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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9954/2015**

SHIV MANGAL PASWAN & ANR. Petitioners
Through: **Mr. Bishwajit Singh, Adv.**

Versus

GOVT. OF NCT OF DELHI & ANR. Respondents
Through: **Mr. Devendra Dedha, Adv. for R-1&2.**

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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02.12.2015

1. On 19th October, 2015, when this petition first came up for hearing, the following order was passed:

“1. The petitioners seek mandamus to the respondent No.1 Govt. of NCT of Delhi (GNCTD) to register their marriage and which has been refused on the ground of the petitioner No.2 wife at the time of marriage on 21st May, 1971 being below the marriageable age.

2. The ground on which registration of marriage has been refused does not make sense when the petitioners, out of the said wedlock have given birth to children and are still married.

3. The counsel for the respondents appearing on advance notice has no instructions.

4. The counsels to ensure that when appearing on advance notice appear with instructions so that the matters such as the present one which are capable of being disposed of on the very first day can be so disposed of.

5. A copy of this order be sent to the Chief Secretary, GNCTD to ensure that in future all counsels representing GNCTD when appearing on advance

notice appear properly instructed and if not instructed, at least the concerned officers are sent to the Court on the day when the matter is listed.

6. Issue notice.
7. Notice is accepted by the counsel for the respondents.
8. Counter affidavit be filed within two weeks.
9. Rejoinder thereto, if any be filed before the next date of hearing.
10. List on 2nd December, 2015.”

2. The counsel for the respondents has handed over in the Court a status report dated 30th November, 2015 which is taken on record. It is *inter alia* stated therein that registration of marriage is computerized and since Section 5 of the Hindu Marriage Act, 1955 provides a condition that the bridegroom should have completed the age of 21 years and the bride should have completed the age of 18 years at the time of marriage, the computer software refuses to accept any application for registration of marriage if the age of either of the parties to the marriage at the time of marriage is shown to be below what is prescribed. It is further stated in the said status report that since the rejection of the application for registration of marriage was on the said technical ground, provision is being made either to correct the computer software or to physically verify the said application.

3. Though in the light of the above, it appears that there is now no impediment at the end of the respondents to register the marriage of the petitioners, if otherwise eligible therefor, but the counsel for the respondents

has rightly stated that since the said problem may be or is being faced by others also, a general direction from this Court would help in improving the software.

4. I may in this regard notice that though Section 5 of the Act lays down the aforesaid besides others as conditions of Hindu marriage but Sections 11 of the Act makes the marriage void only if the conditions of, (i) neither party to marriage having a spouse living at the time of marriage, or (ii) the parties to the marriage being not within the degree of prohibited relationship, or of (iii) the parties to the marriage being not sapindas of each other, are violated. The same does not make the marriage void if the parties to the marriage or any of them have/has not completed the age prescribed in Section 5. Similarly, Section 12 of the Act while prescribing the grounds on which the marriage is voidable also does not prescribe the ground of the parties to marriage or any of them being underage.

5. Need for any further discussion is not felt as the Full Bench of this Court in *Court on its own Motion (Lajja Devi) Vs. State* 193 (2012) DLT 619 has on a conspectus of law including the Prohibition of Child Marriage Act, 2006 held that a marriage contracted with a female of less than 18 years or a male less than 21 years would not be a void marriage but voidable one

which would become valid if no steps are taken by either party thereto, before attaining the age prescribed or within two years of attaining such age to have the marriage declared as void.

6. The petition is accordingly allowed by directing the respondents to not refuse registration of marriage under the Hindu Marriage Act on the ground of the parties or any party thereto at the time of marriage being of age below the minimum prescribed and to make the requisite amendments in their computer software or procedures to enable registration of such marriage in accordance with law.

No costs.

RAJIV SAHAI ENDLAW, J.

DECEMBER 02, 2015

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