

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL MISCELLANEOUS APPEAL No.28 of 2014

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JUDGMENT : (per Hon'ble Dr. Justice B. Siva Sankara Rao)

Aggrieved by the order and decree dated 07.08.2013 passed by the Additional Senior Civil Judge, Narasaraopet, Guntur District, in H.M.O.P.No.106 of 2011 filed by Smt. Grandhi Poorna Seetha Manoja under Section 12 of the Hindu Marriage Act, 1955 (for brevity "the H.M. Act") to declare her marriage performed on 15.08.2008 at Srisailam with the respondent therein-cum-appellant herein, by name Shaik Mohammad Rafi, as null and void, since allowed, the appellant herein maintained the present appeal under Section 28 of the H.M. Act.

2. The contentions in the grounds of appeal are that, the impugned order is contrary to law, the learned trial Judge failed to consider the very maintainability of the claim under Section 12 of the H.M. Act, that too for having not been filed petition within one year from the date of the marriage on the ground of the alleged force and for having lived with him and lead marital life subsequent to the undisputed marriage performed on 15.08.2008 till 05.09.2009, when she was taken from the house of the appellant and also for the reason that she was born on 25.08.1991 as per her SSC Certificate and the claim that she is a minor to annul the marriage thereby also is untenable, apart from no alleged force much less against her will, further without any police report, if at all there is any truth in between either of her or by her father and that falsifies the entire pleading in

support of the claim, that the trial Court failed to appreciate all these facts and circumstances and the oral and documentary evidence in reference thereto, in particular, for the petition allegations of fraud or force or threat or coercion, there is no material but for the evidence of P.Ws.1 and 2, that the main focus of the evidence of P.Ws.1 and 2 is on money and properties of them and to get rid of the appellant on one or the other technical grounds, that without even obtaining divorce from the appellant, the respondent again in marrying one Kanram Ramu @ Sitaramudu shows the character of her and her father, that the trial Court also failed to see that it is at the instance of the petitioner and her parents, he was converted from his Muslim religious community to Hindu religion in the presence and consent of elders of both sides and by given him in adoption to one Chaluvadi Venkata Subba Rao and Kameswari and through them in performing the marriage with the respondent as per Hindu rites and customs, which all establish the defence of the appellant before the trial Court, also from his evidence as R.W.1 with reference to Exs.R.1 to R.8 and that all belies the claim of his wife and her evidence as P.W.1 and of her father P.W.2, and Exs.P.1 to P.23, that the trial Court ought to have seen that P.W.1 deposed before Additional Munsif Magistrate Court, Chilakaluripeta, in C.C.No.342 of 2009 of the appellant/husband never harassed her during their one year marital life together in the same roof willingly and thus, the impugned order of the trial Court declaring the marriage as null and void is nothing but on imaginary and baseless finding without proper appreciation of the version of the petitioner/wife proving to be untrue and ingenuine and outcome of wrong conclusions and findings and by not adverting to the requirement of finding of no fraud and no coercion and hence to set aside the same by dismissing the claim in H.M.O.P.No.106 of 2011 of the trial Court.

3. It is the contention of the learned counsel for appellant/husband in support of the above, that the marriage was undisputedly performed on 15.08.2008 and the respondent/wife was taken from the company of the appellant/husband on 05.09.2009, till

then they lived together happily after his conversion to Hindu religion and was given in adoption to one Hindu Vysya couple viz., Chaluvadi Venkata Subba Rao and Kameswari and the petition was filed on 15.07.2010, later numbered as H.M.O.P.No.106 of 2011 and by then, she was aged about 17 years and from 05.09.2009 when the force ceased, for nothing to continue after she was taken out from his company, if at all to allege anything happened earlier, there is no explanation for nearly ten months after 05.09.2009 till filing of petition on 15.07.2010 for annulment of marriage and the cause of action is also as vague as anything in the claim and that, in fact, the petitioner and respondent prior to the marriage performed on 15.08.2008, though of different religions, they fell in love and after agreed to marry, he was converted and given in adoption and the marriage under Hindu Law was performed supra at Srisailam temple and even the petition averments under Section 12 of the H.M. Act, at para-3, no way shows the consent of her or her parents obtained by force or fraud, much less as to any material fact or circumstance concerning him or her and the allegation of any fraud by him much less to the alleged idea to knock away her property or of her parents; same is even baseless for the fact that, her parents obtained documents from her before the date of marriage and it is only conceived for the petition purpose as if the appellant and his brother boasted about their financial status of possessing of properties in and around Chilakaluripeta and at Chennai, for nothing to say that they did not enquire and he did not possess, and so far as his qualification and job, he worked and in subsequent liquidation or shifting of any entity where he worked that is not a ground to say that he never worked, much less not possessed any qualification, and the so called Birth Certificate dated 28.11.1991 of the petitioner obtained from Chilakaluripeta Municipality is ingenuine, but for her SSC age proof of 25.08.1991 that is correct, that the alleged threats with dire consequences in performing the marriage of the appellant with the petitioner/wife are untrue and conceived only for the purpose of petition claim, with no whisper had there been any truth much less by any complaint to police and thereby the documentary evidence,

placed reliance under Exs.P.1 to P.23, no way shows that there is any fraud played by the appellant much less to give cause of action therefrom to seek for annulment, apart from no force, as referred to supra, and sought for allowing the appeal, as prayed for.

4. Whereas it is the contention of the learned counsel for appeal respondent/wife, who was no other than the petitioner before the trial Court, that the entire petition averments must be construed as a whole even for the existence of cause of action to support the claim, that in cause of action para, though it is required to state the material facts, that is not the be all and end all, as per the settled expressions for any attempt by the appellant '*to make a mountain out of the moul hill*', that she was a minor at the time of marriage as can be seen from the record and there was no conversion of the appellant herein (respondent before the trial Court) from Muslim religion to Hindu religion much less to say the marriage was validly performed, for nothing admitted, but for the so called ceremony of marriage, that too under fraud and force, that the petitioner/wife since minor, her parents were subjected to threat in cause performing the marriage by him under the show, through his relatives and after the alleged ceremony, taken away and not allowed her to come out all through by confining her till 05.09.2009; that too, it is on the complaint to police, the police could bring out the petitioner/wife from his wrongful confinement on 05.09.2009 as pleaded in the petition and it is therefrom on enquiry, after her coming out from the shock and also when consulted through Advocate the various Firms where he claims worked, the true colours of him had came to light of his no qualification and never worked and those are fake documents to make believe, which is nothing but fraud and, in particular, Ex.P.6 r/w. Exs.P.7 and P.12 itself show that it is impossible for him to work in two places, one at Hyderabad and another at Pune, that too during the same period, which he could not explain, that is nothing but a grave fraud that he perpetrated to make believe as if he is a qualified and wealthy and in good job, in introducing through his brother to make believe the minor girl and with threat and force enticed practically and the evidence regarding force

is covered by pleadings at page-2 with reference to the evidence of P.W.1 and also the cross-examination of P.W.2 and the complaint of P.W.2 under Ex.P.1 dated 3.2.2010, apart from Ex.P.19 copy of F.I.R. in Crime No.240 of 2009 and also the force, followed by fraud from the petition averments at page-3 and the evidence of P.Ws.1 and 2, including cross-examination of P.W.1 and the evidence of R.W.1 at page-2, to show that he is only a Fair Price shop dealer without any worthy qualification and never worked in any Software entity, as the letters cause addressed by the parents of the petitioner through their advocate disclosed the entities non-est, so also the alleged salary certificates under Exs.P.7 and P.9 to P.12 and the trial Court was right in coming to the conclusion supported by reasons of she is a victim of fraud and the claim for annulment filed within one year from the date of the fraud discovered and force ceases, as the petition was filed on 15.7.2010, which is within one year after the force ceased to operate from 5.9.2009 even and of the fraud discovered during March, 2010, from Exs.P.13 to P.18 and the admissions of R.W.1 also supports the same and it is through police, P.W.1 came out from his custody as it is her case that earlier not allowed her and even the appeal ground Nos.2, 5 and 8 speak that the appellant and respondent lived only till 5.9.2009 to substantiate from the admission also of after marriage date, she was in his custody for not allowed to come out, according to her, and thereby sought for dismissal of the appeal.

5 . Perused the material on record. The parties are being referred to as the petitioner/wife and respondent/husband, for the sake of convenience, as arrayed before the trial Court.

6. Now, the points that arise for consideration are that—

1. Whether the marriage dated 15.08.2008 of the petitioner with the respondent is not void or voidable and not outcome of force or fraud within the meaning of Section 5, r/w. Section 12 of the H.M. Act?

2. If so, the impugned order dated 7.8.2013 of the trial Court by holding the marriage as null and void is unsustainable and requires interference by this Court, while sitting in appeal and, if so, with what observations and with what conclusions in relation to their marital tie to continue or not? and
3. To what result?

In re. to Point Nos.1 and 2 :

7 . Undisputedly, the acquaintance between the petitioner and respondent was through the brother of the respondent, by name Shaik Kareemullah, who developed friendship while the petitioner was studying I Year Intermediate during the year 2008-09 in Vivekananda College, Chilakaluripeta. The petitioner is a Hindu, by birth and brought up and even as on date, is not in dispute. The respondent is a Muslim by birth, so also his parents, brother and family members. According to him, he was converted into Hindu religion in order to marry the petitioner. He is major by the year 2008 itself and even prior to the so called marriage on 15.08.2008, he also claims that he was adopted to one Chaluvadi Venkata Subba Rao and Kameswari. The so called conversion and the so called adoption are in dispute from the petitioner, including from the evidence on record that of P.Ws.1 and 2 and from the cross-examination of the respondent as R.W.1.

8. The Hindu Marriage Act, 1955 (Act 28 of 1955) came into force with effect from 18.5.1955. Section 2 of the H.M. Act contemplates that it applies to any person, who is a Hindu by religion or Buddhist, Jaina or Sikh, and as per Section 2, sub-section (1) of clause (c), to any other person, who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would have been governed by Hindu Law or by any custom or usage as part of law in respect of any of the matters dealt with herein, if this Act had not been passed.

9 . As per the explanation, the following persons are Hindus, Buddhists, Jains or Sikhs by religion, as the case may be (a) and (b); and (c) any person, who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

10. Section 4 of the H.M. Act gives overriding effect of the Act in saying, save as otherwise expressly provided to the provisions of the Act, over any text, rule or interpretation of Hindu Law or custom or usage as part of it in force before commencement of the Act or even any other Law in force before commencement of the Act.

11. From the above, a Hindu is an excluding definition to say other than Muslim or Christian or Parsi or Jew, but may include a person, who is a convert or re-convert to any of the Hindu, Buddhist, Jaina or Sikh religions.

12. It is for the respondent to establish that he was converted into Hindu religion from Muslim religion. The Hindu Marriage Act, 1955 or Hindu Adoptions and Maintenance Act, 1956 has not provided any procedure for conversion or re-conversion in a particular manner.

13. The respondent, in his counter opposing the petition for declaring the marriage as null and void, did not specifically say as to what is the procedure he adopted to convert into Hindu religion, but for saying at pages-3 and 4 that both of them fell in love and her parents did not agree to perform the marriage as he belongs to a Muslim community and finally they put a condition that if he converts into Hindu religion, then they would perform their marriage and as he got love and affection towards her, he agreed for the condition of her parents and was made to adopt as a son to one Chaluvadi Venkata Subba Rao and Kameswari, who are close relatives of the parents of the petitioner, and he converted from Muslim community to Hindu community in the presence of priests of both side elders on 15.08.2008 at Srisailam temple. He did not file any certificate, if at all the said ceremony was performed in Srisailam temple and permitted by the temple authorities, in proof of it.

14. From the above averments, he claims that it is in compliance with the condition put by the parents of the petitioner to perform his marriage with the petitioner for his conversion to Hindu religion from his parent-Muslim religion, he agreed and was made to adopt to one Chaluvadi Venkata Subba Rao and Kameswari, who are relatives of the petitioner's parents and he converted therefrom. It is not even his case that it is after conversion, he was adopted, but for saying that he was made to adopt and was made to convert. The tenor of his contention shows that it is not even a voluntary outcome from that pleading, leave it as it is, even to say voluntary outcome, he claims mainly as adopted.

15. As per the Hindu Adoptions and Maintenance Act, 1956 (Act 78 of 1956) (for brevity "the H.A.M. Act"), which came into force on 21.12.1956, Section 2, sub-section (1) clause (c), the H.A.M. Act has no application to Muslims and the explanation to (c) provides that any person, who converts or re-converts to Hindu religion, like Section 2 of H.M. Act referred to supra, so also with overriding effect as of Section 4 of H.M. Act, almost in *pari-materia*.

16. Even he is allowed to say before the so called adoption, he was converted into Hindu religion and thereby a Hindu and given in adoption therefrom to a couple of Vysya community, to which the petitioner and her parents belong, Chapter-II of the H.A.M. Act, covered by Sections 5 to 17, deal with how to regulate adoptions, requisites of a valid adoption, capacity to take in adoption and to give in adoption, and with difference in age between a son or a daughter being taken in adoption to the parents or any of them who can take in adoption and other conditions and its effect for a valid adoption and the rights flow from adoption and the presumption from any registered document of a valid adoption.

17. As per Section 5, sub-section (2) of the H.A.M. Act, an adoption, which is void, shall neither creates any rights in adoptive family nor destroys the rights of any person in the family of his or her birth, and as per Section 9, father or mother or guardian of a child shall have

the capacity to give the child in adoption and, as per Section 10, an adoptee must also be a Hindu and not married and not completed the age of 15 years and, as per Section 11, for adoption of a son, the adoptive father or mother to take must not have a son. There is no registered deed of adoption to presume the so called adoption, apart from the adoption is void, as no customary usage is proved to claim as adopted son of the so called Chaluvadi Venkata Subba Rao and Kameswari, for the respondent was even by then undisputedly a major and for having completed 15th year, by which the adoption is not valid otherwise.

18. Besides the factum of adoption is not valid, even taken for arguments sake, any such adoption, apart from the same not proved by any evidence and despite the same in dispute; coming to the so called conversion, even for arguments sake, before the alleged adoption otherwise even void, there is no specific pleading as to what is the procedure adopted for conversion, much less evidence of him as R.W.1 or by cross-examination of P.Ws.1 and 2.

19. In this regard, the learned counsel for respondent/husband placed reliance mainly upon the 3-Judges Bench expression of the Apex Court in PERUMAL NADAR (DEAD) BY LRs. Vs. PONNUSWAMI, leave about the other expression of Kerala High Court in In. RE: BETSY AND SADANANDAN, in saying intention to convert is enough, in paras-6 to 9 in the controversy as to the wife converted from Christianity to Hinduism, which reads thus:

6. It is not necessary to decide in this case whether marriage between a Hindu male and an Indian Christian female may be regarded as valid, for, in our judgment, the finding of the Courts below that Annapazham was converted to Hinduism before her marriage with Perumal is amply supported by evidence. A person may be a Hindu by birth or by conversion. A mere theoretical allegiance to the Hindu faith by a person born in another faith does not convert him into a Hindu, nor is a bare declaration that he is a Hindu sufficient to convert him to Hinduism. But a bona fide intention to be converted to the Hindu faith, accompanied by conduct unequivocally expressing that intention may be sufficient evidence of conversion. No formal ceremony of purification or expiation is necessary to effectuate conversion.

7. In Muthusami Mudaliar v. Masilamani alias Subramania Mudaliar I.L.R. 33 Mad. 342 the validity of a marriage according to Hindu rites between a Hindu and a Christian woman fell to be determined. It was held that the marriage contracted according to Hindu rites by a Hindu with a Christian woman, who before marriage is converted to Hinduism, is valid, though the marriage was not in strict accordance with the Hindu system of law. Such a marriage is still common among and recognised as valid by the custom of the caste to which the man belongs.

8. In Goona Durgaprasada Rao and Anr. v. Goona Sudarasanawami and Ors. I.L.R. [1940] Mad. 653 Mockett, J., observed that no gesture or declaration may change a man's religion, but when on the facts it appears that a man did change his religion and was accepted by his co-religists as having changed his religion and lived and died in that religion, absence of some formality cannot negative what is an actual fact. Krishnaswami Ayyangar, J., observed that a Hindu who had converted himself to the Christian faith returned to Hinduism and contracted a second marriage during the lifetime of his first wife and remained and died a Hindu having been accepted as such by the community and co-religionists without demur. Absence of evidence of rituals relating to conversion cannot justify the Court in treating him as having remained a Christian.

9. The evidence clearly establishes that the parents of Annapazham arranged the marriage. The marriage was performed according to Hindu rites and ceremonies in the presence of relatives who were invited to attend : customary ceremonies peculiar to a marriage between Hindus were performed : no objection was raised to the marriage and after the marriage Annapazham was accepted by the local Hindu Nadar community as belonging to the Hindu faith, and the plaintiff was also treated as a Hindu. On the evidence there can be no doubt that Annapazham bona fide intended to contract marriage with Perumal. Absence of specific expiatory or purificatory ceremonies will not, in our judgment, be sufficient to hold that she was not converted to Hinduism before the marriage ceremony was performed. The fact that Perumal chose to go through the marriage ceremony according to Hindu rites with Annapazham in the presence of a large number of persons clearly indicates that he accepted that Annapazham was converted to Hinduism before the marriage ceremony was performed.

20. No doubt, from the above expression, no particular ceremony is required and *bona fide* intention to convert is enough followed by faith and belief in Hinduism for the respondent besides being accepted by the local Hindu community and treatment of him as Hindu to say that he has converted. Here that evidence is lacking, apart from his say of

not any bonafide intention to convert, but for unwillingly and only to marry the petitioner for a condition stated imposed of conversion to fulfill and not even stated lived as Hindu. Though it is contended that even the so called adoption is void, his conversion no way invalidates for he being a major by the time of marriage, in saying thereby the marriage is not *per se* void, it is besides not proved conversion as discussed supra, not of him to avoid thereby, but for the special grounds of the wife seeking to annul from her say of any fraud or force referred to supra. Exs.R.1 to R.7 of him, in particular, Ex.R.1 Photos covered by Ex.R.7 DVDs also, according to him, shows that some ceremony was performed regarding marriage and claims it is included the alleged ceremony of adoption and conversion, while adopting. In fact, the very adoption void and there is no any voluntary conversion with the intention to convert with faith in Hindu religion and its observance and propagation thereafter, much less recognized him as Hindu even by the Hindu community.

21. So far as the cause of action and its existence is concerned, a perusal of the petition averments, as a whole, clearly indicates that there exists cause of action from 5.9.2009 and later on even para-5 of the petition has not mentioned the date 05.09.2009, to say the same is no way fatal. It is for the reason that cause of action means the bundle of facts which are necessary to establish the claim of a party to grant relief so as to prove. Thereby, it is to be considered from the pleadings as a whole of the petition claim, cause of action exist or not to consider. That is the reason why if from the reading of the plaint as a whole, where it does not disclose a cause of action, liable for rejection and not for mere non-mention of all material facts in the cause of action para. Thus, it is substance and not form that is criteria. In this regard, the Apex Court in KEDAR LAL SEAL AND ANOTHER Vs. HARI LAL SEAL at para-51 observed in categorical terms that *“the Court would be slow to throw out a claim on a mere technicality of pleading when the substance of the thing is there and no prejudice is caused to the other side, however clumsily or inartistically the plaint may be worded. In any event, it is always open*

to a Court to give a plaintiff such general or other relief as it deems just to the same extent as it had been asked for, provided that occasions no prejudice to the other side beyond what can be compensated for, in costs.”

22. It is also laid down in the other expression of the 4-Judges Bench of the Apex Court in BHAGWATI PRASAD Vs. CHANDRAMAUL, particularly in paras-9 and 10 that undoubtedly if a party asks for relief on a clear and specific ground; and in the issues at the trial, no other ground is covered either by directly or by necessary implication, it would not be open to the said party to attempt to sustain the same claim on a ground which is entirely new. But in considering the application of this doctrine to the facts of a particular case, Court must bear in mind the other principle that considerations of form cannot override the legitimate considerations of substance-AIR 1953 SC 235 and AIR 1954 SC 758. If a plea is not specifically made and yet it is covered by an issue by implication and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is did not the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another.

23. Further, in KULDEEP SINGH vs. GANPAT LAL the Apex Court held that even an error of a fact as to date of cause of action mentioned in plaint not a fatal to the maintainability of the plaint in saying it is in plaint claim that requires to constitute existence of cause of action.

24. From the above, now coming to the petition claim under Section 5 r/w. Section 12 of the H.M. Act that was granted by the trial Court, impugned in the appeal by the respondent/husband as appellant, Section 5 of the H.M. Act reads as follows:

“5. Conditions for a Hindu Marriage:-

A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely-

- (i) neither party has a spouse living at the time of the marriage;
- [(ii) at the time of the marriage, neither party-
 - (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
 - (b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
 - (c) has been subject to recurrent attacks of insanity]
- (iii) the bridegroom has completed the age of [twenty-one years] and the bride. the age of [eighteen years] at the time of the marriage; [Substituted by Act 2 of 1978 for “Eighteen years’ and ‘fifteen years’, respectively]
- (iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;
- (v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

25. As per Section 5 of the H.M. Act, if the marriage is not solemnized between any two Hindus (of opposite sex), it is not valid. Further, particularly from clause (3) of the Section, the petitioner/wife must be completed the age of 18 years at the time of her marriage. Even from the say by respondent/husband, while disputing her date of birth as 28.11.1991 as per the Certificate issued by the Municipality under Ex.P.2 dated 29.3.1995, with his claim in appeal ground No.3, though not in his counter to the petition, that as per her SSC Certificate, she was born on 25.8.1991, which, if relates to Ex.R.8

filed and exhibited, therefrom also she did not complete 17 years by the marriage date 15.08.2008.

26. Section 13 of the H.M. Act, which deals with dissolution of marriage by a decree of divorce on any of seven grounds specified, of which Ground No.2 deals with conversion from Hindu to another religion and ceased to be a Hindu. If the very conversion to Hinduism from other religion not taken place as required, there is no marriage in the eye of law even from any ceremony of marriage for both must be Hindus at the time of marriage is a condition precedent; even no specific provision made to annul inter-religious marriage. Further, under Section 13(1-A) of the H.M. Act, two more grounds specified and additionally by Section 13(2) of the H.M. Act, four more special grounds provided to wife, of which the 4th ground covered by Section 13, sub-section (2) clause (iv) reads that “her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

27. No doubt, it is one of the four special grounds to the wife by virtue of the Marriage Laws Amendment Act (Act 68 of 1976) of the Act 25 of 1955 and there were no amendments made either by adding or deletion or substitution to this Section 13 (2)(iv); after the Amended Act 68 of 1976 by the Act 2 of 1978.

28. It is important to note, in this context, that Section 5 of the H.M. Act referred to supra, clause (3) even amended by substitution of 21 years age of the bridegroom and 18 years age of the bride, respectively, at the time of marriage, for 18 years and 15 years, respectively, by the Marriage Laws Amendment Act (Act 2 of 1978) with effect from 1.10.1978, equally Section 13 sub-section (2) clause (iv) was supposed to be, however, it was not amended from 15 to 18 years and 18 to 21 years, respectively. The objects and intention of the Amended Act 2 of 1978 is not specific for such omission with any purpose, much less to retain 18 years and 15 years in Section 13(2) (iv) of the H.M. Act, while amending Section 5 clause (iii) to 21 years

and 18 years, respectively. It is, in fact, from a perusal clearly indicates a mistake in non-incorporation while amending Section 5(iii), in Section 13(2)(iv) of the Act with same amendment to say it is a *causes omissus* by the Legislature that is required to be supplied by the Court within its interpretative arena. In DENTAL COUNCIL OF INDIA vs. HARI PRAKASH, at para-7, page 69, the Apex Court categorically held that the intention of the Legislature to be gathered primarily from the language used is by paying attention of not only what has been said but also what has not been said though supposed to be as the textual interpretation must also match the contextual interpretation. To read Section 13 sub-section (2) clause (iv) of the H.M. Act also as amended by Marriage Laws Amended Act, (Act 2 of 1978) by increasing the age from 15 years to 18 years of bride and 18 years to 21 years of bride groom at the time of marriage for the wife to repudiate before attaining the age of 21 years of the marriage performed before attaining the age of 18 years, from Section 5 clause (iii) speaks for a valid marriage, the bride must complete 18 years and the bridegroom must complete 21 years as per the Marriage Laws Amendment Act 2 of 1978. No doubt, Section 18(a) of the H.M. Act provides that there are penal consequences for Section 5(iii) violation.

29. It is, no doubt, from the above, the submission of the learned counsel for petitioner/wife in the appeal is that, apart from the trial Court's order withstands for nothing to interfere and supported by reasons and well considered one, for any other reason, besides the very marriage be held otherwise as non-est for the respondent is not a Hindu by any conversion validly; even it is a ground under Section 13 sub-section (2) clause (iii) of the H.M. Act to grant divorce, which is not a higher relief to the annulment sought for, by invoking Section 23 of H.M. Act r/w, Order 41 Rules 24 and 33 C.P.C.

30. In support of the said contention, the learned counsel placed reliance upon two expressions of the Apex Court in KEDAR

LAL SEAL (3 supra) and BHAGWATI PRASAD (4 supra) saying, when there is evidence on record and also pleading and to the understanding of both parties, for nothing prejudiced, the right of the appellant as respondent before the trial Court for such relief to mould within the power of this Court, including under Order 41 Rules 24 and 33 of C.P.C.

31. In this regard, it is also necessary to refer the expressions placed reliance further by both parties across the Bench, viz., (1) a Full Bench expression of this Court in P. VENKATARAMANA v. STATE on the scope of Section 5 clause (iii) of the H.M. Act supra and Section 13, sub-section (2) clause (iv) of the H.M. Act supra, also referring to Sections 11, 12 and 18 of the H.M. Act. It was therein held that any marriage solemnized in contravention of Section 5 clause (iii) of the H.M. Act neither void nor voidable and the only consequence being that persons concerned are liable for punishment under Section 18 of the H.M. Act. If the requirements of Section 13, sub-section (2) clause (iv) inserted by the Marriage Laws Amendment Act, 1976 are satisfied, at the instance of the bride, a decree of divorce can be granted. Barring these two consequences, after the Marriage Laws Amendment Act, 1976, there is no other consequences whatsoever resulting from the contravention of the provisions of Section 5 clause (iii) and with that conclusion, overruled the earlier Division Bench expression of this Court in P.A. SARAMMA v. G. GANAPATULU – AIR 1975 AP 193 (DB), holding that the marriage performed of the bride below 15 years at the time of marriage is *void ab initio* for no marriage in the eye of law, which is in answering a bigamous marriage by husband subsequently is punishable or not, holding the first marriage since void, second marriage cannot be called as bigamous.

32. It is important to note that as per 1976 Marriage Laws Amendment Act, Section 5 clause (iii), the age of the bridegroom not completed 18 years and bride not completed 15 years, is not a valid marriage. The consequences, as held by the above Full Bench expression, was punishment under Section 18 of the H.M. Act for

such marriage and not to hold *void ab initio* or voidable. In fact, it is subsequent to the expression, as referred to supra, there is an amendment to Section 5 clause (iii) by the Amended Act 2 of 1978 with effect from 1.10.1978. Thereby, the Full Bench expression is not an authority to the facts on hand, even the marriage of the petitioner is performed after her completion of 16 years before attaining 17th year, since with effect from 1.10.1978, 15 years to be read as 18 years, to say within that age.

33. In fact, in the subsequent 3-Judges Bench judgment of this Court in BATHULA IYLAIAH Vs. BATHULA DEVAMMA held, particularly at paras-7 and 8, that the marriage performed once repudiated before expiry of 18 years, even the petition filed subsequent to the completion of 18 years, but for later no way disentitles the relief. It was held that Section 13 sub-section (2) clause (iv) of the H.M. Act, on its isolation gives a right to repudiate the marriage within that period. The wife even after attaining majority can maintain a petition and the Court under Section 23 (2) of the H.M. Act, whether the proceedings is defended or not, if it is satisfied that there has not been any unnecessary or improper delay in instituting proceedings, shall grant any relief under the Act.

34. From this later expression, though not referred the earlier expression in saying the marriage can be repudiated and after repudiation by conduct, can seek to dissolve and once Section 5 clause (iii) r/w. Section 13 (2)(iv) of the Act, from the *causus omissus* supplied, the marriage once not valid for bride not completed 18 years or groom not completed 21 years, to repudiate by conduct and thereafter can seek. If at all the relief claimed is even under Section 12 of the H.M. Act, and for that Court, if not satisfied from the material to annul, it can mould the relief invoking Section 23 (1)(c) & (e) of the H.M. Act to dissolve. No doubt, in MAKEMALLA SAILOO v. SUPERINTENDENT OF POLICE, NALGONDA, another Division Bench of this Court, referring to Section 5 clause (iii) of H.M. Act, held that child marriage not *per se* illegal, but for punishable under Section 18 of the Act.

35. It is also important, in this context to note that Section 4 of the Special Marriage Act, 1954 (Act 43 of 1954) is similar to Section 5 of the Hindu Marriage Act, 1955, and as per Section 24 of the Special Marriage Act, such marriage, which is not valid under Section 4 (c) (like in Section 5(c) of the H.M. Act) is null and void.

36. If this analogy in correlation to the Special Marriage Act is taken to the combined reading of Section 5(c) r/w. Section 13(2)(iv), even not provided under Section 11 or 12 of the H.M. Act, the same as a ground, divorce relief can be entitled, even taken for arguments sake of the Hindu Marriage is not contractual, being sacramental also. However, the correctness of the two expressions of the Full Bench and one expression of the Division Bench of this Court, requires consideration in the touchstone of the expression of the Apex Court in GULLIPILLI SOWRIA RAJ Vs. BANDARU PAVANI ALIAS GULLIPILI PAVANI, in which it fallen consideration of Sections 2, 5, 7, 8, 11 and 12(1)(c) of the H.M. Act regarding validity of the marriage of a Hindu with another professing Christian faith, although solemnized in accordance with Hindu customs. It was held by the Apex Court of said marriage is *per se* void and even any ceremony or even further any registration of such marriage under Section 8 of the H.M. Act would not validate the same. It was, in fact, held that the word 'may' used in Section 5 of the H.M. Act (a marriage between any two Hindus solemnized) is mandatory and not directory and does not make the provision of that section an optional. Hence, the application can be filed under Section 12(1)(c) of the H.M. Act by one of the spouse, in such a case and thus it was rightly allowed by the High Court by holding that Section 5 is mandatory and in declaring the marriage as void under Section 12(1)(c) of the Act, by extending its scope in interpretation of the provision. (The consent of the petitioner or guardian of the petitioner in the marriage obtained by force or fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent). It was observed in paras-16 and 17 in support of the conclusion that the Preamble itself indicates that the Act was enacted to codify the law relating to

marriage amongst Hindus. Section 2 of the H.M. Act deals with the application of the Act reinforces the said proposition. Section 5 of the H.M. Act thereafter also makes it clear that a marriage may be solemnized between two Hindus, if the conditions contained in the said section were fulfilled. Section 7 of the Act is to be read along with Section 5 (ceremonies of Hindu marriage include Sapthapadi, apart from other customary rights and ceremonies). '*Sapthapadi*' means taking seven steps jointly before the sacred fire.

37. In this context, it is necessary to reproduce Section 12 of the H.M. Act, which reads as under:

12 Voidable marriages .—

(1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:—

(a) that the marriage has not been consummated owing to the impotence of the respondent; or]

(b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner-[was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978)*], the consent of such guardian was obtained by force¹⁴ [or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent];
or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage—

(a) on the ground specified in clause (c) of sub-section (1) shall be entertained if—

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;

(b) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the court is satisfied—

(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(ii) that proceedings have been instituted in the case of a marriage solemnised before the commencement of this Act within one year of such commencement and in the

case of marriages solemnised after such commencement within one year from the date of the marriage; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of [the said ground].

38. Thus, from the above provisions and precedents *supra*, once there is no valid and voluntary conversion and its recognition as a Hindu of the respondent-husband from parent Muslim religion, because of the bar under Section 2 and 5 of the H.M.Act, the marriage is *ab initio* void. Even otherwise, it can be annulled under Section 12(1)(c) of the H.M.Act and the matrimonial Court under Section 23(1)(c) and (e) of the H.M.Act for the lesser relief, including by this Court while sitting in appeal can grant the divorce under Section 13(2)(a)(iv) of the H.M.Act as the so called ceremony of marriage of petitioner and the respondent was performed on 15.08.2008, the petitioner was born on 28.11.1991 according to her and on 25.08.1991 according to him and even taken the earlier date as her birth date of 25.08.1991, by 15.08.2008 she did not complete 17 years to say by the time of her marriage she did not complete 18 years and under Section 13(2)(a)(iv) from the *causes omissa* supplied to read 15 years as 18 years and 18 years as 21 years, for she can repudiate within 21 years, when by the time the petition for annulment filed on 15.07.2010 she did not attain 21 years.

39. Thus, at the cost of repetition from what was discussed earlier, when his version is he was as fell in love with her, made to convert as Hindu by adoption to a Hindu family by made to convert; there from there was no voluntary conversion apart from no adoption validly taken place and there was nothing to show any alleged conversion of him besides voluntary with any faith in Hinduism which is the religion of the petitioner, to validate any ceremonies of marriage, not even adduced any evidence of he was accepted as a Hindu by the neighbourhood and the community of Hindus nearby and observing any faith in Hinduism without which there is no valid conversion is the law laid down in *Perumal Nadar* *supra* and there is no valid

conversion from Muslim religion to Hindu religion, the very marriage itself is void *ab initio* for he is not a Hindu by the time of marriage, and it is a material fact or circumstance relating to him as per Section 12(1)(c) of the H.M.Act to annul the marriage otherwise as per the expression of the Apex Court in *Gullapalli Sowria Rajsupra*. Thus, taken aid of the expressions to the earlier expression of the Division Bench of this Court referred supra in *P.A.Saramma*, such marriage is void *ab initio* in contravention of Section 5 of the H.M.Act.

40. Apart from it, so far as the reliefs to be sought for annulment of marriage under Section 12 of the H.M.Act on the ground of force or fraud, within one year from the date of force seized or fraud discovered and if not and if the person with his or her full consent lived with other party to the marriage, the petition for annulment won't lie concerned; it is the case of the petitioner that immediately after the so called ceremony of marriage under threat and force not voluntary, he has taken her and not even allowed her but for to the intervention of her father through police complaint by rescued her at Chilakaluripet, where he kept her within four walls and there from that force was there on her throughout and it is within no time after 05.09.2009 when she was brought out from his clutches by her father through the help of police by complaint, she could narrate what had happened and she through advocate started consulting about his background and circumstances and came to know and it is within one year after that 05.09.2009, she maintained the petition by 15.07.2010. Even for arguments' sake, the so called force according to her cannot be believed from what he contests, he did not place any material muchless with any version of he even allowed her to go to her parents' place, muchless taken her, even that is not at a far distance for within the same district in different mandal or taluk at best. When it is his case that he was made to convert, though not voluntarily in obliging to marry her, as a Hindu, by her parents including by cause adopted to another family then, there is nothing for him to say she and her parents are unwilling, and nothing to say even she was not willing to go to her parents and not even his case

of her parents were visiting and or she was visiting her parents or vice versa, that conduct of him substantiates to the conclusion of she was kept within four corners under his control out of reach to her parents with no liberty to her and with no right of privacy to her to say that itself is the force against her within the meaning of Section 12(1)(c) of the H.M.Act and to say thereunder the petition filed is within one year as that is the very pleading and evidence of the petitioner in substantiating the conclusion to say as rightly arrived by the trial Court though not in so many specific words. Coming to the fraud within the meaning of Section 12(1)(c) of the H.M.Act on her, even he claimed that her parents got obtained documents from her before performing marriage and their contention of his idea is to grab their properties is not correct; so far as his qualification and placement, so also his job particulars, so also his means and property particulars concerned, even it is the specific pleading in the petition though he could deny for pleading sake specifically otherwise it tantamounts to admission within the scope of Order VIII Rules 3 to 5 C.P.C for no more proof or any requirement to lead evidence, even that is the evidence of the petitioner and her witness with reference to the documents, he could not file a scrap of paper regarding his qualifications or his job particulars and existence of the entities where he claimed worked and if not a ration shop dealer and if got properties; by any rebuttal evidence to rebut the evidence on the petitioner's side. In fact he could not even dispute the documentary evidence placed reliance by the petitioner in this regard among Exs.P-1 to P-23. Undisputedly of his side he is the only witness examined orally and placed reliance upon Exs.R-1 to R-8 no other than so called adoption and marriage ceremonies and Satyanarayana Swamy Pooja photos 7 that covered from DVD and police final report in Crime No.101 of 2010, certified copy of C.C. No.292 of 2011, Section 311 Cr.P.C petition with docket order dated 30.10.2012, F.I.R and charge sheet in C.C. No.143 of 2012, C.C of relinquishment deed, telugu conversation of D.V.Ds with computer output of the conversations and marks list of S.S.C were in Ex.R-8. It is to say he could not file even a scrap of paper regarding his

academics. Even it is claimed by the petitioner including from the evidence by her and her father P.W-2 is only a ration shop dealer, he could not file any document to say still he is working in any entity, muchless as software professional. Among Exs.P-1 to P-23 placed reliance by the petitioner, Ex.P-6 so called appointment letter of him from E-Vlocilis software solutions, Ex.P-7 copy of salary appraisal letter there from and Ex.P-8 so called salary slip proved fake from Ex.P-17 and P-18 as even notice cause issued by petitioner and her father to so called entity it was returned unserved of no such entity and he could not dispute and could not adduce rebuttal but for pretending such entities by the time of notice issued might be closed. Even for that he could not make any efforts to substantiate and the only conclusion and inference is in proof of the material by the petitioner of those are fake and he never appointed muchless worked or drawn salary for its existence is not there at any time. Same is in relation to Techmatics Solutions so called offer letter, pay slip under Ex.P-9 and P-10 of December, 2007 and January, 2008 those are also fake for the entity nonest as proved from Ex.P-13 legal notice returned unserved and Ex.P-14 as not in existence. Same is also the position in relation to C.S.Informatics of so called experience letter and relieve letter of Ex.P-11 and P-12 fake and untrue for its nonest proved from Ex.P-15 and P-16 legal notice unserved of its non-existence. Further more, as referred supra from the combined reading of Ex.P-6 to P-10 with Ex.P-12 and P-11, it is not possible for him to work in two places one at Hyderabad and the other at Pune of the alleged entities proved nonest in the relevant same time during 2007 particularly during June, 2007 that also substantiates that he played fraud on the petitioner regarding his qualifications and employment by misrepresentation if not even fraudulent representation, not only about his alleged qualification, but also about his alleged employment and means. When this is the material fact or circumstance regarding him and same came to light only after she was brought out from his clutches by her father through police help on 05.09.2009 by correspondence through advocate thereafter particularly in March and April, 2010 that revealed and the application

for annulment of marriage under Section 12(1)(c) filed by her was on 15.07.2010; it is also squarely within one year after detection of the fraud and of the material facts and circumstances in relation to him and that itself is also a ground for annulment of the marriage. In this regard the Division Bench of this Court in *M.Devender V. A.Sarika* held that where respondent married the petitioner by making misrepresentations including in relation to his social status or financial status or other material aspects or by concealing the same in his wrong statements of facts such conduct of him prone to a ground to the petitioner-wife to seek for nullity of marriage under Section 12 of the H.M.Act. This conclusion is lending support from the decisions placed reliance for it vide *Smt.Bindu Sharma V. Ram Prakash Sharma* that where husband represents that he was having an attractive job but in fact only undergoing training in a factory and not even having a regular job that misrepresentation of fact itself a ground for annulment of a marriage as sought by the wife in granting the relief under Section 12(i)(c) of the H.M.Act and the other expression in *Anurag Anand V. Sunitha Anand* also a case where husband misrepresented regarding his monthly income and property status to the wife while marrying which are nothing but material facts and circumstances concerning him as a ground as rightly sought by the wife for annulment.

41. Having regard to the above, without even any necessity for this Court while sitting in appeal to invoke, Section 23(1)(c) and (e) of H.M.Act to a lesser relief for divorce under Section 13(2)(iv) of the H.M.Act with *causae omissae* supplying by reading with Section 5(iii) of 15 and 18 years as 18 and 21 years respectively to dissolve their marriage, from the very marriage is null and void *ab initio* for no valid conversion of the respondent husband by voluntarily and with faith in Hinduism and to the acceptance of the Hindu neighbourhood and otherwise from the force proved against her to maintain the claim within one year after its cessation as one of the grounds to annul besides the fraud regarding his qualifications and employment which

are part of deliberate false representations regarding his status, qualifications, properties etc., and from within one year of said fraud detected, the petition is maintained by her in this regard and also in relation to the material facts and circumstances regarding him discussed supra that entitles her to seek annulment of marriage. Thus, even from said re-appreciation of the pleadings and evidence on record on the factual matrix with reference to the law, for this Court while sitting in appeal, there is nothing to interfere but for dismissal of the appeal. Accordingly, the point No.1 and 2 are answered.

In re. to Point No.3:

42. In the result, the appeal is dismissed. There shall be no order as to costs. As a sequel, miscellaneous petitions if any pending shall stand closed.

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA RAO

29.09.2015.

Msr

HON'BLE SRI JUSTICE R.SUBHASH REDDY

AND

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL MISCELLANEOUS APPEAL No.28 of 2014

29.09.2015

Msr

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

P.D. Judgment in

CIVIL MISCELLANEOUS APPEAL No.28 of 2014

(per Hon'ble Dr. Justice B. Siva Sankara Rao)

