

3. Voidable Marriage and its Grounds Under Section 12(1) Hindu Marriage Act 1972

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Abstract

Voidable marriage is perfectly valid marriage as long as the validity of marriage is not challenged by the aggrieved party to the marriage, in voidable marriage court examine the marriage with the lens of provision incorporated in section 12 of Hindu Marriage Act following decide the marriage declared to be voidable marriage after satisfaction from the contention of the party, those aggrieved spouse think that their marriage have been performed by contravening the condition of marriage it is their believe that marriage can never be sustain in the circumstances with the invalid marriage, they approach the court to bringing end the status of marriage, but as long as legality of marriage have not challenged by the opposition parties till the legal status of marriage remains intact like any valid marriage, marriage performed out of voidable marriage arise mutual obligation for the husband and wife, here question may born in your mind that marriage that have been perform by contravening condition of section 12 of HMA despite of why does this marriage arise conjugal rights and obligation between the husband and wife?

Keyword- Marriage, Under Section 12(1), Hindu Marriage Act 1972.

Introduction

We know well there is two types of sin mentioned in almost every religious scripture that means there is one types of sin which is forgivable generally nature of the forgivable sin is not of so heinous of nature but means that it up to aggrieved party whether either parties forget less nature of sin want to continue life with same party or not, if the aggrieved party agreed to forgive less nature of sine want to continue their relation, it is wholly depend the aggrieved, if the aggrieved is party is not agreed to forgive less nature of sin want to have terminate the relation it is wholly depend on them to terminate the relation, but the court role is significant to decide whether nature of sin is forgivable or not, actually this is the example given to make you understand because you co relate this example to understand voidable marriage and void marriage, though this example you may co relate one sin which is forgivable may amount to voidable marriage, other sin which is not forgivable and may not sustain their relation with such heinous nature of sin with the void marriage, this is the reason voidable marriage is considered as perfect valid marriage even the contravening the condition of the marriage section 12 of HMA, but such situation is not there in void marriage. there is no doubt about it the marriage then becomes voidable when respondent contravene the condition of marriage, despite of contravening condition of marriage status of husband wife marriage does not became void since ab initio unlike void marriage, because this marriage does not break the essential condition and essential principle purpose of the marriage unlike void marriage, void marriage

is invalid marriage from the beginning of the marriage and has no status of marriage in the eyes of law, spouses who enter in marriage they do not acquired the legal status of husband and wife because their marriage contravene the condition of marriage, contravening condition is such of heinous nature which shaken the foundation and principle the marriage therefore spouses enter into the marriage despite do not get status of the marriage, no binding conjugal rights marital obligation and duties of maintenance apply on the parties to the marriage, it is not required for the party to move the court to make the void marriage, void marriage does not rise any mutually obligation for the husband and wife. In voidable marriage aggrieved party has to discover the contravening condition within one year of marriage, if the aggrieved party to the marriage discover condition after expiry of one year then they cannot make the marriage voidable before the court, and marriage cannot be terminated even after the of filling of petition of seeking divorce on the account of respondent fault.

Ground of voidable marriages: Section 12, Hindu marriage act, lays down four grounds of voidable marriage which are available in respect to both the parties pre act and post act marriage. These grounds are:

Inability of the respondent to consummate the marriage on the account of his\her impotency

Respondent incapacity to consent or her \ his suffering from mental disorder

Concealment of pre- marriage pregnancy by the respondent

Consent of petitioner obtained by fraud or force.

1. INABILITY OF THE RESPONDENT TO CONSUMMATE THE MARRIAGE ON THE ACCOUNT OF HIS\ HER IMPOTENCY:

Before going in to depth of article it is important for the readers to understand the expression contained in subsection it will open window of knowledge for the readers to regard to this topic, what is consummation of marriage and when it becomes complete? In India getting marriage is the dream of every boys and girls, it is considered that principle reason behind the solemnization of marriage is to get the emotional support, satisfying of their desire through sexual intercourse, procuring of child through the spouses, now we understand the enshrined expression to have detailed knowledge about the article, Hon"ble Supreme Court has interpreted of this expression in its various judgment, marriage consummated when there is complete and ordinary sexual intercourse performed between the spouses to the marriage ones sexual intercourse is complete, law get that marriage is consummated it is immaterial whether a child is born or not due to such sexual intercourse, having child out wedlock is not required condition for the consummation of marriage. It is settled interpretation of court that complete sexual intercourse between the parties constitute the consummation of marriage, a question arises here that what is the one extend of sexual intercourse and one who achieve this extend of limit then it shall be presumed marriage have been consummated for this it is essential that to achieve complete sexual intercourse in order to constitute of consummation of marriage; to make (a marriage) complete by sexual intercourse. 2. To achieve; fulfill. 3. To perfect; carry to the highest degree. Cause of impotency may be in the respondent due to abnormality in the vagina or penis of the respondent, nonfunctional menstrual cycle in the women , absence of formation of semen in the man, having complete and ordinary sexual intercourse is essential for the consummation of marriage, now we have understand to through this article and the

interpretation of Hon'ble court when the marriage get complete or marriage consummated now we lets understand when the marriage will not be presumed consummation of marriage? If the either party to the marriage will fully refuse to consummation of marriage then it will be considered marriage not completed, if one spouse is oversexed and other is not then it does not amount of impotency, sexual intersexual which is incomplete occasionally does not amount to impotency.

Let we understand what is impotency through the interpretation of court when it will be considered one is impotent? We know well impotency of respondent is ground of divorce, respondent is said to be impotent because of inability to perform complete and ordinary sexual intercourse and this inability became sole hurdle to consummate the marriage with the petitioner.

What will be legality and what has been court judgment till todays when the respondent conceals the facts of impotency (due to deficiency inability to perform complete and ordinary sexual intercourse) before the solemnization of marriage and due to the impotency of the respondent marriage was not consummated, nature of concealing facts of impotency contended amount to fraud.

SAMAR ROY CHOWDHURY VS SM. SNIGDHA CHOWDHARY 1976.

FACT OF THE CASE-

The petitioner was married with the respondent wife according to Hindu rites on the 13th May 1973.

On the 14th May, after celebration, petitioner husband brought of respondent at matrimonial home.

That the petitioner alleged in plaint on the 15May, he shown his willingness and made an attempt to consummation of marriage with respondent wife but marriage could not be consummated due to the respondent opposition. It was stated by the petitioner that after refusal of respondent to consummation of marriage, petitioner given breaks of days to the respondent. That the petitioner husband stated in his plea, on the 15th May petitioner made another an attempt to consummation the marriage but ones again respondent wife did not allow the petitioner for the consummation of marriage, petitioner alleged that due to respondent demonstration of reluctance marriage could not consummated, petitioner stated that it was second time when the respondent denied to consummation the marriage.

It was stated by the petitioner that after respondent repeated demonstration of opposition to consummation of marriage, conduct of the respondent left no option to the petitioner but to examine respondent wife to the gynecologist. The Petitioner persuade the respondent to be examine by the doctor accordingly petitioner obtained consent of the respondent wife to be examine by the gynecologist doctor, it appears from the medical report of respondent that she was suffering impotency, it was found in the medical report cause of impotency was malformation and physical abnormality in the respondent organ. Doctor stated that physical abnormality is cause of respondent opposition. It was stated by the doctor that such physical

abnormity of respondent makes consummation of marriage practically impossible and due to physical abnormality wife is unable to have sexual intercourse. It was stated by the doctor that medical report of the respondent revealed that respondent having physical abnormality from at the time of marriage and it is continued till the presentation of petition.

Petitioner made this allegation as the ground of divorce and made prayer through the petition for seeking decree of divorce.

Respondent filed written statement on the 9th February; respondent specifically contested each allegation mention in the petition.

That the respondent vehemently denied the allegation of demonstration of reluctance for the consummation, respondent did not suppress the desire of the petitioner for the consummation. That the respondent further contested and denied allegation leveled by the petitioner that the marriage was not consummated on the account of respondent impotency; in reply respondent stated that marriage was consummated and the petitioner has enjoy the consummation at few occasion, respondent also vehemently denied the allegation of malformation of respondent organ, she stated in her replication that petitioner persuade the respondent to examine with the gynecologist doctor and having regard to the wish of the petitioner agreed to consult with the gynecologist doctor, she was taken to the Dr. DL Poddar, who suggested that minor operation is required to cure the malformation of the respondent organ, it was stated by the doctor that physical abnormality of the respondent is curable and the decease is temporary of the nature, it was stated by the doctor that if operation has been conduct then effect of the operation will cure the physical abnormality of the respondent as well as it will make respondent enable for the consummation of the marriage. It was stated by the doctor after operation penetration will be possible. Respondent shown his willingness to undergo the operation but the petitioner refused to bear medical expense of the respondent whereupon elder brother of the respondent agreed to bear the medical cost despite of petitioner did not agreed to corporate.

The disputed fact came up before the high court, court appointed doctor ask him submit report in seal cover before the court with stipulated time, the team of appointed doctor submitted the report, the doctor found the same problem and suggested the same treatment as the suggestion prescribed by earlier doctor.

Respected learned conceal from both of side made contention in order to strong their side.

Honorable court frames the issues.

Whether they can reconcile between themselves even now.

Wife Stated that the husband was not agreeable and the wife wanted to live with the husband.

Whether there was consummation of marriage and if it is not consummated whether it is due to impotency of the respondent.

Mr. Mukherjee appeared on the behalf on appellant contented that, in order to accomplish the marriage it is mandatory that there must be consummation of marriage, and the essential of consummation of marriage is that there must be complete and ordinary sexual intercourse. Marriage was not consummated due to respondent physical malformation, thatswhy no question arises of living together with the impotent spouse because one of essential principle of the marriage and desire of any married spouse is to have sexual intercourse. Conceal

appeared on the behalf on appellant contended that respondent was impotent at the time of marriage and the impotency is continued till the institution of petition.

Mr. Mukherjee argued that the below court was wholly wrong in his finding and the judgment passed by the below court is totally contradict with the provision of law, appellant counsel argued the judgment of the below court held that petitioner is not entitled for the decree of divorce because the respondent after filling of suits underwent the operation corrected he defect, below court held that in order to obtained decree of divorce it is mandatory that impotency of the respondent must be of permanent nature, further below court held that in present case nature of respondent impotency is curable and of temporary nature, and the respondent has cured of her defect after institution of petition , thatch petitioner is not legally entitled for the decree of divorce, the counsel of provision of law that in order to obtain decree of divorce nature of impotency decree of divorce in the favor petitioner, thirdly circumstances of the law is if that circumstances court cannot refused to petitioner to grant divorce and the petitioner is entitled for the divorce in those circumstances.

It is argued by Mr. Mukherjee that the question of impotency is relevant only during the period of marriage it means that court has to question the only impotency of the respondent from the day of marriage to till the presentation of the petition, if it has been proved that the respondent was found to be impotent between the day of marriage and the impotency continued till presentation of the petition, if it proved that impotency of the respondent cured next lapse of the statutory period[during at the time of marriage till presentation of petition] then it is sufficient for the court to grant divorce in favor of petitioner it settle provision of the law that question of impotency is relevant during the period of marriage, if impotency of respondent cured after filling of suites despite of petitioner is entitled for the decree of divorce and the respondent even after recovery from the impotency she will not get any benefit to make the marriage successful and respondent is not legally entitled to prohibit the petitioner from the obtaining decree of divorce. Mr. Sadhan Gupta appeared on the behalf respondent contended that there is no doubt that respondent was suffering from decease and had the defect in her organ, he further stated that it is admitted that respondent had the defect but the nature of the defect was very temporary and curable, Mr. Sadhan Gupta stated that the defect of the respondent have been cured by the minor operation after filling of the suites, when the defect of the respondent cured then neither it makes any sense nor arises question of decree of divorce, it is contended by petitioner that the petition for the annulment of the marriage would defeat the provision of law because, it is required for the petitioner that for the obtaining decree of divorce impotency of the respondent is essential ground in order to attract the provision, the allegation claimed in the petition does not satisfy the essential the grounds of divorce because respondent deficiency have been cured. Therefore claimed is not maintainable, It is argued by the respondent conceal that petitioner is not entitled to decree of the divorce.

Conclusion:

Voidable marriage considered as a perfect valid marriage in eyes of law as long as party to the marriage approach court to make the marriage invalid, the effect of the voidable marriage is the same like every valid marriage, in voidable marriage husband and wife are to bound to their matrimonial obligation and cohabitation. It is settled provision that to make voidable marriage



into invalid marriage it is essential for the parties discover the impotency and fraud of the respondent within one year from the day of marriage, we have discussed in the article every aspect related to voidable marriage, we have discussed one case law related to voidable marriage, in the mentioned case question raised before the court whether petitioner is entitled for the degree of divorce in case of temporary impotency of the respondent, court rejected the argument of appellant counsel, and held that husband is entitled for the decree of divorce even in the case of temporary and permanent impotency, court held that if respondent temporary impotency cured after initiate of proceeding in even that case petitioner will be entitled for the decree of divorce.

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