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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**%** Reserved on 05.10.2021
Pronounced on: 24.12.2021

\+ MAT. APP. (F.C.) 142/2020

SANDEEP AGGARWAL. ..... Petitioner
Through: Mr. Asutosh Lohia, Advocate.

versus

PRIYANKA AGGARWAL .... Respondent
Through: Mr. Mohan Lal, Advocate.

**CORAM:**
**HON'BLE MR. JUSTICE VIPIN SANGHI**
**HON'BLE MR. JUSTICE JASMEET SINGH**

**J U D G M E N T**

**: JASMEET SINGH, J**

1. The present appeal has been filed under Section 28 of the Hindu Marriage Act, 1955 read with Section 19 of the Family Courts Act, 1984 on behalf of the appellant (husband) against the impugned judgment and order dated 24.12.2019 passed by the Family Court, Dwarka, wherein the petition under Section 12 of the Hindu Marriage Act filed by the appellant was dismissed.

2. The brief factual matrix as per the appellant, necessitating filing of the petition under Section 12 of the Hindu Marriage Act and the present appeal, are as under:

3. The marriage between the appellant and the respondent was solemnized on 10.12.2005. As per the appellant, the marriage between the appellant and the respondent was the outcome of a calculated fraud that was perpetrated by the respondent and her family members as they chose not to disclose a vital and crucial fact regarding the respondent's mental health/ailment.

4. According to the appellant, the respondent was, before the marriage, and during the days that she stayed with the appellant, suffering from Acute Schizophrenia. The respondent behaved in a very unusual manner after her marriage in the matrimonial home, as well as during their honeymoon.

5. Consequently, the appellant took the respondent to Dr. Inderjeet Sharma in January, 2006, who after examining her referred her to GB Pant hospital, where Dr. Rajiv Mehta examined the respondent and prescribed certain medicines. Finding no change in respondent's behaviour, the appellant took her to a neuro surgeon at Institute of Human Behaviour and Allied Sciences, Delhi where the respondent was examined again and Dr. Harcharan Singh prescribed her medicines.

6. On 11.02.2006, the appellant took the respondent to Hindu Rao Hospital at Delhi, where Dr. Jitender Kumar examined the respondent. As per the appellant, after meeting the said doctor respondent shouted "*isi doctor ne mujhe pehle bhi davai di hai*."

7. Since the appellant did not find any improvement in the mental health of the respondent, he also took her to All India Institute of Medical Sciences, where Dr. Mamta Sood, Neuro Psychiatrist examined her and prescribed her few medicines. As per Dr. Mamta Sood, the respondent was suffering from Acute Schizophrenia. The appellant thereafter questioned the respondent's parents and narrated the mental condition of the respondent.

8. The appellant also averred in the petition regarding the mother and aunt of the respondent mixing something in the eatables. This is neither relevant, nor germane, to the issue in controversy and hence not adverted to, by us.

9. The appellant along with the other family members questioned the father

of the Respondent, and it was then that the father of the respondent took the respondent with him to her parental home (after 9 weeks of marriage) on 17.02.2006 and, since then the respondent is living with her parents in their house. The appellant also averred that the marriage between the appellant and the respondent was not consummated.

10. The respondent filed her written statement wherein she denied that the marriage between the appellant and the respondent was not consummated. The respondent averred that she has never suffered from any mental or physical ailment, but she did suffer headaches during her college days due to which her studies were discontinued, and the said fact was clearly told to the appellant, the mediator, and all other persons concerned.

11. She further averred that the appellant, his family members, friends and relatives had met the respondent prior to marriage many a times, and there were numerous telephonic calls. Therefore, there was no question of respondent suffering from any mental ailment, much less, Schizophrenia either prior to the marriage or during subsistence of the marriage.

12. She further stated that the appellant met her prior to the ring ceremony with his family members at Lakshminarayana (Birla) Mandir, where he spent around an hour exclusively with the respondent. After the ring ceremony, the appellant along with his sister-in-law had discussions with the respondent at Pizza Hut, Netaji Subhash Marg, New Delhi. The respondent has denied that appellant had ever taken her to any doctor, or that she was examined by any doctor, or got any treatment.

13. The respondent had also filed a petition under Section 9 of the Hindu Marriage Act, seeking Restitution of Conjugal Rights against the appellant which, vide order dated 30.10.2009 of the Family Court, had

been clubbed with the divorce petition.

14. In order to prove his case before the family court, the appellant examined himself as PW-1, and has exhibited medical slip dated 17.01.2006 (exhibit PW-1/B), Out Patient Cards dated 03.02.2006**,** 11.02.2006 and 07.02.2006 as exhibit PW-1/C, PW-1/D and PW-1/E respectively, and copy of police complaint dated 22.02.2006 as exihibit PW-1/G. Petitioner examined his father Sh. Bal Kishan Aggarwal as PW-2, Smt. Manju Aggarwal, his mother as PW-3, and Sh. Bharat Aggarwal, his brother as PW-4, who reiterated the averments made in the petition. The appellant also examined PW-5 Dr. Rajiv Mehta, PW-6 Dr. Inderjeet Sharma, PW-7 Dr. Mamta Sood and PW-8 Dr. Jitender Kumar. All PWs were extensively cross examined by learned Counsel for the respondent.

15. The respondent, on the other hand, examined herself as RW-1 and exhibited the Film and Report of CT Scan as exhibit RW-1/A, driving licence as exhibit RW-1/B, public notice dated 22.07.2006 in Times of India newspaper as exhibit RW-1/C, information under RTI Act dated 01.02.2006, 03.02.2006 and 11.02.2006 as exhibits PW-1/D and PW-1/E

16. The respondent examined her mother RW-2 Smt. Neena Rani Goel, and her father PW-3 Sh. Mohan Lal. The witnesses have reiterated the averments made in the written statement in their examination in chief, and were also cross-examined by learned Counsel for the appellant.

17. The Family Court after going through the documents, pleadings and evidence and analysing the same, has come to the conclusion that the petition must fail for the following reasons:

    a) That neither the appellant, nor any of his witnesses have been able to conclusively prove that the respondent, prior to her marriage, was suffering from Schizophrenia. According to the Family Judge, the petitioner has failed to prove that his consent to marriage was

obtained by playing fraud and suppressing material fact concerning the illness of the respondent.

b) The Family Court also relied upon the behaviour of the Respondent during cross-examination to hold "*the conduct of the respondent exhibited by her during cross-examination does not show that she was not a normal lady or was suffering from schizophrenia or any other mental disorder. She understood all the questions put to her during cross-examination and answered these questions appropriately.*"

c) Another factor which weighed with the Family Court was that the appellant, as well as his family members, had extensively interacted with the respondent for 4 months after the *Sagai*. The PW-4 Bharat Aggarwal (brother of the Appellant) also admitted that in the *God Bharai* ceremony, the respondent even danced and behaved properly and there was nothing unusual about the behaviour of the Respondent.

d) The allegations of respondent's behaviour in Goa and other small instances at the house have also been considered by the Family Court in detail. However, the same are not relevant for the purpose of adjudication in the present appeal, for the reasons disclosed by us in subsequent paragraphs.

e) The Family Court further held that the medical prescription exhibit PW-1/C and PW-1/E have remained unsubstantiated and unproved, as the appellant has not examined any of the doctor from IHBAS Hospital. The Appellant, though examined PW-7 Dr. Mamta Sood- to prove medical prescription issued by AIIMS Ex. PW-1/E, PW-7 deposed that Ex. PW-1/E does not bear her hand writing anywhere. As regards PW-6 Dr. Indrajeet Sharma, he deposed that the

medicines prescribed by him could be given for various purposes, including anxiety and did not know the patient personally, and the medical prescription did not bear the personal identification of the Respondent on the prescription. The testimony of PW-5 Dr. Rajiv Mehta was not relied upon by the Family Court, because no separate test was conducted for diagnosing the respondent provisionally.

f) What weighed with the Family Court while passing the impugned order, dismissing the petition, was also that during the span of less than one month, the appellant had taken respondent to 5 different doctors of different hospitals. The Family Court also came to the conclusion that the appellant did not wait to see the result of the treatment given by various doctors to the respondent as per prescription, and had taken respondent to one hospital after another for preparation of prescription and no medicine was given to the respondent. The Family Court was of the view that "*it appears that the petitioner was only getting prepared these medical prescriptions to show that respondent was suffering with some ailment without any treatment being provided to the respondent.*"

g) The Family Court also was of the view that the appellant failed to prove on record that respondent was suffering from Schizophrenia or any other ailment prior to her marriage. Hence, the petition was dismissed.

18. In appeal, detailed arguments were addressed by Mr. Asutosh Lohia, learned Counsel for the appellant and Mr. Mohan Lal, learned Counsel for the respondent, who is also her father.

19. The primary argument of the appellant was that the accumulated evidence supports the finding that the Respondent was/is suffering from

"F-20– Hebephrenia". He has referred to multiple prescriptions that diagnosed the Respondent with either Schizophrenia, or F-20-Hebephrenia. To further make his case, learned counsel for the appellant took us through the medical literature on Schizophrenia and Hebephrenia, as well as the literature on the medicines prescribed. He also relied on the statements of Dr. Inderjeet Sharma PW-6, Dr. Rajiv Mehta PW-5 and Dr. Mamta Sood PW-7.

20. The testimonies of doctors and medicines prescribed by them, relied upon by the Appellant are as under:

a) PW-5 Dr. Rajiv Mehta testified that the prescription dated 28.01.2006, Ex. PW-1/B is in his handwriting. He stated that the provisional diagnosis of the patient Priyanka was pertaining to Schizophrenia, and the patient was called on three occasions.

b) PW-8 Dr. Jitender Kumar, Psychiatry Department, Hindu Rao Hospital, Delhi proved the OPD card, Ex. PW-1/D and stated that the said exhibit was prepared by him and bears his signature at point 'A'. He further stated that he had examined the patient and prescribed the medicines mentioned in OPD card, EX PW-1/D. As per the prescription, the Respondent was prescribed medicines Arip MT 15 and Resperidone, which are listed as Antipsychotic Drugs. She was also prescribed Risperidone – including Sizodon, also in another prescription. Respondent was even prescribed Pacitane and Phenargan, which are anticholinergic drugs used to prevent drug-induced parkinsonism. She was also prescribed Bexol-used for treating Parkinsons disease.

c) He also relied on the Exhibit PW-1/E and the testimony of PW-7 Dr. Mamta Sood (a psychiatrist) of AIIMS, who, after examining the Respondent's behaviour opined that the Respondent is suffering

from Hebephrenia, and prescribed some medicines for the same.

21. The Appellant has relied on medical literature and provided a table, classifying the uses of the medicines. Following is the table –

| | **Brand name** | **Chemical Salt/Composition** | **Treatment Of** |
|---|---|---|---|
| (i) | Arip MT 15 | Aripiprazole | Schizophrenia |
| (ii) | Sizodon Plus | Risperidone | Schizophrenia |
| (iii) | Parkin Plus | Trifluoperazine + Trihexyphenidyl | Schizophrenia and Parkinson |
| (iv) | Risdone | Risperidone | Schizophrenia |
| (v) | Bexol | Trihexyphenidyl | Parkinson |
| (vi) | Respid | Risperidone | Schizophrenia |
| (vii) | Pacitane | Trihexyphenidyl | Parkinson |

22. Learned counsel, by relying on medical literature, has shown that Risperidone, Trifluoperazine, and Aripiprazole are Antipsychotic Drugs. The Chapter on "*Drugs Used in Mental Illness: Antipsychotic and Antimanic Drugs*" in the medical text states that '*Antipsychotic (neuroleptic, ataractic, major tranquillizer) useful in all types of functional psychosis, especially schizophrenia.*'[1]

23. Learned Counsel for the appellant has submitted that courts are ill-equipped to weigh, analyse and arrive at definite findings of mental condition/illness of a litigant on their own. Hence, he has argued that the Respondent must be examined by a Medical Board of experts in the field, to ascertain the medical condition of the respondent in view of the rival claims made by the appellant and respondent. Learned counsel for the appellant has relied on the judgment in *Sharda v. Dharmpal*[2] to submit that that the Court can always direct examination by a medical

[1] K.D. Tripathi, *Essentials of Medical Pharmacology* (6th Edition, 2008) Jaypee Brothers Medical (P) Ltd.
[2]MANU/SC/0260/2003.

expert, to call for the medical opinion to arrive at the truth.

24. Mr. Lohia has submitted that even today, he is ready that the respondent be examined by a Medical Board to ascertain the mental condition of the respondent as to:

    a) Whether she is suffering from Schizophrenia? and;

    b) Since how long she has been suffering from the said ailment, if at all.

25. In addition the appellant has also submitted:

    *i.* That the parties have not stayed together for longer than two months, and the marriage is not consummated.

    *ii.* They have been separated for 16 years.

    *iii.* The Respondent admitted to attempting suicide in her testimony.

    *iv.* She also admitted to getting headaches and ear infections.

26. In the light of the judgment in ***Dharam Pal*** (**supra**), we asked Mr. Mohan Lal whether the respondent would be ready and willing to subject herself to examination by a Medical Board of specialists. The learned Counsel for the respondent flatly refused and said that subjecting the respondent to a Medical Board would amount to cruelty on her.

27. The learned Counsel for the respondent submitted that the appellant never took the respondent to any doctor, as none of the doctors have identified the respondent. He further submitted that there is not a single purchase of medicine shown by the appellant, and there is no justification as to why the appellant would take the respondent to 5 doctors within a period of 1 month, and not wait for the results of the medication.

28. Learned Counsel has refuted that the respondent was suffering from any mental disorder prior to her marriage; at the time of her marriage, and; thereafter. He has supported the findings returned in the impugned judgment.

29. We have heard learned Counsel for the parties and have gone through the documents.

30. At the outset, we may state that Judges are not medical professionals or experts, and acquire limited knowledge based on the arguments of the parties, and the medical literature produced before them; the testimonies of expert witnesses produced in Court, and; the submissions advanced before the Court. The Courts, to be able to decide such issues, needs expert opinion from credible persons in the field. The parties are also entitled to grant of opportunity to either support, or challenge the opinion that the experts may give after examination of the person concerned, and all other relevant materials. However, what weighs with us, at the outset is the denial of the respondent to subject herself to evaluation of her condition by an independent Medical Board to be appointed by the Court. This conduct itself raises a presumption against the respondent. The judgment of *Dharampal (Supra)* is clear and unequivocal in this regard. The relevant extract from *Dharampal (Supra)* read as under:

> **"*9 .***Clause 2(b) of Section 5 provides for one of the conditions for a valid Hindu marriage that neither party must be suffering from unsoundness of mind, mental disorder or insanity. In terms of Section 12(1)(b) of the Act a marriage may be held to be voidable if the other party was suffering from mental disorder or insanity. Section 13(1)(iii) of the Act provides that a party to the marriage may present a petition for dissolution of marriage by a decree of divorce inter alia on the ground that the other party has been incurably of unsound mind and has been suffering continuously or intermittently from mental disorder of such a kind that the petitioner cannot reasonably be expected to live with the respondent. It is beyond any cavil that a marriage in contravention of the aforementioned provisions of the Hindu Marriage Act is per se not void but is merely voidable.
>
> ***10 .***It is trite law that for the purpose of grant of a decree of divorce what is necessary is that the petitioner must establish

*that unsoundness of mind of the respondent is incurable or his/her mental disorder is of such a kind and to such an extent that he cannot reasonably be expected to live with his/her spouse. Medical testimony for arriving at such finding although may not be imperative but undoubtedly would be of considerable assistance to the court. We may, however, hasten to add that such medical testimony being the evidence of experts would not leave the court from the obligation of satisfying itself on the point in issue beyond reasonable doubt. Relevance of a medical evidence, therefore, cannot be disputed.*

***15.*** *Having regard to the complexity of the situation, the doctor's opinion may be of utmost importance for granting or rejecting a prayer for a decree of divorce. The question is as to whether a mental disorder is curable can be subject matter of determination of by a Court of Law having regard to the expert medical opinion and particularly the ongoing development in the scientific and medical research in this direction.*

***18.*** *However, the Court has been empowered to issue such a direction in a civillitigation.*

***33.*** *Yet again the primary duty of a Court is to see that truth is arrived at. A party to a civil litigation, it is axiomatic, is not entitled to constitutional protection under Article 20 of the Constitution of India. Thus, the Civil Court although may not have any specific provisions in the Code of Civil Procedure and the Evidence Act, has an inherent power in terms of Section 151 of the Code of Civil Procedure to pass all orders for doing complete justice to the parties to the suit.*

***35.*** *In certain cases medical examination by the experts in the field may not only found to be leading to truth of the matter but may also lead to removal of misunderstanding between the parties. It may bring the parties to terms.*

***36.*** *Having regard to development in medicinal technology, it is possible to find out that what was presumed to be a mental disorder of a spouse is not really so.*

***37.*** *In matrimonial disputes, the court has also a conciliatory role to play- even for the said purpose if may require expert advice.*

***38.*** *Under Section 75(e) of Code of Civil Procedure and Order 26 Rule 10A the Civil Court has the requisite power to issue a direction to hold a scientific, technical or expert investigation.*

***45. It was held that nobody can be forced to go to a mental hospital to undergo a medical treatment and it would be for the Court to draw an adverse inference against him for not doing so.***

***51…..****The prime concern of the Court is to find out as to whether a person who is said to be mentally ill could defend himself properly or not. Determination of such an issue although may have some relevance with the determination of the issue in the lis, nonetheless, the Court cannot be said to be wholly powerless in this behalf. Furthermore, it is one thing to say that a person would be subjected to test which would invade his right of privacy and may in some case amount to battery;* ***but it is another thing to say that a party may be asked to submit himself to a psychiatrist or a psychoanalyst so as to enable the Court to arrive at a just conclusion. Whether the party to the marriage requires a treatment or not can be found out only in the event, he is examined by a properly qualified Psychiatrist. For the said purpose, it may not be necessary to submit himself to any blood test or other pathological tests****.*

***53….Keeping in view of the fact that in a case of mental illness the Court has adequate power to examine the party or get him examined by a qualified doctor, we are of the opinion that in an appropriate case the Court may take recourse to such a procedure even at the instance of the party to the lis.***

***54. Furthermore, the Court must be held to have the requisite power even under Section 151 of Code of Civil Procedure to issue such direction either suo motu or otherwise which, according to him, would lead to the truth.***

***84. If despite an order passed by the Court, a person refuses to submit himself to such medical examination, a strong case for drawing an adverse inference would be made out Section 114 of the Indian Evidence Act also enables a Court to draw an adverse inference if the party does not produce the relevant evidences in his power an possession.***

***85. So viewed, the implicit power of a court to direct medical examination of a party to a matrimonial litigation in a case of this nature cannot beheld to be violative of one's right of privacy.***

***86. To sum up, our conclusions are***

1. ***A matrimonial court has the power to order a person to undergo medical test.***
2. ***Passing of such an order by the court would not be in violation of the right to personal liberty under Article 21 of the Indian Constitution.***
3. ***However, the Court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the Court. If despite the order of the court, the respondent refuses to submit himself to medical examination, the court will be entitled to draw an adverse inference against him.*** **" (emphasis supplied)**

31. The outright refusal of the respondent to undergo any medical examination, prevents the court arriving at the truth. It has been held by the Supreme Court in *Kollam Chandra Sekhar v. Kollam Padma Latha*[3] by relying on the testimony of a doctor that Schizophrenia "*is a treatable, manageable disease, which can be put on a par with hypertension and diabetes*." However, the same requires determination by a doctor, and in ***Dharam Pal*** (Supra) the court has observed that "*.....but it is another thing to say that a party may be asked to submit himself to a psychiatrist or a psychoanalyst so as to enable the Court to arrive at a just conclusion. Whether the party to the marriage requires a treatment or not can be found out only in the event, he is examined by a*

[3](2014) 1 SCC 225.

*properly qualified Psychiatrist."* Therefore, in such circumstance determination of truth is an important step for us to enable making of a fair decision.

32. In *Kollam Chandra Sekhar* (Supra), the Supreme Court has aptly described the institution of marriage, wherein the court has observed:

> **"*42.*** *Marriage is highly revered in India and we are a nation that prides itself on the strong foundation of our marriages, come hell or high water, rain or sunshine. Life is made up of good times and bad, and the bad times can bring with it terrible illnesses and extreme hardships. The partners in a marriage must weather these storms and embrace the sunshine with equanimity. Any person may have bad health, this is not their fault and most times, it is not within their control, as in the present case, the respondent was unwell and was taking treatment for the same. The illness had its fair share of problems……*"

33. Marriage is not made of only happy memories and good times, and two people in a marriage have to face challenges and weather the storm together. It is not easy to live with a partner who has mental health issues, and such ailments come with their own challenges for the person facing the problem, and even more so for the spouse. There needs to be an understanding of the problems in a marriage, and communication between the partners– especially when one of the two partners in a marriage is facing challenges of their own. Treatment of any mental ailment requires acceptance of the same, not only by the family members but, most importantly, by the person suffering therefrom. The same has been enunciated by the Department of Health, Australia Government where it has been observed that, "*....Acceptance is acknowledged to be an important step in developing effective illness management strategies and working effectively with mental health services and complying with medications and treatments (Van Meijel et al 2002a, Van Meijel et al*

*2002b). This can be a difficult process, however, and takes time (Nemec & Taylor 1990). Acceptance is unlikely to occur immediately after the first episode; at this time, most people want to return to their previous self and previous life and are very reluctant to accept that they may have ongoing problems with their mental health."*[4]

34. It is true that the medical opinion in the present case is not conclusive. However, the evidence of Dr. Rajiv Mehta, read with the evidence Dr. Inderjeet Sharma, coupled with the documents exhibited by them seems to suggest that Respondent was suffering from schizophrenia. In the cross-examination, the doctor opined that the provisional diagnosis of the patient was on the basis of history and the interview of the patient. PW-5 further deposed in his prescription that the patient was suffering from F-20.

35. Further, generally, tests are not conducted for Schizophrenia. Pertinently, the respondent herself admitted that even in her college days she used to have headache and the said headaches were of such severity, that they interfered with her education, as a result of which, the respondent could not complete her college. There is no explanation or reason, as to what was the nature of those headaches; what caused those headaches; and; what was the treatment given to the respondent for those headaches.

36. A combined reading of the evidence as well as the admission of the respondent, even though, may not conclusively prove that the respondent was suffering from Schizophrenia/Hebephrenia- F-20 prior to her marriage, at the time of her marriage, and; subsequent to her marriage, but definitely raises a serious doubt about the mental health of the respondent, and points to the possibility of the appellant's allegations in

[4]Rickwood D (2006). *Pathways of Recovery: Preventing Further Episodes of Mental Illness (Monograph)*. Commonwealth of Australia, Canberra. (citations omitted)

that regard being true.

37. In these circumstances, the judgment of *Sharda v. Dharampal* is a clincher, as far as we are concerned. The Counsel for the appellant on one hand voluntarily made a statement that, at his cost and expense, the respondent be evaluated by a Medical Board to arrive at the truth of the mental health of the respondent. The appellant had also moved an application before the Family Court for evaluation of the respondent by a Medical Board. The prayer of the application reads as under:

> "*that this Hon'ble Court be pleased to issue necessary directions in the matter to enable the respondent being referred to some medical board constituted by this Hon'ble Court which may keep the respondent in observation for such period as may be necessary to determine th medical condition or the respondent and also the existence or otherwise of such condition of the respondents AND to pass such other orders/directions which this Hon'ble Court may deem fit and proper*."

38. The said application was dismissed by a cryptic orderby the Family Court on date 27.08.2009 observing the following:

> "*After considering the pleadings of the parties, I am of the opinion that parties have to stand at their own legs in proving their case. It is the case of the respondent/husband that petitioner/wife is suffering from Schizophrenia and in order to prove the case, it is the duty of the respondent/husband to lead evidence and the court cannot provide assistance to the respondent/husband to procure the evidence. The application being devoid of merit is dismissed.*"

39. As noticed above, the said plea was again made while this appeal was pending. The Counsel for the respondent flatly refused this proposal.

40. In *Sharda v. Dharampal,* the Courtheld as under:

> *"85. So viewed, the implicit power of a court to direct medical examination of a party to a matrimonial litigation in a case of this nature cannot beheld to be violative of one's right of privacy.*
> *86. To sum up, our conclusions are*

1. *A matrimonial court has the power to order a person to undergo medical test.*
2. *Passing of such an order by the court would not be in violation of the right to personal liberty under Article 21 of the Indian Constitution.*
3. *However, the Court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the Court. If despite the order of the court, the respondent refuses to submit himself to medical examination, the court will be entitled to draw an adverse inference against him*."

41. Thus, the Family Court fell in error in rejecting the appellant's application. The approach of the Family Court – that the appellant had to fend for himself, and he could not seek a direction from the Court for medical examination of the respondent was erroneous. It is not that this direction was sought by the appellant without any foundation or basis. The appellant had raised a plea that the respondent was suffering from Schizophrenia from day one. The appellant had shown the respondent to several specialists, and the medications prescribed show that they were relevant for treatment of Schizophrenia. The appellant also produced the medical doctors/ specialists and exhibited their prescriptions. The parties lived together for hardly any period, as the respondent was taken away by her father after about nine weeks of marriage from the matrimonial home. The evidence with regard to the respondent's medical condition – which related to her mental health, could possibly not have been garnered by the appellant without co-operation of the respondent. Only upon medical examination of the respondent, it could be established, with definiteness whether, or not, she is suffering from Schizophrenia, even though, there were pointers in that direction.

42. Pertinently, the Respondent could not establish any reason as to why, so early in the marriage, the parties separated, when according to the

respondent, there were no serious issues in the relationship. The fact that she sought Restitution of Conjugal Rights itself shows that so far as she was concerned, she had no serious complaints with the appellant; or the relationship.

43. In the aforesaid circumstances, in our view, the Family Court was duty bound to direct the medical examination of the respondent. The appellant could not have been left to gather evidence of the respondent's mental condition on his own.

44. The above factual matrix leads to an irrefutable assumption that all was not well with the respondent and she has been suffering from some disorder which she did not want to come out. We may also draw an analogy from section 114 illustration (h) of the Evidence Act, 1872. Section 114 of the Indian Evidence Act reads as under:

> "***Court may presume existence of certain facts.*** *– The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.*"

Illustration (h) reads as under:

> "*That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him*".

45. Carrying the illustration (h) further, and, in the light of the judgment of *Dharampal (Supra)*, we can conclude that examination by medical specialist(s), if undertaken, would have been unfavourable to the respondent. The refusal by the respondent to undergo medical examination by the Medical Board of experts leads to the inference that she was not prepared to face the Medical Board as that could have exposed the condition of her mental well being, and would have

established the allegation made by the appellant that she was suffering from Schizophrenia. Why else, such a spouse–who claims to be not suffering from any mental ailment who has preferred a petition to seek restitution of conjugal rights, and expresses her desire to live with the appellant husband, not undergo such medical examination?

46. The only course that commends itself, in the facts of the case, is to call the opinion of an expert Medical Board. While the burden of proof is on the party alleging a claim, the conduct and cooperation of the other party is something to be taken a note of. The outright refusal by learned counsel of the Respondent to subject the Respondent to such medical examination, leaves the situation at a stalemate and prevents us from arriving at the definite truth. The Respondent has scuttled the effort of the court to arrive at a definite finding of truth. The only way of conclusively determining the mental health of the Respondent is by subjecting the Respondent to an examination by an expert Medical Board. The appellant has significantly discharged the onus by leading cogent evidence, and raise a preponderance of probability, that the Respondent is suffering from Schizophrenia.

47. For the abovesaid reasons, we draw an adverse inference against the Respondent that she is suffering from Schizophrenia.

48. Section 12 of the Hindu Marriage Act deals with voidable marriages. A Hindu marriage shall be voidable and may be annulled by a decree of nullity, *inter alia*, on the ground that the marriage is in contravention of the condition specified in Clause (ii) of Section 5. Section 5 Clause (ii), insofar as it is relevant, states that a marriage may be solemnized between two Hindus, *inter alia*, if:

*"(ii) at the time of marriage, neither party –*

*(a) is incapable of giving a valid consent to it in*

*consequence of unsoundness of mind; or*
*(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or*
*(c) ……."*

49. The fact that the parties could not live together beyond nine weeks itself shows that the mental disorder suffered by the respondent is of a kind, and to such an extent as to be unfit for marriage and the procreation of children. It is not the case of the respondent that either of the conditions enumerated in Section 12(2)(a)(i), or (ii) exists in the present case, which would have debarred the appellant from seeking annulment of marriage on the ground contained in Section 12(1)(b) of the Hindu Marriage Act. That is not the defence set up by her, or established by her. The failure on the part of the respondent to disclose her mental disorder before her marriage with the appellant – as alleged by him, constituted a fraud perpetrated upon the appellant. Apart from stating that the parties had met a few times before the marriage, the respondent has not specifically averred, or established, that the appellant was made aware of the mental disorder suffered by the respondent, which was passed-off by her as mere "headaches". Headaches–by themselves are not a disease. They are only symptoms of a disease. The Respondent does not state what caused her such serious and frequent headaches, which debilitated her from completing her studies.

50. We are, therefore, inclined to allow the present appeal and annul the marriage between the appellant and the respondent on the ground contained in Section 12(1)(b) of the Hindu Marriage Act.

51. We may also observe that the learned counsel for the respondent is the father of the respondent, and it appears that his objectivity in dealing

with the matter has been overshadowed by his love for his daughter, i.e. the respondent, which is only natural and to be expected. However, in the process, unfortunately, the life of the appellant has been ruined and he has remained stuck in this relationship for 16 years without any resolution. In the most important years of his life, when the appellant would have, otherwise, enjoyed marital and conjugal bliss and satisfaction, he has had to suffer due to the obstinacy displayed by not only the respondent, but even her father, who appears to have been calling the shots in relation to the matrimonial dispute raised by the appellant. In these circumstances, we grant token costs to the appellant of Rs. 10,000/- .

**JASMEET SINGH, J**

**VIPIN SANGHI, J**

**DECEMBER 24, 2021/** dm