

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kaur v. Jhamb*,
2019 BCSC 67

Date: 20190111
Docket: E056294
Registry: New Westminster

Between:

Pardeep Kaur

Claimant

And

Harpreet Singh Jhamb

Respondent

Before: The Honourable Mr. Justice G.C. Weatherill

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

K.S. Taunk

Respondent:

No appearance at this hearing

Place and Date of Hearing:

New Westminster, B.C.
January 11, 2019

Place and Date of Judgment:

New Westminster, B.C.
January 11, 2019

[1] **THE COURT:** This is an application by the claimant for an order annulling her purported marriage to the respondent. The uncontroverted evidence presented at the hearing was as follows.

[2] On August 1, 2018, the claimant commenced full-time employment as a hairdresser with a company called “BPL” (the “company”). The company is owned and operated by a man named B.S.S.

[3] Shortly after her employment began, B.S.S. suggested to the claimant that she marry one of his relatives who was residing in India and who B.S.S. subsequently sponsored to immigrate to Canada as a permanent resident (the “respondent”). B.S.S. told the claimant that her employment with the company would be secure only if she accepted this suggestion.

[4] The claimant’s evidence is that the suggestion caused her stress and she asked B.S.S. for one day to think about the proposal, as she was neither willing nor ready for marriage.

[5] The following day, the claimant agreed to marry the respondent under duress, as she did not want to lose her job.

[6] On August 20, 2018, there was a civil marriage ceremony attended by the claimant, the respondent, and a few of B.S.S.’s friends and family. Immediately after the ceremony, the claimant went home alone. She has not seen the respondent since. The marriage was not consummated.

[7] The parties belong to the Sikh religion and are Punjabi by ethnicity. According to the Sikh religion, in addition to a civil marriage ceremony, it is essential that there be a religious ceremony in front of the holy book, Shri Guru Granth Sahib, prior to cohabitation and/or consummation of the marriage. No such religious ceremony took place.

[8] The claimant was fired from her employment with the company shortly after the civil ceremony. She believes she was fired because she did not go through with the religious ceremony.

[9] The test for duress was described in *Stott v. Merit Investment Corp.* (1988), 63 O.R. (2d) 545 (C.A.) at 561:

The term “economic duress” as used in recent cases, particularly in England, is no more than a recognition that in our modern life the individual is subject to societal pressures which can be every bit as effective, if improperly used, as those flowing from threats of physical abuse. It is an expansion in kind but not class of practices that the law already recognizes as unacceptable such as those resulting from undue influence or from persons in authority. But not all pressure, economic or otherwise, is recognized as constituting duress. It must be a pressure which the law does not regard as legitimate and it must be applied to such a degree as to amount to “a coercion of the will”, to use an expression found in English authorities, or it must place the party to whom the pressure is directed in a position where he has no “realistic alternative” but to submit to it, to adopt the suggestion of Professor Waddams (S.M. Waddams, *The Law of Contract*, 2nd ed. (1984), at p. 376 et seq.). Duress has the effect of vitiating consent and an agreement obtained through duress is voidable at the instance of the party subjected to the duress unless by another agreement or through conduct, either express or implied, he affirms the impugned contract at a time when he is no longer the victim of the duress.

[10] The evidence before me is overwhelming that the civil marriage ceremony the parties participated in on August 21, 2018 was a sham and was entered into solely for immigration purposes. I am satisfied that the claimant did not enter into the agreement to participate in this sham of her own free will, but did so because of the threat of losing her job. I find that she was coerced into marrying the respondent and participated in the civil ceremony under duress.

[11] The claimant’s application for an order that her marriage to the respondent is a nullity is granted.

“G.C. Weatherill J.”