

Sunil K. Mirchandani Vs. Reena S. Mirchandani

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Court : Mumbai

Decided On : Aug-04-1999

Reported in : AIR2000Bom66; 1999(4)ALLMR48; 2000(1)BomCR142; I(2000)DMC79; 2000(1)MhLj3

Judge : R.M. Lodha, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 12(1)

Appeal No. : M.J. Petition No. 2350 of 1994

Appellant : Sunil K. Mirchandani

Respondent : Reena S. Mirchandani

Advocate for Pet/Ap. : L.S. Krishnamoorthy, Adv.

Judgement :

ORDER

R. Lodha, J.

1. By this petition filed by the petitioner Sunil K. Mirchandani, it is prayed that decree of nullity of marriage solemnised between the petitioner and the respondent on 28-11-1993 be passed in his favour.

2. Sunil K. Mirchandani (the petitioner) married Reena Sunil Mirchandani (the respondent) on 28-11-1993 at St. John Baptist Church, Thane. At the time of the marriage the petitioner, 36 years old, was divorced from his earlier wife and the respondent, 30 years old, was a spinster. The parties knew each other for about 2 1/2 years prior to the marriage. The respondent inserted an advertisement in the newspaper for a suitable match to which the petitioner responded and both of them met. Though the respondent's father had died two years prior to the meeting of the parties, it is the case of the petitioner that she lied that her father was alive and practising and when she came over to his house she stated that her father had died several years ago. According to the husband, his father did not accept the match because of the said lie by the wife but since both of them were interested in getting married, they continued to meet each other. He was in love with her and ultimately his mother agreed to the match and thereafter marriage took place on 28-11-1993. The next day after the marriage both of them left for honeymoon to Goa. It is the case of the petitioner that the marriage was not consummated at all and whenever he approached the respondent and made advances she would say that she was missing her dog, some time she would say 'I want my brother'. He thought that the respondent was away from her family for the first time in her life and therefore, may be missing them. He decided to be patient and win over her slowly. But more patience he showed, more adamant she became and whenever he approached or made advances to her, she would brush away him under some pretext or the other. The petitioner's case is that his flat, namely flat No. 3, Sun Beam, Peddar Road, Mumbai is one room rented flat. The said flat was taken on rent by his father and after his death it stands in the name of his mother. His mother is about 70 years old. She is ailing and not keeping good health. But despite that she used to get up early and give the petitioner and the respondent bed tea and breakfast and cook all the meals. The petitioner and his mother initially believed that the respondent would adjust herself and take care of the household. To give privacy to the petitioner and the respondent, the bed room being large was partitioned. According to the petitioner, the respondent did not take any interest in the house hold work and even when his mother was seriously ill and bedridden, she even did not make a cup of tea. When his mother was not in a position to cook the food due to her illness, she (the mother) would order tiffin's

for them. On 24-4-1994 the respondent left the matrimonial home permanently. The petitioner says that throughout the said time he made several attempts to consummate the marriage but the respondent wilfully refused to allow the petitioner to consummate the marriage and on every occasion pretended to be sad and upset. On one occasion, she stated that the petitioner should be subjected to A.I.D.S. test and further taunted that he cannot get erection. He was shocked and surprised at such false allegations of the respondent. On one of the occasions the respondent told him that he should get rid of his mother and put her in old peoples home. The respondent would abuse the mother of the petitioner and even call her a prostitute. She would call his house a brothel. The petitioner tried to reason with the respondent but did not succeed. The petitioner requested the wife to return to home by letter dated 24-4-1994 but she did not respond immediately and on 3-6-1994 he received the letter dated 1-6-1994 from the respondent, contents of which were not wholly correct. It is the case of the petitioner that he is not in a position to acquire separate accommodation or to leave his mother alone. In substance, the annulment of marriage is sought on the ground of non-consummation of marriage.

3. The respondent has filed the reply/written statement and has denied that the marriage was not consummated. The respondent has averred in the written statement that the allegations made in the petition that whenever the husband approached her or made advances, she would brush away him under one pretext or the other are all tissues of lies. She has stated that she was doing all sort of work in the house when her mother-in-law was ill but despite that her mother-in-law used to treat her very cruelly. All allegations made in the petition about her behaviour have been denied.

4. The husband has examined himself- However, the wife has not chosen to put herself in witness box.

5. The only question that falls for determination is : whether the petitioner has been able to prove the non-consummation of marriage with the respondent? In his deposition the husband has stated about their marriage on 28-11-1993 and that after the marriage they left for honeymoon to Goa where he wanted to consummate the marriage but could not do so. He has further deposed that

thereafter whenever he made efforts and attempts for consummation of marriage, the respondent wilfully refused to consummate the marriage. He has been cross-examined by the learned Counsel for the respondent and he admitted in his cross-examination that except his bare words there was nothing to suggest that the respondent was impotent. He further stated in his cross-examination that the wife was frigid at the time of filing of the petition. He denied the suggestion put to him that his marriage with the respondent was consummated. He also denied that real fiction between him and the wife was his mother. However, he admitted that he had written a letter dated 16-5-1994 marked 'X' for identification purpose to the wife. The letter dated 16-5-1994 reads thus :-

'Dear Reena.

Please forget all the post differences and return home immediately and start living your normal life. I can assure you that whatever differences you have with my mother are not that big to separate from each other. Please do not have so much hatred for my mother. I can assure you that she was no evil and has no intention to harm you. I am sure that you will recall that before marriage I had requested your 'Do not neglect my mother. You can neglect me'.

I can assure you that my mother has always treated you like her own daughter, and no mother will wish that her son's marriage be broken. My mother has never interfered in our lives. She has just tried to show concern/help out in the situation. Do not forget the good things she has done for you. I request you for my sake to please treat her as your own mother. My mother has nothing against you, it is you who for some reason has so much hatred for her.

I request you to stand by me since you say you love me and return home once again and let us stay together. Let us put an end to the tension created by this separation.

Please note that I had promised my father on his death bed to look after my mother. It is the moral duty of any son to look after his mother. I do not think I have neglected you at any time. I feel that 5 months is too short a period to take such a hasty decision as it concerns both our lives. Adjustment takes a long tie for any

marriage to work. Please have patience. Any hasty decision can cause problems for both of us.

If you love me and care for me, I request you to please return to your home and live together happily. By separate I assure you that both of us will not be happy. Let me assure you that staying separate is not possible.

The decision in this matter is entirely in your hands. I have explained my side of the story.

This is a humble request from a loving husband to his dear wife.

Hope you will think seriously and come back immediately.

Awaiting you early return home.

Missing you always.

With Love & Best Wishes.'

6. It is not necessary that in every case of annulment of marriage on the ground of non-consummation, the party pleading such non-consummation should besides his or her own evidence, lead corroborative evidence in support of his or her deposition about the non-consummation of marriage. If the deposition of the party seeking annulment of marriage on the ground of non-consummation is capable of reliance and sufficiently establishes non-consummation, obviously there may not be necessity of corroboration of such statement either by way of medical evidence or otherwise. However, the Court should find the deposition of such party trustworthy and believable. If the facts shown and circumstances pointed out by such party alleging non-consummation of marriage lead to such probable conclusion, particularly when the other spouse has not entered the witness box, it may not be difficult for the Court to infer non-consummation but on the other hand if admitted facts belie the case of party pleading non-consummation, the non-examination of the other spouse in witness box loses its significance. In the present case, the deposition of the petitioner that marriage was not consummated cannot be believed. The reason is, if what the plaintiff states that immediately after

the marriage he wanted to consummate the marriage but he could not do so because the wife did not want to do so and thereafter despite attempts after attempts and efforts after efforts by him, the respondent did not permit him to do so and on every such occasion he was brushed away is correct, he would not have written the aforesaid letter dated 16-5-1994 to the respondent. The parties got married, admittedly, on 28-11-1993. They lived together for about 5 months. The letter was written by the petitioner to respondent on 16-5-1994 as reproduced above. Any husband who had failed in his efforts in consummation of marriage for about five months not write such letter. From the said letter dated 16-5-1994 it clearly transpires that the petitioner was sexually satisfied with the respondent and he wanted to assure and reassure her by the said letter that differences between the respondent and his mother are not so big to separate them from each other. If the marriage has not been consummated between the parties as is sought to be set up the petitioner for about five months, despite best efforts made by the husband, as canvassed now, in the letter dated 16-5-1994 the husband's frustration would have been reflected and not love and affection which he has showered on his wife. It is not in dispute that the said letter dated 16-5-1994 was written by the petitioner to the respondent and the tone and tenor of the said letter is indicative of his satisfactory sexual relations with the wife and clearly renders the deposition of the petitioner that marriage with the wife was not consummated, not believable. Though the wife has not chosen to enter the witness box, for the reasons indicated above, I do not find the deposition of the petitioner reliable and probable that his marriage with the respondent was not consummated.

7. In the circumstances above, the petition is liable to be dismissed and is dismissed with no order as to costs.

8. Certified copy expedited.

9. Petition dismissed.