

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

**FAO-M No. 35 of 2016 (O&M)**

**Date of Decision: 6.5.2019**

Sukhbir Kaur

.....Appellant

Vs.

Sukhdev Singh

.....Respondent

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN  
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Anil Chawla, Advocate  
for the appellant.

Mr. Veneet Sharma, Advocate  
for the respondent.

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**RAKESH KUMAR JAIN, J. (ORAL)**

This appeal has arisen from the judgment and decree dated 4.9.2015 by which the respondent-husband has been granted decree of divorce under Section 11 of the Hindu Marriage Act, 1955 ('Act' for short).

Learned counsel for the appellant has submitted that the appellant is entitled to permanent alimony in terms of Section 25 of the Act but learned counsel for the respondent has submitted that once the marriage of the appellant with the respondent has been held to be null and void, after decree has been passed under Section 11 of the Act, the question of award of permanent alimony does not arise at all.

In view of the aforesaid contentions raised by learned counsel for the parties, the question that would arise for adjudication in the appeal before this Court is as to whether the appellant-wife would be entitled to permanent alimony even if a decree has been passed against her under

Section 11 of the Act ?

Learned counsel for the appellant has relied upon the decisions of the Supreme Court rendered in the case of ***Ramesh Chandra Rampratapji Daga versus Rameshwari Ramesh Chandra Daga 2005 (1) R.C.R. (Civil) 615, Chand Dhawan versus Jawaharlal Dhawan 1993(2) HLR 203.***

As against, learned counsel appearing on behalf of the respondent has relied upon the following decisions :-

- 1. Yamunabai Anantrao Adhav versus Anantrao Shivram Adhav 1988 (1) HLR 375.***
- 2. Savitaben Somabhai Bhatiya versus State of Gujarat and others 2005 (2) R.C.R. (Criminal) 190.***
- 3. Abbayolla M. Subba Reddy versus Padmamma 1998 (4) R.C.R. (Civil) 314 (Full Bench of Andhra Pradesh High Court).***
- 4. Navdeep Kaur versus Dilraj Singh 2003 (1) R.C.R. (Civil) 365 (Single Bench of this Court).***
- 5. Bhausahab @ Sandu versus Lellabai 2004(2) R.C.R. (Civil) 268 (Full Bench of Bombay High Court).***

We have heard the learned counsel for the parties on the issue involved and perused the record with their able assistance. Before we proceed to decide the question of law, it would be relevant to refer to some facts of the case, extracted from the decision of the trial Court.

The marriage of the parties was solemnized on 11.6.2012 at Gurudwara Singh Sabha, Majitha Road, Amritsar as per Hindu Sikh Rites and rituals. No child was born out of the said wedlock. Insofar as the status of the parties are concerned, the respondent-husband was a widower whereas the appellant wife who had claimed herself to be a spinster, was already married. The present petition was filed by the respondent-husband

under Section 11 of the Act for annulment of marriage on the ground of violation of Section 5 (i) of the Act wherein it has been alleged by the appellant that the factum of earlier marriage was not disclosed to him at the time when their marriage was solemnized on 11.6.2012.

On the pleadings of the parties, as many as four issues were framed by the learned trial Court and after both the parties had led their oral and documentary evidence, the learned trial Court came to a conclusion that the panchayti *talaknama* is not sustainable in the eyes of law and, therefore, at the time of marriage by the appellant with the respondent, she was already having a spouse and, therefore, a decree under Section 11 of the Act was passed against her declaring her marriage null and void.

Although the appellant did not file any application for seeking permanent alimony before the Court below who had passed the decree but had chosen to file the present appeal in which the only prayer made by her is for grant of permanent alimony and not for setting aside the judgment and decree of the learned trial Court.

In view of the aforesaid background, the issue which has been framed by us in the beginning of this order would be the main issue for adjudication. Before we deal with the issue raised by both the parties it would be relevant to refer to Section 25 of the Act which is reproduced as under:-

***25-Permanent alimony and maintenance-□***

*(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for*

*a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.*

*(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.*

*(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, [it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just].*

Learned counsel for the appellant has basically relied upon the decision of the Supreme Court in the case of ***Ramesh Chandra Rampratapji Daga versus Rameshwari Ramesh Chandra Daga*** (for short '***Ramesh Chandra***') (supra). It is contended by the counsel for the appellant that the facts were same in the said case as the appellant-husband was an Income Tax Practitioner in the town of Ratlam in the State of Madhya Pradesh. His first marriage was solemnized with Usha in the year 1963 from whom, he had two sons and one daughter. The marriage of the said appellant with the respondent thereafter was performed. The case of the respondent was that though she was earlier married but as per the custom of Maheshwari community a *Chhor Chithi* or a document of dissolution of marriage was executed with her previous husband on 15.5.1979 and it was

later on got registered and, therefore, her marriage with the appellant in the said case was not a nullity. The matter reached to the Supreme Court and the question before the Supreme Court was as to whether the appellant-husband is still liable to pay the maintenance fixed per month to the appellant wife under Section 25 of the Act ?

It is submitted by the learned counsel for the appellant that in the said case, the Supreme Court has taken into consideration the decision in the case of ***Yamunabai Anantrao Adhav*** (supra) (Supreme Court) and ***Abbayolla M.Subba Reddy*** (supra) (Full Bench of Andhra Pradesh High Court) and also the decision in the case of ***Chand Dhawan*** (supra) and finally decided as under:-

*“We have critically examined the provisions of [Section 25](#) in the light of conflicting decisions of the High Court cited before us. In our considered opinion, as has been held by this Court in Chand Dhawan's case (supra), the expression used in the opening part of [Section 25](#) enabling the 'Court exercising jurisdiction under the Act' 'at the time of passing any decree or at any time subsequent thereto' to grant alimony or maintenance cannot be restricted only to, as contended, decree of judicial separation under [Section 10](#) or divorce under [Section 13](#). When the legislature has used such wide expression as 'at the time of passing of any decree,' it encompasses within the expression all kinds of decrees such as restitution of conjugal rights under [Section 9](#), judicial separation under [Section 10](#), declaring marriage as null and void under [Section 11](#), annulment of marriage as voidable under [Section 12](#) and Divorce under [Section 13](#).”*

It is further contended that it was also held by the Supreme Court that the marriage of the person already having a spouse may be illegal being in contravention of the provisions of the Act but cannot be stated to

be immoral so as to deny the right of alimony or maintenance. In order to buttress the arguments, learned counsel for the appellant has also referred to the decision in the case of **Chand Dhawan** (supra).

On the other hand, learned counsel for the respondent-husband has pressed the decision in the case of **Yamunabai Anantrao Adhav** (supra) to contend that though in the said case, the husband had contracted second marriage when the first wife was alive and the second marriage is null and void, therefore, no decree of Court is required for the purpose and the second wife is not entitled to any maintenance in term of Section 25 of the Act. He has also referred to the judgment of the Supreme Court in the case of **Savitaben Somabhai Bhatiya** (supra) to contend that in the said case though, the dispute was in regard to the award of maintenance under Section 125 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) but it has been held by the Supreme Court that marriage of a woman in accordance with the Hindu rites with a man having a living spouse is a complete nullity in the eyes of law and she is therefore not entitled to the benefit of Section 125 of the Code or the Hindu Marriage Act. Learned counsel for the respondent has also pressed the decision of the Full Bench of Andhra Pradesh High Court in **Abbayolla M. Subba Reddy** (supra) in which the Court was dealing with a case under Section 11 of the Act, decision of the Bombay High Court in the case of **Bhausahab @ Sandu (supra)** in which again the Court was dealing with the case under Section 11 of the Act and also a decision of this Court in **Navdeep Kaur's** case (supra) in which similar issue was involved.

In this regard, learned counsel for the appellant has submitted that all the judgments, relied upon by the learned counsel for the respondent

are prior in time than the decision of the Supreme Court in the case of **Ramesh Chandra** (supra) as it was decided on 13.12.2004. Mr. Veneet Sharma, Advocate appearing on behalf of the respondent has pointed out that the decision in the case of **Savitaben Somabhai Bhatiya** (supra) was of 10.3.2005. The strength of both the benches deciding the case of **Ramesh Chandra** (supra) and **Savita Ben Somabhai Bhatiya** (supra) is the same, therefore, the decision taken on 10.3.2015 is later in law and has to prevail.

Faced with this argument, learned counsel for the appellant has submitted that the decision in the case of **Savitaben Somabhai Bhatia** (supra) relied upon by the counsel for the respondent, is a passing reference in the form of obiter dicta by the Hon'ble Supreme Court as it was not dealing with the case having been filed under Section 5(i) read with Section 11 of the Act. Rather, the Court was dealing with the case where the maintenance was awarded under Section 125 Cr.P.C. It is also submitted that the decision in the case of **Yamunabai Anantrao Adhav** (supra) and **Abbayolla M.Subba Reddy** (supra) (Full Bench of Andhra Pradesh High Court) has been discussed by the Supreme Court in **Ramesh Chandra's** case (supra) and has, thus, referred to a decision of the Supreme Court in the case of **Balwant Rai Saluja and another versus Air India Ltd. and others 2015 AIR (SC) 375** that the binding precedent would be the judgment relied upon by him in the case of **Ramesh Chandra** (supra) as in that case the Court is deciding a similar issue which is involved in the present case. The relevant portion of the judgment of the said decision referred to by the learned counsel for the appellant read as under:-

*“In our view, the binding nature of a decision would extend to only observations on points raised and decided by the Court and neither on aspects which it has not decided nor had*

*occasion to express its opinion upon. The observation made in a prior decision on a legal question which arose in a manner not requiring any decision and which was to an extent unnecessary, ought to be considered merely as an obiter dictum. We are further of the view that a ratio of the judgment or the principle upon which the question before the Court is decided must be considered as binding to be applied as an appropriate precedent. ”*

Learned counsel for the respondent in order to counter the judgment relied upon by the counsel for the appellant has referred to a decision of the Supreme Court in the case of **Arun Kumar Aggarwal versus State of Madhya Pradesh and others Criminal Appeal Nos. 1706-1708 of 2011**.

We have heard the learned counsel for the parties on these judgments and perused the record with their able assistance.

It is to be borne in mind that the Court is dealing with a specific prayer of the appellant i.e. for the grant of permanent alimony under Section 25 of the Act against whom a decree under Section 11 of the Act has been passed by the learned trial Court and the said decree has not been challenged by the appellant. All the judgments of the Supreme Court, relied upon by the learned counsel for the respondent, are in respect of the decisions rendered while deciding the matter arising out of Section 125 Cr.P.C. and it has also been decided in the case of **Savitaben Somabhai Bhatiya** (supra) that if the decree in which marriage has been declared to be null and void in the eyes of law, then no benefit would arise under Section 125 Cr.P.C. or the Hindu Marriage Act. However, a specific question came up before the Supreme Court while deciding the matter in the case of **Ramesh Chandra** (supra) and in the said case while referring to two earlier

decisions of ***Yamunabai Anantrao Adhav*** (supra) (Supreme Court) and ***Abbayolla M.Subba Reddy*** (supra) (Full Bench of Andhra Pradesh High Court), the Supreme Court has held that the Court would have the jurisdiction to award the maintenance under Section 25 of the Act “at the time of passing of any decree” and then it has been held that all kinds of decrees would include the decree passed under the Restitution of Conjugal Rights under Section 9 of the Act, Judicial Separation under Section 10 of the Act, declaring marriage as null and void under Section 11 of the Act, annulment of marriage as voidable under Section 12 of the Act and Divorce under Section 13 of the Act. There was a specific issue raised before the Supreme Court in the case of ***Ramesh Chandra*** (supra) which has been decided in favour of the respondent-wife therein holding that though the marriage has been declared as illegal, null and void in terms of decree passed under Section 12 of the Act but she would be entitled to maintenance and permanent alimony (lump-sum) in terms of Section 25 of the Act. In this regard, we would take the help of the decision of the Supreme Court rendered in the case of ***Balwant Rai Saluja*** (supra) because in that case while deciding the issue as to which precedent has to be followed, the Hon'ble Supreme Court has held that the binding nature of a decision would extend to only observation on point raised and decided by the Court. Thus, in the present case, the judgment in the case of ***Ramesh Chandra*** (supra) is deciding a specific issue as to whether Section 25 of the Act would be applicable in the decree passed under Section 11 of the Act which was not the issue before the Supreme Court in the case of ***Savitaben Somabhai Bhatiya*** (supra) in which Section 125 Cr.P.C. was in issue before the Supreme Court and in that case, the judgment in the case of ***Ramesh***

**Chandra** (supra) was not even produced before the Hon'ble Bench for the purpose of its appraisal and consideration.

Thus, in view of the aforesaid facts and circumstances, we are of the considered opinion that the present case is governed by the decision of the Supreme Court in **Ramesh Chandra's** case (supra) and thus, the present appeal is hereby allowed only to the extent that the question of law which has been framed by us holding that the appellant would be entitled to permanent alimony under Section 25 of the Act *dehors* the fact that the decree has been passed under Section 11 of the Act. Since the decree has been upheld because it has not been challenged, therefore, in order to determine as to how much amount has to be received by the appellant from the respondent, the matter has to be remanded back to the learned trial Court as it would depend upon the facts and circumstances which will come on record after the evidence is led by both the parties. Hence, the matter is remanded back to the learned trial Court who had passed the decree in favour of the respondent, to decide the application under Section 25 of the Act, to be filed by the appellant before it for the purpose of seeking permanent alimony.

Both the parties are directed to appear before the learned trial Court on 21.5.2019.

The appeal is disposed of.

(RAKESH KUMAR JAIN)  
JUDGE

(HARNARESH SINGH GILL)  
JUDGE

May 06, 2019  
Gurpreet

Whether speaking /reasoned : Yes  
Whether Reportable : Yes