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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 22nd December, 2021
+ **C.R.P. 102/2021**
AJMERA RAMULU Petitioner
Through: Mr. Manoj Kumar Singh, Advocate
versus

B. CHANDRAKALA Respondent
Through: Mr. Akshat Bajpai, Ms. Ishani
Sharma and Ms. Shreya Gupta,
Advocates (M: 7985177435)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.

CM APPL. 46940/2021 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

C.R.P 102/2021 & CM APPL. 46939/2021 (for stay)

3. The present petition has been filed challenging the order dated 21st September, 2021 passed by the Ld. Principal Judge, Family Court, Patiala House Courts, New Delhi (*hereinafter* “*Trial Court*”) in **HMA No.301/2018** titled **Sh. Ajmera Ramalu v. Smt. B. Chandrakala**. By the impugned order, the application filed by the Petitioner under Order VII Rule 11 CPC was rejected by the Trial Court. The Respondent-Wife (*hereinafter* “*Wife*”) preferred a petition under Section 18(1)(i)(b) of the Hindu Marriage Act, 1955 (*hereinafter* “*HMA*”), seeking a decree of divorce against the Petitioner-Husband (*hereinafter* “*Husband*”).

4. The case of the Wife is that her marriage was solemnised on 2nd February, 1998 at Ramagundam, District Paddapalli, Telangana as per Hindu rites and ceremonies, as both the Husband and Wife are Hindus. It was on this premise that the provisions of the HMA were invoked before the Trial Court, and a decree of divorce was sought by the Wife.

5. Before the Trial Court, the Husband filed an application under Order VII Rule 11 CPC, taking the preliminary ground that both the parties belong to the *Lambadis (Banjara)* community of Telangana/Andhra Pradesh, which has been notified as a Scheduled Tribe in the said territory. Accordingly, the case of the Husband is that the provisions of HMA would not be applicable to the present case. The application filed by the Husband has been rejected by the Trial Court.

6. By the impugned order, the Trial Court observed that the adjudication of the question as to whether the marriage between the Husband and the Wife was solemnized as per Hindu rites or not, as also whether the parties were Hindus or not, would require evidence to be led in this respect. Accordingly, the Trial Court held that the petition could not be rejected at this stage. The operative portion of the impugned order dated 21st September, 2021 reads as under:

“14. According to the above judgment if members of a tribe, voluntarily choose to follow Hindu customs, traditions and rites, they cannot be kept out of the purview of the provisions of Hindu Marriage Act, 1955.

15. On bare reading of the statement of plaint, it cannot be rejected as it becomes disputed question as to whether the marriage was solemnized in accordance with Hindu rites and customs or in accordance with

Hindu rites and customs or in accordance with rituals/customs applicable to particular tribe to which the parties belong. The issue can be disposed of after framing of legal/preliminary issue and on the evidence of the parties.”

7. Mr. Manoj Singh, Id. Counsel for the Husband, submits that though there are various judgments of the High Courts, including the recent judgment of this Court in **Satprakash Meena vs. Alka Meena [C.R.P.1/2021 decided on 7th July, 2021]**, the present case is distinguishable on the ground that there is no evidence on record to show that the marriage between the parties was conducted and solemnized as per Hindu rites and customs. Thus, the judgment in **Satprakash Meena (supra)** would not be applicable.

8. On the other hand, Id. Counsel for the Wife submits that the petition filed before the Trial Court is clear to the effect that the marriage between the parties was solemnized as per Hindu rites and customs. He further submits that the question as to whether the same is factually correct or not would require evidence to be adduced in respect thereof.

9. This Court has heard Id. Counsels for the parties. Both the Husband and Wife are well-settled professionals. The Wife is an IAS officer and the Husband is an Executive Engineer in the Irrigation Department of the Government of Andhra Pradesh.

10. The Trial Court has rejected the application filed by the Husband under Order VII Rule 11 CPC after considering various judgments in respect of the principle of law that for the purpose of Order VII Rule 11 CPC, only the plaint needs to be seen and the defence need not be perused. Trial Court has further observed that evidence would be required to be led for the purpose of deciding as to whether the Husband and Wife were married as

per Hindu rites and customs, or not.

11. In the petition preferred by the Wife seeking a decree of divorce against the Husband, the relevant portion reads as under:

“1.That the marriage between the Petitioner and the Respondent was solemnized as per Hindu rites and ceremonies on 02.02.1998 at Ramagundam, Dist Peddapalli, Telangana. An affidavit to this effect is enclosed with the present petition.

2. That the status, age, domicile and place of residence of the parties to the present petition, before marriage, and at the time of filing of the present petition was/is as follows:

PETITIONER/WIFE

<i>STATUS</i>		<i>AGE</i>	<i>Place of Residence</i>
<i>Before Marriage</i>	<i>Bachelor Hindu</i>	<i>18 years Approx.</i>	<i>Ramagundam, District Peddapalli, Telangana</i>
<i>At the time of filing the present petition</i>	<i>Married Hindu</i>	<i>37 years Approx.</i>	<i>Vasant Kunj, New Delhi</i>

RESPONDENT/HUSBAND

<i>STATUS</i>		<i>AGE</i>	<i>Place of Residence</i>
<i>Before Marriage</i>	<i>Bachelor Hindu</i>	<i>29 years Approx.</i>	<i>Village Garjanpally, Post Yellareddypet, District</i>

			<i>Sirisilla Rajanna Telangana</i>
<i>At the time of filing the present Petition</i>	<i>Married Hindu</i>	<i>48 years Approx.</i>	<i>Village Garjanpally, Post Yellareddypet, District Sirisilla Rajanna Telangana</i>

3. That the parties to the Petition co-habited as husband and wife at the Matrimonial home at Karim Nagar, District Karim Nagar, Telangana and the marriage between the Petitioner and Respondent was duly consummated out of which one child namely Ms. Kirti Chandra was born out of the said wedlock.

4. That the parties were Hindu at the time of Marriage and they continued to be so even at the time of filing the Petition.

12. Reliance has been placed upon the judgment in ***Satprakash Meena (supra)***. In the said case, though the couple belonged to the Meena community, this Court, on the basis of the evidence on record, held that both the parties were sufficiently Hinduised, as also, the marriage was admittedly conducted as per Hindu rites and customs. The relevant portion of the said judgment is set out below:

“46. In the present case, admittedly, the party’s marriage was solemnised as per the Hindu customs and rites. Ld. counsel for the Respondent-wife admitted during the course of submissions that the wife did not deny that she is a Hindu and the tribe is a Hindu tribe, however, according to him this would not take away

the status of the parties being a part of the notified Scheduled Tribe under the Constitution of India.

47. The word 'Hindu' is not defined in any of the statutes. It is in view of the fact that there is no definition of Hindu, that the Supreme Court has held in Labishwar Manjhi (supra) that if members of Tribes are Hinduised, the provisions of the HMA, 1955 would be applicable. The manner in which the marriage has been conducted in the present case and the customs being followed by the parties show that as in the case of Hindus, the marriage is conducted in front of the fire. The Hindu customary marriage involves the ceremony of Saptapadi which has also been performed in the present case. The various other ceremonies, as is clear from the marriage invitation are also as per Hindu customs. If members of a tribe voluntarily choose to follow Hindu customs, traditions and rites they cannot be kept out of the purview of the provisions of the HMA, 1955. Codified statutes and laws provide for various protections to parties against any unregulated practices from being adopted. In this day and age, relegating parties to customary Courts when they themselves admit that they are following Hindu customs and traditions would be antithetical to the purpose behind enacting a statute like the HMA, 1955. The provisions of exclusion for example under Section 2(2) are meant to protect customary practices of recognised Tribes. However, if parties follow Hindu customs and rites, for the purpose of marriage, this Court is inclined to follow the judgment of the Supreme Court in Labishwar Manjhi (supra) to hold that the parties are Hinduised and hence the HMA, 1955 would be applicable. Moreover, nothing has been placed before the Court to show that the Meena community Tribe has a specialised Court with proper procedures to deal with these issues. In these facts, if the Court has to choose between relegating parties to customary

Courts which may or may not provide for proper procedures and safeguards as against codified statutes envisioning adequate safeguards and procedures, this Court is inclined to lean in favour of an interpretation in favour of the latter, especially in view of the binding precedent of the Supreme Court in Labishwar Manjhi (supra) which considered an identical exclusion under the HSA,1956.”

13. In the present case, the divorce petition itself was filed in the year 2017, and has been pending for approximately four years. Issues are yet to be framed. Evidence is yet to be led before the Trial Court. Both the parties are at odds as to the manner in which the marriage was conducted. At this stage, only the plaint is to be looked at for the purposes of Order VII Rule 11 CPC. In the plaint, extracted hereinabove, the categorical assertion of the Wife is that the marriage was solemnized, as per Hindu rites and customs. Written statement is yet to be filed by the Husband.

14. Under the facts and circumstances of this case, while agreeing with the Trial Court that the plaint could not have been rejected under Order VII Rule 11 CPC, the following directions are issued:

- i) Last and final opportunity is granted to the Husband to file the written statement, within four weeks. No further time shall be granted for filing the written statement.
- ii) Upon the written statement being filed and pleadings being completed, issues shall be framed by the Trial Court. The issue as to whether the parties follow Hindu rites and customs, and whether they are sufficiently Hinduised or not, shall be framed as a preliminary issue.

Limited evidence on this issue shall be led by the parties and this question shall be adjudicated as a preliminary issue, prior to the adjudication of the remaining issues.

iii) Observations made in the impugned order dated 21st September, 2021 shall not affect the adjudication, on merits, of the abovementioned preliminary issue.

15. Considering the fact that both the parties are professionals, as also that they have been blessed with a daughter, the preliminary issue shall be decided within a period of four months from the first date of hearing before the Trial Court. The Trial Court would also consider the expeditious disposal of the divorce petition itself.

16. Further grievance of the Husband is that he has not been able to meet his daughter for the last few years as she has moved out of the matrimonial home along with the Wife, and is presently residing with the Wife. If so, the Husband is free to move an appropriate application before the Trial Court, so that the Trial Court can make an arrangement for the Husband to meet his daughter. Considering that the daughter is an adult, her wishes in respect of the same shall also be taken into consideration.

17. With these observations, the present revision, along with all pending applications, is disposed of.

**PRATHIBA M. SINGH,
JUDGE**

DECEMBER 22, 2021

mw/ad