

***THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA**

AND

THE HON'BLE JUSTICE B.R.MADHUSUDHAN RAO

IA.No.1 of 2025

IN/AND

+ FAMILY COURT APPEAL No.195 OF 2024

% 11—07—2025

#



... Appellant

vs.

\$



... Respondent

!Counsel for the Appellant: Sri B.Subash

^Counsel for Respondent: Sri A.Praneeth, learned counsel representing
Sri P.Lakshma Reddy.

<Gist :

>Head Note :

? Cases referred:

1. Indian Kanoon – <http://indiankanoon.org/doc/1774813>
2. Civil Appeal No.2112 of 2018 dt. 15.02.2018 of Supreme Court of India
3. Indian Kanoon – <http://Indiankanoon.org/doc/84341/>
4. 1991 SCC (2) 637
5. Indian Kanoon – <http://indiankanoon.org/doc/2120073>
6. Indian Kanoon – <http://indiankanoon.org/doc/25503900/>
7. Indian Kanoon – <http://indiankanoon.org/doc/913472/>
8. 1979 AIR Andhra Pradesh 169
9. 2019 AIR Kerala 85 : 2019 (2) DMC 605
10. 2014 (1) DMC 325
11. 2015 (1) ALT 251 : 2015 (1) Andh LD 7
12. 2024 (2) Andh LD 859
13. 2024 NCBHC-NAG 1601
14. 2025 NCKERHC 17403

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD**

* * * *

IA.No.1 of 2025

IN/AND

+ FAMILY COURT APPEAL No.195 OF 2024

Between:



... Appellant

And



... Respondent

JUDGMENT PRONOUNCED ON: 11.07.2025

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA

AND

THE HON'BLE JUSTICE B.R.MADHUSUDHAN RAO

1. Whether His Lordship wishes to
see the fair copy of the Judgment? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : No

B.R.MADHUSUDHAN RAO,J

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA

AND

THE HON'BLE JUSTICE B.R.MADHUSUDHAN RAO

I.A.No.1 of 2025

IN/AND

F.C.A.NO.195 OF 2024

JUDGMENT:(per Justice B.R.Madhusudhan Rao)

1. The present Appeal is filed by the appellant/petitioner aggrieved by the order passed by the learned Judge, Family Court, Ranga Reddy District at L.B.Nagar in FCOP.No.2536 of 2018, dated 28.05.2024.

2.1. Appellant is the petitioner/wife and the respondent is the husband. The case of the appellant is that her marriage with the respondent was performed on 11.12.2013 at APSRTC Kalyanamandapam, Baghlingampally, Hyderabad, on the same day the respondent failed to perform sexual intercourse. On 13.12.2013, they left for Honeymoon to Kerala, unfortunately during the 9 days trip, there was no sexual intercourse between them since the respondent is having erectile dysfunction. Respondent did not attempt to participate in the sexual intercourse with the petitioner. Appellant and the respondent went for second Honeymoon for 15 days to Kashmir, there also the respondent could not perform sexual activities.

2.2. Appellant has joined the respondent in USA in the month of March, 2015. Appellant came to know that erection deficiency is not cured and surgery is also failed. In the month of April, 2015, appellant and respondent approached the Hospital but the Doctors opined that nothing could be done. Lab Report show that there is extremely low level of Follicle Stimulating Hormone (FSH) and Testosterone.

2.3. Respondent has suffered a lot because of the pain and pus of the lumps grown near to testicles and the appellant has served the respondent like that of his mother during her stay with him between March, 2015 to 2018. In the year 2017, after verifying all the reports and the investigations done by the Doctors, it is confirmed that the respondent is not fit for marital life and there is no possibility of having children. Respondent left USA in the year 2018 by leaving the appellant there at. Appellant suffered unbearable torture because of the incidents and she became helpless and lost her health, life, money and facing trauma. Respondent is not performing sexual intercourse due to erectile dysfunction and prayed to grant divorce on the ground of nullity of marriage, cruelty and permanent alimony of Rs.90 Lakhs.

3.1. Respondent filed his counter and contended that he knows the appellant from November, 2007 when they joined in Cognizant

as employees, both are in relationship from July, 2008. Appellant used to visit the respondent's house between April, 2010 to December, 2010 for physical intimacy. Parties have called off their relationship in the month of December, 2010 and continued as Friends. Relationship was again rekindled after the respondent moved to America in the month of March, 2012. Thereafter, marriage proposals have taken place. Respondent came down to India on 07.05.2013 to fix the marriage.

3.2. The marriage is a love marriage. The appellant was planning to leave Sales Force company in which she was working from June, 2010 and she had shares of that company at Etrade USA Brokerage Firm, since she was planning to leave the company, sold the shares and asked the respondent to hold the shares money in his Bank of America Account. Amount transferred to the respondent Bank is \$ 31464.41 USD from Etrade Bank on 11.03.2013. Out of the said amount, the respondent has transferred \$ 18600 to his E-trade Account. The respondent has sent different amounts to the appellant. In total the respondent has transferred Rs.28,71,067/- between April, 2013 to December, 2014 which are made to the appellant's ICICI Bank Account.

3.3. After successful first night, they have participated in Vratham and left to Honeymoon on 13.12.2013. They had sex in Munnar, Thekkady, Kumarakgoam Water Resort for two times. After returning from the Honeymoon, they stayed at appellant house where they had sex. There was no issue with the respondent in participating in sexual activities.

3.4. Respondent came down to India in June, 2014 for petitioner's birthday and both of them went to second Honeymoon to Manali, Ladakh, Kargil, Kashmir, Srinagar where they had sex. Respondent left America again in July, 2014.

3.5. Dr.G.Chandra Sekhar Rao is a Homeopathy Family Doctor, who treated the respondent for cracks in the heel and also for Rheumatoid Arthritis in 2006 and 2011. John C Lincoln is a Hospital in Phoenix and Dr.Antonino Cammarata has performed surgery on 21.12.2014 for the lump of the respondent on his upper thigh. The lump reoccurred in July 2015, December 2015, February 2016 and April 2016. Respondent has consulted Dr. Neeraj Singh who confirmed it to be a Fistula and operation was set on October, 2016, thereafter there was no occurrence of Fistula so far.

3.6. Respondent did have few problems at times in maintaining erection and he consulted Dr.Mark Hong, Urologist, he suggested to use Cialis 20 Mg and initially started with only three tablets. After using the same, the respondent was able to perform sex normally and the same was confirmed by the appellant to Dr. Mark Hong during next visit. The petitioner used to torture the respondent as he was not having job at America.

3.7. Respondent unable to bear the torture of the appellant, agreed for the divorce but she has taken a U turn. Appellant came to America in the month of March, 2015, and she secured a job in May, 2016. Respondent used to pay rent, electricity, internet, health insurance charges till he lost his job in January, 2018. From February, 2018 to May, 2018, expenses were shared 50-50.

3.8. Appellant and the respondent went to San Diego, Sedona and Las Vegas between June, 2015 to December, 2015. Appellant's mother came to America in August, 2017 and stayed in the respondent's Flat till December, 2017. Respondent has lost his job in the month of January, 2018 and he finally gave up the hope in his relationship, booked a ticket to India and left the Country on 30.05.2018. Appellant knew the respondent since 2007 and married the respondent for the sake of his money. Respondent has

no employment and he is depending on his parents, he is not in a position to pay Rs.90 Lakhs and prayed to dismiss the O.P.

4. Appellant is examined as PW.1, got marked Exs.P1 to P17 and respondent is examined as RW.1, got marked Exs.R1 to R7. The learned Trial Court after going through the evidence and documents, dismissed the O.P. filed by the appellant for divorce.

5.1. Learned counsel for the appellant submits that the Trial Court has not framed any specific triable issues based on the pleadings and ignored the true intention of the proviso of Section 12 of the Hindu Marriage Act, 1955. The Trial Court ought to have framed the point of Section 12 (1) (a) and (c) and discarded the evidence on record particularly Exs.P4 to P9 on an assumption that the appellant has not proved the impotency of the respondent.

5.2. He further submits that the Trial Court failed to appreciate the question of fact and law that once the respondent admitted his impotency in clear terms in his counter and in his cross, the burden lies on him to prove the said fact and the respondent has not placed any document to substantiate his contention. As per Exs.P4 to P8, it is Perianal Fistula and abscess which is adjacent to the left testicle in the groin. If the appellant had sexual intercourse with the respondent definitely she would have

conceived for a single time during the entire period. The Trial Court completely ignored Exs.P4 and P5 and also ignored Ex.P8. Respondent has played fraud on the appellant at the time of marriage.

5.3. The learned Trial Court has not considered the amended proviso of Section 12 of Act 68 of 1976. Appellant has filed IA.No.1702 of 2023 disputing the contents of the report issued by Gandhi Hospital with a prayer to cross-examine the witness but the same was dismissed by the Trial Court *vide* order dated 29.12.2023. Counsel to substantiate his contentions has relied on the decisions reported in 1) Narbada Devi Gupta Vs. Birendra Kumar Jaiswal and another¹, 2) G.Saraswathi and Anr. Vs. Rathinammal and others², 3) Director (Studies) and Ors. Vs. Vaibhav Singh Chauhan³, 4) Maharashtra State Financial vs. Jaycee Drugs and Pharmaceuticals⁴, 5) Chief Information Commr. and Another Vs. State of Manipur and Another⁵, 6) Neeraj Garg Vs. Sarita Rani and Ors. etc⁶, 7) M.A.Murthy Vs. State of Karnataka and Ors.⁷, 8) Smt. Suvarna Vs. G.M.Achary⁸, 9) Pramod E.K, Vs.

¹ Indian Kanoon – <http://indiankanoon.org/doc/1774813>

² Civil Appeal No.2112 of 2018 dt. 15.02.2018 of Supreme Court of India

³ Indian Kanoon – <http://Indiankanoon.org/doc/84341/>

⁴ 1991 SCC (2) 637

⁵ Indian Kanoon – <http://indiankanoon.org/doc/2120073>

⁶ Indian Kanoon – <http://indiankanoon.org/doc/25503900/>

⁷ Indian Kanoon – <http://indiankanoon.org/doc/913472/>

⁸ 1979 AIR Andhra Pradesh 169

Louna V.C.⁹, 10) Subash @ Prakash Vs. Priyanka¹⁰, 11) Vijay Nagini Vs. Ram Naren Mothe¹¹, 12) Vuyyuru Kokkilagadda Anusha Rao Vs. Vuyyuru Ravi Teja¹², 13) Sau.Pooja Vs. Shrikant Rameshwarrao Kale¹³, 14) Mahadevan Vs. Bijula A.P.¹⁴ and prayed to set aside the order and decree dated 28.05.2024 in FCOP No.2536 of 2018.

6. Learned counsel for the respondent submits that the Trial Court has appreciated the evidence adduced by the parties and rightly dismissed the OP filed by the appellant for divorce and for permanent alimony, no interference is called for and prayed to dismiss the Appeal.

7. During the pendency of the FCA, appellant has filed IA.No.1 of 2025 under Order 41 Rule 27 r/w Order 42 and 151 of Civil Procedure Code to receive additional documents in FCA for fair adjudication of matter on merits.

8. Appellant has filed his written arguments in support of his contention and respondent counsel has filed his synopsis and list of dates.

⁹ 2019 AIR Kerala 85 : 2019 (2) DMC 605

¹⁰ 2014 (1) DMC 325

¹¹ 2015 (1) ALT 251 : 2015 (1) Andh LD 7

¹² 2024 (2) Andh LD 859

¹³ 2024 NCBHC-NAG 1601

¹⁴ 2025 NCKERHC 17403

9. Heard learned counsel on record and perused the material.

10. Now the points for determination are:

- (i) Whether the trial Court has properly framed the points for consideration while deciding the O.P ?
- (ii) Whether the order of the trial Court suffers from any perversity or illegality, if so, it requires interference of this Court or not?

11. Before answering the point, it is appropriate to decide I.A.No.1 of 2025 which is filed by the appellant to receive additional documents in support of the FCA.

12.1. Appellant contended in the affidavit that she came to know that multiple financial cases have been filed by the Bank of America against the respondent in the years 2022-23 before Superior Court of Arizona, Maricopa Country, USA wherein the appellant is also impleaded as defendant on being the spouse during the relevant period in the United States thereby making her liable for illegal transactions under the applicable law of Arizona and informed her counsel on 23.04.2025, which documents are filed along with the application. The documents annexed to the application came into existence only after filing the divorce petition and the present Appeal and relied on the decisions in Union of India Vs. Ibrahim Uddin: (2012) 8 SCC 148 and K.Venkataramaiah Vs. A.Seetharama Reddy : AIR 1963 SC 1526.

12.2. Respondent filed his counter contending that the documents annexed to the application cannot be taken on record and they are not relevant to the case on hand.

12.3. Document No.1 is dated 01.06.2023, which is summon issued by the Superior Court of the State of Arizona, dated 01.06.2003 *vide* case No.CV2023-008281, the plaintiff therein is Bank of America, N.A., Vs. Prashanth Kumar Vatti and J. Deo Vatti, as spouse, as defendants, which is the accounts summary during the period from 10th November to 9th December, 2018. Document No.2 is the summon issued to the respondent, dated 29.12.2022 *vide* case No.CV2022017213. Document No.3 is also a summon issued to the respondent, dated 29.12.2022 *vide* case No.CV2022017190. O.P. came to be filed by the appellant on 13.10.2018 and it was numbered on 16.10.2018. Respondent has filed his counter in the main O.P. on 16.05.2019. It is to be noted here that the appellant was cross-examined as PW.1 on 06.07.2023 and the respondent was cross-examined as RW.1 by the appellant's counsel on 07.11.2023.

12.4. Documents filed by the appellant annexed to I.A.No.1 of 2025 goes to show that Bank of America has filed certain cases against the respondent for recovery of amounts.

12.5. Order XLI Rule 27(1)(aa) says “the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or”

12.6. Appellant has informed her counsel on 23.04.2025 about the pending cases against the respondent and handed over the documents on 27.04.2025. No proper explanation is offered by the appellant to receive the above said documents in support of her contentions in the Appeal and she failed to establish due diligence for not filing the documents before the trial Court. Since 2023 she kept silent and the orders in FCOP.No.2536 of 2018 came to be passed on 28.05.2024. The decisions cited by the appellant counsel stated supra do not assist the case of the appellant.

12.7. The documents annexed to I.A.No.1 of 2025 are not material for disposing of the FCA. Appellant has not made out any case to receive the documents in support of her contention. I.A.No.1 of 2025 lack merits and the same is dismissed.

13. It is apt to refer the provision of law quoted by the appellant in FCOP.No.2536 of 2018 and the prayer made thereon is as under:

Petition filed under Section 11(IV) & 13(1)(ia) of Hindu Marriage Act, 1955.

“Prayer:

Keeping in view of all the above submissions by the Petitioner herein prayed before this Hon’ble Court to dissolve the marriage between Petitioner and Respondent by passing the decree of Divorce on the grounds of Cruelty and Nullity of Marriage and permanent Alimony of Rs.90 Lakhs from the respondent”.

14. Learned counsel for the appellant submits that the Trial Court failed to frame relevant point for determination as per Section 17 of the Family Court Act, 1984. On reading of Section 17 of Family Court Act, 1984 which says that judgment of a Family Court shall contain a concise statement of the case, the points for determination, the decisions thereon and the reasons for such decision.

15. Appellant’s counsel submits that the O.P filed by the appellant is to declare the marriage as nullity and voidable due to non consummation of marriage under Section 12(1)(a) and as per Section 12(1)(c).

16. On reading of Section 12(1)(a) of Hindu Marriage Act, 1955, which says that the marriage has not been consummated owing to the impotence of the respondent.

17.1 Counsel submits that the respondent has played fraud on the appellant by suppressing the material facts prior to the marriage, that the respondent was suffering with Rheumatoid Arthritis, which attacked Erectile Dysfunction, which falls within the frame work of 12(1)(c) and amounts to cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

17.2. The points framed by the Trial Court while disposing of FCOP.No.2536 of 2018, dated 28.05.2024 are as under:

- (1) Whether the petitioner is entitled for seeking declaration of her marriage with the respondent as a nullity on the grounds of impotency of respondent as claimed?
- (2) Alternatively, whether the petitioner is entitled for seeking dissolution of marriage on the ground of cruelty of the respondent as claimed?
- (3) Whether the petitioner is entitled for seeking permanent alimony of Rs.90,00,000/- from the respondent as claimed?
- (4) To what relief?

18.1. There is no dispute with regard to Ex.P1/Wedding card, Ex.P2/Wedding photographs, Ex.P3/Marriage certificate. Ex.P4 is the Lab reports of the respondent issued by Sonora Quest Lab.

18.2. Ex.P5 is the prescription of the respondent issued by Dr.Mark Hong Yoon, dated 13.03.2015, wherein the respondent was recommended to use Tadalafil [erectile dysfunction] common brand names as Cialis 20 mg tablet. Tadalafil is used to treat male sexual function problems (impotence or erectile dysfunction-ed). It has to be taken once a day and attempt sexual activity at any time between the dose.

18.3. Appellant has joined the respondent in the month of March, 2015 and that she was there with the respondent till 2017 and came down to India in the year 2018.

18.4. It is the contention of the respondent that he and the appellant participated in sex many times without problem after consulting Dr.Mark Hong, Urologist. Ex.P6 is the report issued by Vijaya Diagnostic Centre pertaining to the respondent, dated 10.05.2013 given by Dr.G.Chandrasekhar Rao, Physician. The clinical diagnosis are semen analysis, color doppler scrotum. The report goes to show that sperm count is 70 millions/ml and the impression is Normospermia (biological reference > 20 million/ml).

18.5.1. Ex.P7 is the surgical procedure note issued by Dr.Antonino S. Cammarata, dated 31.12.2014. The Findings are "Left perineal

wound with central necrosis and foul-smelling pus, measurements were 5 x 3 x 2 cm.”

18.5.2. As per Ex.P7 the patient history is *“This patient is a 29 y.o male presenting to the emergency department with a chief complaint of moderate rectal pain onset 2 days ago. There is an abscess associated on the outside of the patient’s rectum. Tylenol moderately alleviated the pain, but the abscess has not reduced in size. He denies any Hx of similar abscesses appearing, but reports of a Hx of internal hemorrhoids. The patient has no other symptom complaints at this time.”*

“Reason for Consultation:-

I was asked by Patrick O’Brien, PA to provide a consultation on this patient regarding perineal pain.

HPI:

Patient is a 29 y.o. male with 3 day onset of L perianal pain and swelling. +previous Hx of this 4 years ago which spontaneously drained and resolved. No melena or hematochezia. No SOB/cp. +fever. No sick contacts or trauma.”

18.6. Ex.P8 is patient Tracking Board, consultation and Fistulotomy procedure by Dr.Neeraj Singh.

History of Present illness (Neeraj Singh MD: 3/8/2016 3:38 PM)

The patient is a 30 year old male, patient presents today for a follow up visit for hemorrhoids. Mr. Vatti is a 30-year-old gentleman who presented with complaint of recurrent ? rectal abscess. He has this recurrent abscess for last many years and he says it started when he had the first surgery by Dr.

Cammaretta. ? Subsequent to that he has recurrent episodes and the abscess will come and drained and will go away. ? the last episode started about a month ago when he had an abscess which is drained and now he has ? a small opening ?? He denies any diarrhea, constipation weight loss, loss of appetite ? or any changes in the bowel habits. ? No complaint of abdominal pain or rectal pain at this time. ? He denies any ? Significant family history of colon or rectal cancer.

Problem List/Past Medical (Dr.System Manager, MD,
FACS:3/8/2016 1:39 PM)

Erectile dysfunction
Rheumatoid Arthritis

18.7. Ex.P9 is the Medical certificate issued by the Dr.G.Chandra Sekhara Rao, B.H.M.S., M.D. (Homoeo), dated 06.03.2015 that respondent is suffering from seronegative arthritis and that medicines are given for three months as he is in USA.

18.8. Ex.P10 is the bunch of the Emails between the respondent and the appellant (19 pages) which shows the purchase of different items from different platforms. Ex.P11 is the E-Trade Financial Statement of the appellant, dated 03.06.2013. Ex.P12 is the Email, dated 13.10.2013 sent by the respondent to the appellant about the Financial Transactions between the parties. Ex.P13 is the Email sent by the respondent to the appellant, dated 10.08.2015 stating that he will book flight tickets for September 1st to Hyderabad for both of them and that will be in August 15th, after going to Hyderabad, he will file for divorce and requested the appellant to do the same.

18.9. Ex.P14 is the mail sent by the appellant to the respondent, dated 18.02.2018 wherein she mentioned that

“Hi

as you lost your work status you are asking me to file H4 for you.

I do not want to do it for two reasons:

1) you are and have nver been a husband.

You do not have the capacity to be one.

2) You are involved in some business or trade which I don't know and this according to me is not right. You seem to hv lost ur job bcos of this

I am anyways going to court to take annulment and compensation for your cheating me. I don't see a reason to have you as my dependent.”

18.10. Ex.P15 is the mail sent by the respondent to the appellant dated 05.03.2018 which states *“As per our discussion, I would need your 1797 approval document to convert my status from H1B to H4. During this time I won't be doing any business. I would ensure that my stay on H4 would not affect you in anyway. During this time I would continue to do job trials. If I do not get a job by end of July, I will either leave USA or convert to F1 visa status”*

18.11. Ex.P16 is the copy of Historical USD to INR Exchange Rate for 2013-14 and Historical CRM stock price in USD for 2013-2014. Ex.P17 is Section 65-B certificate.

19. Ex.R1 is the Bank Statement of Respondent in Bank of America Phoenix Branch. Exs.R2 to R5 are the Bank statement showing the transferred payments/shares/for buying Honda Car by the respondent in favour of the petitioner. Ex.R6 sale of CRM shares in the year 2013 for a profit of \$ 2470.6. Ex.R7 is the House rent paid by the respondent.

20.1 During the pendency of the FCOP.No.2536 of 2018, appellant has filed I.A.No.124 of 2021 directing the respondent to undergo potency test. Respondent reported no counter, thereby the application came to be allowed. The Superintendent of Gandhi Hospital, Secunderabad conducted the potency test on the respondent and forwarded the report dated 15.04.2021 to the Court.

20.2 Appellant has filed another application in I.A.No.1702 of 2023 to summon the Superintendent of Gandhi Hospital, Secunderabad to cross-examine and for marking the report dated 15.04.2021.

20.3 The Trial Court *vide* order dated 29.12.2023 dismissed I.A.No.1702 of 2023 [summon the witness]. It is observed in the above said order that the report dated 15.04.2021 was forwarded to the Court stating that there was nothing to suggest that the

respondent cannot perform sexual intercourse and that the petitioner is at liberty to get the report dated 15.04.2021 marked by taking necessary steps and that no application is filed by her to get the document marked. The Trial Court further observed that I.A.No.1702 of 2023 is filed when the case stands posted for arguments.

21.1. Mere production and marking of a document as exhibit by the Court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence i.e., by the evidence of those persons, who can vouchsafe for the truth of the facts in issue : Narbada Devi Gupta¹ : The principles laid down by the Apex Court is that a reasoned order be passed in every case which must contain the narration of the bare facts of the case of the parties to the lis, the issues arising in the case, the submissions urged by the parties, the legal principles applicable to the issue involved and the reasons in support of the findings on all the issues in support of its contention : G.Saraswathi² : A Judge is supposed to keep his personal views in the background and not inject them in the judgment : Director (Studies)³ : Maharashtra State Financial⁴ case pertains to Money Decree : Where statute provides for something to be done in particular manner it can be

done in that manner alone and all other modes of performance are necessarily forbidden : Chief Information Commr.⁵

21.2. Neeraj Garg⁶ is with regard to expunging certain observations made against the appellant who is a practicing advocate before the High Court : M.A.Murthy⁷ is with regard to challenging the selection of respondent No.4 and placing respondent No.5 in the waiting list : The petitioner/wife was virgin as per the evidence of PW.3, who is a Post-Graduate Diploma in MD and obtained Diploma in DGO. The Court disbelieved the evidence of the respondent/husband that his marriage is consummated : Smt. Suvarna⁸ : Section 14 of the Family Courts Act vis-à-vis Indian Evidence Act, 1872 and held that Family Court Act will prevail : Pramod E.K⁹ : No opportunity was granted to husband to cross-examine three witnesses of the respondent/wife, proper enquiry was not conducted by the Family Court, thereby the matter was remanded back to the Trial Court for fresh decision : Subash @ Prakash¹⁰.

21.3. Respondent/wife was married to the petitioner/husband by suppressing material fact viz., suffering from Bipolar Mental disorder and also the relationship maintained by her with Praveen Kumar prior to and after marriage : Vijay Nagini¹¹ : Vuyyuru

Kokkilagadda Anusha Rao¹² relates to Section 13(B) of Family Court Act : Concealment of pre-existing disease Ptosis including post surgical deformity of Nocturnal Lagophthalmos - held such concealment constitute suppression of a material fact and could have affect the respondent's decision to consent to the marriage : Sau.Pooja¹³ : Wife was suffering from Epileptic psychosis, the evidence of Medical Expert confirming the condition. The High Court held that suppression of such critical medical information amounts to cruelty : Mahadevan¹⁴. The decisions cited by the appellant counsel stated supra do not assist the case of the appellant in view of the fact that the facts differ.

22.1. Appellant has admitted in her cross-examination that the respondent has taken room at Krishna Nagar, Yusufguda and she called off the relationship in the year 2010 to be continued as friends. Witness voluntarily stated that they remained as friends till their marriage and that there was an objection for her marriage with the respondent by her mother regarding caste and she has sold her shares, she do not have account in USA.

22.2. Appellant further deposed that they went to Honeymoon to Kerala for nine days and after returning they stayed together for a period of one month. Second Honeymoon is to Kashmir for 11 days

i.e., Manali, Ladhak, Kargil, Kashmir and Srinagar, they had no sexual intercourse at any point of time in these places. Appellant stayed with the respondent at Vanasthalipuram for one month four days.

22.3. Appellant went to America in the month of March, 2015, they have consulted a Doctor at America by name Dr.Mark Hong Yoon, Urologist and he has prescribed Cialis to the respondent and that the respondent has used the above said medicine in front of her. Appellant stated that she did not share the bed after using the medicines and it did not work. In the month of August, 2015 they have decided to file divorce but the respondent has requested her further time to heal himself as he cannot travel with that condition, the respondent has problem with leakage of pus in left testicles so that he cannot sit or walk, second problem is jaw locks so that he is unable to open his mouth beyond one centimetre, unable to bend, unable to lift his hands and patches on his legs and both lived in the same Flat at USA by sharing everything and that she was on dependent visa on the respondent visa. Appellant's mother visited USA in the year 2017, the respondent was fired in the year 2018. In the month of August, 2015, police came and took the respondent and they advised the appellant to stay separately for one day and that with great faith and trust on the respondent with

six years friendship, she realized mentally to file divorce. Appellant has denied the suggestion that she is not entitled to claim Rs.90,00,000/- towards permanent alimony and that the respondent was capable of performing sex in the first Honeymoon at Kerala and second Honeymoon at Kashmir and after using the medicines at America they participated in sex.

23.1. Respondent deposed in his cross-examination that he underwent Medical test at Vijaya Diagnostics on the recommendation of Dr.Chandra Shekar and has also underwent test on 26.03.2023 in Quest Diagnostics. In the month of December, 2014, he went for lump surgery near left upper thigh at JCL Deer Valley Hospital, Phoenix and he also underwent surgery for fistula on 08.03.2016 at VSC 27th AV Hospital, and that he had reported that he has Erectile dysfunction as per the existing medical illness. Witness adds that the problem of ED is not ongoing as it happened between March and April 2015.

23.2. Respondent further deposed that he was not working from 11.01.2018 to October, 2019 and he left USA on 30.05.2018, appellant was in USA during that time. Appellant stayed in USA from June, 2018 to October, 2019. Appellant has joined him in USA in the year 2015 on dependent visa in the first quarter and

that he underwent test on 13.03.2015 by Dr.Yoon Mark Hong for Erection dysfunction and Doctor has advised him to take Cialis 20 mg tablet, he did not go for any Arthritis test from 2013 to 2016 and he had a fight with the appellant on 14.09.2015 and also on 04.07.2017 and the parties have contemplated of taking divorce during the fights from 2015 to 2017, he has not submitted any document regarding the reduction of using Cialis 20 mg to 5 mg by Dr. Mark Hong. His salary is higher during 2015 to 2018 and that the appellant had contributed 50% of all expenses from December, 2017 to May, 2018. Respondent denied the suggestion that the allegations made by him on the appellant are false and incorrect.

24. Divorce sought by the appellant in the O.P. is that the respondent is impotent which falls under nullity of marriage and for cruelty. The contention of the appellant is that, the fact of impotency of the respondent was not known to her at the time of marriage and she came to know only after thorough verification of the reports from the Doctor in 2017.

25.1. As admitted by the appellant that her first Honeymoon was on 13.12.2013 to Kerala and thereafter respondent left USA on 16.01.2014. The respondent came back to India on June, 2014, the appellant and the respondent went for second Honeymoon to

Kashmir. The respondent has underwent surgery at John C.Lincoln Hospital in USA in the month of December, 2014 and thereafter appellant has joined the respondent in USA in the month of March, 2015. Appellant was in USA till 2018.

25.2. The respondent has admitted that he has Erectile dysfunction but after using the tablets prescribed by the Doctor that came to be subsided and he had sexual intercourse with his wife. The documents filed by the appellant under Ex.P6 goes to show that the sperm count of the respondent is 70 millions/ml and the impression is Normospermia.

25.3. The potency test report dated 15.04.2021 of Gandhi Hospital, Secunderabad states that there was nothing to suggest that the respondent herein cannot perform sexual intercourse, which observation is made by the Trial Court in I.A.No.1702 of 2023 in FCOP.No.2536 of 2018, dated 29.12.2023. Appellant has not taken any steps to mark the said report, dated 15.04.2021 in view of the fact that the report was against her.

25.4. Appellant has admitted that she has received Rs.28,71,067/- from the respondent, but she went on to say that the money belongs to her.

26. Respondent has stated in Ex.P13 dated 10.08.2015 that he will file divorce but the same could not be materialized. The mail sent by the appellant to the respondent under Ex.P14 supports the contention of the respondent that he lost his job, which is fortified by Ex.P15.

27.1. If really the marriage has not been consummated owing to the impotency of the respondent on the date of marriage, Honeymoon to Kerala and Kashmir, definitely the appellant would have informed her parents or to her in-laws about the incapacity of the respondent in performing material obligations, which is not done by her and joined the respondent in March-2015.

27.2. Appellant has admitted that she called off her relationship with the respondent in the year 2010 and continued to be friends and they remained as friends till their marriage. There is no evidence to prove that the respondent has played fraud and married the appellant.

28. Except the testimony of the appellant, there is no evidence on record to show that the respondent was incompetent in performing the marital obligations. Furthermore she has not examined any independent witness to support her contentions. It is to be noted here that no suggestion is put to the respondent

during the course of his cross-examination that the parties have not performed sex at any point of time after the marriage and that the respondent is incompetent to do so.

29.1. The marriage of the parties took place on 11.12.2013 and they went to Honeymoon on two occasions i.e., at Kerala and Kashmir, appellant was in USA from March, 2015 till 2017 and filed O.P. for divorce on 13.10.2018 after 5 years of the marriage. Appellant cannot turn around and say that the respondent is impotent but the Medical Report (Ex.P6) and Potency Test Report dated 15.04.2021 of the respondent speaks otherwise.

29.2. Appellant failed to prove the inability of the respondent to engage in sexual intercourse which existed at the time of marriage and continued as such till filing the O.P.

30. As stated supra, the Trial Court has framed comprehensive points and disposed off the O.P. in consonance with Section 17 of the Family Courts Act, 1984.

31. The Trial Court has meticulously dealt with the contentions raised by the appellant in point Nos.1 to 3 from paragraph Nos.12 to 22. We are of the view that the appellant has not made out any case to annul her marriage on the ground that the respondent is

impotent and not capable of performing sex, underwent harassment in the hands of respondent and also failed to prove that she is entitled for permanent alimony of Rs.90,00,000/-. We are not inclined to interfere with the judgment passed by the Trial Court, we answer the points framed by us accordingly.

32. There are no merits in the Appeal, deserves no consideration and the same is liable to be dismissed and is accordingly dismissed.

33. FCA.No.195 of 2024 is dismissed.

All connected applications, if any, shall stand closed.
Interim orders, if any, stands vacated.

MOUSHUMI BHATTACHARYA, J

B.R.MADHUSUDHAN RAO, J

11th JULY, 2025.
PLV