

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO-M-369-2014 (O&M)
Date of decision: 07-01-2015**

Sukhbir Kaur

.....Appellant

Vs.

Harpreet Singh

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE SNEH PRASHAR**

Present: Mr. Pardeep Goyal, Advocate for the appellant-wife.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant – wife against the judgment and decree dated 2.8.2014 passed by the trial court, whereby the petition filed by the respondent-husband under section 11 of the Hindu Marriage Act, 1955 (in short, “the Act”) for declaring the marriage as nullity has been allowed.

2. A few facts relevant for the decision of the controversy involved as available on the record may be noticed. Marriage between the parties was solemnized on 9.12.2010 at Village Dhandewari, Tehsil

Malerkotla, District Sangrur. After the marriage, the parties lived together and cohabited as husband and wife and out of the wedlock, one male child namely Rohanpreet Singh was born. From the very beginning, the behaviour of the appellant towards the respondent and his parents was very rude. She used to quarrel on petty matters. Once she poured sugar in diesel tanker of the tractor to cause monetary loss to the respondent and his family. The appellant had gone to her parental home for delivery of child. The respondent brought the appellant to attend marriage ceremony of his brother but she misbehaved with the respondent and his family members at the time of marriage. She again went to her parental home on 12.11.2012. The family members of the appellant and some other persons came to the house of the respondent and assaulted him. The matter was reported to the police. Thereafter the police got the compromise effected between the parties on 15.11.2012. Later on, the respondent came to know that the appellant was not competent to solemnize the marriage with the appellant as she was earlier married with Harminder Singh, resident of Village Khanpur, District Sangrur. She was having living spouse at the time of marriage and marriage of the respondent with the appellant was nullity in the eyes of law. The appellant and her parents did not disclose this fact to the respondent at the time of marriage. The respondent had disclosed to the appellant that he was divorcee and his first marriage was dissolved by decree of divorce dated 10.5.2003. The appellant is living separately from the respondent since 12.11.2012. The respondent filed petition under Section 11 of the Act for declaring the marriage between the parties as nullity. Upon notice, the appellant appeared and filed written statement controverting the averments

made in the petition. It was inter alia stated that the respondent and his parents were informed before the marriage that she was already married and panchayati divorce had taken place between them. Baldev Singh of Village Sangala was mediator. This was the second marriage of both the parties. The fact regarding the respondent having living spouse at the time of marriage was denied. The trial court after examining the entire evidence on record allowed the petition under section 11 of the Act filed by the respondent vide judgment and decree dated 2.8.2014 impugned herein. Hence the instant appeal by the appellant wife.

3. We have heard learned counsel for the appellant and perused the record.

4. On the pleadings of the parties, the trial court framed the following issues:

“1. Whether the marriage between the parties is nullity in the eyes of law? OPP.

2.If Issue No.1 is proved, petitioner is entitled for decree of divorce under section 11 of HMA as prayed for.

3.Relief.”

In order to prove his case, the respondent-husband appeared as PW1 and tendered his affidavit Ex.PW1/A reiterating his entire assertion as made by him in his petition under Section 11 of the Act. He also produced his father as PW2 who filed his affidavit Ex.PW2/A in his defence. Learned counsel for the respondent tendered into evidence copy of judgment dated 10.5.2003 Ex.P.1 granting divorce to the respondent. On the other hand, the appellant appeared herself as RW1 and placed on record her affidavit Ex.RW1/A

reiterating the version of her written statement. Bhajan Singh, her father appeared as RW2 and tendered into evidence his affidavit Ex.RW2/A. Dr.Baljinder Singh, Medical Officer, Civil Hospital, Tapa was examined as RW3 who conducted medico legal examination of the appellant on 13.11.2012 and proved on record copy of MLR Ex.R.1. In his statement, the respondent husband deposed that previous marriage of the appellant was subsisting at the time of marriage between the parties. He came to know after compromise dated 15.11.2012 that the appellant was not competent to solemnize marriage with the respondent as she had living spouse at the time of marriage. The parents of the appellant did not disclose this fact to the respondent. In her cross examination, the appellant stated that a Panchayati divorce had taken place with her first husband Harminder Singh. However, no such document was proved on record. The respondent had placed on record copy of judgment dated 10.5.2003 Ex.P.1 whereby he had got divorced from his first wife. It was not denied that first husband of the appellant was alive at the time of her marriage with the respondent. The trial court after considering the entire evidence on record recorded that the appellant was having living spouse at the time of her marriage with the respondent and the respondent was entitled to get the marriage declared as nullity. The relevant finding recorded by the trial court reads thus:-

“12.In the present case, the respondent has examined only herself and her father to support her version taken in the written statement. She had pleaded that one Balbr Singh had got the compromise effected but he has not been examined. The respondent has not examined even a single witness who could prove that there was custom in the area or community to get the panchayati divorce. Even the authority cited by

respondent that there was evidence of custom of panchayati divorce on the basis of which it was held that such instances cannot be ignored because there was no such entry in the revenue record. The ratio of authority cited by learned counsel for the respondent is therefore not applicable to the facts of the present case. Once respondent has admitted that she was already married then it was incumbent upon her to prove that she was legally divorced from her first husband as per law or customs prevailing in the area. The petitioner has placed on record copy of judgment dated 10.5.2003 Ex.P.1 whereby he had got divorced from her first wife. It is not denied that first husband of respondent was alive at the time of her marriage with the petitioner. Section 5(i) of Hindu Marriage Act, 1955 provides that neither party to marriage should have a spouse living at the time of the marriage. Section 11 provides that any marriage solemnized in contravention of Clause (i), (iv) and (v) of Section 5 shall be nullity and either party can get such marriage declared as nullity. From my above discussion and evidence on record, it is proved that respondent was having living spouse at the time of her marriage with petitioner and petitioner is entitled to get the marriage declared as nullity. Both these issues are decided in favour of the petitioner and against the respondent.”

5. A perusal of the findings recorded by the trial court shows that previous marriage of the appellant was subsisting at the time of marriage with the respondent. The respondent came to know about this fact after compromise dated 15.11.2012 between the parties. The parents of the appellant did not disclose this fact to the respondent whereas the respondent had informed them about his previous marriage and the decree of divorce vide judgment dated 10.5.2003, Ex.P.1. Thus, as per section 11 of the Act, any marriage solemnized in contravention of clauses (i), (iv) and (v) is to be

declared nullity and either party can get such marriage declared as such. In the present case, it was categorically recorded by the trial court that the appellant was having living spouse at the time of her marriage with the respondent. We find no ground to differ with view taken by the trial court keeping in view the overall facts and circumstances of the case. Learned counsel for the appellant has not been able to show that the findings recorded by the trial court are erroneous or perverse in any manner.

6. Learned counsel for the appellant placed reliance on judgment of this Court in *Jasbir Singh vs. Inderjit Kaur*, 2003(3) RCR (Civil) 503 to contend that once it is established by specific instance and statements of witnesses that the marriage was dissolved by way of customary divorce, mere fact that there is no entry in the column of the custom in the Register of the Village or district is of no consequence. Such instances cannot be ignored merely on the basis of oral statements that no such custom was existing. Section 29(2) of the Act saves and recognises customary divorce. Subsequent marriage cannot be nullified merely on the ground that earlier marriage was not dissolved by decree of divorce by a competent court of jurisdiction. In *Jasbir Singh's* case (supra), the previous marriage of the wife was dissolved by customary divorce which was proved by way of detailed evidence. Even the writing of the customary divorce was seen by the parties and only thereafter the second marriage had taken place. In the present case, the facts are different. Herein, no document of panchayati divorce alleged to have taken place was proved on record. Thus, the appellant cannot taken any advantage of the said decision.

7. In view of the above, finding no merit in the appeal, the same is

hereby dismissed. As a result, even the application under Section 24 of the Act filed by the appellant wife does not survive and the same also stands dismissed.

(Ajay Kumar Mittal)
Judge

January 07, 2015
'gs'

(Sneh Prashar)
Judge