

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Aryak Dutt

FAT No. 119 of 2026

With

CAN 1 of 2026

With

CRA (SB) 55 of 2026

With

CRAN 1 of 2026

Subham Roy Choudhury

Vs.

Sreejoyee Chakraborty

For the Appellants : Mr. Ajoy Roy Chowdhury, Adv.
Ms. Moumita Das, Adv.

For the Respondents : Mr. Sabyasachi Mukherjee, Adv.
Ms. Saheli Mukherjee, Adv.
Mr. Ranabeer Halder, Adv.
Ms. Debjani Chakraborty, Adv.

Hearing Concluded On : 14.09.2026

Judgment Delivered On : 22.09.2026

Aryak Dutt, J.:

1. This appeal is directed against the judgment and decree dated 24th December, 2025, passed by the learned Additional District Judge, 1st Court, Alipore, in Matrimonial being Suit No. 42 of 2016 [R-1343 of 2016], by which the appellant's suit for a decree of nullity under Section 25(iii) of the Special Marriage Act, 1954, was dismissed on contest, without any order as to costs.

2. The parties were married on 22nd February, 2016. The marriage was solemnised socially according to hindu rites and customs and was registered on the same day under the Special Marriage Act, 1954. The appellant sought annulment on the ground that his consent to the marriage had been obtained by fraud, in that the respondent and her family had concealed her chronic medical condition, namely Idiopathic Thrombocytopenic Purpura ("ITP") post-splenectomy, from which she is said to have been suffering since 2007.

3. The case of the appellant, was that he was employed in the United States of America and returned to India on 14th February, 2016, eight days before the date fixed for the marriage;

that the negotiations were conducted by the respective parents of both the parties. The respondent had been suffering from a chronic relapsing condition of ITP post-splenectomy since 2007. It was alleged that this was deliberately suppressed by the respondent and her family during the negotiations. The appellant learnt about it for the first time on 7th March, 2016, on a visit to hospital. Allegedly his consent for the marriage had thereby been vitiated. He relied upon certain WhatsApp messages for alleged admissions of concealment, and upon certain medical prescriptions and treatment papers said to establish the gravity of the condition.

4. The respondent denied concealment altogether. Her case was that the marriage was negotiated upon full disclosure. Matters of education and health were discussed between the two families. Her father, conscious of the importance of transparency therefore has gathered her entire medical file, including the post-splenectomy prescriptions and blood reports and despatched it to the appellant's father through DTDC courier on 29th January, 2016, well before the appellant returned from the United States. Receipt of such medical report was not denied by the appellant. She never regarded her condition as marriage-defeating. Her

condition after splenectomy had been stable and manageable for years and did not interfere with her work, travel or daily life. The allegations of concealment were an afterthought, manufactured after the marriage ran into difficulty within the first week owing to demands for money and ornaments.

5. The respondent further pleaded that the appellant had withheld the single most important witness in the case, namely his own father, who alone could have confirmed or denied receipt of the medical file.

6. Five issues were framed, relating to maintainability, cause of action, consummation of the marriage, the entitlement of the appellant to a decree of nullity, and other reliefs.

7. On the substantive issue the learned Judge found that no concealment had been proved and no fraudulent intent had been shown. The learned Judge drew an adverse inference under Section 114, Illustration (g) of the Indian Evidence Act, 1872, from the non-examination of the appellant's father and held the WhatsApp messages were inadmissible for want of a certificate under Section 65B of that Act. Learned Judge further held that the appellant, having examined no doctor and proved no medical

document, had failed to establish that the respondent's condition was grave or marriage-defeating. The suit was accordingly dismissed.

8. Each side examined one witness and one witness only at the trial. The appellant examined himself. The respondent examined herself as D.W.1, her evidence-in-chief being tendered on affidavit under Order XVIII Rule 4 of the Code of Civil Procedure, 1908, and she was cross-examined on 4th March, 2025 and was further cross-examined on 24th June, 2025. She stated in terms that nobody would adduce evidence in her favour save herself.

9. In her affidavit-in-chief the respondent deposed that the marriage was solemnised upon mutual negotiation and discussion between the two families "*on various matters including education, health condition etc.*". The appellant and his parents were accordingly "well aware" of her education and health. Her father handed over her medical file to the appellant's father and also sent it by DTDC courier on 29th January, 2016 under Consignment No. V27316871, the file containing all the post-

splenectomy prescriptions and blood reports up to the date of the negotiation.

10. The respondent has produced the carbon copy of the receipt dated 29th January, 2016 received by her from her father.

11. In cross-examination the respondent admitted that she had been under the treatment and supervision of Dr. Soumya Bhattacharjee since 2007 until 2013, and that she had been admitted thrice at Apollo Hospital for treatment of her ailments prior to her marriage. She has also stated that she was told at the time of the negotiation of the marriage that the appellant was living in the U.S.A. and she used to converse with him over WhatsApp.

12. As to the events following the marriage, her evidence was that she stayed in the matrimonial home for about nine or ten days whereafter she fell ill under stress and pressure and was admitted to the hospital at midnight on 3rd March, 2016 and was discharged on 9th March, 2016. No member of the matrimonial family came to the hospital or bore the cost of her treatment, in consequence of which she went to her parents' house upon discharge. The appellant left for the United States thereafter.

13. The appellant's father was not examined. The respondent's father, who is said to have despatched the consignment, has since died.

14. Learned counsel for the appellant submitted that the learned Judge had misdirected himself on the evidence. It was urged that the respondent's own admissions in cross-examination that she was under continuous treatment from 2007 to 2013 and had thrice been hospitalised before the marriage established a serious and long-standing condition. The findings on disclosures therefore rests upon no evidence at all.

15. Principal reliance was placed upon the judgment of a Division Bench of this Court in the case of ***Rita Dey (Saha) Vs. Ashit Kumar Saha***, being the ***F.A. No. 151 of 2013***, decided on ***4th April, 2016***, in which a decree annulling a marriage under Section 12(1)(c) of the Hindu Marriage Act, 1955, for suppression of the wife's carcinoma was affirmed. It was submitted that the case is on all fours with the present one; that this Court there refused to accept the contention that the medical document could not be relied upon because its author had not been

examined; and that concealment of a grave illness during marriage negotiations amounts to fraud vitiating consent.

16. Learned counsel for the respondent supported the decree. It was submitted that the burden of proving fraud lay upon the appellant throughout and was never discharged; that the appellant's own plaint admitted that health was discussed during the negotiations, an admission which he omitted from his affidavit-in-chief and which he conceded in cross-examination as well. His father, the principal negotiator and the person to whom the file is said to have been sent, was deliberately withheld and that his electronic evidence was inadmissible. It was submitted that ***Rita Dey (Saha) (supra)*** was decided upon wholly different facts and upon a differently worded statute.

17. Section 12(1)(c) of the Hindu Marriage Act, 1955, renders a marriage voidable where the consent of the petitioner was obtained "by force or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent". Section 25(iii) of the Special Marriage Act, 1954 is differently framed. It provides that a marriage solemnised

under the Act shall be voidable and may be annulled by a decree of nullity if —

“(iii) the consent of either party to the marriage was obtained by coercion or fraud, as defined in the Indian Contract Act, 1872 (IX of 1872).”

18. The legislature has thus incorporated into the Special Marriage Act, by reference, the definition of fraud contained in Section 17 of the Indian Contract Act, 1872. That definition is materially broader than the language of the Hindu Marriage Act. So far as is presently relevant, “fraud” means and includes “the active concealment of a fact by one having knowledge or belief of the fact”, or “any other act fitted to deceive”, committed by a party to the contract with intent to deceive another party thereto and to induce him to enter into the contract.

19. Under the Special Marriage Act a petitioner does not establish fraud merely by showing that a material fact was not mentioned. He must establish active concealment, a positive act of suppression or, alternatively, silence in circumstances giving rise to a duty to speak.

20. The party complaining had the means of discovering the truth with ordinary diligence, the marriage is not voidable under Section 25(iii) even if the silence would otherwise have been fraudulent within Section 17.

21. To these statutory requirements must be added two well-settled principles of law. The burden of proving fraud lies squarely upon the party who alleges it. A petitioner in a suit for nullity must succeed upon the strength of his own case and not upon the weakness of the defence. A decree of nullity is not an alternative route to divorce. The ground must be strictly construed and sparingly applied, and fraud, carrying as it does an imputation of deliberate deceit, requires clear and cogent proof and cannot be inferred lightly.

22. The respondent was under no obligation to prove disclosure. The burden of proving concealment lay upon the appellant, and it lay upon him throughout. A failure by the respondent to establish her positive case of disclosure would leave the appellant exactly where he began, namely under an obligation to prove, by clear and cogent evidence, that a material fact was actively concealed from him with intent to deceive.

23. The appellant's own pleading admits that health was among the matters discussed between the two families during the negotiations. An admission in the pleading of a party is the best evidence against him and requires no proof. This averment was conspicuously omitted from the appellant's affidavit-in-chief, and that when questioned in cross-examination he conceded that he had not included it in his evidence. A case of active concealment cannot rest upon a pleading which itself records that the subject said to have been concealed was discussed.

24. It is the respondent's unchallenged evidence he met her only once before the marriage, on 16th February, 2016. On his own case, therefore, whatever was disclosed or withheld was disclosed to or withheld from his family, and principally his father. That circumstance makes the next omission decisive.

25. The appellant did not examine his father. His father was the principal negotiator, he was the person to whom the medical file is said to have been sent, he was the only person who could have deposed, one way or the other, as to what was disclosed during the negotiations and as to whether the consignment was received by him. Where a party withholds the

best evidence available to him upon the very fact in issue, the Court is entitled, under Section 114, Illustration (g) of the Evidence Act, 1872, to presume that the evidence, if produced, would have been unfavourable to him.

26. The WhatsApp messages upon which the appellant relied as containing admission were inadmissible in evidence. The appellant moreover conceded in cross-examination that he had taken screenshots, mailed them to himself, saved them under altered file names and printed them. A history of handling which would, quite apart from admissibility, have gone to weight. Moreover, the entire WhatsApp chat between the parties is required to be considered. If it is so considered, the portions which the appellant had highlighted at the hearing are emotional outburst of a newly married women finding her marriage crumbling due to no fault of her or her family. The same neither establishes the charge of fraud nor entitles the appellant to any relief in the suit.

27. Even if it is assumed that the respondent and her family said nothing at all about her medical history, the case would remain one of silence, not of active concealment. The

appellant returned to India eight days before his wedding. He asked nothing. He made no inquiry of the respondent, none of her family, and not even from his own father who had conducted the negotiations. He sought no medical information of any kind.

28. The appellant led no evidence on the medical conditions of the respondent. He examined no doctor. He proved no medical document; the prescriptions and treatment papers he produced were not proved by their authors or by any person competent to speak to them. He called no expert to depose that ITP, or ITP post-splenectomy, is a condition which impedes cohabitation, fertility, or the performance of marital obligations, or that it renders a marriage unsafe or unworkable.

29. The appellant relied strongly upon the respondent's admissions in cross-examination, that she was under treatment from 2007 until the middle of 2013 and had been admitted to hospital thrice before the marriage. Those admissions establish the existence of a medical history. They do not establish that the condition was material in the sense explained above; still less do they establish that it was concealed. Indeed, they are entirely consistent with the existence of precisely the file of prescriptions

and blood reports which the respondent says was furnished to the appellant's family.

30. As to the relapse of the respondent's medical condition around March, 2016, is due to the stress and anxiety she experienced in the matrimonial home. The appellant produced nothing to rebut her account.

31. In the case of ***Rita Dey (Saha) Vs. Ashit Kumar Saha***, being the ***F.A. No. 151 of 2013***, decided on ***4th April, 2016***, a Division Bench of this Court has dismissed a wife's appeal and affirmed a decree passed by the learned Additional District Judge, 1st Court, Barasat, annulling her marriage under Section 12(1)(c) of the Hindu Marriage Act, 1955. The husband's case there was that his wife had suppressed, during the negotiation of the marriage, that she was suffering from carcinoma of the breast. The Bench held that the wife had known of her condition, that she had failed to prove disclosure, and that the suppression amounted to fraud within Section 12(1)(c) of the Act.

32. We have given that decision our respectful and anxious consideration. In our judgment it does not govern the present case.

33. The diseases in ***Rita Dey (Saha) (supra)*** and the present case are not comparable. In ***Rita Dey (Saha) (supra)*** the condition was “high grade infiltrating duct carcinoma”, a malignancy requiring immediate surgical intervention, of a gravity apparent upon the face of an admitted report. The present case concerns ITP post-splenectomy, upon whose nature, severity and marital implications not one word of medical evidence was led.

34. Judgement of ***Rita Dey (Saha) (supra)*** was an affirmance. The Bench was reviewing a decree of the trial court, found that its judgment did not suffer from any illegality, and declined to interfere.

35. The findings which sustain the decree in the present case are summarised as firstly, the admission in the appellant’s own pleading and its unexplained omission from his evidence, secondly, the withholding of his father as witness who was a key, thirdly, the inadmissibility of the electronic material, fourthly, the

entire absence of medical or expert evidence, and Lastly, his own failure to make any inquiry before the marriage, rest upon the pleadings, upon admissions in cross-examination and upon the state of the record, and not upon the impression which either witness made upon the Judge. A decree which is sustainable upon grounds independent of an inadmissible consideration is not vitiated by the presence of that consideration.

36. We find that, the alleged fraud is said to have been discovered around the first week of March, 2016 and the suit was instituted within the same year. The appellant had full knowledge of the medical condition of the respondent prior to marriage. In evidence-in-chief, the respondent had categorically stated that her medical condition was made known by her family to the family of the appellant prior to the marriage. Although, the appellant had cross-examined the respondent on two days, no question and not even a suggestion was put to her during cross-examination. The assertion of the respondent both in the written statement as also in the evidence-in-chief on such score went uncontested. Simpliciter on such ground alone, appellant cannot succeed.

37. The appellant failed to prove, that the respondent was suffering from a condition which was material in the objective sense, she or her family actively concealed it, or kept silence in circumstances importing a duty to speak. They did so with intent to deceive him and to induce the marriage and his consent was in fact caused thereby. He admitted in his plaint that health was discussed. He omitted that admission from his evidence and could not explain the omission. He withheld his father as witness who could have resolved the matter. He proved no medical document and examined no doctor. His electronic evidence was inadmissible. And he made no inquiry of any kind before the marriage.

38. CRA (SB) 55 of 2026 is an appeal under Section 341 of CrPC, 1973 (Section 380 of BNSS, 2023) filed by the appellant for setting aside the impugned order dated 24th December 2025 passed by the Learned 1st Additional District Judge at Alipore in perjury petition Misc case no. 519 of 2025 of the appellant under Section 340 of the Code of Criminal Procedure, 1973, which is Section 379 of BNSS 2023 read with Section 209 of IPC (246 of BNS), arising out of given evidence in witness box by the respondent/wife.

39. The appellant had invoked the jurisdiction of the court under Section 340 of the Code of Criminal Procedure alleging that the respondent/wife had given false evidence before the court and has thereby committed an act of perjury. The learned judge rejected such application of the appellant for want of grounds to invoke this exceptional jurisdiction.

40. Section 340 of CrPC is an exceptional discretionary power to be invoked only when expedient in the interest of justice, not routinely whenever false statements are alleged. The court noted that mere inconsistency, denial of allegation or finding against a party do not automatically amount to perjury under Section 191/193 of IPC. The appellant failed to point out any specific statements on oath given by the respondent which was found false by a competent court. We observed that Section 340 CrPC cannot be used to exact vengeance or settle personal grievances in matrimonial disputes as in the present case.

41. The entire foundation on which the appellant made out its case in the 340 application, is on the alleged suppression of the respondent's medical condition at the time of marriage. The said disputed factual assertion were matters directly in issue in

the matrimonial proceedings. To attract section 340 of the CrPC the court must form a prima facie opinion that the statement complained of is not only false, but made knowingly and with a deliberate object of misleading the court and that such falsehood had a direct and substantial impact on the judicial decision making process, which is not so in the instant case. We have held that the respondent/wife is not guilty of suppression.

42. Under Such circumstances, we do not intent to interfere with the order impugned no.3 dated December 24 of 2025, in CRA (SB) 55 of 2026. All connected pending applications are disposed of.

(a) The appeal being **F.A.T. No. 119 of 2026** is **dismissed.** All connected applications are **disposed of.**

(b) The judgment and decree dated 24th December, 2025, passed by the learned Additional District Judge, 1st Court, Alipore, in Matrimonial Suit No. 42 of 2016 [R-1343 of 2016], dismissing the suit on contest, is affirmed.

(c) The appellant shall pay to the respondent the costs of this appeal, assessed at Rs. 1,00,000/- (one lakh) within four weeks from the date.

(ARYAK DUTT, J.)

43. I Agree.

(DEBANGSU BASAK, J.)