

Rameshwar Vs. Neelam

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Court : Rajasthan

Decided On : Feb-24-2012

Judge : The Honourable Ms. Justice Bela M. Trivedi

Appeal No. : S.B. Civil Misc. Appeal No. 311 of 2008

Appellant : Rameshwar

Respondent : Neelam

Judgement :

1. The present appeal has been filed by the appellant-applicant under Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the said Act') challenging the order dated 3.8.07 passed by the Addl. District Judge, Chabra, District Baran (hereinafter referred to as 'the trial court') in Civil Misc. Case No. 45/05 whereby the trial court has dismissed the application of the appellant under Section 12 of the said Act.

2. The short facts giving rise to the present appeal are that the marriage between the appellant and the respondent was solemnised on 29.4.04. The appellant-applicant made an application being No. 45/05 before the trial court seeking annulment of the said marriage under Section 12 of the said Act on the ground that the marriage was solemnised by committing fraud. The said application was presented on 8.11.05 by the appellant-applicant and, therefore, the trial court dismissed the said application by the impugned order, on the ground that the

application having been preferred one year after the discovery of the alleged fraud, the said application was barred by Section 12(2) of the said Act. Being aggrieved by the said order, the present appeal has been filed.

3. It has been sought to be submitted by the learned counsel for the appellant that the marriage of the appellant with the respondent was the result of fraud committed by the family members of the respondent as the marriage was to be performed with the younger sister of the respondent and not with the respondent. While fairly admitting that the application was filed after one year of the said detection of fraud, the learned counsel has submitted that the trial court should have decided all the issues involved in the application and should not have dismissed the application only on the ground of limitation.

4. As against that, the learned counsel for the respondent pressing into service the provision contained in Section 12(2) of the said Act submitted that the application being patently barred by the said provision, the trial court had rightly dismissed the same.

5. In order to appreciate the contentions raised by the learned counsel for the appellant, it would be beneficial to reproduce the relevant provision contained in Section 12(2) of the said Act which reads as under :-

“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) -----

(b) -----

(c) that the consent of the petitioner, or whether 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 (2 of 1978), the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent; or

(d) -----

(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage--

(a) on the ground specified in clause (c) of sub-section (1), no petition for annulling a marriage--

(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.”

6. From the bare reading of the said provision, it clearly transpires that the petition for annulling a marriage on the ground specified in clause (c) could not be entertained if the same is presented after more than one year of the discovery of the fraud. Admittedly, the marriage between the parties was solemnised on 29.4.04 and the alleged fraud had come to the notice of the appellant on the very next day, and the application for annulling the said marriage under Section 12 of the said Act was filed on 8.11.05. Therefore, the said application was patently barred by the time limit prescribed under the said provision contained in Section 12(2) of the said Act.

7. In that view of the matter, the trial court has rightly dismissed the said application on the ground of being barred by limitation. There being no illegality or perversity in the order passed by the trial court, the present appeal deserves to be dismissed and is accordingly dismissed.

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