

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FAMILY COURT APPEAL NO.100 OF 2018

Mr. Jaiwant Prabhakar Ranshinge .. Appellant
V/s.
Mrs. Anita Jaiwant Ranshinge .. Respondent
....

Mr.S.A.Abhyankar a/w Anu C. Kaladharan and Punam Shinde I/b
Ms. Anjali N. Helekar, for the Appellant.
Mr. B.S. Pawar, for the Respondent.
....

**CORAM: A.A. SAYED &
S.C. GUPTE, JJ.**

DATE : 7 SEPTEMBER, 2018.

P.C.:

. Learned Counsel for the Appellant husband has handed over a Demand Draft of Rs.30,000/- and a further sum of Rs.4,000/- cash aggregating to Rs.34,000/- to learned Counsel for the Respondent wife in Court, which according to learned Counsel for the Appellant, covers the arrears of maintenance upto 31 August 2018.

2. The present Appeal is filed by the Appellant-husband challenging the judgment and order dated 26 August 2016 of the Family Court, Mumbai, whereby Petition A-1412 of 2013 filed by the Appellant/Original Petitioner-husband under Section 13(1)(ia) and Sections 5, 7 and 11 of the Hindu Marriage Act, 1955, for declaring the marriage null and void,

and alternatively for decree of divorce, came to be rejected under Order VII Rule 11(a) of the Code of Civil Procedure, 1908 on the ground that the Petitioner did not disclose any cause of action. At the time of marriage, the Appellant-husband was a Hindu by religion and the Respondent-wife was a Christian. The case of the Appellant-husband was that he and the Respondent-wife got married on 15 May 1981 as per Hindu Vedic rites, however, the said marriage was not registered. It was contended by the Appellant-husband that the Respondent-wife was Christian by religion and continued to be a Christian and did not convert at the time of marriage. This position was admitted before the Family Court by the learned Counsel for the Respondent-wife.

3 In the impugned order dated 26 August 2016. the Family Court has recorded that the Appellant husband was directed to satisfy the Court about maintainability of Petition No.A-1412 of 2013 and the Petition was heard on the preliminary issue. It was contended by the Appellant husband that since the marriage was in contravention of section 5 of the Hindu Marriage Act, 1955 and since the Respondent wife was not a Hindu at the time of marriage, the marriage was a nullity. The Family Court in paragraph 4 of the impugned order has observed as under:

“4 The present Petition is filed by the Petitioner on 9.5.2013. Marriage between Petitioner and Respondent is

solemnized on 15.5.1981. They have two daughters aged about 30 and 26 years respectively. It is not Petitioner's case that he was unaware of the Respondent's religion or Respondent misrepresented him about her religion. He has nowhere mentioned about the delay of 31 years in filing the present Petition. From his pleadings, it is crystal clear that since before the marriage the Petitioner has knowledge of Respondent's religion. He also knows that Respondent never converted into Hindu religion at any point of time before performing marriage with him. The marriage between Petitioner and Respondent is clearly in contravention to the provisions of section 5 of Hindu Marriage Act. The Petitioner himself chose to marry with respondent though she was not converted into Hindu religion at the time of marriage. He cannot take advantage of his own wrong. Now, after 31 years he has filed the present petition for nullity which is not tenable. Petitioner's advocate relied upon the citation **2009 (2) MH.L.J in the case of Gullipalli Vs. Bandaru Pavani** wherein the Apex Court observed that;

15. "With regard to the provisions of section 5 of the Hindu Marriage Act, 1955, Mr. Rao submitted that it was clear from the wording thereof that the conditions indicated in the section were to apply only in respect of a marriage between two Hindus and that a Hindu marriage could be solemnized between two Hindus only when the conditions set out in the provisions contained therein had been fulfilled. According to Mr. Rao, the marriage between the parties would have to

be categorized within the scope and ambit of section 12 relating to voidable marriage since a void marriage under section 11 of the Act had been defined to mean any marriage after the commencement of the Act if it contravenes any one of the conditions specified in clauses (I), (iv) and (v) of Section 5. Since the marriage of the parties did not fall within the said categories the respondent had no option but to make an application under section 12 (1) (c) that the marriage was a nullity on the ground that the appellant had been beguiled into the marriage by the appellant on fraudulent considerations, one of which was that he was a Hindu at the time of marriage. Mr. Rao submitted that since a valid marriage under the Hindu Marriage Act, 1955, could only be performed between two Hindus the marriage had been rightly declared to be a nullity by the High Court and its decision did not warrant any interference in this appeal.”

The Hon'ble Apex Court's ruling is totally against the petitioner, as it was on the ground of misrepresentation by the appellant regarding his social status and that he was of relevant religion, although, he and his family members professed Christian faith. In the present matter, it is not petitioner's case that respondent misrepresented herself as Hindu. Hence this ruling does not apply to the present case.”

4 In our view the Family Court erred in observing that the aforementioned judgment in the case of **Gullipilli Sowria Raj Vs. Bandaru Pavani @Gullipili Pavani** was totally against the Appellant husband as in that case nullity of marriage was sought on the ground that there was misrepresentation by the husband (that he was Hindu by religion) whereas in the instant case there is no ground of misrepresentation. It is pertinent to note that in the case before the Supreme Court, misrepresentation was only one of the grounds stated in the Petition for declaring the marriage to be a nullity. The Family Court seems to have overlooked paragraphs 1 and 22 of the aforesaid judgment of the Apex Court, which are extracted hereunder:

“1. The only question which falls for determination in this Civil Appeal by way of Special Leave is whether a marriage entered into by a Hindu with a Christian is valid under the provisions of the Hindu Marriage Act, 1955.

22. In the facts pleaded by the respondent in her application under section 12(1)(c) of the 1955 Act and the admission of the appellant that he was and still is a Christian belonging to the Roman Catholic denomination, the marriage solemnized in accordance with Hindu customs was a nullity and its registration under section 8 of the Act could not and/or did not validate the same. In our view, the High Court rightly allowed the appeal preferred by the respondent herein and the judgment and order of the High Court does not warrant any interference.”

5 In our view, the matter needs to be reconsidered by the Family Court as the Family Court has apparently misread the judgment of the Apex Court. In the circumstances, we pass the following order:

ORDER

- i) The matter is remitted back to the Family Court to decide the issue of maintainability of the Petition afresh;
- ii) We make it clear that though we are remitting the matter back to the Family Court, it will be open for the Family Court to decide the matter on its own merits without being influenced by the observations made in this order.
- iii) All contentions are kept open.

6 The Family Court Appeal is disposed of in the aforesaid terms.

(S.C. GUPTE,J.)

(A.A. SAYED,J.)