

1979 November 16

[A. LOIZOU, J.]

CHRYSTALLA HOUSSAIN (NEE DJORDJI),
Petitioner,

v.

MAKHDOOM NAZAR HOUSSAIN,
Respondent.

(Matrimonial Petition No. 3/79).

Matrimonial Causes—Nullity of marriage—Non-consummation of marriage—Law applicable—Burden of proof—Husband refusing to consummate marriage unless wife changed her religion—Wife’s refusal to change her religion cannot be held as putting it out of the husband’s power to request intercourse—Husband guilty of wilful refusal to consummate marriage. 5

On July 15, 1977, the petitioner, a Greek Cypriot and a member of the Greek Orthodox Church, got married to the respondent, a Pakistani national of the Muslim faith, at the register office of Kensington, London. Petitioner’s version, which was corroborated by a witness who knew the parties in London, was that the respondent insisted both before and after the marriage that she should change her religion and become a Muslim; that due to her refusal, the respondent refused to consummate their marriage and made it clear to her that so long as she remained a Christian Orthodox he would never consummate the marriage; and that she left London and returned to Cyprus where she continued residing until September, 1977, when she went to England, saw the respondent, who once more insisted that she should change her religion and persisted refusing to consummate the marriage. 10 15 20

In an undefended petition by the wife for nullity of marriage on the ground of non-consummation due to the wilful refusal of the husband:

Held, that a marriage is voidable at the suit of a spouse if it has not been consummated owing to the wilful refusal of the 25

5 other spouse to consummate it; that the change of religion was not in any way the subject of an agreement between the parties entered into before they went into the civil marriage in England; that the wife's refusal to change her religion cannot be held as putting it out of the husband's power to request intercourse; that the burden of proof in such a case is on the petitioner; that the petitioner has discharged this burden and it has been established to the satisfaction of this Court that the husband is guilty of wilful refusal to consummate the marriage; and that, accordingly, a decree of nullity will be granted to the wife

10 *HjiJovanni v. HjiJovanni* (1969) 1 C.L.R. 207 distinguished).

Decree nisi granted.

Cases referred to:

- 15 *Papa Alexandrou v. Andreou* (1963) 2 C.L.R. 488 at p. 491;
Harthan v. Harthan [1943] 2 All E.R. 639 at p. 642;
HjiJovanni v. HjiJovanni (1969) 1 C.L.R. 207;
Jodla v. Jodla (otherwise *Czarnomska*) [1960] 1 All E.R. 625.

Matrimonial Petition.

20 Petition by wife for nullity of marriage on the ground of the wilful refusal of the husband to consummate it.

L.N. Clerides with N. L. Clerides, for the petitioner.

Respondent absent, duly served.

Cur. adv. vult.

25 A. LOIZOU J. read the following judgment. This is a wife's undefended petition for nullity of marriage on the ground of non-consummation due to the wilful refusal of the husband, who, though duly served failed to enter an appearance or contest the proceedings.

30 The petitioner, aged 22 is a Greek Cypriot and a member of the Greek Orthodox Church. She was born at Trikomo and lived until the filing of this petition, with the exception of certain visits to London, to which I shall refer in due course, all her life in Cyprus.

35 In the summer of 1977, she went to London where she met the respondent, who is a Pakistani national of the Muslim faith. A friendship ensued between them and they were eventually married in England at the register office of Kensington, London,

on July 15, 1977. There was no religious ceremony in connection with the marriage.

The petitioner's version is that the respondent insisted both before and after their marriage that she should change her religion and become a Muslim. Due to her refusal, the respondent wilfully refused to consummate their marriage and made it clear to her that so long as she remained a Christian Orthodox he would never consummate the marriage. She left and returned to Cyprus where she continued residing until September 1977, when she went to England, saw the respondent, who once more insisted that she should change her religion and persisted refusing to consummate the marriage.

Towards the end of September 1977, she returned to Cyprus where she continued living with her parents. Her version is corroborated by the testimony of Costas HadjiPanai who knew the parties in London.

I have no reason to question the correctness of the petitioner's version in the circumstances. The Law on the point is clear. Its statement as set out in *Rayden on Divorce 8th Edition* p. 116 was cited with approval in the case of *Papa Alexandrou v. Andreou* (1963) 2 C.L.R. p. 488 at p. 491, it reads:

"A marriage is voidable at the suit of a spouse if it has not been consummated owing to the wilful refusal of the other spouse to consummate it. The consummation must be proposed to the refusing party with such tact, persuasion and encouragement as an ordinary spouse would use in such circumstances... Wilful refusal must have persisted up to the day of presentation of the petition."

The burden of proof in such a case is on the petitioner (*Harthan v. Harthan* [1948] 2 All E.R. p. 639 at p. 642). I am satisfied that the petitioner has discharged this burden of proof cast upon her and that it has been established to my satisfaction that the husband is guilty of wilful refusal to consummate the marriage. The change of a religion by the petitioner—wife was not in any way the subject of an agreement between them entered into before the parties went through the civil marriage in England. Her refusal to change her religion cannot be held as putting it out of the husband's power to request intercourse.

In this respect the case of *HjiJovanni v. HjiJovanni* (1969) 1 C.L.R. p. 207 in which reference is also made to the case of *Jodla v. Jodla (otherwise Czarnomska)* [1960] 1 All E.R. 625, is distinguishable.

- 5 For all the above reasons I am satisfied that the respondent husband is guilty of a wilful refusal to consummate the marriage and I grant a decree of nullity to the wife on the ground of such refusal, with costs in her favour.

Decree nisi and order for costs as above.

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Decree nisi with costs.