn, had alleged that it was the appellant who was impotent. The material provision of the Act under which the application was filed by the appellant is s. 12(1)(a) which is as follows :

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> "12(1) Any marriage solemnized, 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 respondent was impotent at the time of
F the marriage and continued to be so until the institution of the proceeding;
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> . . . . . .

A party is impotent if his or her mental or physical condition makes consummation of the marriage a practical impossibility.
G The condition must be one, according to the statute, which existed at the time of the marriage and continued to be so until the institution of the proceedings. In order to entitle the appellant to obtain a decree of nullity, as prayed for by him, he will have to establish that his wife, the respondent, was impotent at the time of the marriage and continued to be so until the instiution of the
H proceedings.

Both the appellant and the respondent have been examined by doctors and their oral evidence and reports are on record.

Though the impotency of the appellant does not strictly arise for consideration in a petition filed by him, nevertheless the trial Court framed issues even in that regard : Issues Nos. 1 and 2, which are material, are as follows : A

> "1. Whether the respondent was impotent at the time of the marriage and has continued to be so till the filing of the present petition ? B
>
> 2. Is the petitioner impotent and consequently unable to perform the normal sexual function with the respondent ? If so, what is the effect thereof ?"

The learned District Judge, after a consideration of the evidence on record, ultimately held that the appellant had failed to prove that the respondent was at any time impotent and, as such, decided issue No. 1 against the appellant. He further held, on issue No. 2 that the facts of the case, on the contrary, showed that because of some physical or psychological cause, it was the appellant who was not able to consummate the marriage with the respondent. In this view the petition filed by the husband-appellant was dismissed. C D

On appeal by the appellant, the learned Judges of the Circuit Bench of the Punjab High Court differed from the finding of the trial Court on issue No. 2. The learned Judges, however, held that it had not been proved that the appellant was impotent, but, on the material issue regarding the impotency of the respondent-wife, the learned Judge were of the view that there were various factors and circumstances throwing a serious doubt on the allegation made by the appellant. The High Court held that it had not been established by the appellant that non-consummation of the marriage was due to the impotency of the respondent. It further held that on the state of evidence it did not believe that the respondent-wife had been proved to be impotent. The High Court also declined to believe the case of the appellant that the respondent had persisted in her attitude of exhibiting repulsion to the sexual act. E F

It is not really necessary for us to deal elaborately with the evidence in the case on the basis of which concurrent findings have been recorded by the District Court and the High Court, rejecting the case of the appellant that his wife, the respondent, was impotent at the time of the marriage and continued to be so until the institution of the proceedings. G

Mr. Shroff, learned counsel for the appellant, found considerable difficulty in satisfying us that the finding recorded by the two Courts on this aspect was erroneous or not supported by the evidence. No doubt, there was a feeble attempt made by the H

A learned counsel to urge that the evidence of the respondent that she had always been ready and willing to allow her husband to consummate the marriage should not be believed. When the two Courts have accepted her evidence, it is futile on the part of the appellant to urge this contention.

B The reliance placed by Mr. Shroff on the decision of this Court in *Earnest John White* v. *Kathleen Olive White*(1) is misplaced. In that decision, it has been laid down that though it is not usual for this Court to interfere on questions of fact, nevertheless, if the Courts below ignore or mis-construe important pieces of evidence in arriving at their finding, such finding is liable to be C interfered with by this Court. We are satisfied that the Courts below, in the instant case, have neither ignored nor mis-construed important pieces of evidence when they came to the conclusion that the appellant's case, regarding the impotency of the respondent, could not be believed.

D On the findings that both the appellant and the respondent were not impotent and the marriage had not been admittedly consummated, counsel urged that the conclusion to be drawn was that such consummation was not possible because of an invincible repugnance on the part of the wife. Counsel further urged that taking into account the practical impossibility of consummation, the application filed by the appellant should be allowed.

E So far as the charge of 'invincible repugnance to the sexual act' on the part of the respondent is concerned, it is only necessary to refer to the finding of the High Court that the allegation had not been proved but that, on the other hand, lack of proper approach by the appellant for consummating the marriage might F have been responsible for non-consummation. It is the further view of the High Court that the evidence of the appellant that he went on making attempts on several occasions for consummation of the marriage cannot be believed.

Mr. Shroff referred us to the decision of the House of Lords in *G.* v. *G.*(2). That was an action by a husband against his wife G for a decree of nullity of marriage on the ground of impotency. It was established that the husband was potent and had made frequent attempts to consummate the marriage; but he could not succeed owing to the unreasoning resistance of the wife. The wife was declared, on medical examination, not to suffer from any structural incapacity. Under those circumstances the House of H Lords held that the conclusion to be drawn from the evidence was that the wife's refusal was due to an invincible repugnance to

(1) [1958] S.C.R. 1410. (2) L.R. [1924] A.C. 349.

the act of consummation and, as such, the husband was entitled to a decree of nullity. This decision does not assist the appellant, as we have already referred to the finding of the High Court disbelieving the evidence of the appellant on this aspect. A

Mr. Shroff next relied on the decision in *G. v. G.*(1) holding that a Court would be justified in annulling a marriage if it was found that the marriage had not been and could not be consummated by the parties thereto, though no reason for non-consummation was manifest or apparent. In that decision both the husband and the wife were perfectly normal and each charged the other as being responsible for non-consummation of the marriage. The Court held that without going into the question as to who was the guilty party, it was evident that the marriage had not been consummated and could not be consummated in future also. Accordingly the Court annulled the marriage for the reason that it was satisfied that B C

> "*quoad hunc et quoad hunc*, these people cannot consummate the marriage." D

The Court further held that the two people should not be tied up together for the rest of their lives in a state of misery. The position in the case before us is entirely different. Neither of the two Courts have found that the marriage cannot be consummated in future and they have not also accepted the appellant's plea that the respondent had always resisted his attempts to consummate the marriage. E

When once the finding has been arrived at that the appellant has not established that the respondent was impotent at the time of the marriage and continued to be so until the institution of the proceeding, the inevitable result is the dismissal of the appellant's application under s. 12(1)(a) of the Act. The result is that the appeal fails and is dismissed. There will be no order as to costs. F

G.C. *Appeal dismissed.*

(1) L.R. [1912] P.D. 173.