

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 6 of 2017**

- Aditi Shakar D/o Shri Mahendra Shankar, Aged About 20 Years
Permanent R/o Qtr. No.18/ F, Street No.32, Sector-10, Bhilai,
Tahsil And District Durg, Chhattisgarh

---- Petitioner**Versus**

- K. Rammurti S/o Shri K.Ashok Kumar, Aged About 24 Years R/o
Qtr. No.3/ B, Street No.3, Sector-4, Bhilai, Tahsil And District
Durg, Chhattisgarh

---- Respondent

For Appellant
For Respondent

Mr. Praveen Dhurandhar, Advocate
Mr. H.B. Agarwal, Senior Advocate
with Mr. Pankaj Agarwal, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

Order On Board By**Prashant Kumar Mishra, J.****6/7/2017**

1. Heard.
2. The appellant's suit for declaring the marriage with the respondent as null and void under Section 12 of the Hindu Marriage Act, 1955 (in short "the Act, 1955"), has been dismissed by the trial Court, even without registration of the suit.

IA No.01

3. Mr. H.B. Agarwal, Senior Advocate assisted by Mr. Pankaj

Agarwal, Advocate would oppose the prayer for condonation of delay, however, considering the fact that the subject matter of the suit pertains to the legality of the marriage or the marital status of the parties, which would chase them or atleast the appellant throughout her life as also for the reason that the Supreme Court in the matter of **Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others (AIR 1987 SC 1353)**, has held that while considering the prayer for condonation of delay, the Court should not take a pedantic or hyper-technical view of the matter and all efforts should be made to decide the matter on merits, we are inclined to condone the delay of 394 days and hear the appeal on merits.

4. Accordingly, IA No.01 is allowed and the delay is condoned.

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5. By one page short order, the learned Judge of the Family Court has refused to register the plaint preferred by the appellant on the ground that in para 2 of the plaint itself, the appellant stated that her marriage being performed in the Arya Samaj Mandir, wherein, *Karmkand* and *Saptpadi* was not performed, there was no marriage in the eyes of law in accordance with the Hindu Rites and Rituals. Therefore, as per the appellant's own saying, the suit is not maintainable as there was no marriage as contemplated under the Act, 1955.
6. We are afraid such reasoning can never withstand the judicial scrutiny, because, in every case, whether a suit is filed for

declaration of marriage as void under Section 11 or voidable under Section 12 of the Act, 1955, the plaintiff is necessarily required to plead that there was no marriage in the eyes of law, therefore, it would not mean that the declaration as to the validity of marriage or the marital status of the parties cannot be sought under the said Act even if the parties are Hindu.

7. The issue as to when a suit can be dismissed at the threshold without registration has been elaborately dealt with by this Court in FAM No.86 of 2016 (Shikha Majumdar @ Shabina Begam and another Vs. Anutosh Majumdar, decided on 2.3.2017), wherein, after referring to the relevant provisions under the Code of Civil Procedure, 1908 and the Chhattisgarh Civil Court Rules, the Division Bench of this Court, in which, one of us (Prashant Kumar Mishra, J.) was a member, held thus in para 34:

“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.”

8. Even otherwise, the Supreme Court in the matter of **Balram Yadav Vs. Fulamaniya Yadav, AIR 2016 SUPREME COURT 2161**, has held that 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 of the Family Courts Act, 1984 (in short "the Act, 1984"), all those jurisdictions covered under Section 7 are excluded from the purview of the jurisdiction of the Civil Courts.
9. In the teeth of the law settled by the Supreme Court in **Balram Yadav (supra)**, if the reasoning assigned by the trial Court is allowed to stand, the appellant/plaintiff would be remediless because she cannot file a suit before the Civil Court in view of Section 8 of the Act, 1984.
10. In our considered view, the impugned order deserves to be and is hereby set-aside. The matter is remitted back to the trial Court for registering the suit and proceeding further to decide the suit in accordance with law.
11. The appellant shall appear before the trial Court **on 28.7.2017**.
12. The record of the trial Court be sent back immediately.
13. The appeal is allowed to the extent indicated above.

Sd/-

Judge
(**Prashant Kumar Mishra**)

Sd/-

Judge
(**Arvind Singh Chandel**)

