

FAO-M-159-2016 (O&M)

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

**FAO-M-159-2016 (O&M).
Decided on: July 26, 2018.**

Naresh Kumari

.. Appellant

VERSUS

Ajay

.. Respondent

*** * ***

**CORAM: HON'BLE MR.JUSTICE M.M.S.BEDI
HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL**

*** * ***

**PRESENT Mr.Sansar Kundu, Advocate,
for the appellant.**

None for the respondent.

M.M.S. BEDI, J. (ORAL)

The appellant-wife has preferred this appeal against the judgment and decree dated 17.4.2015, passed by the Additional District Judge, Rohtak, allowing petition under Section 11 of the Hindu Marriage Act, filed by the respondent-husband.

The case of the respondent-husband, as pleaded in the petition, was that the parties were married on 22.6.2012 as per Hindu rites and ceremonies in District Jind. After the marriage, they started residing at Village Meham, District Rohtak, but no child was born. The respondent-

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husband claimed the marriage to be nullity on the ground that the appellant-wife was previously married to one Vinod Kumar son of Bhim Singh resident of Bhiwani, and she had told to the appellant that divorce had been obtained from said Vinod Kumar. In June 2013, the respondent-husband asked the appellant-wife to bring divorce decree regarding her previous marriage for getting their marriage registered but she did not bring the decree of divorce passed by any Court of law. Later on the respondent-husband came to learn that the previous marriage of the appellant-wife was subsisting at the time of the marriage of the parties on 22.6.2012. He claimed that marriage was liable to be declared a nullity.

The appellant-wife in her written statement raised preliminary objections to the effect that the respondent-husband had suppressed the material facts and clarified that she had taken divorce from her earlier husband Vinod Kumar in the presence of *Biradari* and at that time, family members of the family of Vinod Kumar and appellant were present before the officials of Women Cell, Jind and all the disputes regarding dowry etc. were settled. They all mutually agreed that both Vinod Kumar and Naresh Kumari were free to marry each other as per their own choice and documents. The statements were duly signed by the parties in presence of *Biradari*. This fact had been disclosed to the respondent-husband and his family members and on their satisfaction the marriage was solemnized between the parties. She raised the allegations that she had been maltreated and she was tortured for bringing less dowry. On account of previous knowledge of the respondent regarding previous marriage and

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passage of more than one year and birth of no child, the petition deserves to be dismissed.

The lower Court taking into consideration, the definition of '*void marriage*' under Section 11 of the Hindu Marriage Act and the conditions of Hindu marriage under Section 5 (i) of the the Hindu Marriage Act, held that the marriage between the parties deserves to be nullified.

The lower Court had not decided the appeal in the light of legal concepts of estoppel, waiver and limitation. In the present case, the factum of previous marriage had been disclosed to the respondent as per the statements of appellant as RW.1, her father Om parkash as RW.2 and Bimla as RW.3 but irrespective of the said fact, the marriage between the parties was declared nullity without there being any material on the record that the appellant-wife had been continuing relationship with her previous husband and was enjoying the status of wife of previous husband.

This Court in *Jaswinder Singh Vs. Manjit Kaur, FAO-2709 of 2015, decided on 21.5.2018*, has held that the factors of limitation, estoppel and waiver are required to be taken into consideration before declaring a marriage nullity under Section 11 read with Section 5 (i) of the Hindu Marriage Act.

Irrespective of the merit, it is pertinent to mention here that during pendency of the appeal, the respondent-husband was directed to pay maintenance pendente lite at the rate of Rs.7,000/- per month vide order dated 28.11.2017. On the last date of hearing on 01.06.2018, the arrears had accumulated to the extent of Rs.1,30,000/-. Though the respondent-husband

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was represented by Mr. Gunjan Mehta, Advocate but subsequently counsel had made a request for permission to withdraw his power of attorney as the respondent, despite his repeated instructions, had failed to clear the arrears. We made an endeavour to send a notice to the respondent-husband but the notice has been received back with a report that the respondent-husband could not be traced at the address given.

We are satisfied that the respondent-husband is evading appearance and abusing the process of law. He has got knowledge about the litigation. He was being represented through his counsel but after the wife's application for maintenance pendente lite was allowed, he instructed his counsel to withdraw the power of attorney.

We, in the above circumstances, have no option but to strike off the defence of the respondent-husband in the present appeal. His claim for seeking the marriage with the appellant-wife as nullity has been considered on the basis of the record. His claim throughout is liable to be dismissed for non-payment of the arrears of maintenance which have accumulated to the tune of more than Rs.1,30,000/-, in view of judgment in ***Nirmal Kaur Vs. Kirpal Singh***, FAO-M-371 of 2014, decided by this Court on 02.12.2017. In ***Nirmal Kaur*** (supra), in para 24, it has been held as under: -

“24. In view of the above, it is held that non-payment of maintenance pendente-lite and/or litigation expenses by the spouse, as ordered or directed by the Court, despite opportunity having been given, would amount to wrong within the meaning of Section 23 of the H.M. Act leading to the conclusion that the said spouse is taking

advantage of his/her own wrong disentitling the said spouse the relief claimed under the H.M. Act.”

In view of judgment in ***Nirmal Kaur*** (supra), the claim of the respondent is liable to be rejected throughout. The appeal is allowed. The judgment and decree dated 17.4.2015, passed by the Additional District Judge, Rohtak, petition under Section 11 of the Hindu Marriage Act, filed by the respondent-husband declaring the marriage a nullity is hereby set aside and his claim in the aforesaid petition is dismissed throughout.

Decree sheet be drawn accordingly.

(M.M.S. BEDI)
JUDGE

July 26, 2018.
raj arora

(ANUPINDER SINGH GREWAL)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No