

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH at JALPAIGURI
CIVIL APPELLATE JURISDICTION
(APPELLATE SIDE)**

FA/8/2025

**Smt. HAIMANTI KARJEE @ HAIMANTI ROY PRODHAN @
HAIMANTI KARJEE NEE ROY PRADHAN**

VS

Sri SOUGATA KARJEE

**Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Chaitali Chatterjee (Das)**

For the Appellant	: Dr. Arjun Chowdhury, Adv. Mr. Bikash Singha, Adv. Ms. Sunayana Parveen, Adv. Ms. Riya Agarwala, Adv. Mr. Manta Mondal, Adv.
For the Respondent	: Mr. Rajat Das, Adv. Ms. Susmita Dasgupta, Adv. Ms. Srijana Thapa, Adv.
For orders on	: 20.08.2026

Arijit Banerjee, J. :-

1. The suit of the husband (hereinafter referred to as 'Sougata'), under Section 12 of the Hindu Marriage Act, 1955, for annulment of his marriage

with the appellant herein (hereinafter referred to as 'Haimanti') being Matrimonial Suit No. 170 of 2015 has been decreed by the learned Additional District Judge, 3rd Court, Jalpaiguri, by a judgment and order dated February 12, 2025. Hence this appeal at the instance of the wife.

2. Sougata and Haimanti tied the matrimonial knot according to Hindu Rites and Customs on February 8, 2012.

3. On May 26, 2015, Sougata filed a suit for annulment of his marriage with Haimanti primarily on the ground that Haimanti was impotent and consequently, the marriage has not been consummated. A few paragraphs of the plaint may be noted: -

“8) That after the marriage, “Phool Sojja” or first nuptial night ceremony was observed at the petitioner's house at Siliguri. In this context it is significant to mention that no physical or emotional intimacy in any kind developed between the petitioner and the respondent owing to the cold attitude, non co-operation and refusal on the part of the respondent.

Rather the following morning to the utter shock of the petitioner and his family members that the respondent suddenly called up her parents over the phone complaining them of physical and mental torture inflicted upon her by the petitioner and his family members and sought immediate relief to handle the awkward situation “Jayanti Roy” the facilitator and relative of the

respondent was called upon and immediately seeing her the respondent blamed her expressing her annoyance stating, that the petitioner is lacked virility and how could she stay with such a person and since this was shamelessly alleged by the respondent in front of the guests present on that occasion, it was extremely shocking, humiliating, painful and unbearable for the petitioner. But in order to handle the situation wisely the petitioner along with his parents and Jayanti Roy took the respondent back to her father's house at Jalpaiguri.

13) That the physical intimacy between the petitioner and the respondent was never achieved owing to plain refusal on the part of respondent. Instead the respondent indulged herself in whispering conversations for hours together over the phone even in the dead night and on being asked about who she was speaking to she never gave a proper reply rather snapped off. This became traumatic for the petitioner.

16) That it is significant to mention here that the petitioner after the date of his marriage never got any clue of respondent's menstruating as expected as a normal biological phenomenon in a non pregnant woman or one who has not reached the menopause stage. On this unnatural biological phenomenon the petitioner questioned the respondent about it and insisted on consulting a

gynecologist but the respondent neither disclosed anything nor did she agree of consulting a gynecologist rather claimed herself to be perfectly healthy and normal and thus an uneventful dissatisfied and painful life dragged along between the petitioner and the respondent interspersed with quarrels and her frequent visits at her paternal house.

20) That it is submitted that as and when the petitioner tried for sexual intercourse with the respondent the petitioner found some abnormality in the private parts of the respondent and on being asked the respondent used to cry and blamed the petitioner that he was creating mental pressure upon the respondent and that amounted to mental torture and if the petitioner continued to ask her any question in this matter she would lodge a complaint against him and his family members and thereby rope them all in a criminal case and put them behind the bar.

22) That thereafter on 27th December 2014 the petitioner finally made the respondent agree to go for medical checkup at the clinic of Dr. Kabita Mantry (Mundra) a gynecologist at Siliguri and she mentioned her condition as "Mullerian agenesis", suggesting MRI of whole abdomen, Karyotyping order to determine the genotype and phenotype of the respondent and accordingly on 28/02/2015 the respondent underwent MRI at Tenovus Research and Diagnostic

Pvt. Ltd. Hakim Para, Siliguri under Dr. Mintu Saha M.D. and Mita Gupta as per medical prescription of Dr. Kabita Mantry (Mundra) and from the said MRI report it has been revealed that the most vital parts of a female body her Vagina and Uterus are absent in her body and both of the kidneys are fused and seen in midline pelvis region. They too suggested above observations were consistent with mullerian agenesis.

23) That on revealing of the said medical report the respondent became furious and threatened the petitioner that if he discloses the said report to anyone then she would definitely implicate the petitioner and his other family members in a false case and thereafter on 02/03/2015 the respondent went to her parental house after taking all her belongings and valuables and since then is residing therein and thereafter being scared by the attitude and behavior of the respondent the petitioner reported in writing the said matters to the Inspector in Charge, Siliguri Police Station vide G.D Entry No. 1221 dated 19/04/2015.”

4. Haimanti filed her written statement dealing with the allegations in the plaint. She pleaded that the suit was barred by limitation. As regards the paragraphs of the plaint extracted hereinabove, Haimanti dealt with the same in the following manner: -

“9. That Para 8 of the plaint is an attempt to blame your Respondent and not true and rather the contrary facts remain in the truth that after the marriage, “phool sajya” or the first nuptial night ceremony was observed at the petitioner's house at Siliguri, there was no voluntary attempt on the part of the petitioner for sexual intercourse, though your respondent urged for the cherished desire she bore in her mind since childhood and understanding of the realization of the meaning of “Phool sajya” night and through her emotional intimacy she tried her level best to aim her desire, but the petitioner expressed his willingness to move slowly on that part and expressed also the fact that he is inexperienced on that part and doesn't know how to act.

14. That para 13 of the plaint is false that to the facts that physical intimacy was common to the parties but sexual intercourse only held in limited period and though that may not occurred with full satisfaction and so cannot be termed that consummation held in between the parties.

16. That not true the fact that the petitioner stated his submission in an ambiguous form in para 16 that contrary true that the petitioner was /is well aware of the menstruating cycle of your respondent and the petitioner at the relevant times assisted in

house hold activities to respondent and also suggested for proper rest.

20. That again false facts accounted in para 20 of the plaint till to this date no criminal case held on the part of the respondent is the good conduct, gesture shown towards the petitioner because of the fact that the respondent still is obliged by the name of her husband.

22. That the MRI reports and the opinions of the doctor is discarded by your respondent and the manner of obtaining documents which not handed over to respondent and not shown even are not at all the documents of conclusive proof and cannot be trusted by any logical inference and those need to be handed over to your respondent at the earliest, so that proper action can be taken accordingly.

24. That the statement made in para 23 of the plaint is evident of the ill motive and evil design of the petitioner husband to lodge a diary unnecessary before the I.C. Siliguri Ps. as even after that till to this date of filing this written objection the petitioner has talking terms with your respondent and always it been stated by the petitioner to re unite with the order of the Ld. Court and so the mentioning date of 02/03/2015 in para no 23 that the petitioner has no kind of relationship with the respondent, is not all true and

falsely mentioned to establish the false ground upon the insisting part of the petitioner, as the petitioner himself is still giving assurance to your respondent for their restitution of conjugal rights.”

5. The learned Trial Court framed the issues as follows:-

- “1. is the suit maintainable in its present form and law?
2. Whether the marriage between petitioner and respondent was solemnized according to Hindu Marriage Act?
3. Whether there is any cause of action for the petitioner/husband to institute the prevent suit against respondent/wife?
4. Whether the marriage between petitioner and respondent was duly consummated?
5. Whether the respondent/wife suffers from impotency and so failed to consummate the marriage with the petitioner?
6. Whether the petitioner entitled to get a decree for annulment of marriage against the respondent within the meaning of S. 12 of Hindu Marriage Act?
7. To what other relief/reliefs, if any, is the petitioner is entitled to?”

6. Sougata's examination-in-chief was by way of affidavit evidence. He was duly cross-examined by Haimanti's Counsel. Sougata also examined the two doctors, viz., Dr. Kavita Mantry (P.W. 2) and Dr. Mintu Saha (P.W. 3), who had examined and carried out medical tests on Haimanti.

7. Haimanti's examination-in-chief was also by affidavit evidence. She was cross-examined by Sougata's Counsel.

8. The issue of limitation was decided by learned Trial Judge in favour of Sougata. The main issue of whether or not Haimanti is impotent and consequently the marriage has not been consummated, was decided against Haimanti. Relying on the evidence of P.W. 2 and P.W. 3, the learned Trial Judge held that indeed, Haimanti was impotent and the marriage could not have been consummated. Consequently, the learned Judge passed a judgment and decree annulling the marriage between Sougata and Haimanti on the ground that the marriage has not been consummated owing to Haimanti's impotence. Hence, this appeal at the instance of Haimanti.

9. We have heard learned Counsels for the parties at some length.

10. The main argument advanced by Dr. Chowdhury, learned Advocate representing Haimanti is that the learned Trial Court should not have accepted the evidence of the two doctors as sacrosanct. They were plaintiff's witnesses. The learned Judge should have allowed Haimanti to adduce independent medical evidence. In the alternative, the learned Judge should have directed an independent medical board to be constituted for examining Haimanti and returning a report on the alleged impotency of Haimanti.

11. Learned Counsel submitted that the other doctor whom Haimanti consulted, i.e., Dr. J. Bhattacharya refused to attend Court to depose as a witness in spite of earnest requests having made by Haimanti. At Haimanti's instance, learned Trial Court also issued a bailable warrant of arrest to secure the presence of Dr. J. Bhattacharya as a witness. Such order issuing warrant should not have been withdrawn by the learned Judge prior to execution of the warrant.

12. Learned Counsel also argued that it would appear from Sougata's deposition itself, that the marriage was consummated.

13. Learned Advocate representing Sougata supported the judgment and decree under appeal. He took us through the evidence on record. He argued that the medical evidence on record clearly demonstrates that Haimanti does not have uterus or vagina. She also has ectopic kidney i.e., the kidneys are not located in their original place. Consequently, Haimanti is incapable of having sexual intercourse and therefore is impotent.

14. We have given our anxious consideration to the rival contentions of the parties.

15. To start with, we notice that in paragraph 14 of the written statement Haimanti seems to have admitted that the marriage was not consummated.

16. P.W. 2 is a highly qualified gynecologist. She holds the degrees of MD (GYNAE & OBST), DND, MRCOG-I (London). Relevant portions of her deposition may be noticed as follows:-

“..... I have got one clinic in the name and style of Family Clinic Infertility Centre at Siliguri. The patient came with the complaint of stopping of menstruation for the last one year.Other than prescribed medicines, I prescribed the patient to undergo following tests..... The patient came to me further after undergoing tests as were prescribed by me. On the date of her first visit, I got her to undergo ultrasound test and obtained report immediately. the same was done in my chamber. On perusal of the report, it was detected by me that she was absent of uterus and ectopic kidney, i.e., it was not located in its original place.....I prescribed medicines for starting of periods time and again but to no consequence. Thereafter, I advised M.R.I. The patient never visited in company with her husband. The patient came with her husband on 27.12.2014 and I advised her to undergo same tests as before The patient undergo ultrasound test again on 27.12.2014 and same result came..... she was not cured of her menstruation problem. I advised her to undergo MRI test of whole abdomen. She came to me with report of MRI. On perusal of the report, I found absence of uterus. Ovaries were above of its exact position. Both kidneys were fused and seen in midline pelvis and there was absence of vagina. **With all these problems, a woman cannot conceive as I opined.** She faces difficulty in sexual relation due to small size of vagina but it depends on person to person.”

In her cross-examination, P.W. 2 stated *inter alia* as follows:-

“Whatever I have deposed is on basis of MRI report. Absence of vagina or small size of vagina are of same term....”

17. P.W. 3, a doctor having M.D. degree in Radiology proved the whole abdomen MRI report of Haimanti which was marked as Exhibit – 6. Certain portions of his examination-in-chief may be noticed:-

“.... The report bears my signature. ... It was opined by me that the patient did not have uterus and both the ovary are high up, both kidney was fused and were low line. I could not detect her vagina as it was absent. These are the seven MRI plates issued by our institution. The said MRI plates were in respect of patient Haimanti Karjee. The MRI plates are marked as mat Exhibit – 1 Series.”

18. There is nothing of significance in the cross-examination of P.W. 3.

19. We are consciously refraining from discussing the evidence of Sougata or Haimanti. While Sougata has run a case that Haimanti was frigid and incapable of having sexual relationship with him, Haimanti has denied the same and has contended that she had an extremely active sex life with Sougata. Their evidence would not be of much help in deciding the real issue, i.e., whether or not Haimanti is impotent and consequently her marriage with Sougata has not been consummated. This is essentially a medical issue and has to be decided on the basis of expert medical evidence.

20. What is clear from the evidence of P.W. 2 and P.W. 3 is that Haimanti does not have uterus nor vagina. It will therefore not be possible for Haimanti to have a normal sexual relationship with Sougata.

21. We may also note that in her cross-examination Haimanti admitted that she experienced menstrual bleeding only once when she was a student of college in the year 2007. She has also admitted in her cross-examination that she is 'unable to bear child in ordinary natural course.'

22. P.W. 2 and P.W. 3 cannot be said to be interested witnesses. They are experts in their respective fields. There is no reason to doubt the correctness of their diagnosis of Haimanti's physical problems. Constitution of a medical board at this stage would be of no use. It is also not demonstrated that any such request was made to the learned Trial Court on behalf of Haimanti. Haimanti's Counsel duly cross-examined P.W. 2 and P.W. 3. It is highly unlikely that the MRI report of Haimanti will change if a separate medical board is constituted.

23. In the case of ***Yuvraj Digvijay Sinhiji v. Yuvrani Pratap Kumari, (1969) 2 SCC 279***, the Hon'ble Supreme Court, while discussing Section 12(1)(a) of the Hindu Marriage Act, 1955, observed as follows:-

"A party is impotent if his or her mental or physical condition makes consummation of the marriage a practical impossibility. The condition must be one, according to the statute, which existed at the time of the marriage and continued to be so until the institution of the proceedings. In order to entitle the appellant to obtain a decree of nullity, as prayed for by

him, he will have to establish that his wife, the respondent, was impotent at the time of the marriage and continued to be so until the institution of the proceedings.”

24. In *Jagannath Muduli v. Nirupama Behera*, AIR 2009 Ori 59, a Division Bench of the Orissa High Court held that absence of vaginal canal would make the wife impotent within the meaning of Section 12(1)(a) of the Hindu Marriage Act, 1955 and the same would be a good ground for the husband to seek annulment of marriage.

25. It is an admitted position that Haimanti does not have uterus and as such will never be able to bear a child. However, there is a world of difference between not being able to conceive and being impotent. A lady may be unable to conceive for various reasons. However, she may well be enjoying a perfect conjugal life with her husband. It is the inability to have a normal sexual life that makes a lady impotent. In the present case, the fact that Haimanti will not be able to bear a child is not relevant. However, because of lack of vagina, she will never be able to have normal sexual intercourse, and, therefore, she must be held to be impotent. This has been clearly established by the evidence on record.

26. There is also no admission in the evidence of Sougata that he had full sexual intercourse with Haimanti and, therefore, the marriage was consummated. Learned Advocate for Haimanti sought to highlight a single sentence that Sougata said in his cross-examination, i.e., “I discharged my semen in her private parts then says no.” Even if the immediate retraction was

not there, the sentence would not necessarily mean that the couple had successful sexual intercourse. It is quite possible that Sougata ejaculated by way of self-stimulation and discharged semen externally on and not inside the private parts of Haimanti.

27. The operative portion of the learned Trial Judge's judgment and order reads as follows:-

“Both PW-2 and PW-3 are independent witnesses and expert in the field. I find from the evidence of both the witnesses that the respondent has no vagina along with other deformities which are not curable. Therefore, case of the petitioner stands on that ground as none of the doctors has opined that sexual relation may be build up with a lady having no vagina. Non having vagina of a woman amounts to impotency. It is the popular definition of marriage that marriage is legalization of sexual intercourse and procreation of children. In absence of vagina, no sexual intercourse may occur and in absence of ovary respondent cannot bear a child. Therefore, the very object of marriage is frustrated due to the shortfall of the respondent which, according to me, amounts to impotency of the respondent and as such, the petitioner is entitled to get a decree on that ground.

Hence, aforesaid issues are decided in favour of the petitioner.

C.F paid is correct.

Hence, it is

ORDERED

that the instant Matrimonial Suit No.170 of 2015 is allowed on contest but without cost.

The marriage between the petitioner Sougata Karjee and the respondent Haimanti Karjee nee Roy Pradhan solemnized on 08.02.2012 according to Hindu Rites and Ceremonies is annulled under Section 12(1)(a) of the Hindu Marriage Act by a decree of nullity with immediate effect.”

28. We see no apparent error or infirmity in the impugned judgment and order. It is unfortunate that Haimanti has physical deficiencies. We deem it unnecessary to go into the question of whether or not the same was concealed from Sougata and his family prior to marriage.

29. We also see no force in the arguments that since P.W. 2 and P.W. 3 were examined by the plaintiff, they would be deemed to be partisan towards the plaintiff. They are professional doctors who had examined Haimanti. They apprised the Court of the results of their examination. Haimanti did not examine any expert witness for contradicting the views of P.W. 2 and P.W. 3. We do not think that it is the Court’s duty to secure the presence of a doctor whom a party to the suit wishes to examine.

30. In the result, this appeal fails and is dismissed. There will be no order as to costs.

31. Urgent certified website copies of this ORDER, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(Chaitali Chatterjee (Das), J.)

(Arijit Banerjee, J.)