

BHAGWATI @ REENA

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v.

ANIL CHOUBEY

(Civil Appeal No. 4890 of 2017)

MARCH 01, 2017

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[N. V. RAMANA AND PRAFULLA C. PANT, JJ.]

Hindu Marriage Act, 1955 – s.12(1)(c) – Annulment of marriage – Sought by husband on the ground that he was forced to marry appellant under the threat of false complaint and that at the time of marriage, appellant was less than 18 years of age – Trial court held that marriage of respondent with appellant was void ab initio on account of appellant having not completed 18 years of age at the time of marriage and also that respondent proved that his marriage was held by force – High Court affirmed the order of trial court – On appeal, held: s.12(1)(c) stipulate that only minor spouse has a right to seek annulment of marriage – In this case, admittedly it is respondent-husband who sought annulment of marriage and he was major at the time of marriage – In the interest of justice, matter remanded back to High Court for fresh consideration.

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Disposing of the appeal and remitting the matter to High Court, the Court

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HELD: The High Court has clearly erred in reaching to the conclusion that the appellant was a minor at the time of her marriage, whereas the appellant has categorically stated that she was above 18 years old on the date of marriage. It is an admitted position of both the parties that the husband was major at the time of marriage and he only sought annulment of marriage. The High Court has sidetracked and diluted the main issue involved in the appeal i.e. annulment of marriage sought by the respondent-husband on the ground of fraud and coercion and went on giving findings on the aspect of age of the wife. In fact age of the wife was one of the grounds raised by the husband. [Paras 8, 9 and 10][423-E-F; 424-B-C]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4890 of 2017.

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A From the Judgment and Order dated 06.05.2015 of the High Court of Madhya Pradesh, Jabalpur in First Appeal No. 623 of 2005.

Dr. Rajesh Pandey, Nitin Bhardwaj, Abhishek Pandey, Advs. for the Appellant.

B V. K. Shukla, Ms. Kamlesh Tamrakar, Vijay Lakshmi, Amit Gaurav Singh, Advs. for the Respondent.

The following Order of the Court was delivered:

ORDER

1. Leave granted.

C 2. This appeal is preferred by the appellant/wife questioning the order dated 06-05-2015 passed by the High Court of Madhya Pradesh at Jabalpur in First Appeal No. 623 of 2005 whereby the High Court confirmed the order passed by the Family Court dated 17-06-2005 in Civil Suit No.24-A/2002 declaring the marriage between the appellant/wife and the respondent/husband as void *ab initio* on account of appellant/wife having not completed 18 years of age at the time of marriage.

D 3. The respondent/husband filed Civil Suit No. 24-A/2002 on the file of the Presiding Officer, Family Court seeking declaration of the marriage between the parties solemnized on 07-07-1999 as null and void
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F 4. It is the specific case of the husband that under the threat of registering a false complaint he was forced to marry the appellant-wife. Several complaints were given by her and he was put to lot of stress and coercion. It is also his specific case that their marriage was not consummated willfully. There was a threat to his life at the hands of his wife and her family after the marriage. He has also stated that at the time of marriage, his wife was less than 18 years of age and hence sought for annulment of marriage.

G 5. In response to this, the appellant-wife stated that marriage was not performed by exerting pressure and the same was solemnized with the sheer will and consent of the husband. She stated that marriage was consummated between the parties and in fact the respondent-husband has contracted a second marriage with another girl named Anita and to conceal this offence, he has come up with the Suit seeking annulment of marriage with the appellant. According to her, she was major at the time
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of her marriage with the respondent-husband.

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6. The trial Court, after a full fledged trial, formed the opinion that the appellant-wife was aged less than 18 years at the time of her marriage which violates the provisions of Section 5(iii) of the Hindu Marriage Act, 1955. The trial Court has also come to the conclusion that the respondent-husband has proved that his marriage with the appellant-wife was held by force. Accordingly, the trial Court annulled the marriage and decreed for the dissolution.

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7. Aggrieved by the same, the appellant-wife carried the matter to the High Court. Before the High Court she filed an application under Order 41 Rule 27 of CPC to place birth certificate as additional evidence. Very interestingly, the High Court has delivered the Judgment only harping on the age of the wife and further refused to receive the document i.e. Birth Certificate. There was a finding recorded by the High Court with regard to the age of the wife that she accepted that she was adult on 28-06-1999 being the date on which her marriage was fixed with the respondent and she was short of 8-9 days to complete 18 years, but on the date of her marriage i.e. 7.7.1999 she was 18 years old.

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8. We have heard learned counsel for the rival parties and perused the record as well. In our considered view, the High Court has clearly erred in reaching to the conclusion that the appellant was a minor at the time of her marriage, whereas the appellant has categorically stated that she was above 18 years old on the date of marriage. It is an admitted position of both the parties that the husband was major at the time of marriage and he only sought annulment of marriage. Here it is pertinent to have a look at Section 12(1)(c) of the Hindu Marriage Act, 1955 which reads thus:

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“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 Restrain (Amendment) Act, 1978 (2of 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;”

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9. It is no more *res integra* that child marriages are voidable at the option of the minor spouse at the time of marriage. Therefore it is clear from the reading of the said Section that only minor spouse has a

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A right to seek annulment of marriage. In this case, admittedly it is respondent-husband who sought annulment of marriage and he was major at the time of marriage.

B 10. We are, therefore, unable to agree with the findings and discussion made by the High Court. The High Court has sidetracked and diluted the main issue involved in the appeal i.e. annulment of marriage sought by the respondent-husband on the ground of fraud and coercion and went on giving findings on the aspect of age of the wife. In fact age of the wife is one of the grounds raised by the husband. Even before us also the thrust of the argument is on that.

C 11. Hence we feel that in order to meet the ends of justice this matter should be remanded back to the High Court for fresh consideration in accordance with law.

D 12. Accordingly the matter is remanded to the High Court for fresh consideration in the proper perception of law uninfluenced by any of the observations made by us. As the Suit is of the year 2000, the High Court may dispose of the appeal as expeditiously as possible.

13. The appeal stands disposed of without any order as to costs.