

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.5060 of 2016

Date of Decision: 15. 01.2019

Harmesh Singh

...Petitioner

versus

Renu Kumari @ Seema Rana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Parvinder Singh, Advocate
for the petitioner.

Mr. Gurcharan Dass, Advocate,
for the respondent.

Amol Rattan Singh, J.

This is a revision filed by the respondent in a petition instituted against him by the respondent herein (Renu Kumari) under Section 11 of the Hindu Marriage Act, 1955 (hereinafter to be referred to as the Act), seeking a decree of nullity as regards the marriage between the parties, on the ground that the present petitioner, Harmesh Singh, was already a married man having a wife and two children and therefore the marriage between him and the respondent herein, Renu Kumari, was null and void, with no divorce having been obtained by the present petitioner from his 'first wife', Anita Kumari.

2. In the present petition, the petitioner herein is aggrieved of the order of the trial court (District Judge, Family court, SBS Nagar), dated

19.07.2016 by which the present petitioners' application under Order 7 Rule 11 of the CPC, seeking rejection of the petition (filed under Section 11 of the Act), has been dismissed by that court.

3. A perusal of the application filed by the present petitioner (copy annexed as Annexure P-7), shows that he sought rejection of the 'Section 11 petition' on the ground that no decree of divorce between the respondent herein (petitioner in the Section 11 petition), and her husband Ravinder Kumar, having been placed on record despite the present petitioners' application seeking that the needful be done, showed that actually there was no decree of divorce ever issued qua her marriage to the aforesaid Ravinder Kumar and therefore the question of any declaration of any subsequent marriage between her (Renu Kumari) and the present petitioner (Harmesh Singh) did not arise.

It was further contended in the application that in any case since the applicant, (present petitioner) Harmesh Singh, has denied the marriage with Renu Kumari altogether, the petition filed by her under Section 11 itself was not maintainable and therefore deserves to be rejected (on that ground too).

4. A reply to the application (under Order 7 Rule 11 CPC) having been filed by Renu Kumari (respondent herein and petitioner in the petition under Section 11), a perusal thereof shows that other than taking the usual grounds of the application not being maintainable etc., it has been stated that in fact it was the 3rd application filed by Harmesh Singh and that he should be directed to file a reply to the application under Section 24 of the Act.

It is further stated (all in the preliminary objections of that reply) that Harmesh Singh had at one stage admitted Renu Kumari to be his

wife and had even obtained a warrant under Section 100 of the Code of Criminal Procedure, 1973, for obtaining her custody and that there was overwhelming evidence to the effect that a marriage had taken place between the parties and consequently “the production of the earlier marriage of the petitioner with Ravinder Kumar is not relevant at this stage”. (*Sic*. Obviously what is sought to be contended is that production of a divorce decree qua the marriage with Ravinder Kumar was not relevant).

5. In the reply on merits, to the application under Order 7 Rule 11 CPC, the respondent herein has stated that earlier also the trial court (in the present *lis*) had already decided an application filed by Harmesh Singh and that the words 'husband' and 'wife' used in Section 24 of the Act, had to be given a wide interpretation, especially as in the present petition, there were a large number of documents to prove that the marriage had taken place between the parties.

6. Having considered the aforesaid pleadings, the learned trial court, vide the impugned order, has observed that when the case was fixed for filing a reply to the application under Section 24 of the Act, Harmesh Singh (present petitioner) moved an application on 07.11.2015, seeking that a direction be issued to Renu Kumari to produce the judgment and decree of divorce qua her marriage to Ravinder Kumar, so as to enable him (Harmesh Singh-present petitioner), to file a proper reply to the application under Section 24.

Thereafter, he moved another application on 22.01.2016 seeking a direction that just the particulars of the decree of divorce with Ravinder Kumar be given so that he (Harmesh Singh) could procure the same and thereafter file a reply to the application under Section 24.

As per the impugned order, the application dated 22.01.2016 was disposed of with the trial court stating that an adverse inference would be taken against “the respondent/petitioner” at the time of decision of the petition.

Further, it was observed (in the impugned order) that although the controversy regarding the alleged marriage of Renu Kumari with Ravinder Kumar “had already been disposed of” in the present *lis* vide the order dated 18.02.2016, another application (this time under Order 7 Rule 11 CPC) had been intentionally moved, just to linger the matter on, so that the present petitioner did not have to file a reply to the application under Section 24. Thus, further observing that if he was aggrieved of the order dated 18.02.2016 he could have preferred an appeal or revision against that order, which he had not done, the application under Order 7 Rule 11 CPC was dismissed.

7. Before proceeding further ahead, the order dated 18.02.2016 is reproduced hereinunder, it having been reproduced in paragraph 3 of the present petition:-

“Heard on application moved by the Applicant/Respondent Harmesh Singh for directing the Respondent/Petitioner to furnish the particulars of decree of divorce with Ravinder Kumar son of Mangal Singh. Respondent/Petitioner has allegedly stated herself to be divorced wife of Ravinder Kumar, whereas said marriage has not been dissolved by divorce and that marriage still subsists. In reply, Respondent/Petitioner has stated that she did not remember particulars of divorce decree with Ravinder Kumar and Applicant/Respondent is filing similar type of application to delay the matter. Thus, keeping in view the reply submitted by the Respondent/Petitioner, application stands disposed of

with a view of taking adverse inference against the Respondent/Petitioner at the time of decision of the present petition.

Case is adjourned to 02.03.2016 for filing reply to petition under Section 24 of Hindu Marriage Act and consideration on said application.”

8. Before that, the statement of the respondent herein, i.e. Renu Kumari, made before the trial court in respect of any divorce from Ravinder Kumar, is also produced in the present petition which reads as follows:-

“Statement of Renu Kumari, Petitioner.

At present I have not in possession of divorce deed. As per my knowledge, my previous husband obtain the decree of divorce.”

9. Before this Court, Mr. Parvinder Singh, learned counsel for the petitioner, submitted that once it was admitted by the respondent herein that she had been married earlier to Ravinder Kumar and she was refusing to even give the details of the decree of divorce issued by a competent court qua that marriage, therefore, it was very obvious that no such divorce had taken place and consequently, the question of declaring any marriage between the present petitioner and the respondent herein did not arise, with such marriage if at all it took place (which is vehemently denied by the present petitioner), in any case being void *ab initio*.

He further submitted that in such a situation, there was no question of even the petitioners' liability to pay her any maintenance in terms of Section 24 of the Hindu Marriage Act.

10. *Per contra*, Mr. Gurcharan Dass, learned counsel for the respondent, submitted that whether or not the respondent had obtained any divorce from her first husband would be a matter of evidence before the trial

court, and simply because she could not produce any divorce decree at this stage, would not make the petition itself filed by her under Section 11 of the Act, to be non-maintainable.

11. Mr. Gurcharan Dass then pointed to Section 11 of the Act to submit that in any case, even to declare any marriage solemnized after the commencement of the Act, to be null and void, a petition has to be presented by either party for such decree of nullity to be issued, and consequently, the application under Order 7 Rule 11 CPC was wholly misconceived and deserves to be rejected on that short ground alone, even though that reason has not been explicitly stated by the trial court in the impugned order, though the inference obviously is that it was a frivolous application filed, only to avoid filing a reply to the application under Section 24 of the Act.

12. Mr. Gurcharan Dass also relied upon an order of a Division Bench of this Court in Sunita Rani v. Manjit Singh, passed in CMM-140-2014 in FAO-M-322 of 2014, to submit that even when the parties had been living together as husband and wife for ten long years, with one of them thereafter having taken a plea that the other was already married, maintenance *pendente lite* was required to be paid by the husband.

13. In rebuttal, learned counsel for the petitioner submits that the petitioner having wholly denied the factum of any marriage between the parties to the present *lis*, though he admitted to a live in relationship in his written statement (copy annexed as Annexure P-2), even the issuance of a decree of nullity is unnecessary, with both the parties admittedly having been married earlier, with none of them having been divorced.

Hence, he submitted that the impugned order deserves to be set aside and the application under order 7 Rule 11 CPC filed by the present

petitioner before the trial court, allowed.

14. Having considered the arguments on both sides, as also having seen the application filed under Order 7 Rule 11 CPC before the trial court, and reply thereto, in my opinion, this petition cannot be allowed even in terms of what is stipulated in Section 11 of the Hindu Marriage Act, 1955, which reads as follows:-

“11. **Void marriages.**-Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto [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.”

Hence, in the opinion of this court, the contention of Mr. Gurcharan Dass that even a void marriage has to be declared to be so, is a contention that is correct and consequently, the petition filed by the respondent herein under that provision, before trial court, cannot be rejected simply on the ground that the respondent herein herself not having produced a decree of divorce from her 'first husband' (Ravinder Kumar), the petition filed by her itself is not maintainable.

This is especially so because a perusal of the pleadings in the petition under Section 11 itself (copy Annexure P-1 with the present revision petition), shows that the respondent has alleged that the present petitioner, Harmesh Singh, had actually married her and had even shown her to be his wife in his passport.

Thereafter, in her reply to the application under Order 7 Rule 11, she has, as already noticed, also referred to a warrant stated to have been obtained by the petitioner under Section 100 Cr.P.C. from a competent

court, in order to obtain her custody, on the ground that she is his wife.

15. Consequently, keeping in view all the aforesaid facts, especially as the respondent herein is claiming that a marriage did take place in front of witnesses, between the petitioner herein and her, but which is contended to be a void marriage on account of the petitioners' earlier marriage with one Anita Kumari not having annulled, the petition under Section 11 would be very much maintainable, in my opinion.

Whether or not the respondent herein is able to prove that any actual marriage took place between the petitioner and her, is something to be gone into by the trial court on the basis of the evidence led before it, with no observation made by this Court in this petition to be taken as any comment on the merits of the case of either of the parties.

Even the reference by this court to the 'first wife/first husband' of either of the parties, is specifically given in inverted commas (“ ”), only for the sake of reference, without this court having accepted or rejected the fact that there was any first wife or first husband with whom a marriage (if any) was still subsisting, on the date of any marriage between the petitioner and the respondent herein.

16. As regards the contention of Mr. Gurcharan Dass, learned counsel for the respondent, in terms of the order of the Division Bench of this Court in *Sunita Ranis'* case (supra), no comment is being made by this court on that, because that order applies to maintenance being payable under Section 24 of the Hindu Marriage Act, with the application filed by the respondent herein still to be adjudicated upon by the trial court, in the present *lis*.

Naturally, with no order passed by that court on that application

having been impugned in this petition, it would be improper for this court to make any comment on that issue at this stage.

In the light of what has been held hereinabove, this petition is dismissed, with costs of Rs.5000/- imposed upon the petitioner.

January 15, 2019
dinesh

(AMOL RATTAN SINGH)
JUDGE

- | | |
|-------------------------------|-----|
| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | Yes |