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Ct-08

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**FMA 648 of 2023**  
with  
**CAN 1 of 2022**

**Manju Singha Roy**  
**Vs.**  
**Union of India & Ors.**

Mrs. Debjani Ray  
Ms. Susmita Das  
Ms. Sohini Dey

... For the Appellant

Mr. Kallol Kumar Basu  
Ms. Ashima Roy Choudhury

... For the Kolkata Port Trust

1. The appeal is arising at the instance of the second wife of a retired employee, Arun Kumar Singha Roy, of Kolkata Port Trust (in short "KOPT") now known as Syama Prosad Mookherjee Port, Kolkata.

2. The appellant claims that her husband Arun Singha Roy married Smt. Mukul Singha Roy in the year 1956. Out of the said wedlock, one son and two daughters were born. After the birth of the said children, according to the appellant, Mukul, the first wife, left her husband Arun and remarried another person. She never returned to Arun subsequently. The appellant claims that Arun married her in May 1973

3. Being aggrieved by the order of KOPT on the ground that during the subsistence of the first marriage the second marriage cannot be

consummated and in view thereof the family pension cannot be released in favour of the second wife, as claimed of the deceased employee, the present appellant filed a writ petition and same was dismissed.

4. In our view, the learned Single Judge was justified in accepting the view expressed by KOPT, as under the Hindu Marriage Act, 1955 the second marriage during the subsistence of the first marriage is an invalid marriage and as held by the Hon'ble Supreme Court of India in the case of ***Rameshwari Devi Vs. State of Bihar & Ors.***, reported in ***(2000)2 SCC 431***.

5. Learned counsel representing the appellant submits that the first wife has filed an affidavit affirming that she had left her husband after the birth of one son and two daughters out of their wedlock and since 1971 the first wife had no connection with her husband, Arun Kumar Singha Roy. The said affidavit was produced before the KOPT in which she had admitted the second marriage of her husband and she did not claim family pension. The second marriage of Arun took place in the year 1973 i.e. after his first wife left him. The present appellant was not aware whether the Arun had filed any suit for divorce

against his first wife. Both Arun and Mukul are not alive. We have been informed that sons and daughters of the first wife are also not contesting the claim of the appellant with regard to the family pension. In this circumstances, a declaration of status may be required in which it is to be seen what would be the effect of admission by Mukul, the first wife of the second marriage without any decree of divorce (as it is not reflected from the affidavit of Mukul submitted before the KOPT).

6. Mukul had left her matrimonial home voluntarily in 1971 and settled with another person for which innocent Manju, the second wife, is now made to suffer. It appears that Mukul deserted Arun in 1971 permanently and settled with another person. The appellant became a life partner of Arun since 1973. KOPT does not dispute that the present appellant was the nominee in the service book and all other documents. She was mentioned as wife. Moreover the first wife during her life time filed an affidavit admitting her desertion and separation from Arun at her instance and relinquishing all right as legal heir of Arun. Notwithstanding the fact that we refuse to interdict the order passed by the learned Single Judge, we feel that the Board of KOPT may

consider such special facts and circumstances in taking a decision with regard to the claim of the present appellant within a period of eight weeks from the date of communication of this order, subject to the appellant's producing credible evidence of her relationship with Arun.

7. In the event the decision of the Board is against the appellant, it would be open to the appellant to take appropriate steps in accordance with law including filing a civil suit.

8. In view of the above, the appeal being FMA 648 of 2023 stand disposed of along with CAN 1 of 2022.

9. However, there shall be no order as to costs.

10. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

**(Uday Kumar, J.)**

**(Soumen Sen, J.)**

