

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.O.C.P.-219-2019 (O&M)
Reserved on : February 16, 2023
Pronounced on : February 23, 2023

Roshan Lal.....Petitioner

Vs.

Veena Rani...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Pushpinder Kaushal, Advocate
for the petitioner.

Mr. Sarju Puri, Advocate
for the applicant-respondent.

ARVIND SINGH SANGWAN, J.

The present contempt petition is filed alleging that the respondent-wife has performed second marriage during the pendency of FAO No.290-M-2008 vide which the petitioner-husband has challenged the judgment and decree dated 19.8.2008 granting decree of divorce in favour of respondent-wife.

Counsel for the petitioner submits that the following certain dates and events are relevant in the present case :-

4.11.2005	The marriage of the petitioner was performed with the respondent.
4.7.2006	The respondent alleging cruelty and desertion filed an FIR under Sections 406, 498-A, IPC against the petitioner.

27.8.2006	A girl child was born out of this wedlock.
16.9.2006	The respondent filed petition under Section 13 of the Hindu Marriage Act for dissolution of marriage by decree of divorce on the ground of cruelty and desertion. Application filed under Section 24 of the Hindu Marriage Act, 1955 claiming maintenance <i>pendente lite</i> and litigation expenses were also filed.
9.1.2008	The maintenance <i>pendente lite</i> was awarded from the date of application, i.e. 29.7.2006.
5.8.2008	As the petitioner-husband failed to clear the arrears approximately Rs.58,000/-, his defence was struck off.
19.8.2008	The trial Court granted a decree of divorce on the ground of cruelty in favour of respondent-wife.
7.11.2008	Though no specific date of filing is there, however, the petitioner filed the aforesaid FAO-M-290-2008.
27.11.2008	High Court issued notice of motion, as counsel for the appellant stated that arrears of maintenance of Rs.58,000/- will be paid within four months by installments of Rs.15,000/- per month.
18.8.2010	In an application filed by the respondent under Section 24 of the Hindu Marriage Act, maintenance of Rs.2,500/- per month was awarded, apart from the litigation expenses and it was directed that the arrears of Rs.21,000/- will be paid before 31.10.2010. Thereafter, the case was fixed before the Mediation and Conciliation Centre.
18.11.2010	The aforesaid appeal was admitted to be listed within one year. However, till date the same is not decided and is pending.

4.11.2012	The order of maintenance was clarified to the extent that it is only for the minor child.
23.9.2018	The petitioner alleges that respondent-wife has performed second marriage which amounts to civil contempt under Section 2(b) of the Contempt of Courts Act.
1.10.2018	A girl child was born out of the second wedlock.

Both girls are living in care and custody of respondent and her husband.

Counsel for the petitioner has argued that the respondent has committed civil contempt within the ambit of Section 2(b) of the Contempt of Courts Act, 1971.

Counsel for the petitioner has also placed on record the order dated 22.12.2021 passed by the Judicial Magistrate 1st Class, SBS Nagar, in which in a criminal complaint filed by the petitioner the respondent is summoned to face the trial under Section 494 IPC. The said order is taken on record as **Mark 'A'**.

Counsel for the petitioner has placed reliance on a Division Bench judgment of this Court passed in '**Jasbir Kaur Vs. Kuljit Singh**', 2008(2) RCR (Civil) 929 to submit that where an appeal is filed by one of the spouse within the period of limitation challenging a degree of divorce granted in favour of other spouse and during pending of appeal one of the spouse contract second marriage, it is unlawful under

Section 15 of the Hindu Marriage Act, 1955 amounts to willful disobedience to the "other process of the Court" and is civil contempt within the meaning of Section 2(b) of the Contempt of Courts Act, 1971.

Section 15 of the Hindu Marriage Act, 1955 reads as under :-

"15. Divorced persons when may marry again.—

When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again."

Facts of Jasbir Kaur's case are that after a decree of divorce was granted in favour of husband, the wife filed an appeal within limitation and while issuing notice, an interim order **"In the meantime, the respondent is restrained from remarrying"** was passed.

The wife, who was the appellant alleged that the husband has performed second marriage during pendency of the appeal, which amounts to willful disobedience of the order and, therefore, he was held guilty of violating the Court order. It is held by the Division Bench as under :-

"The role allocated to the Courts is something more than what Section 15 of the 1955 Act declares.

According to Section 15 of the Act, a party to the dissolved marriage could marry again if period of filing an appeal has expired or the appeal has been dismissed. It necessarily implies that the decree holder has to make inquiries that jo appeal has been filed within the period of limitation or that the appeal has been dismissed. Such a spouse cannot sit at home and wait the summons to come because service of summons may not necessarily be effected on the winning spouse within the period limitation.”

Counsel for the petitioner has also relied upon another judgment **‘Court on its own motion Vs. Jagdeep Pal Singh’**, 2019(3) RCR (Civil) 408 to submit that while relying upon Jasbir Kaur’s case (*supra*), it is held that contracting a marriage after filing an appeal tantamount to civil contempt. Similar view is taken by this Court in **‘Court on its own motion Vs. Munish’**, 2016 (2) RCR (Civil) 835, wherein again reliance was placed on Jasbir Kaur’s case (*supra*).

Counsel for the petitioner has also placed reliance on the judgment of Hon’ble the Supreme Court in **Savitri Pandey Vs. Prem Chandra Pandey**, 2002(1) RCR (Civil) 719. This judgment was also relied upon by the Division Bench in Jasbir Kaur’s case (*supra*). It is held by the Hon’ble Supreme Court that remarriage during pendency of appeal, even if no stay is granted against a decree of divorce, the respondent cannot remarry during the pendency of the appeal.

In reply, counsel for the respondent, while referring to the judgment in Jasbir Kaur's case (*supra*), has submitted that two questions were framed, '**first**' whether under the provisions of Section 2(a) and (b) of the Act and Section 15 and 23(2)(3)(4) of 1955 Act, it is willful disobedience when a spouse perform marriage after filing of appeal in terms of Section 15 of the Hindu Marriage Act, 1955. Counsel for the respondent has submitted that under Section 23(2) and (3) of the Act, a statutory duty has been imposed on the trial Court to make endeavour to bring about reconciliation between the parties. It is further observed that although no such express provision has been made imposing similar obligation on the first Appellate Court by Section 28 of the 1955 Act yet the Appellate Court is enjoined upon performing such functions which are required to be performed by the trial Court that has passed the decree and statutory guidance is available under Section 96 of the Civil Procedure Code.

Counsel for the respondent has argued that no such procedure was followed in the instant case and, therefore, the rigor of Section 15 will not apply.

Counsel for the respondent has laid much emphasis on the provisions of Section 21B of the Hindu Marriage Act which reads as under :-

[21B. Special provision relating to trial and disposal of petitions under the Act.-- (1) The trial

of a petition under this Act shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion unless the court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(2) Every petition under this Act shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of service of notice of the petition on the respondent.

(3) Every appeal under this Act shall be heard as expeditiously as possible, and endeavour shall be made to conclude the hearing within three months from the date of service of notice of appeal on the respondent.]

Counsel for the respondent has submitted that the judgment in Jasbir Kaur's case (*supra*) is clearly distinguishable in the facts and circumstances of the present case. **Firstly**, because in the instant case, there was no stay order granted by the Court at any stage restraining the respondent from remarrying though there was a specific order in Jasbir Kaur's case (*supra*). **Secondly**, Counsel has submitted that in Jasbir Kaur's case (*supra*) the provision of Section 21B were not at all considered which provides that every appeal under this Act will be heard as expeditiously as possible and the Court will make endeavour to conclude

the hearing within three months from the date of service of the notice of appeal on the respondent.

Counsel for the respondent has submitted that a combined reading of Section 15 and Section 21B of the Act would show that the rigor of Section 15, when no specific stay order is granted against the respondent from remarrying will applied only for a period of three months provided under Section 21B laying down an obligation on the Appellate Court to decide the appeal within three months. Counsel for the respondent submitted that in the instant case, neither there was any stay against respondent from remarrying nor the appeal is decided despite a lapse of 15 years. Counsel for the respondent has submitted that appeal was admitted on 18.11.2010 and after waiting for a period of 8 years, the respondent, lady, who is taking care of her minor daughter, in order to secure her future, had performed the second marriage and even after the second marriage another girl child is born and the respondent and her husband are taking care of both the minor girls and, therefore, the rigor of Section 15 of the Hindu Marriage Act, in the present circumstances, will not be applicable.

Counsel for the respondent has relied upon (2020) 11 Supreme Court Cases 253, **Krishnaveni Rai Vs. Pankaj Rai and another**, wherein it has been held by the Hon'ble Supreme Court that the rigor under Section 15 applies only when the appeal is within limitation and, therefore, the marriage of the respondent cannot be held

void as the appeal was taken up on 27.11.2008 for the first time when the notice was issued.

Counsel for the respondent has also relied upon (1978) 3 Supreme Court Cases 258, **Smt. Lila Gupta Vs. Laxmi Narain and others**, wherein the proviso to Section 15 which was later on omitted by Act No.68 w.e.f. 27.5.1976 prohibiting a spouse not to marry within one year of the date of divorce was held to be directory and not mandatory. Counsel for the respondent has further submitted that the aforesaid proviso stands omitted from the statute, however, the interpretation made by the Hon'ble Supreme Court is that the provisions of Section 15 are directory and not mandatory. Counsel has then referred to another judgment of the Hon'ble Supreme Court in (2018) 9 Supreme Court Cases 691, **Anurag Mittal Vs. Shaily Mishra Mittal**, wherein while relying upon **Lila Gupta's** case, the following observations were made :-

8. After a comprehensive review of the scheme of the Act and the legislative intent, this Court in Lila Gupta (supra) held that a marriage in contravention of the proviso to [Section 15](#) is not void. Referring to [Sections 5](#) and [11](#) of the Act, this Court found that a marriage contracted in breach of only some of the conditions renders the marriage void. This Court was also conscious of the absence of any penalty prescribed for contravention of the proviso to [Section 15](#) of the Act. This Court referred to the

negative expression “it shall not be lawful” used in proviso to [Section 15](#) which indicates that the prohibition was absolute. In spite of the absolute prohibition, this Court was of the view that a marriage contracted in violation of the proviso to [Section 15](#) was not void. There was a further declaration that the dissolution of a marriage is in rem and unless and until a Court of appeal reversed it, marriage for all purposes was not subsisting. The dissolution of the marriage is complete once the decree is made, subject of course to appeal. This Court also decided that incapacity for second marriage for a certain period of time does not have the effect of treating the former marriage as subsisting and the expression ‘spouse’ would not include within its meaning the expression ‘former spouse’.

Counsel for the respondent has further submitted that the petitioner cannot take benefit of his own wrong as the decree of divorce was passed as the petitioner has failed to pay even a single penny towards *pendente lite* and litigation expenses despite so ordered by the trial Court on 9.1.2008 and, therefore, his defence was struck off on 5.8.2008. Counsel for the respondent has further submitted that the FAO was filed in the year 2008 and remained pending for two years when it was admitted on 18.10.2010. However, in the intervening period the petitioner has shown no inclination and never made any effort to reconcile the dispute for a period of about 10 years in term of

Section 23(2) and (3) of the Act. Rather, the petitioner was involving the respondent in one litigation or the other, in order to harass her and it is an irretrievably broken marriage since the beginning of the year 2006. Counsel for the respondent has thus submitted that as per Sections 23(2)(3) of the Hindu Marriage Act, the Court is enjoined to make endeavour for bringing about reconciliation between the parties. "It is possible so to do consistently with the nature and circumstances of the case". However, no such efforts were made and, therefore, there is no willful disobedience on the part of the respondent.

Counsel for the respondent has relied upon a civil suit dated 10.5.2009 filed by the petitioner against the respondent and her husband praying for a decree that the marriage solemnized between the respondent and Arvinder Singh-her husband be declared null and void. Counsel for the respondent has also submitted that even criminal complaint has been filed against the respondent which reflects that instead of performing matrimonial obligation of being a caring husband or a good father, the petitioner has rather initiated multiple litigation against the respondent despite the fact that she is maintaining a daughter now aged 16½ years born out of wedlock with petitioner.

In reply, counsel for the petitioner has submitted that the arrears of maintenance of Rs.58,000/-, which were not paid by the petitioner due to which, his defence was struck off was however, deposited before this Court and were withdrawn by the respondent-wife.

After hearing learned counsel for the parties, I find that no willful disobedience of the order is made out for the following reasons :-

- (a) The judgment in Jasbir Kaur's case, Munish case (*supra*), Munish's case (*supra*) and Jagdeep Pal Singh's case (*supra*) are clearly distinguishable. In all these judgments, this Court has only considered the provisions of Sections 15, 23 and 28 of the Hindu Marriage Act read with Section 2 of the Contempt of Courts Act. There is no reference to 21B(3) of the Hindu Marriage Act. Section 21B(3) states that the appeal will be disposed expeditiously within a period of three months, which casts duty and obligation on the Appellate Court to decide the appeal in a time bound manner because the rigor of Section 15 prohibits the spouse in whose favour a decree of divorce (under challenge) is passed cannot remarry. However, there can be no endless time limit for a spouse not to remarry, as in the instant case, the notices were issued on 27.11.2008 and appeal was admitted on 18.11.2010 and in between only one effort was made for the purpose of reconciliation before the Mediation and Conciliation Centre. Admittedly after the year 2010, till date the period and despite a lapse of 13 years, the appeal has not been decided, though the Act

casts upon a duty on the Appellate Court to dispose it off within three months. Therefore, Division Bench judgment in Jasbir Kaur's case (*supra*) where there is no reference of Section 21B(3) holding that performing second marriage after filing of appeal within limitation amounts to civil contempt is clearly distinguishable in the present case.

- (b) Apparently as per Jasbir Kaur's case (*supra*), a spouse cannot be held guilty of contempt for his/her obligation not to perform marriage as per rigor of Section 15 of the Act, when the Appellate Court itself has failed to perform its own obligation to decide the appeal in three months as per Section 21B(3) of the Act. Therefore, a spouse cannot be held guilty under Section 15 of the Act without referring to Section 21B(3) of the Act.
- (c) Even otherwise, on facts Jasbir Kaur's case (*supra*) is distinguishable as in the said case from the first date, a stay order was passed directing the respondent not to remarry. However, in the instant case, the petitioner has relied upon rigor of Section 15 of the Hindu Marriage Act to interpret that even if there is no specific stay order, a spouse cannot perform remarriage till the decision of the

appeal. In the instant case, there was no stay order right from the date of notice of motion till the time the respondent performed marriage on 23.9.2018.

- (d) On the face of it, the respondent performed marriage after about 10 years of passing of the decree of divorce by the trial Court and cannot be held guilty of civil contempt for the inability of the High Court to dispose of the appeal in terms of Section 21B of the Act. Surprisingly, the notice of motion order dated 27.11.2008 reflects that the petitioner husband has undertaken to pay the arrears of maintenance of Rs.58,000/- for non-payment of which the defence was struck off and as per the statement made by the counsel for the petitioner at the bar that he has already deposited the said amount, there was no impediment for the matrimonial Bench to have remanded the case back in 2010 itself by granting an opportunity to the petitioner husband to lead his defence evidence. However, the Bench has admitted the appeal and the same has not been decided even after 15 years of its admission and, therefore, in the light of Section 21B (3) of the Act, the rigor of Section 15 putting a restraint on the respondent wife not to get marriage for a period of 15 years on account of incapability of the

High Court to decide the appeal expeditiously, no fault can be fixed on the respondent wife as the interpretation of Section 15 is to be made in terms of Section 21B(3) of the Act. If there is a restraint liability on one spouse, it is the duty of the Court also to dispose of the appeal expeditiously within three months.

- (e) Needless to say that even after admission of appeal, no efforts were made by the respondent in terms of Section 23(2) of the Hindu Marriage Act read with Section 28 of the Act as a spouse cannot be made to wait for endless period if the Court is not able of deciding the appeal, especially when the same has been admitted.
- (f) Though there is no dispute that the violation of Section 15 of the Hindu Marriage Act amounts to civil contempt under Section 2(b) of the Act. However, in the peculiar facts and circumstances of the present case when there is no specific restraint order from remarrying after three months period expired under Section 21B(3) for disposal of the appeal, considering that the respondent waited for 10 years and ultimately decided to move on to secure her future and performed the second marriage, no willful disobedience is made out.

Accordingly, this contempt petition is dismissed.

As noticed above, the petitioner-husband Roshan Lal has filed a criminal complaint under Section 494 IPC against the respondent-wife in which the Judicial Magistrate 1st Class, SBS Nagar vide order dated 22.12.2021 **(Mark 'A')** has summoned the respondent to face trial observing that she has performed the marriage in violation of Section 15 of the Hindu Marriage Act, is also not sustainable.

Therefore, exercising the *suo moto* power under Section 482 Cr.P.C., the order dated 22.12.2021 and subsequent prosecution of respondent in pursuance thereto, pending before the said Court are also, hereby, quashed.

February 23, 2023
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO