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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 23rd March, 2018

+ CM(M) 140/2017

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..... Petitioner

Through: Mr. Saleem Ahmed, Mr. Shamim,
Ms. Charu Dalal and Mr. Ajay Pratap
Singh, Advs.

versus

A

..... Respondent

Through: Ms. Jhuma Bose, Adv. with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T

1. An important question of law has arisen for consideration in this case as to whether the parties married under the Special Marriage Act, 1954 can be permitted to challenge jurisdiction of the Family Court to entertain and try a petition for dissolution of marriage under the Special Marriage Act.
2. The petitioner and the respondent got married under the Special Marriage Act, 1954 on 20th August, 1998. On 29th September, 2014, the respondent instituted a petition for divorce against the petitioner under Section 27(1) (a) (b) and (d) of the Special Marriage Act, 1954. The Certificate of Marriage under the Special Marriage Act was filed by the respondent along with the petition.
3. The petitioner filed the written statement dated 6th April, 2015 in which he admitted that the marriage was solemnized under the Special

Marriage Act on 20th August, 1998. The petitioner further admitted that the respondent was Hindu at the time of the marriage.

4. On 18th November, 2015, the petitioner filed an application under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the written statement to challenge the maintainability of the divorce petition under the Special Marriage Act on the ground that the parties are governed by Muslim Personal Laws and the provisions of Special Marriage Act, 1954 were not applicable as the respondent had embraced Islam prior to the solemnization of the marriage under the Special Marriage Act and the parties entered into a *nikah* ceremony on 06th December, 1998 after their marriage under the Special Marriage Act.

5. The learned Family Court dismissed the application vide order dated 02nd November, 2016 which is under challenge in this petition.

6. Learned counsel for the petitioner urged at the time of the hearing that the amendment is necessary for determining the real issues between the parties. It was submitted that the petitioner has challenged the jurisdiction of the Family Court to entertain and try the divorce petition under the Special Marriage Act on the ground that the parties subsequently performed *nikah* ceremony on 06th December, 1998 and, therefore, the parties are governed by the Muslim Personal Laws. It is further submitted that the respondent embraced *Islam* prior to the marriage under the Special Marriage Act on 20th August, 1998.

7. Learned counsel for the respondent urged at the time of the hearing that the parties got married under the Special Marriage Act on 20th August, 1998 and, therefore, the divorce petition is maintainable under the Special Marriage Act. It is further submitted that the petitioner specifically admitted

in the written statement on oath that the respondent was Hindu at the time of the filing of the divorce petition whereas in the amendment application, the petitioner has made a contradictory statement that the respondent was a Muslim prior to the solemnization of Marriage under the Special Marriage Act i.e. on 20th August, 1998. It is submitted that the petitioner cannot be permitted to set up a contradictory plea by amendment. It is further submitted that the petitioner has raised a false claim before the Family Court as well as this Court. The relevant portion of the divorce petition and the written statement are reproduced hereunder:

Para 1 of the divorce petition

“1. That the marriage of the petitioner with the Respondent was solemnized on 20.8.1998 under Special Marriages Act in Mumbai. (A copy of the marriage certificate is annexed to this petition.)”

Para 1 of the Written Statement

“1. That in reply to Para No.1 it is submitted that the marriage of petitioner with the respondent was solemnized on 20/08/1998 under Special Marriage Act in Mumbai is not denied, but it is submitted that both the parties to the marriage were not of the same religion so as certificate was obtained but later on respondent belonging to Muslim religious he had to marry the petitioner according to Muslim Law (sic) petitioner embraced Islam and is called by the name if AISHA.”

8. Relevant provisions of Special Marriage Act, 1954

8.1. Statement of Objects and Reasons of Special Marriage Act, 1954

Special Marriage Act, 1954 is a successor legislation of Special Marriage Act, 1872 which did not recognize inter-religion marriages. Under Special Marriage Act, 1954 two persons belonging to different religion can solemnize their marriage under the Act without renouncing their religions. The object and reasons of the Special Marriage Act, 1954 are reproduced hereunder:-

“This Bill revises and seeks to replace the Special Marriage Act of 1872 so as to provide a special form of marriage which can be taken advantage of by any person in India and by all Indian nationals in foreign countries irrespective of the faith which either party to the marriage may profess. The parties may observe any ceremonies for the solemnisation of their marriage, but certain formalities are prescribed before the marriage can be registered by the Marriage Officers. For the benefit of Indian citizens abroad, the Bill provides for the appointment of Diplomatic and Consular Officers as Marriage Officers for solemnising and registering marriages between citizens of India in a foreign country.

2. Provision is also sought to be made for permitting persons who are already married under other forms of marriage to register their marriages under this Act and thereby avail themselves of these provisions.

3. The bill is drafted generally on the lines of the existing Special Marriage Act of 1872 and the notes on clauses attached hereto explain some of the changes made in the Bill in greater detail.”

(Emphasis Supplied)

8.2. **Preamble of Special Marriage Act, 1954**

“An Act to provide a special form of marriage in certain cases, for the registration of such and certain other marriages and for divorce”

8.3. **Conditions relating to solemnization of special marriages**

Section 4 of the Special Marriage Act prescribes the conditions for solemnizing a special marriage. Section 4 starts with a *non-obstante* clause that “*Notwithstanding anything contained in any other law for the time being in force relating to solemnization of marriages*”, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage, the conditions contained in the said Section are fulfilled. None of these conditions require that the man and woman must belong to same religion. Section 4 enables two persons belonging to different or same religions to enter into a valid marriage as long as they fulfill conditions contained in the said

Section such as neither party is having a spouse living, the parties are not within the degrees of prohibited relationship unless the customs governing at-least one of them permit such marriage, etc. Personal religious laws of different religions would obviously not recognize inter-religion marriages unless of-course one party to such marriage is prepared to renounce his/her religion and accept conversion to the religion of the spouse and such conversion is recognized by such religion. Section 4 of Special Marriage Act is reproduced hereunder:-

“Section 4 - Conditions relating to solemnization of special marriages.-

Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:-

- (a) neither party has a spouse living;*
- (b) neither party-*
 - (i) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or*
 - (ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or*
 - (iii) has been subject to recurrent attacks of insanity;*
- (c) the male has completed the age of twenty-one years and the female the age of eighteen years;*
- (d) the parties are not within the degrees of prohibited relationship:-*

Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage

may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and

(e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends.

Explanation.-In this section, “custom”, in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family:

Provided that no such notification shall be issued in relation to the members of any tribe, community, group or family, unless the State Government is satisfied-

(i) that such rule has been continuously and uniformly observed for a long time among those members;

(ii) that such rule is certain and not unreasonable or opposed to public policy; and

(iii) that such rule, if applicable only to a family, has not been discontinued by the family.”

(Emphasis Supplied)

8.4. Form of solemnization of marriage under Special Marriage Act

Section 12 of the Special Marriage Act provides that parties are at liberty to choose any form of solemnization of marriage. The proviso to Section 12 requires each party to say in the presence of the Marriage Officer and three witnesses that he takes the other person as the lawful spouse. Section 12 of the Special Marriage Act is reproduced hereunder:

“Section 12 - Place and form of solemnization -

(1) The marriage may be solemnized at the office of the Marriage Officer, or at such other place within a reasonable distance therefrom as the parties may desire, and upon such conditions and the payment of such additional fees as may be prescribed.

(2) The marriage may be solemnized in any form which the parties may choose to adopt:

Provided that it shall not be complete and binding on the parties unless each party says to the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties, "I, (A), take thee (B), to be my lawful wife (or husband)".

8.5. **Certificate of marriage under Special Marriage Act**

Section 13 requires the Marriage Officer to enter a Certificate in the prescribed form in the Marriage Certificate Book to be signed by the parties and three witnesses. Section 13(2) of the Special Marriage Act provides that a Certificate of Marriage shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and all the formalities respecting the signatures of witnesses have been complied with. Section 13 of the Special Marriage Act is reproduced hereunder:

"Section 13 - Certificate of marriage -

(1) When the marriage has been solemnized, the Marriage Officer shall enter a certificate thereof in the form specified in the Fourth Schedule in a book to be kept by him for that purpose and to be called the Marriage Certificate Book and such certificate shall be signed by the parties to the marriage and the three witnesses.

(2) On a certificate being entered in the Marriage Certificate Book by the Marriage Officer, the Certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and that all formalities respecting the signatures of witnesses have been complied with.

(Emphasis Supplied)

8.6. **Registration of marriage solemnized under any other form**

Section 15 of the Special Marriage Act provides for the registration of marriage solemnized under other forms. Section 15 of the Special Marriage Act is reproduced hereunder:

"Section 15 - Registration of marriages celebrated in other forms.—
Any marriage celebrated, whether before or after the commencement

of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 (3 of 1872) or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely—

(a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since;

(b) neither party has at the time of registration more than one spouse living;

(c) neither party is an idiot or a lunatic at the time of registration;

(d) the parties have completed the age of twenty-one years at the time of registration;

(e) the parties are not within the degrees of prohibited relationship:

Provided that in the case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and

(f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.”

8.7. Effect of registration of marriage

Section 18 of the Special Marriage Act provides that a marriage upon being entered in the Marriage Certificate Book shall be deemed to be a marriage solemnized under the Special Marriage Act and all children born after the date of ceremony of marriage shall be deemed to be and always to remain legitimate children of the parents. Section 18 of the Special Marriage Act is reproduced hereunder:

“Section 18 - Effect of registration of marriage under this Chapter-
Subject to the provisions contained in sub-section (2) of section 24, where a certificate of marriage has been finally entered in the Marriage Certificate Book under this Chapter, the marriage shall, as from the date of such entry, be deemed to be a marriage solemnized under this Act, and all children born after the date of the ceremony of marriage (whose names shall also be entered in the Marriage Certificate Book) shall in all respects be deemed to be and always to

have been the legitimate children of their parents: Provided that nothing contained in this section shall be construed as conferring upon any such children any rights in or to the property of any person other than their parents in any case where, but for the passing of this Act, such children would have been incapable of possessing or acquiring any such rights by reason of their not being the legitimate children of their parents.”

8.8. **Dissolution of marriage under the Special Marriage Act**

Chapter VI of the Special Marriage Act contains the provisions for dissolution of marriage and Chapter VII contains the provisions relating to the jurisdiction and procedure.

8.9. **Deemed Severance from undivided family**

Section 19 of the Special Marriage Act stipulates that a marriage solemnized under this Act by any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family. Section 19 of the Special Marriage Act is reproduced hereunder:

“Section 19 - Effect of marriage on member of undivided family -

The marriage solemnized under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family.”

8.10. **Succession to property of parties married under the Special Marriage Act**

Chapter IV of the Special Marriage Act provides for the consequences of marriage under the Special Marriage Act. Section 21 of the Special Marriage Act provides that the succession to the property of any person solemnized under the Special Marriage Act shall be governed by the Indian Succession Act. Section 21 of the Special Marriage Act is reproduced hereunder:

“Section 21 -Succession to property of parties married under Act -
Notwithstanding any restrictions contained in the Indian Succession Act, 1925 (39 of 1925), with respect to its application to members of certain communities, succession to the property of any person whose marriage is solemnized under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the said Act and for the purposes of this Act shall have effect as if Chapter III of Part V (Special Rules for Parsi section that Intestates) had been omitted therefrom.”

8.11. **Monogamy is the rule under the Special Marriage Act 1954.**

8.11.1. Section 43 of the Act stipulates that a person already married under any law, contracts a second marriage under this Act shall be deemed to have committed an offence under Section 494 or Section 495 of the Indian Penal Code, and the marriage so solemnized shall be void. Section 43 of the Special Marriage Act is reproduced hereunder:

“Section 43 -Penalty on married person marrying again under this Act -

Save as otherwise provided in Chapter III, every person who, being at the time married, procures, a marriage of himself or herself to be solemnized under this Act shall be deemed to have committed an offence under Section 494 or Section 495 of the Indian Penal Code, 1860 (45 of 1860), as the case may be, and the marriage so solemnized shall be void.”

8.11.2. Section 44 of the Special Marriage Act stipulates that a person married under this Act, contracts a second marriage shall punishable under Section 494 and Section 495 of the Indian Penal Code and the marriage so contracted shall be void. Section 44 of the Special Marriage Act is reproduced hereunder:

“Section 44 - Punishment of bigamy -

Every person whose marriage is solemnized under this Act and who, during the lifetime of his or her wife or husband, contracts any other marriage shall be subject to the penalties provided in Section 494 and

Section 495 of the Indian Penal Code, 1860 (45 of 1860), for the offence of marrying again during the lifetime of a husband or wife, and the marriage so contracted shall be void.”

9. **Relevant Judgments**

9.1. In ***Dr. Abdur Rahim Undre v. Padma Abdur Rahim Undre***, AIR 1982 Bom 341, a Muslim boy married a Hindu girl on 6th May, 1966 before the Registrar and the marriage was duly registered on 6th May, 1966 under British Marriage Act, 1949. On 20th April, 1978, the husband gave *talaq* which was challenged by his wife on the ground that the marriage in England was performed according to the British Marriage Act, 1949; the said marriage was a monogamous and secular in nature; the marriage performed under the secular law of England cannot be dissolved under the personal law as the parties are governed by Special Marriage Act, and therefore, the alleged *talaq* was invalid. The Division Bench of Bombay High Court observed that Special Marriage Act applies to all Indian Communities irrespective of caste, creed or religion. The concept of marriage under the said Act is monogamous dissoluble by the Court of competent jurisdiction. Relevant portion of the said judgment is as under:

“10. So far as the marriage dated 6th May, 1966, solemnized in England is concerned parties are not at issue. The defendant herself has given evidence that marriage was solemnized and plaintiff also admitted in his evidence that required ceremony and formalities were completed and he accepted the defendant as his wife in the presence of witnesses. Therefore, it must be held that marriage dated 6th of May, 1966 was performed in England according to the British Marriage Act, 1949. This position is also clear from the entry of marriage made pursuant to the provisions of Marriage Act, 1949.No civil marriage validly performed and solemnized, according to any law in force can be treated as a religious marriage, by introducing elements of formalities of personal law.”

.....The character of marriage remains unaffected by such external factors. Because, a civil marriage validly performed, has an overriding effect on all other religious forms of marriages.

11. When the parties have solemnized a legal and valid marriage as per British Marriage Act, it is difficult to hold that the said marriage should also be treated as Nikah Fasid. When the parties with open eyes have chosen a specific form of marriage, it cannot be held that they concurrently also intended to enter into another form of marriage. To impute such an intention is contrary to well established principles of justice, equity and good conscience.

.....If such a contention is accepted then even a secular and monogamous marriage solemnised as per provisions of Special Marriage Act, 1954 could be termed as 'Nikah Fasid' and a secular and monogamous marriage between the two muslim or between two muslim husband and non-muslim wife will become impossible even if they desire to solemnise such a secular and monogamous marriage.

13. The special Marriage Act or Foreign Marriage Act do not require continuance of the original religion as a condition for getting relief of divorce.

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22. ...The Special Marriage Act 1954 applies to all citizens irrespective of religion.Admittedly the marriage which was solemnized in May 1966 in England under the British Marriage Act, 1949 was monogamous and secular in nature.Once it is held that the marriage which took place in England in 1966 was secular in the form and content and also monogamous and such a secular law is also available in India in the form of Special Marriage Act, 1954 then in our view even the lex domicilli in case of such secular marriage will be the Special Marriage Act and not the Personal Law of the husband. This is more so when one of the parties belonged to different religion and is not a muslim, After all there should be harmony between different personal laws so that the parties can live together.

23. It can safely be said that Special Marriage Act is in reality an Indian Marriage Act, which applies to all Indian Communities irrespective of caste, creed or religion. The concept of marriage under the said Act, is monogamous, that is union for life, dissoluble by judicial authorities. Under the said law all modern matrimonial

*reliefs are made available to both the spouses in the event of break down of marriage on an application to the Court of competent jurisdiction. Even the religious marriages can be registered under the said Act. On such registration the religious marriage can be converted into secular marriage. In this, context it is also pertinent to note that between 1954 to 1969 two Indian citizens domiciled in India could have married under Special Marriage Act even outside India. A marriage which is monogamous in form continues to be so, where as original religious marriage can be converted into a secular marriage. However, a secular marriage cannot be converted into religious marriage. Therefore if there is in the field an Indian enactment which is applicable to all the citizens of India irrespective of their religion, then so far as secular marriages are concerned the said law will become *lex domicilli* of India for the purposes of matrimonial reliefs. Such an interpretation will be in tune with Article 44 as well as the preamble of the Constitution. It cannot also be forgotten that the establishment of a secular society is the aim and goal of Indian Constitution. Therefore in the area and field which is secular or nonreligious laws will have to be common for all citizens of India, and that is what has been done, though to limited extent by enacting Special Marriage Act at least leaves a choice open which is available to all the citizens of India irrespective of their caste, creed or religion.”*

(Emphasis Supplied)

9.2. In **Minoti Anand v. Subhash Anand**, 2011 (2) Mh.L.J. 812, the parties solemnized their marriage under the Hindu Marriage Act but subsequently registered the marriage under the Foreign Marriage Act. The divorce petition filed under the Hindu Marriage Act was challenged on the ground that the petition could be filed only under the Special Marriage Act. The Bombay High Court held that the registration of a marriage under the Foreign Marriage Act is conclusive and the provisions of the Special Marriage Act would apply. Relevant portion of the said judgment is as under:

“15. The essence of this very provision is that when one fact becomes or is statutorily deemed to be conclusive evidence of another fact, any other evidence, which would disprove such other fact cannot be led.

16. In this case, the registration certificate of the marriage between the parties is conclusive evidence of the fact that their marriage was solemnised under the FMA and not any other Act. Therefore, evidence with regard to the fact that their marriage was actually solemnised under any other Act at any other time cannot be allowed and cannot be seen. It may be that parties married for the purpose of their own satisfaction or appeasement under different laws. In this case, the husband has sought to claim that the parties had married initially under the HMA as per Hindu Vedic rites and, therefore, their marriage can be dissolved only under the HMA. However, their marriage has not been registered under the HMA. Their marriage has been registered under the FMA. Hence it must be taken to be proved conclusively that it was solemnised under the FMA and not HMA.

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23. Once, therefore, it is seen that the marriage is solemnised under the Act, there can be no debate that the SMA would apply.”

(Emphasis Supplied)

9.3. In **Anwar Ahmed vs. State of Uttar Pradesh**, 1989 All LJ 303, the applicant solemnized his first marriage under Mohammedan law and he contracted his second marriage under Special Marriage Act. The Allahabad High Court held that the second marriage under the Special Marriage Act is an offence punishable under Section 494 IPC notwithstanding that the Personal Law permits Muslim male to contract four marriages. Relevant portion of the said judgment is as under:

“...Notwithstanding the fact that personal law permits a Muslim male to contract four marriages, if a second marriage is contracted under the Special Marriage Act 1954 vis-à-vis the fact that a muslim male has a legally wedded wife who has been married to him under the Mohammedan Law, Section 494, I.P.C. has to claw at the erring male. The applicant cannot take refuge behind the fallacious

contention that he had contracted the second marriage with a Muslim woman by virtue of the exceptions enshrined in Mohammedan Law. Mohammedan Law does not claim precedence over Special Marriage Act, 1954 keeping in view that the applicant solemnised his first marriage under Mohammedan law and he contracted his second marriage under Special Marriage Act. There being no saving clause for the applicant to purge him of the charges u/s 494, L.P.C. I feel that the applicant is liable to be punished u/s 494, I.P.C.”

9.4. In **S. Radhika Sameena vs. The S.H.O., Habeebnagar Police Station, Hyderabad**, 1997 (3) RCR (Criminal) 427, a Muslim boy and a Hindu girl married under the Special Marriage Act. The wife subsequently converted into Islam. The boy contracted a second marriage under Muslim Law. The Division Bench of Andhra Pradesh High Court held that having married under the Special Marriage Act, the second marriage is an offence punishable under Section 494 or 495 of the Indian Penal Code. Relevant portion of the said judgment is as under:

“10. ...Having married under the Special Marriage Act, if a person again contracts a second marriage, he shall be deemed to have committed an offence under Section 494 or 495 IPC. Section 44 of the Special Marriage Act lays down:

“44. Punishment for bigamy :- Every person whose marriage is solemnized under this Act and who, during the lifetime of his or her wife or husband, contracts any other marriage shall be subject to the penalties provided in Sections 494 and 495 of the Indian Penal Code, 1860 (45 of 1860), for the offence of marrying again during the lifetime of a husband or wife, and the marriage so contracted shall be void.”

...Likewise, the petitioner converting into Islam will not disentitle her from prosecuting her husband for bigamy since their marriage was under the Special Marriage Act but not under the Muslim personal law.

...

12. ...Dr. Jameeluddin, is liable to be prosecuted for the offence of bigamy under Section 494 IPC. Dr. Jameeluddin, the fourth respondent, cheated two innocent women, on his own admission.”

(Emphasis Supplied)

9.5. In **Jafar Abbas Rasoolmohammad Merchant v. State of Gujarat**, (2016) 57 (2) GLR 1529, the Gujarat High Court while dealing with case of bigamy observed that :

“26.1 Special Marriage Act 1954: Monogamy is the rule under the Special Marriage Act 1954. Among the conditions for solemnization of a civil marriage spelt out in the Act the foremost is that “neither party has a spouse living”-Section 4(a).

In respect of bigamy there are two different penal provisions under the Act. If a person already married, under whatever law, fraudulently contracts a civil marriage the provision of Section 43 of the Act will apply.....

The other provision contained in Section 44.....is meant for a person married under the Special Marriage Act who contracts a second marriage under any other law.....

Chapter III of the Act, referred to in Section 43 reproduced above, provides the facility of turning a pre-existing marriage solemnized as per religious or customary rites into a civil marriage by registering it under this Act. This facility is also available subject to the condition that “neither party has at the time of registration more than one spouse living”-Section 15(b). If a person having more than one spouse living fraudulently registers either of his marriages under this Act he will be guilty of the offence of knowingly making a false statement punishable under Section 45 of the Act.

The anti-bigamy provisions of the Special Marriage Act apply to every marriage contracted under its provisions irrespective of the religion of the parties. A court has specifically held that if a Muslim contracts a civil marriage under the Special Marriage Act instead of his personal law the anti-bigamy provisions of the Act will apply to him. See S. Radhika Sameena v. S.H.O., Habeeb Nagar Police Station, Hyderabad 1997 CriLJ 1655 (AP).”

9.6. In **Sayeeda Shakur Khan vs. Sajid Phaniband**, (2006) 5 Bom CR 7,

the Bombay High Court observed that succession to the property of a Muslim married under Special Marriage Act who died intestate would be governed by Special Marriage Act and not by Muslim personal Law. Relevant portion of the said judgment is as under:

“9. ...Section 18 of the Special Marriage Act, stipulates the effect of a marriage under that Act. Where a marriage is registered under the Special Marriages Act, it is deemed to be a marriage solemnized under the Act. Section 21 of the Special Marriage Act reads as under:

“21. Succession to property of parties married under the Act. - Notwithstanding any restrictions contained in the Indian Succession Act, 1925 (39 of 1925), with respect to its application to members of certain communities, succession to the property of any person whose marriage is solemnized under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the said Act and for the purposes of this Act shall have effect as if Chapter III of Part V (Special Rules for Parsi section that intestate) had been omitted therefrom.”

...This Section provides that succession to the property of a person whose marriage is solemnized under the Act would be regulated by the provisions of the Indian Succession Act, 1925. ...

13. ...once a Muslim who is married under the Special Marriage Act is treated on par with person of other communities married under the Special Marriage Act, all the rigours of the Indian Succession Act are applicable....”

(Emphasis Supplied)

9.7. In ***Grace Sheela Joseph vs. P.K. George Vaidian***, AIR 1988 Ker 234, the parties were married according to the rites, ceremony and customs of the Church. The wife filed a petition for dissolution of marriage under Section 27 of Special Marriage Act. The maintainability of the petition was challenged on the ground that their marriage was neither solemnized nor registered under the Special Marriage Act. Accepting the said objection, the

Division Bench of Kerala High Court held as under:-

“These two provisions quoted above make it clear that apart from those whose marriages have been performed under the provisions of the Act of 1954 even those whose marriages have been solemnized either before or after the commencement of the Act of 1954 in any other form or under any other enactment may get their marriages registered under Section 15 of the Act, provided the conditions of that provision are satisfied and in such an event the marriage shall, as from the date of entry in the "Marriage Certificate Book", be deemed to have been solemnized under the Act of 1954 on account of the legal fiction introduced by Section 18. It is obvious that after a marriage solemnized in a form other than the one contemplated by the Act has been registered under Section 15 because of the deeming clause in Section 18, parties thereto are entitled to take recourse to Section 27 of the Act. The reason why Section 27 of the Act unlike Sections 24 and 25 thereof does not contain the words "any marriage solemnized under this Act" is not that Section 27 was intended to apply to marriages performed under other enactments but because the benefit of it was made available even to those whose marriage though not solemnized under the Act was registered under Section 15 and thus deemed to have been under the Act by operation of Section 18. If it had been contemplated that parties who have undergone marriage under any of the other enactments mentioned above can sue for divorce under Section 27 of the Act of 1954, it was wholly redundant for the legislature to have enacted Sections 15 and 18 of the Act as extracted above. Sections 15 and 18 to my mind, disclose an intention on the part of the legislature that unless a marriage solemnized in a form other than that prescribed by the Act of 1954 has been registered in accordance with Section 15 of the Act, the parties to such a marriage will not be governed by any of the provisions of the Act.”

9.8. In **Suman Kundra v. Sanjeev Kundra**, AIR 2015 Del 124, the parties were married as per Hindu rites and ceremonies on 29th October, 1986. However, their love marriage did not continue very long and the marriage dissolved by a decree of divorce on 02nd June, 1988. The parties re-married for the second time before the Marriage Officer under Special Marriage Act

on 03rd May, 1990. However, the parties could not reconcile their inherent differences and the husband filed a petition for dissolution of marriage under Section 13(1)(a) and (b) of Hindu Marriage Act on 21st July, 2005. The wife challenged the maintainability of the petition. This Court held that since the parties were married under the Special Marriage Act, their conduct with regard to the grant of divorce or relationship would be covered under the Special Marriage Act only.

10. **Summary of Principles**

10.1. The Special Marriage Act, 1954 provides a special form of marriage, its registration and divorce. A marriage between any two persons belonging to any religion or creed may be solemnized under this Act. Being a secular Act, it plays a key role in liberating individuals from the traditional requirements of marriage. It provides for a civil law of marriage that would enable individuals to get married outside of their respective community mandates.

10.2. The Special Marriage Act 1954 is not concerned with the religion of the parties to an intended marriage. Under the Act any person, whichever religion he or she professes, may marry either within his or her community or in a community other than his or her own, provided that the intended marriage in either case is in accord with the conditions for marriage laid down in the Act.

10.3. No religious rituals or ceremonies are required from the marriage to be completed under the Special Marriage Act. It is up to the parties to decide whether they want to do marriage rituals or not. The marriage solemnized under Special Marriage Act is registered and a Certificate of Marriage is given to the parties. The Certificate shall be signed by the parties to the

marriage and witnesses which is deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized.

10.4. The Special Marriage Act provides an option of turning an existing religious marriage solemnized in any other form under any other law into a civil marriage by registering it under its provisions, provided that it is in accord with the condition for marriage laid down under the Act. This provision of subsequent registration enables parties to avail secular and uniform remedies despite the solemnization of marriage through performance of religious ceremonies under one's own personal laws. This aids them in overcoming the constraints or discrimination faced in their own personal laws.

10.5. The unique feature of the Special Marriage Act, 1954 is compulsory registration of marriage under the Act which protects the interest of the parties and the children born out of wedlock.

10.6. The Registration Certificate of the marriage between the parties is conclusive evidence of the fact that their marriage was solemnised under the Special Marriage Act. Therefore, evidence with regard to the fact that their marriage was actually solemnised under any other Act at any other time, cannot be allowed. There can be no issue that the Special Marriage Act would apply.

10.7. When a person solemnizes marriage under this law then the marriage is not governed by personal laws but by Special Marriage Act. The rights and duties arising out of marriage are governed by the Special Marriage Act and the succession is governed by Indian Succession Act, 1925, and not by the personal laws.

10.8. Having married under the Special Marriage Act, if a person contracts

a second marriage, he shall be deemed to have committed an offence under Section 494 or 495 IPC.

11. **Findings**

11.1. In the present case, both the parties appeared before the Marriage Officer for Mumbai on 20th August, 1998 and made a declaration required under Section 11 of the Special Marriage Act and the marriage under Special Marriage Act was solemnized between them in the presence of the three witnesses and the Marriage Officer. The Marriage Officer issued a Certificate of Marriage under Section 13 of the Special Marriage Act which is on record of the Family Court. The Certificate of Marriage dated 20th August, 1998 is reproduced hereunder:

“CERTIFICATE OF MARRIAGE
(See Section 13)

I Shri S.B. Koli, Marriage Officer, Bombay hereby certify that on the 20th day of Aug 1998 Mohammed Atique and Aprajita Sharma appeared before me and that each of them. In my presence and in the presence of three witnesses who have signed hereunder, made the declaration required by Section 11 and that a marriage under this Act as solemnized between them in my presence at my office.

Witnesses:

(1) *Maya B. Jdnani (Adv.)*

53A Mittal Tower

Nariman Pt.

Bombay – 21

(2) *Santosh H. Divakar*

3A Girjabai Chawl

Navenad

Mulund (E)

Mumbai 81

(3) *Manisha Sharma*

Roop Mahal ‘B’ 4th Rd.

Khar (W)

Sd/- S.B. Koli 20/8

Marriage Officer for Mumbai

Sd/- M. Atique 20.8.98

Bridegroom

Sd/-Aparajita Sharma 20.8.98

Bride

Three Witness

1) Sd/- Maya B. Jdnani 20.8.98

2) Sd/- S.H. Divakar 20.8.98

Dated the 20th day of Aug 1998”

11.2. Under Section 13(2), the aforesaid Certificate dated 20th August, 1998 is deemed to be conclusive evidence of the fact that marriage under the Act had been solemnized and that all formalities respecting the signatures of witnesses have been complied with.

11.3. The Certificate of Marriage issued by the Marriage Officer under the Special Marriage Act is a conclusive proof of their valid marriage under the Special Marriage Act and the petitioner cannot be permitted to challenge the jurisdiction of the Family Court to entertain and try the petition for divorce instituted by the respondent. The petitioner's challenge to the jurisdiction of the learned Family Court to entertain and try the petition under the Special Marriage Act is barred by law.

11.4. The learned Family Court has clear jurisdiction to entertain and try the respondent's petition as both the parties are governed by the Special Marriage Act.

11.5. The petitioner's contention that the respondent embraced *Islam* prior to 20th August, 1998 is contradictory and mutually destructive to the petitioner's admission in the written statement that the respondent was *Hindu* at the time of the marriage on 20th August, 1998. The petitioner has neither withdrawn the admission made in the written statement nor given any justification for setting up a contradictory plea. In that view of the matter, the respondent cannot be permitted to set up a contradictory and mutually destructive plea in the written statement by way of an amendment.

11.6. Even assuming that the respondent had embraced *Islam* prior to 20th

August, 1998, it would not in any manner, effect the jurisdiction of the learned Family Court to entertain and try the petition for divorce under the Special Marriage Act.

12. **Conclusion**

12.1. There is no merit whatsoever in this petition. This petition is gross abuse and misuse of the process of law and is, therefore, dismissed with cost of Rs.50,000/- to be paid by the petitioner to the respondent within four weeks.

12.2. With respect to the show cause notice dated 31st October, 2017 issued by this Court, the Family Court shall consider the same at the time of final hearing of the petition for divorce.

12.3. The learned Family Court is directed to expedite the hearing and shall endeavor to decide the same within one year.

13. The parties shall appear before the learned Family Court on 16th April, 2018 at 2.30 PM.

14. The record of the Family Court be returned back forthwith.

15. Copy of this judgment be given *dasti* to learned counsels for the parties under signatures of the Court Master.

MARCH 23, 2018
dk/rsk/ak

J.R. MIDHA
(JUDGE)