

NS v MI (2006)

(2007) 1 FLR 444; [2006] EWHC 1646 (Fam)

05/07/2006

Barristers

Teertha Gupta KC

Court

Family Division

Summary

A marriage was voidable on the ground of duress under the Matrimonial Causes Act 1973 s.12(c) as the wife had been forced into it. A decree of nullity was granted.

Facts

The petitioner wife (N) sought a decree of nullity on the basis that her marriage was voidable under the Matrimonial Causes Act 1973 s.12 as she had been forced into it. When N was 16 years old, her parents had taken her from the United Kingdom, where she had been born and brought up, to Pakistan purportedly for a holiday. While she was there, she realised the real purpose for her visit was to marry her cousin. N begged the respondent husband (M) not to marry her and to let her return to the UK, but he refused. N's family told her the only way she would be returning to the UK would be if she married M, and her parents threatened to kill themselves if she did not marry him. N's passport had been kept by her mother during her time in Pakistan and was only returned to her upon her return to the UK. The marriage went ahead, but was not consummated, and N returned to the UK five months later. N served a petition upon M. After initially saying that he intended to defend the petition, he subsequently said he would not.

Held

HELD: N's evidence was accepted, she had established her case and a decree nisi of nullity was granted on the ground of duress. N had been lured to go to Pakistan on a false pretence, and had been subjected to continued emotional pressure and moral blackmail. N's will had been overborne by duress, *Hirani v Hirani* (1983) 4 FLR 232 CA (Civ Div) applied. Forced marriages were utterly unacceptable and intolerable and the court had to use all its powers to prevent them, *K, Re* (2005) EWHC 2956 (Fam), (2007) 1 FLR 399 considered. While the source of the fear and the agent of the duress would generally be the other party to the marriage, that was not necessarily so, *Szechter v Szechter* (1971) P 286 PDAD considered. There were many ways in which duress or coercion might be inflicted such that one person's interests were overborne, and one had to have regard to the relationship between the parties, *SA (Vulnerable Adult with Capacity: Marriage), Re* (2005) EWHC 2942 (Fam), (2006) 1 FLR 867 considered. The test was a subjective, not an objective, one, and, while the standard of proof was the civil standard, the more serious the allegation the more cogent the evidence required to overcome the unlikelihood of what was alleged and to prove it. The court had to be careful to ensure, particularly where a nullity suit was

undefended, that a proper case was being put forward and not one contrived to enable a spouse to escape from a perfectly lawful marriage that had turned out to be irksome. The court had to be alert to the possibility of forced marriage, but equally had to be careful not merely to distinguish between arranged marriage and forced marriage but also to guard against the risk of stereotyping. While the Family Proceedings Rules 1991 r.2.28 provided that the hearing of a nullity suit was to be in open court, the court would, if given advance notice and if the circumstances were appropriate, do what it could to afford a petitioner appropriate protection.

Petition granted

Permission

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