CASE NO.:
Appeal (civil) 5028 of 1999

PETITIONER:
R. LAKSHMI NARAYAN

Vs.

RESPONDENT:
SANTHI

DATE OF JUDGMENT: 01/05/2001

BENCH:
D.P. Mohapatra & U.C. Banerjee

JUDGMENT:

D.P.MOHAPATRA ,J.
L...I...T.....T.....T.....T.....T.....T.....T..J

On analysis of the case of the parties and the contentions raised by learned counsel on their behalf, the question that arises for determination is whether the appellant has established a case for declaring the marriage null and void under section 12(1)(b) read with Section 5(ii) of the Hindu Marriage Act, 1955 ?

The appellant is the husband of the respondent. They were married according to Hindu rites and rituals on 1-11-1987. It is relevant to note here that it was an arranged marriage and the decision was taken after the appellant had met the respondent and talked with her. After staying together for about 25 days the couple parted company. Thereafter the appellant filed a petition under section 5(ii) read with section 12(1)(b) on 12.2.1988 seeking a declaration that the marriage is null and void as the respondent suffers from chronic and incurable mental disorder and is not in a fit mental state to lead a married life. In support of his case the appellant alleged inter alia that on the night of the marriage he found respondent to be drowsy; she refused to have cohabitation; on being questioned by him she said that she has been suffering from mental disorder since her childhood; she did not want to have any marriage relationship, but under pressure from her parents the marriage with the appellant was performed. The appellant further alleged that when father of the respondent was informed about her physical and mental condition he disclosed that his daughter has been under treatment for some mental disease and gave the prescription given by the doctor. The appellant pleaded that he and his father made attempts for curing the respondent of the ailment suffered by her but such attempts proved futile. Under such compelling circumstances he filed the petition seeking the declaration that the marriage was null and void.

Respondent in her written statement refuted the allegations made in the petition/plaint. She denied that she suffered from any mental disorder, far less of a chronic

and incurable nature. She also denied that she had no cohabitation with her husband or that she had expressed that she was not interested in leading married life. She asserted that immediately after the marriage she and her husband lead a happy married life; they went to different places and visited temples. She also asserted that she has all along been ready and willing to lead a normal marital life with the appellant; but the appellant is interested in having a second marriage so that he may get more dowry. According to the respondent the reason for which she has not been able to lead a normal family life is on account of refusal of the appellant to share the marital relationship with her.

The trial court on assessing the evidence on record dismissed the petition filed by the appellant holding, inter alia, that he had failed to establish that the respondent was suffering from any mental disorder or that there was no cohabitation or that the respondent was not in a fit mental state to lead a married life. The trial court which had the privilege of observing the respondent as a witness and watching her demeanor made the following observations in the judgment:

The respondent was examined in this court from 11.25 a.m. to 1.25 p.m. During the enquiry, it did not appear from her activities that her mental condition and activities had been affected. She has given answer very clearly to the questions posed by the petitioners advocate. This court is not a medical expert. But there was an opportunity to watch the activities and movements of the respondent. Since it is not proved from the activities and the letters of the respondent that she had incurable mental disease and since the marital relationship is fulfilled by the cohabitation between the petitioner and the respondent, it is decided that the respondent is fit for marital relationship and she is not affected by mental disease Since the petition is filed within a year from 1.11.1987, the date of marriage, this petition is not sustainable under law and it is decided that this marriage is not fit to be declared null and void.

On appeal by the appellant the appellate court found fault with the judgment of the trial court on the ground that the trial judge had not considered the documentary evidence in the case including the prescription issued by Dr. Papa Kumari of Chennai. The Court held that within a few days of the marriage the spouses had parted company and thereafter there has been no meeting between them. The appellate court accepted the case of the appellant that there was no cohabitation between the parties to the marriage. Taking note of certain statements made by the respondent in her evidence the appellate court found that she has admitted that she has been suffering from a mental disorder from her childhood; that she was given injection once in a month and used to take drugs whenever she had headache. On such findings the appellate court reversed the judgment of the trial court and allowed the petition filed by the appellant.

The second appeal filed by the respondent was allowed by the High Court, the judgment of the first appellate court was reversed and the judgment of the trial court was restored. The High Court, as appears on perusal of the judgment, mainly considered the question whether the appellant was aware of the physical and mental disorder of

the respondent before the marriage. The High Court held that the marriage was not vitiated by fraud or misrepresentation. The appellant (husband) had opportunity to meet the respondent (wife) and to know her physical and mental condition. The Court did not accept the case of the appellant that the respondent was suffering from chronic and incurable mental disorder and that there was no cohabitation between the parties.

The appellant husband has filed this appeal by special leave under Article 136 of the Constitution, assailing the judgment of the High Court.

Since the decision in the case depends on interpretation of sections 5(ii) (a) and (b) and section 12(1)(b) the said sections are quoted hereunder for convenience of reference :

5. Conditions for a Hindu marriage A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

(i) Xxx xxx xxx

(ii) at the time of the marriage, neither party

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children;

12. Voidable Marriages (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

xxx xxx xxxx

(b)that the marriage is in contravention of the conditions specified in clause (ii) of section 5.

Section 5 provides that a marriage may be solemnized between any two Hindus if the conditions specified in the section are fulfilled. Amongst the other conditions stated therein in sub-section (ii) it is laid down that at the time of marriage neither party is incapable of giving a valid consent to it in consequence of unsoundness of mind or though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children. The clause lays down as one of the conditions for a Hindu marriage that neither party must be suffering from unsoundness of mind, mental disorder, insanity or epilepsy and section 12(1)(b) refers that any marriage shall be voidable and may be annulled if the marriage is in contravention of the condition specified in clause (ii) of section 5. On a plain reading of the said provision it is manifest that the conditions prescribed in that section, if

established, disentitles the party to a valid marriage. The marriage is not per se void but voidable under the clause. Such conditions in the very nature of things call for strict standard of proof. The onus of proof is very heavy on the party who approaches the Court for breaking a marriage already solemnized.

An objection to a marriage on the ground of mental incapacity must depend on a question of degree of the defect in order to rebut the validity of a marriage which has in fact taken place. As noted earlier, the onus of bringing a case under this clause lies heavily on the petitioner who seeks annulment of the marriage on the ground of unsoundness of mind or mental disorder. The court will examine the matter with all possible care and anxiety.

Bearing in mind the principles which flow from a fair reading of the statutory provisions noted above we proceed to examine whether the appellant has succeeded in establishing the case for declaring the marriage null and void on the ground of mental incapacity of his wife at the time of marriage. Even accepting the findings recorded by the first appellate court which decided the case in favour of the appellant as correct then the position that emerges is that the respondent has been under treatment for some mental problem before the marriage; and that there was no cohabitation between the parties during the period of about one month during which they stayed together. On these findings can it be held that a case for declaring the marriage to be invalid under section 12(1)(b) read with section 5 (ii)(b) has been established. It is not the case of the appellant that the respondent was incapable of giving valid consent to the marriage in consequence of unsoundness of mind at the time of marriage. From the facts found by the appellate court it cannot be held that the respondent has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and procreation of children. To draw such an inference merely from the fact that the spouses had no cohabitation for a short period of about a month, is neither reasonable nor permissible. To brand the wife as unfit for marriage and procreation of children on account of the mental disorder it needs to be established that the ailment suffered by her is of such a kind or such an extent that it is impossible for her to lead a normal married life. This is the requirement of the law as appears on fair reading of the statutory provisions. The appellate court has also not specifically given such a finding. Merely giving a finding that the respondent was suffering from some mental disorder and she did not have cohabitation with her husband during the period they stayed together is not sufficient to comply with the condition prescribed under section 5(ii)(b) of the Act. We deem it relevant to note here that the observations in the judgment of the trial court about the physical and mental condition of the respondent which have been noted earlier indicates the position that the requirement of section 5(ii)(b) are far from satisfied from the materials placed by the appellant. In the circumstances the High Court cannot be faulted for having dismissed the petition filed by the appellant under section 12(1)(b) read with section 5(ii)(b) of the Act. The judgment of the High Court is no doubt far from satisfactory. The High Court has not formulated any question of law in the judgment which is a mandatory requirement under section 100 C.P.C. The High Court has also not considered the relevant aspects of the matter other

than fraud and misrepresentation about mental condition of the respondent on the part of her parents at the time of the marriage. We have considered the submission made by learned counsel for the appellant to remit the matter to the High Court for fresh disposal. We however, in the facts as above, do not feel it expedient to do so.Our attention has not been drawn to any material on record which, if considered, would have tilted the balance in favour of the appellant. It is our considered view that on the facts and circumstances of the case and the materials placed on record this is not a fit case for interfering with the judgment of the High Court in exercise of jurisdiction under Article 136 of the Constitution.

Accordingly the appeal is dismissed, but in the circumstances of the case without any order of costs.

JUDIS