

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-M-211-2017 (O&M)
Date of Decision:- 28.2.2018

Satwant Singh

... Appellant

Versus

Ravdeep Kaur

... Respondent

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present:- Mr. Dheeraj Mahajan, Advocate for the appellant.

Mr. K.S. Mangat, Advocate for the respondent.

M.M.S. BEDI, J.

This appeal has been preferred by the appellant-husband against order dated 17.8.2017 dismissing his petition which was titled under Section 12 of the Hindu Marriage Act, 1955 for annulment of the marriage. A perusal of the averments in the petition of the husband before the lower Court indicates that he had sought the annulment of the marriage only on the ground that marriage of the appellant-husband to the respondent-wife on 23.8.2015 was void, as she was already legally wedded wife of one Avtar Singh on the said date. The appellant-husband had filed an application under Section 9 of the Hindu Marriage Act, 1955 earlier on 5.3.2016, but on coming to learn about her relationship with Avtar Singh as first husband, the petition under Section 12 of the Hindu Marriage Act, 1955 was filed.

The respondent-wife has taken the plea that a 'Talaknama' executed between her and her earlier husband Avtar Singh dated 19.6.2015 was handed over to the appellant-husband when the proposal was made for

her marriage and it is only after acquiring the knowledge of the said 'Talaknama', he gave his consent to marry her.

The lower Court has framed the following issues:-

1. Whether the respondent has treated the petitioner with cruelty? OPA
2. Whether the petitioner is entitled to a decree of divorce as alleged in the petition? OPA
3. Whether the petition is not maintainable as the petitioner has not come to the Court with clean hands and suppressed the true and material facts from the Court? OPR
4. Relief.

These issues seem to have been framed by the then Presiding Officer without application of judicial mind on the pleadings of the parties and in absolute contravention of the provisions of Order 14 Rules 1 to 3 of the Code of Civil Procedure. The judgment has been pronounced treating the petition under Section 13 of the Hindu Marriage Act, 1955 and taking into consideration the facts pleaded, which seem to be under Section 11 of the Hindu Marriage Act, 1955, in context to the claim under Section 5 (i) of the Hindu Marriage Act, 1955. The issue Nos.1 and 2 regarding entitlement of the appellant-husband for divorce on the ground of cruelty have been decided against him holding that the application under Section 12 of the Marriage Act, 1955 is not maintainable. The most important/material issues, which arise out of the pleadings are:-

- (i) Whether the marriage of Satwant Singh with Ravdeep Kaur solemnized on 23.8.2015 is null and void on account of she

having a previous husband Avtar Singh and having not obtained decree of divorce in accordance with law? OPA

- (ii) Whether there was any Talaknama executed between Ravdeep Kaur and her husband Avatr Singh on 19.6.2015. If so, to what effect? OPR

A perusal of the judgment of the lower Court indicates that wrong issues had been framed and while dismissing the petition a finding has been given that the petition under Section 12 of the Hindu Marriage Act, 1955 is not maintainable as it does not fall within the definition of 'voidable marriages' mentioned in Section 12 of the Hindu Marriage Act, 1955, in the nature of the controversy involved, the wrong issues framed and the finding given regarding non-maintainability of the application under Section 12 of the Hindu Marriage Act, 1955 are absolutely illegal and not sustainable. The Court below has failed to exercise the jurisdiction vested in it under the law and has adopted an evasive approach to dispose of the petition of the appellant-husband filed under Section 12 of the Hindu Marriage Act, 1955 on the ground that the plea taken does not fall under Section 12 of the Hindu Marriage Act, 1955, whereas apparently the said plea is available under Section 11 of the Hindu Marriage Act, 1955, in context to Section (5) (i) of the Hindu Marriage Act, 1955.

In view of the above circumstances, the judgment and decree passed by the lower Court dated 17.8.2018 is hereby set aside and the appellant-husband is permitted to file a fresh petition within a period of two months after the present decision before the Court of competent jurisdiction under Section 11 of the Hindu Marriage Act, 1955 and seek adjudication in accordance with law by enabling the respondent-wife to file fresh written

statement by taking up the pleas already taken in the written statement with any additional plea if available. It will be open to the Court to frame fresh issues on the basis of the pleadings, in accordance with law, besides the above said issues. Anything said in the earlier judgment will not affect the merits of the fresh petition to be filed under Section 11 of the Hindu Marriage Act, 1955, if so advised. Any finding or observation will not be treated as *resjudicata* as the earlier judgment is apparently without jurisdiction and having been passed in violation of the basic requirements of framing of issues and decision on the same.

The appeal is allowed with abovesaid observation with liberty to the appellant-husband to avail the appropriate remedy. It will be appreciated in case the controversy is finally settled within a period of one year after filing of fresh petition under Section 11 of the Hindu Marriage Act, 1955.

(M.M.S. Bedi)
Judge

28.2.2018

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No