

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

Sr. No.255

FAO-M-26-2015
Decided on : 14th January, 2016

Rajpal Singh @ Raju

.... Appellant

VERSUS

Karamjit Kaur

..... Respondent

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MS. JUSTICE LISA GILL

Present: **Ms. Harmanpreet Kaur(Simmi), Advocate**
for the appellant.

Mr. Anupam Singla, Advocate
for the respondent.

RAJIVE BHALLA, J. (Oral)

The appellant and the respondent got married on 15.03.2011. The appellant filed a petition under Section 11 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act'), seeking a declaration of nullity of marriage on the ground that at the time of their marriage the appellant's first marriage was in subsistence. The Additional District Judge (FTC), Bathinda vide judgment and decree dated 03.01.2013 declared the marriage null and void. The respondent filed a petition under Section 25 of the Act for maintenance. The Additional District Judge, Bathinda has allowed maintenance @ Rs. 3500/-, from the date of application.

Counsel for the appellant contends that Section 25 of the Act cannot be read to confer a right to seek maintenance if the

marriage has been declared a nullity. The respondent herself claimed and obtained a declaration that the marriage is a nullity and therefore, cannot now turn around and by claiming the status of a wife maintain a claim for maintenance.

Counsel for the respondent however submits that Section 25 of the Act does not draw a distinction between a wife of a marriage that is a nullity or a marriage that is void or voidable or exclude the wife of a marriage that is a nullity. The purpose of Section 25 of the Act is to grant sustenance to a wife who is unable to maintain herself.

The question that calls for an answer is whether a petition under Section 25 of Act, is maintainable at the behest of the wife who alleges and obtains a decree of nullity of marriage?

Section 25 of the Act which reads as follows:

25 Permanent alimony and maintenance .

[\(1\)](#) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall[***] pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant[, the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

[\(2\)](#) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

[\(3\)](#) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock,[it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just].

Section 25 of the Act empowers a Court at the time of passing a decree or at any time thereafter on an application, to award as maintenance, a gross or monthly sum to the husband or the wife. Section 25 of the Act does not use the words “legally wedded wife” or wife of a “valid marriage” nor does it prohibit the wife of a void marriage from claiming maintenance. All that Section 25 of the Act postulates is that the application should be made by a husband or a wife, but without reference to whether the decree passed declares the marriage, void, illegal or has dissolved the marriage. A marriage, it is true, would be declared a nullity from its inception but should the offending spouse who is guilty of deception be allowed to take benefit of his or her deception to deprive an innocent spouse, in this case the respondent-wife, of maintenance.

A similar question came up for consideration before the Hon'ble Supreme Court, in '*Badshah vs. Sou. Urmila Badshah Godse and another, 2013 (4) Cri. CC 653*' and though answered in the context of Section 125 of the Cr. P.C., it was held that the deceiving spouse cannot be allowed to take advantage of his deception and urge that as the marriage is void the wife is not entitled to maintenance. An extract from the judgment reads as follows:-

'14.We are dealing with the situation where the marriage between the parties has been proved. However, the petitioner was already married. But he duped the respondent by suppressing the factum of alleged first marriage. On these facts, in our opinion, he cannot be permitted to deny the benefit of maintenance to the respondent, taking advantage of his own wrong. Our reasons for this course of action are stated hereinafter.

15. X X X

16. X X X

17. X X X

18. Of late, in this very direction, it is emphasized that the Courts have to adopt different approaches in "social justice adjudication", which is also known as "social context adjudication" as mere "adversarial approach" may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently :

"It is, therefore, respectfully submitted that "social context judging" is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social- economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication." [Delivered a key note address on "Legal Education in Social Context"]

19. X X X

20. X X X

21. X X X

22. X X X

23. X X X

24. X X X

25. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon;s Case (1854) 3 Co. Rep. 7A, 7b which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction ut res magis valeat quam pereat, in such cases i.e. Where alternative constructions are possible the Court must give effect to tat which will be responsible for the smooth working of the system for which the statute has been enacted rater than one which will put a road block in its way. If the choice is between two interpretations, the narrower which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125, Criminal Procedure Code, such a woman is to be treated as the legally wedded wife.

A perusal of the aforesaid judgment, reveals that though it

has been recorded under Section 125 Cr. P.C., it has been held that

the purpose of a statute and the mischief it proposes to suppress must be the foundation of judicial interpretation and a construction that would render legislative provisions ineffective must be avoided. The thought underlining the ratio of this judgment is the need to ensure that a spouse who deceives the other is not rewarded for his or her deception. A restrictive interpretation, to the words used in Section 25 of the Act would reward the offending spouse for his or her deception, in this case the appellant-husband and would in essence be unjust.

This apart, a reference may be made to section 18 of the Hindu Adoptions and Maintenance Act, 1956, and a judgment of the Karnataka High Court in '*N. Pushpalatha vs. B.V. Jayaram, 2011(3) ICC 216*' wherein while considering the scope and ambit of section 25 of the Act and the general rule that a wife of a husband who is already married is not entitled to claim maintenance, held as follows:-

'13. It may not be relevant to note that in the decision of the Andhra Pradesh their Lordships have held that a second wife is not entitled to claim maintenance when the Hindu male having legally wedded wife, but by looking into the provisions of Section 18 of the Hindu Adoptions and Maintenance Act, 1956, we do not see the word 'legally wedded wife-under section 18 of Hindu Adoptions and Maintenance Act, 1956. Therefore, it would be relevant for us to extract Section 18 of Hindu Adoptions and Maintenance Act, 1956:

“18. Maintenance of wife.

(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.

(2) A hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance:

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;

- (c) if he is suffering from a virulent form of leprosy;
 - (d) if he has any other wife living;
 - (e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;
 - (f) if he has ceased to be a Hindu by conversion to another religion;
 - (g) if there is any other cause justifying her living separately.
- (3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

14. By looking to the provisions of Section 18 of the Act, a wife, who has been neglected by her husband, is entitled to seek maintenance. Even in the instant case, even though the appellant/plaintiff has to be treated as second wife. We are of the opinion that the defendant having lived with her for more than 12 years cannot escape to maintain the plaintiff. By respectfully following the judgment of the Supreme Court in Ramesh Chandra Rampratapji Daga's case. We are of the opinion that the finding of the trial Court has to be set aside by holding that the appellant is entitled to claim maintenance. Accordingly, we answer point No.(i) in favour of the appellant.

A perusal of the aforesaid extract reveals that Section 18 of the Hindu Adoptions and Maintenance Act, 1956, like Section 25 of the Act, uses the word 'wife' and not “legally wedded wife” or a wife from a valid marriage.

Thus, a wife who has been deceived into a marriage that is nullity, in our considered opinion would be entitled to maintenance under Section 25 of the Act. We, therefore, proceed to interpret the words and expressions used in Section 25 of the Act to include a wife of a marriage that is a nullity and hold that the trial Court has not committed any error in awarding maintenance. The appeal is dismissed.

[RAJIVE BHALLA]
JUDGE

14th January, 2016
Jyoti III

[LISA GILL]
JUDGE