



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FAMILY COURT APPEAL NO.92 OF 2023

.... APPELLANT
(Original Applicant)

VERSUS

.... RESPONDENT
(Original Respondent)

....
Mr. Amit A. Yadkikar a/w Mr. Akshay Kulkarni, Advocate for the
Appellant
Mr. Jitendra V. Patil, Advocate for the Respondent

....

**CORAM : NITIN B. SURYAWANSHI AND
SANDIPKUMAR C. MORE, JJ.**

RESERVED ON : 18/08/2025

PRONOUNCED ON : 22/09/2025

JUDGMENT : (Per : Sandipkumar C. More, J.)

1. Being aggrieved and dissatisfied with the judgment and order dated 17/08/2023 passed by the learned family court Judge,

Aurangabad in Petition No. A-528 of 2018, the appellant – husband i.e. original petitioner, has filed this appeal. The learned family court judge, Aurangabad under the impugned judgment, has dismissed the aforesaid petition of the appellant – husband, which was filed by him for getting decree of divorce under Section 13(1)(i-a) and (iii) of the Hindu Marriage Act.

2. Background facts leading to this appeal are as under :

The marriage of the appellant – husband and respondent-wife was solemnized on 28/04/2018 at Chalisgaon, District Jalgaon. When the respondent – wife started cohabiting with the appellant – husband, he realized that respondent – wife was having some health issues. He observed that respondent – wife used to sleep for longer period. She was also found urinating in bed and frequently falling unconscious. She was not completing work given to her and found unresponsive to the talks of the appellant – husband. The appellant – husband when tried to ask her father about such abnormal behaviour, he received unsatisfactory answers.

Thereafter, the appellant – husband with consent of father of the respondent – wife, got her examined through one doctor at Jalgaon and then came to know that respondent wife is suffering from disease known as cerebral-palsy. Even the said doctor had

suggested that it was not proper on the part of father of respondent – wife to perform her marriage since her brain was not properly developed. The doctor also told the appellant – husband that the disease of respondent – wife is incurable. The appellant – husband also sought second opinion from another doctor at Aurangabad in respect of disease of the respondent – wife, but the doctor at Aurangabad also found the same and even advised that it was dangerous for the appellant – husband and his family members to stay with the respondent – wife. Thus, the appellant – husband felt cheated as the family members of respondent-wife did not disclose him before the marriage that the respondent-wife suffers from such mental disorder. According to the appellant-husband the respondent-wife is also unable to perform marital obligations because of her disease. The respondent-wife has left house of the appellant-husband on her own and started residing in the house of her parents in the year 2018 itself. The appellant-husband was constrained to send her a legal notice on 20/10/2018 for seeking divorce by mutual consent. However, the respondent-wife replied the said notice on 27/10/2018. Being dissatisfied with the reply, the appellant-husband filed the aforesaid divorce petition, stating that he was deceived due to the non-disclosure of the respondent-wife's mental illness by her family members prior to the marriage.

On the contrary, the respondent-wife, through her written statement Exhibit-15, contested the divorce petition and denied the adverse allegations made against her. According to the respondent-wife, one of her hands is weak by birth, but she does not suffer from any mental illness. She asserted that she received her education in regular schools and college and that her medical records does not indicate any mental illness. She further claimed that the appellant-husband is, in fact, a distant relative, and it was his mother who brought the marriage proposal despite knowing the fact of weakness of her one hand. She further claimed that their marriage was solemnized after prior meetings of both sides and in the presence of 1500 people at Chalisgaon. According to her, she is mentally fit for marriage and also performs marital obligations. She contended that since the appellant – husband does not like her, he is making false allegations. Thus, she prayed for dismissal of the petition. The learned family court judge by conducting the trial, dismissed the petition of the appellant-husband and hence this appeal.

3. Learned counsel for the appellant-husband submits that marriage of the parties was performed on 28/04/2018 and the petition for divorce had been filed on 13/11/2018 i.e. within a

period of one year of the marriage. He further submitted the learned family court judge ought not to have entertained the petition considering the bar under Section 14 of the Hindu Marriage Act. However, he further added that though the appellant has filed the petition for divorce under Section 3(1)(i-a) and (iii) of the Hindu Marriage Act, but the allegations made by him against the respondent-wife indicate that he is also seeking divorce from the respondent-wife by invoking provisions of section 12 of the Act. He thus, requested to permit the petitioner to add ground of fraud for getting divorce as envisaged in Section 12 of the Hindu Marriage Act. According to him, there is ample evidence on record to show that the respondent – wife is found suffering from disease known as cerebral-palsy, wherein there is under development of brain. He pointed out that the learned family court judge wrongly observed that the appellant-husband did not produce supportive documents issued by the concerned doctors as regards of mental illness of the respondent-wife. He pointed out that during the pendency of divorce petition, he had in fact filed an application for medical examination of the respondent-wife at his own cost, but the learned family court judge wrongly observed that the said medical examination of the respondent-wife was not at his instance.

4. The learned counsel for the appellant-husband further contended that even the evidence of Dr. Minakshi is there on record to show that respondent – wife is suffering from disease cerebral-palsy, which is incurable. Learned counsel for the appellant-husband specifically pointed out that the family members of the respondent-wife had in fact hidden the disease of respondent-wife and thereby played fraud upon the appellant. He pointed out that despite order passed by the learned family court judge directing the parties to file affidavit in respect of assets and liabilities, the respondent-wife could not file the same and instead of that came with false reply. He further submitted that despite allegation of suppression of mental illness of the respondent-wife, the learned family court judge failed to frame issue on this aspect. According to him, the learned family court judge wrongly concluded that it was not the case of mental disorder of the respondent-wife, but only her body movements were affected, which have no impact on the marital obligations. He further pointed out that, in fact, there was non-consummation of the marriage. Thus, he concluded that even the non-disclosure of the mental disorder of the respondent-wife, by itself amounts to cruelty. Thus, he prayed for grant of decree of divorce on the ground of fraud as contemplated in Section

12 of the Hindu Marriage Act. He also relied on the case of **Pooja vs. Shrikant Rameshwarrao Kale, MANU/MH/0805/2024.**

5. On the contrary, the learned counsel for the respondent-wife supported the impugned judgment and contended that the learned family court judge has rightly appreciated the evidence on record even though respondent-wife could not lead any evidence. According to him, the respondent-wife is not suffering from any mental illness which can prevent her from performing marital obligations. In the alternative, he submitted that the court can not grant divorce by invoking provisions of Section 12 of the Hindu Marriage Act as no such prayer was there in original petition filed by the appellant – husband. According to him, if the appellant-husband really wants to rely on Section 12 of the Act, then there must be amendment to that effect and for that purpose, matter has to be remanded back. He also relied on the case of **Sharda vs. Dharmpal, MANU/SC/0260/2003.**

6. Heard rival submissions. With able assistance of the learned counsel for the rival parties, we have also gone through the documents on record alongwith the record and proceedings of the original petition.

7. It is significant to note that the appellant – husband is seeking divorce on the ground of cruelty as per Section 13(1)(ia) of the Hindu Marriage Act and mental disorder / unsoundness of mind as per Section 13(1)(iii) of the Hindu Marriage Act, 1955 (hereinafter referred to as ‘the Act’.) It is his case that the respondent – wife is found suffering from the disease known as ‘cerebral palsy’, which is incurable and therefore, the decree of divorce can be passed under Section 13(1)(iii) of the Act, which reads as under :

“Section 13(1)(iii) :- *has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind as to such an extent that the petitioner cannot reasonably be expected to live with the respondent.*

Explanation.- *In this clause,-*

- (a) *the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;*
- (b) *the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally*

aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or]”

However, according to him, the family court ought not to have entertained the petition as it was filed within one year of the marriage. Admittedly, under Section 14 of the Act there is bar for entertaining the petition for divorce filed under Section 13 of the Act, within a period of one year from the date of marriage. However, though such bar is there, but court in case of exceptional hardship can entertain such petition by giving reasons to that effect. Therefore, he submits that even if it is found that the family court wrongly entertained the petition without giving reason of exceptional hardship, the appellant-husband still can seek nullity of his marriage with the respondent-wife by invoking provisions of Section 12(1)(c) of the Act. He drew our attention to the allegations made by him in the petition, wherein he contended that the family members of the respondent-wife suppressed the fact that she was suffering from cerebral palsy since her birth and her behaviour was abnormal. To that effect, he levelled allegations against her claiming that she frequently urinated in the bed, remained idle and did not respond to the petitioner and showed an inability to understand

day-to-day matters and follow instructions. Thus, the appellant-husband claimed that he became aware of the aforesaid facts only after the marriage which were deliberately suppressed by the respondent-wife and her family members. Therefore, he urged that his case be considered under Section 12(1)(c) of the Act as well. Obviously, the learned counsel for the respondent-wife opposed this submission. As such, the question before us is whether a decree of nullity of marriage can be granted in the absence of a specific prayer to that effect.

8. We would like to reproduce Section 12 (1)(c) of the Act for quick reference.

“Section 12(1)(c) : *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], 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].”*

9. In the case of **K. Shanmugha Raja @ Raja vs. Shanthakumari**, reported in 2018 SCC OnLine Mad 9397, the

Madras High Court, taking guidance from the observations of the Hon'ble Apex Court in ***Firm Srinivas Ram Kumar v. Mahabir Prasad (AIR 1951 SC 177)*** and ***Bhagwati Prasad v. Shri Chandra Maul (AIR 1966 SC 735)***, considered the case of the appellant under Section 12(1)(c) of the Act. In that case, the respondent-wife had suppressed her religion as Christian at the time of marriage and had married with the appellant by falsely representing herself as a Hindu. In the case of ***Firm Srinivas Ram Kumar v. Mahabir Prasad*** (supra) the Hon'ble Apex Court has observed that even in the absence of any pleading for alternative claim in the plaint filed for specific performance, a decree for recovery of money can be granted in order to render substantial justice. Similar observation is made by the Hon'ble Apex Court in the case of ***Bhagwati Prasad vs. Shri Chandra Maul*** (supra), wherein it is contended that if a plea is not specifically made and yet it is covered by a issue by implication and the parties knew that the said plea was involved in trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon, if it is satisfactorily proved by evidence.

10. Admittedly, in the instant matter, there was no prayer by the appellant-husband before the family court for grant of decree for nullity of marriage. However, if the allegations made by the appellant-husband against respondent-wife are perused then it is evident that the appellant-husband has contended that after marriage he found abnormal behaviour and unusual conduct of the respondent-wife and when he inquired with her family members about the same, he could not get satisfactory answers. Moreover, he has also contended that he got the respondent-wife examined after consulting her parents in respect of the aforesaid abnormal and unusual conduct from doctor at Jalgaon and then came to know for the first time about the disease from which the respondent-wife is suffering is known as 'cerebral palsy'. Thus, it is his case that at the time of marriage the aforesaid fact was suppressed from him and a fraud as contemplated in Section 12 (1) (c) of the Act was played, which entitles him to seek decree of nullity of marriage. Further, it appears that despite making such allegations of suppression, the family court did not frame any issue to that effect. Therefore, considering the observation of the Hon'ble Apex Court in the case of **Firm Shrinivas Ram Kumar and Bhagwati Prasad** (*supra*) we are of the opinion that the appellant-husband is entitled for seeking nullity of marriage on the aforesaid

ground in the light of Section 12(1)(c) of the Act. Thus, we are of the view that the case of the appellant-husband can be considered in the ambit of Section 12(1)(c) of the Act.

11. On going through the impugned judgment, it is evident that family court has dismissed the petition on the ground that there is no pleading or specific evidence regarding cruelty. On the allegation in respect of mental disorder of the respondent-wife, the family court has observed that the petitioner-husband failed to produce on record medical records in respect of examination of the respondent-wife through doctors at Jalgaon and Aurangabad. The family court also relied on the part of cross-examination of the appellant-husband wherein he admitted that respondent-wife never behaved violently or dangerously and during the engagement and marriage ceremony her conduct was found normal and also that one hand of respondent-wife was weak but no incidents suggesting mental illness. Further, the family court has also observed that cerebral palsy relates only to body movements and the respondent-wife is able to manage ordinary life with support. With these observations the family court has held that the appellant – husband could not prove the ground of mental disorder under which he sought divorce. However, when we have already permitted

the appellant-husband to seek nullity of marriage under Section 12(1)(c) of the Act, the appellant's evidence is also to be considered from that angle.

12. The overall allegations made by the appellant-husband against the respondent-wife if perused, then it is evident that the appellant-husband has contended that due to incurable mental disorder the respondent-wife could not participate in marital life and due to concealment of her mental illness by her family members and her desertion from him since 2018, made him entitle for claiming decree for nullity of marriage. It is significant to note that though the respondent-wife vide her written statement at Exhibit-15, has denied allegations about her mental illness and stated that she completed regular schooling and college, however, she came with a case that the appellant-husband's family members were already aware about her condition at the time of marriage. According to her since the the appellant-husband was not interested in her, he made false accusations in respect of her mental illness. However, she admitted her partial disability i.e. weakness in one hand since birth. It is important to note that despite filing her written statement, the respondent-wife has not led any evidence either by herself or through her father. Thus, it can

be said that she kept herself away from searching cross-examination in respect of her alleged mental illness. Therefore, we have to scrutinize the evidence led by the appellant-husband on record.

13. So far as mental illness of the respondent-wife is concerned, the family court has observed that the respondent-wife had filed an application Exhibit-26 for her medical examination and showed her willingness to undergo medical test. However, on perusal of Exhibit-26 from the record and proceedings of the original petition, it is clearly evident that the said application was in fact filed by the appellant-husband and not by the respondent-wife. Further, the order dated 02/03/2021 passed on the said application Exhibit-26 by the family court, indicates that initially the respondent-wife had opposed for the prayer of the said application, but subsequently agreed to undergo the medical examination. As such, the aforesaid observation of the family court that respondent-wife by filing application Exhibit-26 showed willingness to undergo medical test, is apparently incorrect.

14. It is significant to note that as per the order below Exhibit-26 the appellant-husband got examined the respondent-wife through

members of Medical Board of Government Medical College at Aurangabad. One of the members of the said Board Dr. Minakshi Bhattacharya is also examined by he appellant-husband as PW-2 in respect of alleged mental illness of the respondent-wife. Thus, though the appellant-husband could not file the documents in respect of medical examination of the respondent-wife by the doctor at Jalgaon, but the certificate given by the aforesaid Medical Board after conducting examination of the respondent-wife, is filed on record at Exhibit-31. It is clearly mentioned in the said certificate that the respondent-wife is suffering from left paresis (cerebral palsy), a non-progressive mild intellectual deformity. It is also opined that she has adoptive functioning and able to take care of self and others in supportive environment. If said certificate is read in the light of evidence of PW-2 Dr. Minakshi Bhattacharya i.e. one of the members of the aforesaid Board, then it is evident that during the said examination her IQ test was conducted and MRI of her brain was also obtained. Further, a neuro-physician also examined her on 08/09/2021. Thereafter, considering the opinion of the neuro-physician alongwith opinion of psychiatric, the Board issued a certificate Exhibit-31.

15. This witness has also explained what is meant by cerebral palsy. According to her, cerebral palsy is called paralysis of brain but in case of the respondent-wife, it was found non-progressive that means the intensity of same will not increase in future. Further, as per the opinion of psychiatric the respondent-wife was having a mild intellectual deformity and she is able to take care of herself and others only in supportive atmosphere. The evidence of this witness further suggests that the respondent-wife is suffering from the disease 'cerebral palsy' since her birth. Most importantly this witness has stated that the disease 'cerebral palsy' from which the respondent-wife is suffering is not curable. Though it is claimed by the respondent-wife in her written statement that the appellant-husband was knowing the said fact even prior to the marriage, but it is significant to note that the respondent-wife has not led any evidence to that effect. On the contrary, the appellant-husband since beginning is claiming that he got the knowledge of mental illness of the respondent-wife only after the marriage & specially when he got examined her through doctor at Jalgaon. Thus, it is evident that the evidence of PW-2 Dr. Minakshi Bhattacharya has confirmed the fact of incurable mental illness of the respondent-wife for the first time after her examination through Medical Board. There is nothing on record to show that the

appellant-husband was aware of the said mental illness prior to his marriage with the respondent-wife.

16. The learned counsel for the appellant-husband heavily relied on the judgment of this court, Bench at Nagpur in the case of **Pooja vs. Shrikant Rameshwarrao Kale** (*supra*), wherein this court has upheld the decree of nullity passed by the family court on the ground of concealment of the disease known as 'Ptosis' of wife by her family members by considering Section 12(1)(c) of the Act. This court in para 25 of the aforesaid judgment, has made following observations:

“25. In the present case the wife was suffering from Ptosis. The Doctor performed eyelid muscle resection surgery, wherein the Doctor removed a part of eyelid muscle, whereby upper lid of left eye became shortened forever. Post surgery, she suffers from a condition called Nocturnal Lagophthalmos, which is incurable. In this condition her left eye remains opened even during sleep. Thus, there is a permanent deformity in eyelid muscle of the wife. We are conscious of the fact that this would not materially interfere with a happy marital life including sexual pleasure, but certainly if disclosed would have resulted in the husband not agreeing or consenting to the marriage. It is of course another

matter if a party becomes the victim of an incurable disease after the solemnization of the marriage. But, if a girl or a boy, who is of a marriageable age suffers from an incurable disease before the solemnization of the marriage and knows about it, it would be necessary for her / him to disclose the said fact to the party that approaches him/ her with a proposal for the marriage. The wife and her parents were aware before the solemnization of marriage that the wife suffers from Ptosis and post operational deformity i.e. Nocturnal Lagophthalmos. It was necessary for them to inform to the husband before solemnization of the marriage. Had the said fact been disclosed, it may result in the husband refusing to consent to marry the wife and therefore, this would also be a material fact within the meaning of the term 'material fact.'

Herein in this case, the family court has observed that though the respondent-wife was suffering from disease 'cerebral palsy', but she did not become violent at any stage in the engagement ceremony as well as on the day of marriage and she behaved like an ordinary person. Further, it is observed by the family court that cerebral palsy is not a mental disorder but it relates only to body movements. We are unable to understand the aforesaid observation that cerebral palsy is not mental disorder and relates only to body movements. PW-2 Dr. Minakshi Bhattacharya

has specially explained that disease 'cerebral palsy' from which the respondent-wife is suffering, is there since her birth and it is not curable. Though it would not come in the way in enjoining happily marital life including the sexual pleasure, but what is material is the suppression of said disease from the side of the respondent-wife at the time of marriage. Had it been disclosed prior to the marriage, then it would have resulted in the appellant-husband having second thought whether to go for the marriage. Thus, the suppression of disease 'cerebral palsy' of the respondent-wife by her family members prior to the marriage, certainly entitles the appellant-husband for seeking nullity of marriage under Section 12(1)(c) of the Act. It is to be noted that respondent-wife cohabited with appellant hardly for 6 to 7 months and thereafter she is residing with her parents till today.

17. In view of the above discussion, we are of the considered opinion that the family court has definitely erred in dismissing the petition of the appellant-husband by not considering the aspect of suppression of the incurable disease of the respondent-wife by herself or her family members despite pleadings to that effect on record. Therefore, we pass following order.

ORDER

- I) The appeal is hereby allowed and the judgment and decree passed by the Family Court, Aurangabad in Petition No. A-528 of 2018, is hereby quashed and set aside.
- II) The marriage between the appellant-husband and the respondent-wife solemnized on 28/04/2018 is hereby declared null and void from the date of this order. However, having regard to the main dispute between the parties, we are not inclined to make any comment as regards the rights of respondent-wife to claim permanent alimony as it would be beyond the scope of this appeal. As such, it is open for respondent to exercise the aforesaid right of permanent alimony under appropriate remedy as permissible under law.
- III) The appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)**(NITIN B. SURYAWANSHI, J.)**