

\$~2

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

%

Date of Judgment: 09th July, 2018

+ MAT.APP.(F.C.) 189/2017

MEENAKSHI SHARMA

..... Appellant

Through: Mr. D. K. Sharma, Advocate.

versus

RAVI KUMAR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. The present matrimonial appeal has been filed by the appellant under Section 19 of the Family Courts Act, 1984 against the impugned order dated 27.03.2017 whereby the petition filed by the respondent/husband under Section 11 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'HMA') was allowed. Consequently, a decree was passed declaring the marriage between the parties dated 03.03.2014 as Null and Void.
2. The marriage between the petitioner and the respondent was solemnized on 03.03.2014. On account of marital discord between the parties led to the filing of the petition in the month of April, 2015 under Section 12 of HMA seeking a declaration that the marriage between the parties be declared as null and void for the reasons that as on the date of marriage i.e. 03.03.2014 the respondent (appellant herein) was having a living spouse. The petition discloses that the

marriage between the appellant and one Manoj Kumar was solemnized on 06.05.2011. On 05.06.2011, with the intervention of respectable persons of the society in the presence of the family members of the parties an agreement was reduced into writing and signed by 8 persons including the respective fathers of the parties to dissolve the marriage.

3. Mr. Sharma, learned counsel appearing for the appellant submits that the marriage was dissolved as per customs and thus the order of the Principal Judge, Family Court is liable to be set aside.
4. We may note that during the pendency of the petition filed under Section 11 of the HMA by the respondent herein, an application was filed under Order XII Rule 6 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') for passing a decree on admissions and the Principal Judge, Family Court issued notice in the matter. Reply was filed and the respondent (Appellant herein) was also examined under Order 10 CPC. During the statements so recorded, the wife had admitted that her first marriage was performed on 16.05.2011 and dissolved on 05.06.2011 by mutual compromise. The Principal Judge, Family Court had also noticed that the document so executed was a compromise whereby either of the parties would not interfere in the life of each other in future. Mr. Sharma, learned counsel for the appellant has laboured hard to contend that the marriage between the parties stood dissolved by an agreement dated 05.06.2011 and thus the impugned order is liable to be set aside. It is further contended that the parties were known to each other and the factum of the earlier marriage was well known to the respondent and

thus the respondent cannot take benefit of the fact that there was no decree of divorce. In our view the submission made by the counsel for the appellant cannot be accepted in view of Section 11 read with Section 5 of the Hindu Marriage Act, 1955. Section 11 reads as under:

Section 11 - Void marriages – Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto 11 [against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i) , (iv) and (v) of section 5.”

Section 5(i) reads as under:

“Section 5 - Conditions for a Hindu Marriage – A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely :-

(i) Neither party has a spouse living at the time of the marriage;

5. We may also note that it is not disputed that document which was executed does not bear the signatures of either of the parties but their respective fathers. The following explanation was rendered by the appellant herein at the time of filing written statement which has been extracted at para ‘g’ of grounds of appeal which is reproduced below :

“G. That on 05/11/2015 the appellant filed written statement and submitted that *‘the factum of first marriage of the appellant was well known to the respondent and his family members and relatives and this was also know to them that the marriage between appellant and said Manoj Kumar had been dissolved by the intervention of the respectable members of the society and elder men of*

both the parties. It was also submitted that the parents of the appellant as well as respondent are residing in same area for last 30-40 years and have common relations. The uncle (Mausa) of the respondent namely Brij Bhushan is working with the father of the appellant for the last about 30 years in DTC and the aunt (Buaa) of the respondent married to the cousin brother of the appellant. Thus the families of the appellant as well as the respondent had very close relations and were known to each other.”

6. In view of the express bar under Section 5 (i), we find that there is no infirmity in the order passed by the Principal Judge, Family Court, Rohini which would require any interference. Accordingly, the present appeal and pending applications are dismissed.
7. At this stage, learned counsel for the appellant submits that he would seek appropriate remedy as available to him in accordance with law seeking maintenance and other reliefs as the parties resided together as husband and wife.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JULY 09, 2018

gr