

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

FAO-M-315-2016 (O&M)

Date of decision: July 26, 2019

Kusum

.... Appellant

Versus

Ankit

.... Respondent

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Argued by: Mr. Rakesh Nagpal, Advocate
for the appellant.

Mr. I.P.S.Kohli, Advocate
for the respondent.

Manjari Nehru Kaul, J.

1. The instant appeal has been preferred by the appellant-wife against the judgment and decree dated 30.05.2016 passed by the Court below vide which petition under Section 12 of the Hindu Marriage Act, (for short 'the Act'), filed by the respondent-husband was allowed.

2. Few facts necessary for adjudication of the instant appeal as pleaded in the petition before the Court below may be noticed. The marriage between the parties was solemnized on 06.02.2013 as per Sikh rites and ceremonies at Kurukshetra. After the marriage, the parties resided and cohabited as husband and wife at Kurukshetra. A male child was born out of the said wedlock on 17.12.2013. It was alleged that the appellant-wife got married to the respondent-husband during the subsistence of her first marriage with one Hardeep Singh and the said fact was concealed by her at the time of their marriage. It was further alleged that it came to the notice of the

respondent-husband only in the month of August, 2014 that the appellant-wife and the said Hardeep Singh (first husband of the appellant-wife) had filed a petition under Section 13-B of the Act for dissolution of marriage by mutual consent, which was allowed by the learned Civil Judge (Sr. Division), Kaithal on 17.04.2013 i.e. after solemnization of marriage between the parties. Besides this, the respondent-husband also levelled allegations of cruel and abusive behaviour against the appellant-wife.

3. Per contra, the appellant-wife categorically denied the concealment of her first marriage with Hardeep Singh from the respondent-husband, in her written statement filed before the Court below. She claimed that in fact it was well within the knowledge of the respondent-husband and his family that a petition under Section 13-B of the Act was pending between her and her first husband. She rather submitted that it was with the consent and knowledge of both the parties that her marriage with the respondent-husband was solemnized during the pendency of petition under Section 13-B of the Act between her and her first husband. She further submitted that in fact the husband had thrown her out of her matrimonial home and all her dowry articles had been misappropriated by them which included a car and motorcycle.

4. After the pleadings, following issues were framed by the Court below:

1. Whether marriage between the parties is liable to be declared as a nullity under Section 12 of the Hindu Marriage Act, 1955 on the grounds as mentioned in the petition? OPP
2. Whether the petitioner is entitled to a decree of divorce on the ground of cruelty as alleged? OPP

3. Whether the petition is not maintainable in the present form? OPR
4. Relief.
5. We have heard learned counsel for the parties and perused the other material and evidence available on record.
6. It would be relevant to mention that during the pendency of instant appeal, parties were referred to mediation and conciliation Centre of this Court and we also interacted with the parties to get the matter amicably settled but it proved to be futile exercise.
7. For adjudication of the issue involved in the instant appeal, it is necessary to reproduce Sections 5 and 11 of the Act, which are as follows:

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;

² *[(ii) at the time of the marriage, neither party-*

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) 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

*(c) has been subject to recurrent attacks of insanity[***];]*

(iii) the bridegroom has completed the age of [twenty-one years] and the bride, the age of [eighteen years] at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

*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.*

8. A bare reading of the provisions of Section 11 of the Act makes it amply clear that a marriage solemnized in contravention of any of the three conditions mentioned in Section 5 would be null and void from its inception and either party to such marriage can obtain a decree of nullity from the Court.

9. Hence, in view of the admitted fact that the marriage between the parties took place during the subsistence of appellant-wife’s first marriage with Hardeep Singh, we do not find any perversity or illegality in the impugned order of the Court below, so as to warrant any interference. Accordingly, the present appeal stands dismissed.

10. However, we feel it would be just and appropriate to direct the respondent-husband to pay a sum of Rs.7 lakhs to the child born out of the wedlock of the parties, namely Vansh Singhmar, which shall be kept in a Fixed Deposit in a nationalised Bank in the name of the said child to which he would become entitled on attaining the age of majority.

(RAJAN GUPTA)	(MANJARI NEHRU KAUL)
JUDGE	JUDGE
July 26, 2019	
sonia	
1. Whether speaking/non-speaking?	Yes/No
2. Whether reportable?	Yes/No