

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 86 of 2016**

Judgment Reserved On : 06/10/2016

Judgment Delivered On : 02/03/2017

1. Shikha Majumdar @ Shabina Begam W/o Shri Anutosh Majumdar, Aged About 29 Years R/o Adarsh Nagar, Gangotri, Near School, Charoda Basti, Bhilai, Distt. Durg, Chhattisgarh
2. Ku. Anushka D/o Shri Anutosh Majumdar, Aged About 9 Years Through Her Natural Guardian Mother Smt. Shikha Majumdar @ Sabina Begam, W/o Shri Anutosh Majumdar, R/o Adarsh Nagar, Gangotri, Near School, Charoda Basti, Bhilai, Distt. Durg, Chhattisgarh(Plaintiffs)

---- Appellants

Versus

- Anutosh Majumdar S/o Shri Paritosh Majumdar, Aged About 31 Years R/o Radhakrishna Mandir, Lohar Para, Bhilai 3, Tahsil And Distt. Durg, Chhattisgarh(Defendant)

---- Respondent

For Appellants : Smt. Fouzia Mirza, Advocate.

For Respondent : Shri Anumeh Shrivastava, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Chandra Bhushan Bajpai

C A V JUDGMENT

1. The seminal issue to be decided in this appeal under Section 19 of the Family Courts Act, 1984 is whether the Family Court is

justified in dismissing the suit at the stage of registration.

2. This appeal is barred by 601 days for which the appellant has preferred an application under Section 5 of the Limitation Act for condonation of delay, therefore, before proceeding to deal with the merits of the appeal, we shall consider the application for condonation of delay.
3. It was argued that because of financial constraints the appellant No.1 could not approach this Court within time to challenge the impugned order, however, when she received notice in Civil Suit No.94-A/2015 filed by the respondent for declaration wherein similar relief in relation to marital status of the parties has been prayed, she was constrained to approach this Court, therefore, the delay being bona fide and unintentional deserves to be condoned.
4. On the other hand, the respondent would state that appellant No.1 is a working woman and has filed 3 separate proceedings under Sections 127 CrPC, 125 (3) CrPC and under Sections 18, 19, 20, 21 & 22 of the Domestic Violence Act from June to November, 2015, therefore, there is no truth in the submission that she was having financial constraints. It was further argued that the appellant No.1 has failed to explain each days delay.
5. The present matter pertains to declaration of marital status of the

parties which shall have bearing on appellant No.1 throughout her life. Moreover, the suit has been dismissed without registration and not on merits. The respondent has also filed a suit seeking declaration that the appellant No.1 is not his legally married wife and for permanent injunction that she should never claim to be the respondent's wife. Thus, in the suit preferred by the respondent, marital status of the parties would be decided, therefore, if the delay in filing the present appeal is condoned, the respondent shall not be prejudicially affected. As a matter of fact, any decision on merits in the first suit would serve both the parties, therefore, instead of taking a pedantic or hyper-technical view of the matter, we deem it fit to condone the delay in filing the appeal and decide the present appeal on merits rather than dismissing the same on the ground of limitation, in view of the law laid down by the Supreme Court in the matter of **Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others** {AIR 1987 SC 1353}.

6. Facts necessary to be referred for considering the seminal issue is that the appellant, a Muslim girl before marriage, allegedly married the respondent on 5.4.2003 as per Hindu rituals and customs. A baby girl namely, Anushka Majumdar was born out of the said wedlock on 8.5.2004. Her baptism ceremony was also performed as per Hindu rituals and customs at the parental house of the

respondent husband. She is presently studying in class-6th and the school records contain the name of the respondent as her father.

7. It is averred in the plaint that lately, the respondent got entangled with another lady namely, Itishri Goutam and eventually started harassing the appellant No.1 both physically and mentally as also in the name of dowry, which led to filing of complaint by the appellant No.1 at Bhilai-3, which was withdrawn after reconciliation and subsequent settlement. However, the respondent again started harassing the appellant No.1, therefore, another FIR was lodged and a criminal trial is pending consideration against the respondent. The appellant No.1 was thrown out of the house in the year 2012, therefore, the appellant No.1 moved an application for grant of maintenance under Section 125 CrPC which was initially rejected by the family Court for appellant No.1 but was allowed in favour of appellant No.2 (her daughter born out of the wedlock).
8. The appellant No.1 preferred criminal revision No.544/2013 which was allowed by the High Court on 24.12.2014 granting maintenance to her at the rate of Rs.5,000/- per month. S.L.P. preferred by the respondent was also dismissed by the Supreme Court.
9. The present suit was preferred on 14.5.2014 seeking declaration

that the appellant No.1/plaintiff No.1 is legally married wife of the respondent and appellant No.2 is the legitimate daughter of the defendant/respondent. The trial Court heard the appellant No.1 before registration on 5.7.2014 and thereafter the impugned order has been passed on 15.7.2014 holding that as per her own pleading, appellant No.1 was Muslim by religion before her marriage without there being any further pleading that she was converted to Hinduism before marriage, therefore, by virtue of Section 2 of the Hindu Marriage Act, 1955 (for short 'the Act, 1955'), provisions of the said Act would not apply to her and secondly mere declaratory suit is not maintainable.

10. Smt. Fouzia Mirza, learned counsel for the appellants would submit that the plaint itself avers that the marriage was solemnized as per the Hindu rituals and custom, therefore, before submission of written statement by the respondent, the suit could not have been dismissed without registration. She would also submit that suit for mere declaration of marital status is maintainable.
11. Per contra, Shri Anumeh Shrivastava, learned counsel for the respondent would support the impugned order on submissions that since admittedly appellant No.1 was a Muslim girl before marriage, it was necessary for her to plead that she got converted

into Hinduism before marriage and in the absence of such pleading, the suit has rightly been dismissed as the Act, 1955 would not apply to appellant No.1.

12. The second ground of rejection need not detain this Court for long as law in this regard has been settled by the Supreme Court in the matter of **Balram Yadav Vs. Fulamaniya Yadav** {AIR 2016 SUPREME COURT 2161} holding that under Section 7(1) Explanation (b), a suit or a proceeding for a declaration as to the validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of the Family Court, since under section 8, all those jurisdictions covered under section 7 are excluded from the purview of the jurisdiction of the Civil Courts. In case, there is a dispute on the matrimonial status of any person, a declaration in that regard has to be sought only before the Family Court. It makes no difference as to whether it is an affirmative relief or a negative relief. What is important is the declaration regarding the matrimonial status. Section 20 also endorses the view which we have taken, since the Family Courts Act, 1984, has an overriding effect on other laws.
13. We shall now deal with the first ground of challenge for which the family Court has held that since the plaintiff No.1 claims to have

married the defendant according to Hindu rituals and customs on 5.4.2003 but there is no averment that she converted into Hinduism, therefore, in view of Section 2 of the Act, 1955, the said Act is not applicable to the parties, therefore, the suit is not maintainable. The provisions contained in Section 2 of the Act, 1955 provide that this Act would apply to any person who is a Hindu by religion in any of its forms or developments including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj or to a Buddhist, Jaina or Sikh by religion. The Explanation to Section 2(1) provides that any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion is a Hindu, Buddhist, Jaina or Sikh by religion, as the case may be. Sub-section (3) provides that the expression 'Hindu' in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

14. The plaintiff has not mentioned in the plaint as to under which enactment she is seeking this declaration or the personal law which governed their marriage or post marital relationship. In the entire plaint, there is no mention of Hindu Marriage Act or that she is following Hindu rights and rituals after marriage, although she avers that Baptism ceremony of her daughter Anushka was

performed by the respondent/husband in his house according to Hindu rituals and customs.

15. In above view of the plaint averments, reference to the provisions of the Family Courts Act, 1984 (for short 'the Act, 1984') would also be necessary because the Act appears to be a secular Act without reference to any particular religion. However, the substantive relief which any party to a proceeding before the Family Court claims or is entitled for would be under their own personal law which governs their rights and obligations whether codified or not. The Act, 1984 only provides for establishment of a Court and its jurisdiction without making any provision mentioning personal laws of any religion, therefore, maintainability of a petition has to be considered accordingly.

16. It is settled that Hindu religion does not admit of formal ceremony of purification nor it is pre-requisite for conversion. However, case law on the subject is available governing Right of Succession and Inheritance and not in relation to marriage or marital relationships.

17. The Division Bench of the Patna High Court in the matter of **Chunku Manjhi Vs. Bhabani Majhan** {AIR 1946 Pat 218} has held that to sum up, the position is that it is possible in law that aborigines of non-Hindu origin can become sufficiently Hinduised

so that in matters of inheritance and succession they are prima facie governed by the Hindu law except so far as any custom at variance with such law is proved, that for the purpose of Hinduisation any formal ceremony of conversion is not necessary, that the test as to whether people of non-Hindu origin have become Hindus out and out consists not in their following the religious rules of the Srutis and Smritis or their completely giving themselves up to Brahmanical rules and rituals but in their acknowledging themselves to be Hindus and, in adopting Hindu social usages, the retention of a few relics of their ante-Hinduism period notwithstanding. In cases where complete Hinduisation is proved, the parties are to be prima facie governed by the rules of the Hindu law, and the burden of proving that any special custom obtained in the community either as a relic of their non-Hindu period or otherwise is upon the party to set it up. It has also been observed that the question whether a family or a tribe of non-Hindu origin has been so far Hinduised as to attract the provisions of the Hindu law in matters of inheritance and succession, is a mixed question of law and fact. It has also further been observed that the Hindu Law of Inheritance (Amendment) Act, 1929, applies also to those persons who but for the passing of the Act, would have been subject to the law of Mitakshara. Thus, it applies to Santhals of

Chota Nagpur who are Hindus and are governed by the Mitakshara School of Hindu law in matter of inheritance and succession.

18. In another decision by the Patna High Court in the matter of **Budhu Majhi Vs. Dukhan Majhi** {AIR 1956 Pat 123} it has been observed that it is not necessary that the parties must be completely Hinduised. Even if they had been sufficiently Hinduised so as to be governed by Hindu law of succession, it is enough. It has also been observed that the adoption of Hindu names, employment of priests, performance of pujas, such as Durga Puja, Mansa Puja, Kali Puja etc. offering of pindas, observing of mourning, performance of funeral ceremonies are sufficient proof of a family, aboriginal in origin, having adopted Hinduism in its entirety. The test as to whether people of Hindu origin have become Hindus out and out consists not in their following the religious rules of Srutis and Smritis or their completely giving themselves up to Brahmanical rules and rituals but in their acknowledging themselves to be Hindus and in adopting social usages, the retention of a few relics of their ante Hinduism period notwithstanding. A formal conversion is not a pre-requisite to a person becoming a Hindu.

19. In the matter of **Langa Manjhi Vs. Jaba Manjhain** {AIR 1971

Patna 185}, the Division Bench of the Patna High Court has held that the term Hindu is not an anthropological one but is used in a theological sense as distinguished from national or racial sense, and, therefore, many persons of aboriginal tribes and origins have been absorbed in the Hindu faith and have come under the sway of Hindu law, for example, Naiks in Madhya Pradesh who were originally of Gond origin. The courts below have held that the Santhals of village Kutchai share Hindu beliefs and observe Hindu usages and practices. They worship Hindu deities and their mode of life is that of Hindu. Therefore, they have become sufficiently Hinduised and are governed by the Hindu law in the matter of succession and inheritance. Mr. Mukherji has strongly challenged these findings of the courts below. Learned counsel in support of his contention of agnatic rule of succession relied upon a decision of Macpherson, J. sitting with Dawson_Miller, C.J. in *Krittibash Mahton v. Budhan Mahtani*, AIR 1925 Pat 733. There, the case was of Kurmi-Mahtos of Manbhum pargana of the Manbhum district. The only point which was argued before their Lordships, was whether the parties were governed by the Dayabhaga School of Hindu Law. Both the courts below had found that the parties were so governed. It was contended in this Court that the court below was not justified in coming to the conclusion that even if the

parties were undoubtedly governed by Hindu Law, they were still governed by the Dayabhaga School of Hindu Law. In that connection, Dawson-Miller, C.J., said that in the circumstances it was futile to send back the case to determine the very question of fact which was conceded, and, therefore, the appeal was dismissed. Macpherson, J., had agreed and given his own judgment. In dealing with the matter, he said that in cases relating to inheritance among aboriginals in Manbhum it is always necessary to enquire whether even if Hinduised (slightly, partially, or completely) they have abandoned the tribal custom as to inheritance (usually they have not, even where, as is unusual, Hinduzation is complete) and then if they have abandoned the tribal custom what particular school of Hindu Law they have adhered to. The observation of his Lordship, with respect, in view of the facts and arguments in the case, was obiter.

20. It was further held therein that the expressions “Hindus out and out” and “become sufficiently Hinduised” are the expressions used by the Privy Council. It is also a settled law now that no ceremony of purification is a prerequisite of Hinduisation. It is not correct to say that one must be born a Hindu, since Hinduism has grown by gradually Hinduising the non-Hindu, specially the wilder tribes of India, and the process still continues. The question, therefore, has

to be decided by coming to the conclusion as to how far the parties have either become “Hindus out and out’ or “sufficiently Hinduised” in order to attract the principles of Hindu law in the matter of inheritance and succession. Now, the well established position in law is that it is possible that aboriginals of non-Hindu origin can become sufficiently Hinduised so that in the matter of inheritance and succession they are prima facie governed by the Hindu Law, except so far as any custom at variance with such law is proved.

21. In the matter of **B. Ramayya Vs. Mrs. Josephine Elizabeth and others** {AIR 1937 Madras 172}, the question before the Division Bench was whether a Hindu who had converted to Christianity claiming re-conversion to Hinduism would make him Hindu on his self proclamation in the absence of other evidence showing re-conversion. The Division Bench quoted AIR 1952 Madras 160 {**Ratansi D. Morarji Vs. Administrator General, Madras**} wherein it has been held that a European does not become a Hindu merely because he professes a theoretical allegiance to the Hindu faith, or is an ardent admirer and advocate of Hinduism and its practices; but if he resides long in India, abdicates his religion by a clear act of renunciation and adopt Hinduism by undergoing formal conversion, gives up along with Christianity his Christian name

and deliberately assumes a Hindu name, marries in accordance with Hindu religious rites a person who is a Hindu by race and religion, and cuts himself off from his old environments and takes to the Hindu mode of life, in such a case the Court may justly come to the conclusion that he has become a Hindu within the meaning of the Succession Act. These tests are satisfied in the present case and I therefore hold that Mena Renda otherwise called Sulochana was a Hindu at her death.

22. The Division Bench of Madras High Court thereafter proceeded to observe that the above passage from AIR 1952 Madras 160 is clearly no authority for the position that a formal conversion is a pre-requisite to a person becoming a Hindu. As in 1967 MLJ 389 {Guruswami Nadar v. Irulappa Konar}, it has been observed that the above passage does not lay down that every one of the tests mentioned there should be fulfilled where conversion to Hinduism is alleged; all that was laid down was that each of the tests enumerated in the passage having been fulfilled, there was conclusive evidence in favour of the alleged conversion.

23. Importantly, the Division Bench of Madras High Court, after more detailed discussion held that indeed it seems to have been assumed throughout, that the conversion, if in fact it did take place, had the

effect of restoring him to the original caste. But this is a matter which we need not further pursue, as we are satisfied that the evidence adduced to prove that the deceased adopted the ways of a Hindu and observe the Hindu mode of life, is hopelessly discrepant. We are quite clear that the mere fact that a person makes a declaration that he has become a re-convert to Hinduism, is totally inadequate to make him a Hindu. The Court thereafter concluded, in the facts of said case, that we must therefore hold that at the time of his death Dr. Iswarayya was a Christian and affirm the finding on this point.

24. It would be profitable to quote commentary from Dr. Nirmal Shukla's 'Introduction to Classical Hinduism' wherein the eminent author would explain, on the strength of precedents, as to what Hinduism is. According to Dr. Shukla, Hinduism cannot be defined in terms of Polytheism or Hennotheism or Monotheism. The nature of Hindu religion ultimately is Monism/Advaita. This in contradistinction to Monotheism which means only one God to the exclusion to all others. Polytheism is a belief of multiplicity of Gods. On the contrary, Monism is a spiritual belief of one Ultimate Supreme and manifests Himself as Many. This multiplicity is not contrary to Non-Dualism. This is the reason why Hindus start adoring a Deity either handed down by tradition

or brought by a Guru or Swambhuru and seek to attain the Ultimate Supreme. The term polytheism can be applied to Hinduism in so far there is a multiplicity of divine forms from Hindu deities such as Shiva, Vishnu and Brahma to deities of regional Temples. It is difficult, if not impossible to define Hindu religion or even adequately describe it. Unlike other religions in the world, the Hindu religion does not claim any one prophet; it does not worship any one God; it does not subscribe to any one dogma; it does not believe in any one philosophic concept; it does not follow any one set of religious rites or performances; in fact, it does not appear to satisfy the narrow traditional features of any religion or creed. It may broadly be described as a way of life and nothing more. In *Ganpat v. Presiding Officer* {(1975) 1 SCC 589} the election of the respondent to the reserved seat was challenged on the ground that he was a Buddhist and not a Hindu and hence was not a member of the Scheduled Caste. Finding that some of the members of the Scheduled Caste change their religion to remove the indignity of being branded as untouchables, the Supreme Court held that:

“We have evidence in this case that people who claim themselves to have become Buddhists have taken advantage of scholarships and other facilities granted by Government to members of Scheduled Castes. Whether such concession to members of Scheduled Castes should also be extended to members of those castes who have changed their

religion is a different question. Whether the Scheduled Castes Order should also describe such persons as members of the Scheduled Castes is very relevant to the present question.....

XXXX

XXXX

XXXX

Hinduism appears to be very complex religion. It is like a centre of gravity doll which always regain its upright position however much it may be upset. Hinduism does not have a single founder, a single book, a single church or even a single way of life. Hinduism is not the caste system and its hierarchies, though the system is a part of its social arrangement, based on the division of labour. Hinduism does not preach or uphold untouchability, though the Hindu Society has practiced it, firstly due to reasons of public health and later, due to prejudices. (Copied in bits and bits from the book).”

25. Referring to **Langa Manjhi** (Supra), Dr. Shukla writes that in cases it is established that the parties of non-Hindu origin have been Hinduised, prima facie, they are governed by the rules of Hindu law and the burden of proving that the old custom of that community still exists is upon the party who sets it up. Whether a person is Hinduised completely or otherwise is a question of fact.
26. Be that as it may, we are here to decide whether dismissal of the suit at the threshold without registration is proper in the facts and circumstances. The question as to whether the plaintiff is Hinduised completely or otherwise being a question of fact, it could not have been determined without adjudication. If the plaintiff asserts that her marriage was performed according to

Hindu rituals and customs, it may be a matter of evidence as to whether she has adopted Hindu religion or she still believes herself to be a Muslim. This can only be decided after a full blown trial wherein the parties would adduce evidence, both oral and documentary to prove their respective case. Merely for the reason that there is no averment that the plaintiff has converted herself into Hinduism, the suit for declaration of marital status cannot be dismissed without trial in view of law laid down by the Supreme Court in **Balram Yadav** (Supra), which has already been quoted in para-12 of our order.

27. We may dilate on one more ground for setting aside the impugned order with reference to the provisions of the Code of Civil Procedure, 1908 (henceforth 'the Code') and the Chhattisgarh Civil Courts Rules framed under the Chhattisgarh Civil Courts Act, 1958.

28. Order IV of the Code deals with Institution of Suits. It consists of only two rules which are reproduced hereunder:-

“1. Suit to be commenced by plaint.- (1) Every suit shall be instituted by presenting a plaint in duplicate to the Court or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2).

2. Register of suits.- The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.

29. Order V of the Code makes a provision for Issue and Service of Summons. Sub-rule (1) of Rule 1 of Order V provides that when a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant.

30. Order VI of the Code provides for the matters dealing with 'Pleadings Generally', whereas Order VII makes a provision as to what shall contain in the plaint. Rule 11 of Order VII speaks about rejection of plaint. It provides that the plaint shall be rejected in the following cases:-

- “(a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a

time to be fixed by the Court, fails to do so;
 (d) where the suit appears from the statement in the
 plaint to be barred by any law;
 (e) where it is not filed in duplicate;
 (f) where the plaintiff fails to comply with the
 provisions of rule 9.

Provided that the time fixed by the Court for the
 correction of the valuation or supplying of the
 requisite stamp-paper shall not be extended unless
 the Court, for reasons to be recorded, is satisfied
 that the plaintiff was prevented by any cause of an
 exceptional nature for correcting the valuation or
 supplying the requisite stamp-paper, as the case
 may be, within the time fixed by the Court and that
 refusal to extend such time would cause grave
 injustice to the plaintiff.”

31. When a suit is instituted by presenting a plaint in accordance with
 Order 4 of the Code, the procedure for registration is prescribed
 under the Civil Court Rules. Rule 38 of the Civil Court Rules says
 that the officer receiving the plaint shall examine it in order to find
 out whether all the requirements of law have been complied with.
 This examination should be directed to ascertain amongst other
 things-

“(i) Whether the plaint has been properly stamped
 in accordance with the valuation put upon it. (See
 in this respect the instructions in Appendix II to
 Part V.)

(ii) Whether it has been properly signed and
 verified (Order VI, rules 14 and 15).

(iii) Whether it complies with the requirements of
 Order VII (rules 1 to 8).

(iv) Whether in the case of recovery of land it sets out sufficient specification of the land claimed, i.e. if an entire plot or field, to which a separate survey number has been assigned is claimed, whether the plaint states that survey number and its area, or if a portion only of such a survey number is claimed, whether the plaint defines specifically the area claimed and its position and boundaries are clearly shown in the map filed with the plaint.

(v) Whether it is accompanied by the necessary copies of plaint and process fees [Order IV, rules 1 (1) and (2)].

(vi) Whether the document attached to the plaint (if any) are accompanied by a list in the prescribed form [Order VII, rule 9(1)].

(vii) Whether it is accompanied by plaintiffs registered address as required by Order vii, rule 19.

(viii) Whether in the case of minor plaintiff and defendants the requirement of Order XXXII, rules 1 and 3, have been complied with and the necessary application supported by an affidavit verifying the fitness of the proposed Guardian ad item of the minor defendant (s) has been filed.

(ix) Whether the suit is within the pecuniary and territorial jurisdiction of the Court.

(x) Whether the claim is apparently within time.

(xi) Whether the power of attorney has been properly accepted and endorsed by the pleader and whether in the case of illiterate executants it has been attested as required by rule 9-A.

32. Under Rule 39, the Officer (referred to in Rule 37) shall, after examining the plaint, record his opinion by writing that it is properly drawn up, apparently within time and properly stamped.

He will then, where necessary enter it in his register of complaints and applications received (No.II-78) and transmit it to the Court concerned. The officer examining the plaint is further enjoined to refer any plaint which he considers should be returned or rejected for any reason for the orders of the Judge.

33. Under Rule 41, it is provided that a plaint on admission shall be registered in the register of civil suits and entered in the judicial diary and cause list. Ordinarily registration should be within two days of the date of admission.

34. A conjoint reading of the provisions contained in the Order 4, 5, 6 & 7 of the CPC and Rule 37 to 41 of the Civil Court Rules would manifest that a plaint can be dismissed at the threshold only when it is not properly drawn up or is apparently barred by limitation or is not properly stamped. A plaint can also be rejected when it falls within any of the mischief provided under clause (a) to (f) of Rule 11 of Order 7. However, when the Judge has not opined that a suit is barred under any law or under any clause provided under Order 7 Rule 11 CPC, the suit shall ordinarily be registered and is not liable to be dismissed at the threshold without registration.

35. In taking the above view, we may profitably seek assistance of the observations made by the Supreme Court in the matter of

Vidyawati Gupta and Others Vs. Bhakti Hari Nayak and Others {(2006) 2 SCC 777} wherein the Supreme Court has observed in para-49 that the requirement of Order 6 & 7 of the Code are procedural in nature, any omission in respect thereof will not render the plaint invalid and that such defect or omission will not only be curable but also will date back to the presentation of the plaint and further that the provisions of sub-rule (3) of Rule 1 Order 4 of the Code will also have to be read and understood in that context. The expression “duly” used in sub-rule (3) of Rule 1 Order 4 of the Code implies that the plaint must be filed in accordance with law. The Supreme Court was of the view that the rules of procedures are made to further the cause of justice and not to prove a hindrance thereto. Reference was made by the Supreme Court to its earlier decisions in the matters of **Sk. Salim Haji Abdul Khayumsab v. Kumar** {(2006) 1 SCC 46} and **Kailash Vs. Nanhku** {(2005) 4 SCC 480}. The Supreme Court held that the provision contained in Order 4 are directory in nature and non-compliance therewith would not automatically render the plaint non est because such a stand would be too pedantic and would be contrary to the accepted principles involving interpretation of statutes.

36. In the impugned order, learned Family Court has passed an

opposite order which is in stark conflict with the observations made by the Supreme Court, as also failed to put in line with the prescribed procedure in the Civil Court Rules and Order 4 to 7 of the Code for presentation and registration of plaint. The Family Court has rejected the plaint without referring as to under which provision of law the plaint is not maintainable. Unless such reference is made, the Court could not have refused registration of the suit.

37. For the afore-stated reasons, we allow the appeal, set aside the impugned judgment and remit the matter back to the Family Court to register the plaint and proceed for holding trial in accordance with law. However, it will remain open for the trial Court to consider the issue concerning maintainability of the suit whenever any such objection is raised by the respondent/husband.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Chandra Bhushan Bajpai)

HEADLINES

Suit for declaration as to the validity of marriage and matrimonial status of a person cannot be dismissed without registration in view of Sec.7(1) Explanation (b) r/w Sec. 8 of the Family Courts Act as also provisions contained under O.4 to 7 of CPC and Rule 37 to 41 of CG Civil Court Rules.