

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Madhuresh Prasad

F.A. 167 of 2016

with

CAN 3 of 2023

Abraham Anand @ C. Abraham Anand

Vs.

Meri Mamata Das

For the Appellant : Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Mr. Abhirup Halder.

For the Respondent : Mr. Barun Kumar Samanta.

Heard on : March 05, 2024

Judgment on : March 22, 2024

Madhuresh Prasad, J.:

1. The Court of learned Additional District Judge, 3rd Court at Malda has rejected the appellant's suit praying for a decree declaring the marriage dated 31.01.2010 solemnized with the respondent to be void. The suit was filed and numbered as Matrimonial Suit No. 432 of 2013 (MAT Suit No. 432 of 2013).

2. As per the plaint and appellant's deposition at the Trial Court, the facts which are not in dispute are that marriage was solemnized on 30.01.2010. Though this date was not disputed, the appellant/plaintiff has come out with a case that the marriage was solemnized

per force and by resorting to deception. It is also the case of the appellant/plaintiff that the rites, ceremonies and customs of the Malda Baptist Church were not followed and that the marriage was solemnized by a person who was not having a valid license in terms of Section 5 of the Indian Christian Marriage Act, 1872. It is further case of the appellant/plaintiff that the marriage was not consummated.

3. Though there is pleading to the effect that the respondent has subjected the appellant/plaintiff to cruelty, no evidence has been led in this regard. The appellant/plaintiff has examined the Priest-in-Charge of the Church where the marriage was solemnized. He has deposed as P.W.2. His deposition reveals that he was authorized by the Bengal Baptist Union to conduct marriage ceremony and other Christian religious activities, at the relevant time when he was the President and Pastor-in-Charge of the Dakshin Dinajpur Baptist Union. The authorization in this regard vide letter dated 24.01.2008 was marked as Exhibit – 5.

4. The respondent in her Examination-in-Chief has admitted that the marriage was solemnized on 31.01.2010. According to her, the same was performed upon observing the Christian ceremonies and customs at the Christian Fellowship Church Kanirmore of District Malda in presence of the Priest-in-Charge (P.W.2). As per the respondent, the marriage was consummated on 31.01.2010 itself. She has narrated perpetration of cruelty upon her by the

appellant/plaintiff, compelling her to file a petition under the Domestic Violence Act.

5. According to her, the situation thus had become irretrievable and unbearable soon after the marriage was solemnized. The parties, therefore, filed a case of mutual divorce before the learned District Judge, Malda on 11.03.2011 vide MAT Case No. 103 of 2011, which subsequently came to be dismissed. It is further her case that the petitioner/ plaintiff has also filed another case in the Court of Principal District Judge at Changalpattu in Chennai bearing I.D.O.P. Case No. 192 of 2012 for divorce on the grounds of cruelty and desertion which was subsequently withdrawn by the appellant/plaintiff. The respondent has tendered certified copy of the petition for mutual divorce filed in MAT Suit No. 103 of 2011 which has been marked as Exhibit – D. She has flatly denied the suggestion that the marriage was not held as per rites, customs, ceremonies of the Church, or that the same was not in accordance with the Indian Christian Marriage Act, 1872 ('Act' for short).

6. The learned Counsel for the appellant/plaintiff has emphatically submitted that the marriage not being solemnized according to the provisions contained in the Act and without observing the rites, practice and ceremonies of the Church wherein the marriage was solemnized is fit to be declared void. It is submitted that the marriage was solemnized by P.W.2 who was incompetent in terms of Section 5 of the Act to perform the marriage. The marriage, therefore, not being solemnized by any persons licensed under the Act as contemplated

under Section 5, is contrary to the provisions of the Act. The marriage, being solemnized otherwise than in accordance with provisions of the Act was liable to be declared void.

7. Learned Counsel for the respondent submits as per instruction contained in e-mail dated 12.07.2023, print of which has been handed to the Court that he is under instruction that the respondent does not want to proceed with the case. The print out of the e-mail be taken on record.

8. The submission and case of the appellant/plaintiff is required to be considered keeping in view the provisions of the Act. Section 5 of the Act is relevant to the case of the appellant/plaintiff and the submission advanced on his behalf. This Section specifies the persons by whom a marriage may be solemnized between persons, one or both of whom is a Christian, or Christians. The Section specifies such persons disjunctively in between sub-Section (1) to sub-Section (5).

9. From a harmonious consideration of the evidence on record being the certificate of marriage (Exhibit – 1); and the letter of authority dated 24.01.2008 (Exhibit 5), it is obvious that P.W.2 had solemnized the marriage being authorized as such, while he was the President and Pastor-in-Charge of the Dakshin Dinajpur Baptist Union within whose jurisdiction the Church where the marriage was solemnized is situated. Exhibit – 1, being the certificate issued by the P.W.2 in such capacity is duly acknowledged by a signature affixed thereto by the present appellant/plaintiff.

10. Section 5(1) of the Act reads as follows:-

“5. Persons by whom marriages may be solemnized. – Marriages may be solemnized in [India]-

(1) By any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister;”

The fact that the appellant/plaintiff and the respondent are both Baptist Christians is not in dispute. The Church where the marriage was solemnized was also a Baptist Church. P.W.2 who has solemnized the marriage, as per the letter of authority (Exhibit – 5) had received episcopal ordination, and was the President and Pastor-in-Charge of the Dakshin Dinajpur Baptist Union duly authorized to conduct marriage ceremony and all other Christian religious activities. Whether, he was licensed under the Act to solemnize a marriage or not, therefore, is wholly irrelevant having regard to the case as emerging based on the pleading and evidence available on record, and the relevant provision of Section 5 extracted above. We, therefore, find no merit in the plaintiff's contention that marriage was void on the ground that the same was solemnized otherwise than in accordance with the Act.

11. There is also evidence on record (Exhibit – D), being the application earlier filed for dissolution of marriage on mutual consent under Section 6 of the Christian Marriage Act by the present appellant and respondent. This application, i.e. MAT Suit No. 103 of 2011 contains unequivocal stand of the present appellant/plaintiff that based on an acquaintance, which developed into love, marriage

was solemnized between the parties to the instant proceedings on 31.01.2010. It is also specifically stated that after marriage, both the parties lived together as husband and wife and that their marriage was consummated. Such stand of the appellant/plaintiff is duly supported by an affidavit appended to the application, sworn by him.

12. We, therefore, are of the opinion that the present appellant/plaintiff cannot be permitted to blow hot and cold. The stand taken in MAT Suit No. 103 of 2011 contains an inherent and explicit admission of marriage being duly solemnized on 31.01.2010 and consummation thereof. We are, therefore, of the opinion that now he cannot be permitted to make a volte face in the instant proceedings and is estopped from contending to the contrary that the marriage was not consummated, and that it was void.

13. In view of foregoing consideration, we find no reason to interfere with the judgment and decree passed in MAT Suit No. 432 of 2013 dated 30.01.2010.

14. The appeal is hereby dismissed.

15. There shall be no order as to costs.

(Madhuresh Prasad, J.)

16. I agree.

(Harish Tandon, J.)