

IN THE FAMILY DIVISION OF THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
ORIGINAL JURISDICTION

FAMILY COURT CASE NO. 16/LTK/0286

BETWEEN : **RAHUL UDAY SINGH**
FIRST APPLICANT

AND : **JIGNASHA**
SECOND APPLICANT

Counsel : Mr. N. Padarath for both the Applicants.

Date of Judgment : 7 February, 2017

Judgment by : Hon. Mr. Justice Sunil Sharma

Category : Not reportable unless case citation anonymised
as follows:

RUS vs J – Fiji Family High Court Case No:
16/Ltka/0286.

JUDGMENT OF THE COURT

Catchwords

Marital Status

Proceedings

- *Application for order of nullity – application by both parties on the ground that consent to marry given by them was not real consent since it was obtained by duress. Duress not established by either of the applicants, application refused.*

Legislation

Cases referred to

- Family Law Act 2003.
- *Hirani v Hirani* (1982) 4 Fam. L. R. (Eng.) 232;
- *In the Marriage of Teves and Campomayor* (1994) 122 F. L. R 172;
- *In the marriage of S* (1980) 42 F.L.R 94.

BACKGROUND INFORMATION

- [1] The parties got legally married to each other on 3 June, 2016 at the Lautoka Registry. By Form 2 Application for Order of Nullity filed on 22 June, 2016 both parties are jointly seeking a nullity of their marriage.
- [2] Both the applicants rely on one ground of nullity that is both the husband and wife did not give their real consent to the marriage since the same was obtained by duress hence the marriage was void.
- [3] The applicants called five witnesses in support of their application.

EVIDENCE

- [4] The first witness was Rahul Uday Singh the first applicant who informed the court that he got legally married to the second applicant on 3 June, 2016. He has known Jignasha from November, 2015 having met her in India in 2013. The marriage was an arranged one after his mother and Jignasha's father had discussed about the marriage of the two in 2013. The discussions were held in New Zealand when Jignasha's father and her brother had stopped over in New Zealand.
- [5] In January, 2016 Rahul's mother came to Fiji and met Jignasha's family and upon returning to New Zealand his mother told him to get married to Jignasha. At first Rahul said "no" since he was not ready for marriage.
- [6] According to Rahul his mother pressured him to get married and it was for his mother's sake he agreed. As a result at the end of May, 2016 Rahul came to Fiji with his mother to get married. Prior to the legal marriage Rahul and Jignasha would talk to each other over the phone it would be once or twice a week. According to Rahul it was normal short conversations like how was your day, what did you eat today and that was it.
- [7] On the day of the legal marriage Rahul was quite upset because after the legal marriage both Rahul and Jignasha did not communicate with each other and since it was not his love marriage he did not want to go ahead with the marriage and live as husband and wife.
- [8] When going back to Ba with his mother and Jignasha after the legal marriage Jignasha did not approach him or communicate with him hence he became more upset.

- [9] Finally Rahul stated that they were supposed to get married in November, 2016 but his mother wanted the marriage to take place in June since Jignasha's visa was expiring in August, 2016. Rahul maintained that he did not want to get married to Jignasha.
- [10] In answer to court, Rahul said he was 24 years of age at the time of his legal marriage, he was employed and he lived with his mother. When he was 9 years of age his father passed away and from then on his mother has taken care of him so all the decisions he makes he tries to keep his mother happy.
- [11] The next witness was Rahul's mother Prabha Wati Singh. This witness informed the court that her son Rahul did not know Jignasha before the legal marriage. The marriage between Rahul and Jignasha was arranged by her and Jignasha's father.
- [12] The witness met Jignasha's father in 2013 when he came to New Zealand on his way to India. Before going to India Jignasha's father liked Rahul and mentioned he had a daughter.
- [13] Nothing happened after the conversation in 2013. In January, 2016 the witness came to Fiji and met Jignasha and her parents at their residence in Ba.
- [14] Further discussions were held between the witness and Jignasha's parents and it was agreed that the applicants could get married. When the witness returned to New Zealand she told Rahul about the discussions she had in Fiji. According to the witness Rahul's reply was *"mummy if you want me to get married then I will get married."*
- [15] In June, 2016 the witness and her son Rahul came to Fiji and both went to Jignasha's house and if Jignasha and her family were willing legal marriage could be done. After Jignasha's family and the witness agreed legal marriage was fixed for the next day so on 3 June, 2016 at 10.00am the applicants got legally married.
- [16] It was within 15 minutes after the signing of the marriage form both the applicants indicated that they didn't want each other and Rahul was blaming the witness that she had forced him to get married and at the same time Jignasha was blaming her father that he forced her to get married.
- [17] According to the witness she had told her son to get married since she was getting old.

- [18] In answer to court the witness said both the applicants were present when discussions about their marriage took place and both were aware of their marriage. According to her observations she saw both the applicants were not looking happy but she thought once they get legally married they will be okay. The witness was rushing to get her son married since she was sickly and wanted to see her son get married soon.
- [19] Jignasha the second applicant informed the court that she met Rahul for the first time in Fiji at the end of May, 2016 when he came to her house with his mother. The couple did not talk to each other, it was her father and Rahul's mother who had decided to fix a date for the legal marriage.
- [20] Jignasha knew about her marriage to Rahul since January, 2016 when Rahul's mother had come to Fiji. Jignasha was also able to recall in 2013 her father had told her about his discussions with Rahul's mother, at that time she did not react since she was not ready for marriage. In January, 2016 Jignasha was again told to get married to Rahul by her father but she refused. Her father suggested that she should get married since she was getting old. Jignasha did not take her father's word seriously because in 2013 when the marriage proposal was put forward it did not eventuate so she thought this time around it will be the same.
- [21] According to Jignasha her father continued to pressure her every day and every week to get married to Rahul. As a result of her father's pressure in March, 2016 Jignasha accepted her father's advice and decided to get married. When she was going to the Registrar's office she stated that she was tensed and felt pressured that somebody was pushing her into the marriage.
- [23] After about 15 minutes of signing the marriage form Jignasha decided she does not want this marriage and that she cannot stay with Rahul.
- [24] In answer to court Jignasha stated that she was present with Rahul throughout the discussions at her home before the legal marriage. She did not react since she was tensed also she did not tell Rahul or his mother that she was pressured to get married. According to Jignasha she had not talked to Rahul in person that day. Prior to this day they had communicated with each other over the phone and by text messages but not too often and according to her it was only *"hi" and "hello"*.
- [25] The fourth witness was Vinayak Bala Shankar Joshi the father of the second applicant who confirmed that his daughter Jignasha had an arranged marriage with Rahul as a result of his discussions with Rahul's

mother and Rahul in 2013 in New Zealand. In 2013 Jignasha was in India so when he arrived in India he relayed the outcome of the discussions to Jignasha who did not want to get married at that time.

- [26] In 2014 the witness became a Priest at the Radha Krishna Temple in Ba so the entire family came to live in Fiji from India. Since Jignasha was 24 years of age he thought it was proper for her to get married.
- [27] In February, 2016 Jignasha agreed to get married to Rahul so the witness got Jignasha and Rahul to speak to each other over the phone. Rahul and Jignasha talked to each other and both agreed to get married. The witness then requested Rahul, Rahul's sister, and his mother to come to Fiji so that Rahul and Jignasha could get legally married.
- [28] The witness informed Jignasha about the visit by Rahul and his family to Fiji and according to the witness Jignasha had agreed to marry Rahul. Thereafter both Rahul and Jignasha got legally married.
- [29] According to the witness at the time of the legal marriage the couple were "alright" it was after the legal marriage when the couple arrived home from Lautoka to Ba that Jignasha informed him that she did not want to proceed with the marriage and if she was forced she will commit suicide.
- [30] The witness stated that Jignasha had not stated her unwillingness prior to getting married and if she had indicated this before marriage he would not have got her married.
- [31] In answer to court the witness stated that it was his wish for Jignasha to get married since she was getting old.
- [32] The final witness was Kartik Joshi the brother of the second applicant who informed the court that he had accompanied his father to New Zealand and was present during the conversation his father had with Rahul's mother regarding Rahul and Jignasha. It was discussed that both would make a good couple but they had not met and spoken to each other. From India Jignasha and Rahul were talking to each other over the phone, according to the witness it was normal conversation nothing about the marriage. When Rahul's mother visited Fiji in 2016 she had the opportunity to talk to Jignasha.
- [33] According to the witness he spoke to Jignasha about her impending marriage to Rahul her reply was she did not feel "right" about it because she had not met Rahul, however she further mentioned "*if father has looked for a boy he must be okay*". When Rahul and his mother visited

his house before the legal marriage Rahul and Jignasha met and talked to each other thereafter Jignasha and Rahul got married.

- [33] This was the case of both the applicants. After the conclusion of the hearing counsel for both the applicants filed written submissions.

LAW

- [34] The ground for nullity advanced by both the applicants is that no real consent was given by them when they got legally married to each other on 3 June, 2016 since their consent was obtained by duress.

- [35] The above ground is stated in the first limb of section 32 (2) (d) (i) of the Family Law Act 2003. For completeness the law relating to nullity of marriage which is applicable to the application filed is as follows:

Section 32 (1) of the Family Law Act states:

“An application under this Act for an order of nullity of marriage must be based on the ground that the marriage is void.

(2) A marriage that takes place after the commencement of this Act is void if –

...

(d) the consent thereto of either of the parties is not a real consent because –

(i) It was obtained by duress ...”

- [36] Over the years case authorities have defined duress in accordance with the facts and circumstances of each case:

(a) In Hirani v Hirani (1982) 4 Fam. L. R. (Eng.) 232 as:

“The crucial question in these cases, particularly where a marriage is involved, is whether the threats, pressure, or whatever it is, is such as to destroy the reality of consent and over bears the will of the individual,”

(b) In the marriage of S (1980) 42 F.L.R 94 as:

“If one is caught in a psychological prison of family loyalty, parental concern, sibling responsibility, religious

commitment and a culture that demands filial obedience. If these matters operate and a party has no consenting will then there is duress”;

- (c) *In the marriage of Teves and Campomayor (1994) F.L.R 172 as:*

“Duress does not necessary need to involve a direct threat of physical violence as long as there is sufficient oppression from whatever source, acting upon a party to vitiate the reality of their consent. It must be duress at the time of the marriage ceremony and not duress at some time earlier unless the effect of this continues to overbear the will of a party to a marriage at the time of the ceremony itself.”

- [38] The above definitions of duress were taken into consideration by Justice Wati in *SSS v. PKT – Fiji Family High Court case no. 11/SUV/0330* which I accept as the correct position of the law in Fiji as well.

- [39] Section 26 (a) of the Family Law Act states:

“A court exercising jurisdiction under this Act must, in the exercise of that jurisdiction, have regard to –

“(a) the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life ...”

- [40] I am mindful that an application for an order of nullity is not to be granted lightly, the law recognises the need to preserve and protect the institution of marriage hence the law does not allow the court to grant a decree of nullity as a matter of discretion. If the facts establish that a marriage is void appropriate remedies must be granted.

- [41] The Family Court of Australia in *In the marriage of S (supra)* had this to say at page 104 about nullity of marriage:

“...Public policy requires that marriages should not be lightly set aside, and there is in some cases the strongest temptation to the parties more immediately interested to act in collusion in obtaining a dissolution of the marriage tie. These reasons necessitate great care and circumspection on

the part of the tribunal, but they in no way alter the principle or the grounds on which this, like any other contract, may be avoided.”

DETERMINATION

- [41] For clarity and completeness I will address each applicant separately in relation to the ground of nullity advanced.

FIRST APPLICANT

- [42] The first applicant Rahul lives in New Zealand with his mother he got married to the second applicant as a result of an arranged marriage initiated between his mother and Jignasha's father. In 2013 Jignasha's father visited New Zealand where Rahul's mother had put a proposal for Rahul's marriage to a girl from India. Jignasha's father responded that he had a daughter Jignasha and together they will make a good couple, however, no progress was made in regards to this subject at that time. In the meantime Jignasha and her family moved to Fiji from India.
- [43] In January, 2016 Rahul's mother came to Fiji and visited Jignasha and her family in Ba upon her return to New Zealand Rahul's mother told Rahul about Jignasha and for him to marry Jignasha.
- [44] Rahul did not agree but when his mother pressured him to marry then for her sake he agreed and together with his mother he came to Fiji.
- [45] Rahul was 24 years of age at the time he got legally married to Jignasha, prior to the legal marriage Jignasha and Rahul would talk to each other once or twice a week by phone although they were short conversations.
- [46] According to Rahul in all the decisions he takes he tries to keep his mother happy.
- [47] According to Rahul's mother when she went to New Zealand after having discussions with Jignasha's family and upon informing Rahul of the discussions that had taken place Rahul's reply was *“mummy if you want me to get married then I will get married.”*
- [48] From the evidence adduced I do not think that Rahul was under any pressure to marry Jignasha he did not elaborate about the “pressure” that was supposedly put on him by his mother.

- [49] In his evidence Rahul told the court that he went to meet Jignasha in India in 2013 and has known her from November, 2015. This suggests to me that Rahul was keen to know Jignasha and had met her in India where she was living. According to Rahul he agreed to marry for his mother's sake and in all the decisions he takes he tries to keep his mother happy.
- [50] Rahul's mother did not inform the court that she had pressured her son to get married hence there is no evidence before the court that she had forced or pressured Rahul to marry Jignasha. On the other hand Rahul's mother informed the court that Rahul had agreed to get married by saying words as such "*mummy if you want me to get married then I will get married.*"
- [51] The very fact that Rahul came willingly to Fiji with his mother specifically to marry Jignasha shows his willingness to participate in the marriage ceremony. It is unfortunate that there was a change of heart after the solemnization of the marriage had taken place.
- [52] I do not accept the evidence of the first applicant as reliable and credible that he was pressured by his mother to marry the second applicant. I am satisfied that Rahul was not under duress to marry the second applicant.

SECOND APPLICANT

- [53] The second applicant Jignasha informed the court that she agreed to get married since her father was putting pressure on her by saying every day and every week to get married to Rahul. It was in March, 2016 that she finally agreed. When going to the Registrar's office she was tensed and it felt like someone was pushing her to get married. According to Jignasha she met Rahul for the first time when he came to her house a day before the legal marriage. She stated that they did not talk in person but did talk over the phone and sent text messages only short communications which was not often.
- [54] I note that Jignasha's brother Kartik had informed the court that both Jignasha and Rahul had met and talked with each other at their house before legal marriage. I also note that Rahul in his evidence had stated that he met Jignasha in India in 2013 and has known her from November, 2015.
- [55] According to Jignasha's father her daughter agreed to get married in February, 2016 and both were talking to each other over the phone. It

was after Rahul and Jignasha had agreed to marry each other that Jignasha's father asked Rahul, his mother and sister to come to Fiji for the legal marriage. Jignasha's father also did not mention anything about putting any pressure on Jignasha to marry Rahul.

[57] I found Jignasha's father who is a Hindu Priest to be an honest and reliable witness as a concerned father he had thought of the very best for his daughter considering that Jignasha was 24 years of age at the time and to him it was proper age for her to get married. I do not accept that Jignasha's father had pressured Jignasha to marry Rahul. According to Jignasha's father if Jignasha would have told him about her intentions of not getting married to Rahul prior to getting married he would not have got them married. I do not have any reasons to doubt the sincerity of Jignasha's father who would not have gone against the wishes of his daughter.

[58] I have also directed my mind to see if Jignasha was caught in a psychological prison of family loyalty, parental pressure or a culture that demands filial obedience, unfortunately there was no evidence to suggest the above. From my observations of the second applicant I found her to be a person who knew what she was doing, she also appeared to me as a person of strong character who would not be easily swayed or forced into something against her will by anyone including her father. It was only after signing the marriage form she realised she did not want to proceed with the marriage and live with Rahul as his wife.

[59] I do not accept the evidence of the second applicant as reliable and credible that she was pressured by her father to marry the first applicant. I am satisfied that Jignasha was not under duress to marry the first applicant.

CONCLUSION

[60] Based on the evidence adduced I am not satisfied that either of the applicants were under duress to marry each other. From the evidence before the court both the applicants were matured adults who had met each other and agreed to get married. There is no evidence of any pressure, oppression or threat by either Rahul's mother or Jignasha's father on either Rahul or Jignasha. I also find that there was no continuing duress or duress at the time of the solemnization of the marriage.

[60] I have also directed my mind to see whether there was any mental oppression of both the applicants and in this regard I refer to the observations made by the Family Court of Australia in *In the marriage of S (supra)* where Watson J. at page 104 stated:

"...A sense of mental oppression can be generated by cause other than fear or terror. If there are circumstances which taken together lead to the conclusion that because of oppression a particular person has not exercised a voluntary consent to a marriage, that consent is vitiated by duress and is not a real consent."

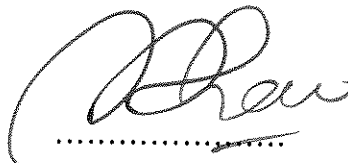
[61] I am satisfied that there are no circumstances prevailing in this case that will lead to the conclusion that either of the applicants have not been able to exercise his or her voluntary consent to the marriage due to mental oppression. It is obvious from the evidence that the applicants had given their real consent to marry each other but after the solemnisation of the marriage had a change of heart towards each other. The ground of duress has therefore not been made out since there was no duress to destroy the reality of consent given by both the applicants.

FINAL ORDERS

- (a) The application for an order of nullity of marriage is refused.
- (b) Parties to bear their own costs.



At Lautoka
7 February, 2017


.....
Sunil Sharma
JUDGE

Solicitors

M/S. Samuel K. Ram, Ba for both the Applicants.