

HIGH COURT OF CHHATTISGARH, BILASPUR**FA(MAT) No. 94 of 2019**

- Tanmay Hanumanta, S/o Shri Sanjay Kumar, Aged About 23 Years, R/o Ram Rudra Kripa, Shivanand Nagar, Sector-3, Shri Nagar, Khamtarai, Raipur, District Raipur Chhattisgarh.

---- Appellant**Versus**

- Sonam Jain, D/o Shri Sunil Jain, Aged About 24 Years, R/o Jhabak Bada Kamasipara, Sadar Bazar, Raipur, District Raipur Chhattisgarh.

---- Respondent

For Appellant : Shri Pushkar Sinha, Advocate.

For Respondent : Shri Navin Shukla, Advocate

**Hon'ble Shri Justice P. Sam Koshy, Judge &
Hon'ble Smt. Justice Rajani Dubey, Judge**

Order on Board**22/10/2021****Per P. Sam Koshy, Judge**

1. With the consent of both the parties, the matter is heard on admission.
2. Being aggrieved by the judgment & decree dated 15.10.2019 passed by the First Additional Principal Judge, Family Court, Raipur, District- Raipur, C.G. in H.M.A Case No. 267/2019, appeal has been filed.
3. By the said order, the learned court below has rejected an application filed by the appellant under Section 3 of the Prohibition of Child Marriage Act, 2006. The main facts relevant for the adjudication of the present appeal is that the appellant and the respondent are said to have entered into marriage on 16.03.2015. On the said date, the appellant claims that he was a minor and had not attained the age of majority. According to the

appellant, his date of birth is 11.02.1996, the marriage between the parties is said to have taken place at Arya Samaj Mandir, Nandi Chowk, Tikrapara, Raipur.

4. The suit for nullifying the marriage under Section 3 of the Prohibition of the Child Marriage Act, 2006 was instituted on 13.02.2019 on which date, the appellant admittedly had crossed the age of 23 years and the respondent is said to have been 24 years at that point of time.
5. The application under Section 3 of the Prohibition of Child Marriage Act, 2006 has been rejected by the court below on the ground that the same has been filed beyond the permissible period as envisaged under sub-section 3 of Section 3 of the aforementioned Act of 2006.
6. On 13.02.2019, admittedly the appellant was more than 23 years of age i.e. he had crossed more than 2 years time from the date of attaining the age of majority.
7. It would be relevant at this juncture to take note of the definition of "child" as provided in clause (a) of section 2 which is for ready reference is being produced herein as under:-

“(a) child means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.”

It is also relevant at the same time to take note of the provision for the purpose of instituting the proceedings for declaring the marriage to be voidable. Section 3 provides for the Limitation Act in filing of the petition which again for ready reference is produced herein as under:-

“ (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.”

8. The aforementioned Act of 2006 does not provide for any power for condoning the delay if the petition is not filed within the

stipulated period as envisaged under sub-section 3 of Section 3. In the absence of any such power conferred upon the authority the court below could not have exercised or invoked the Provision of Limitation Act entertaining or condoning the delay in approaching the Court under Section 3 of the Act, 2006. The court below having considered the evidence on either side and also taking note of the date of birth and date of filing of the suit before the court below and reached to a conclusion that the petition has been preferred by the appellant after he had crossed more than 2 years' time which is otherwise prescribed under sub-section 3 of Section 3 within which the petition ought to have been filed.

9. On the aforesaid admitted factor, the application has been rejected.
10. This Court does not find any strong case made out by the appellant to hold that the finding given by the court below is either bad in law or contrary to the provisions of the Act of 2016 nor is there any authority produced by the appellant before this Court to show that the court below in spite of the Act, not providing the power to condone the delay has the power to exercise the power of Limitation Act to condone the delay in filing of the application U/s 3 of the Act of 2016.
11. The appeal for the aforesaid reason deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Sd/-
(Rajani Dubey)
Judge