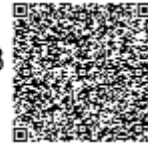


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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

**FAO-5373-2019 (O & M)
Reserved on: 17.07.2024
Pronounced on: 26.07.2024**

SUNIL KUMAR

.....Appellant

Versus

RENU

....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. R.S.Panghal, Advocate
for the appellant.

Mr. Balraj Gujjar, Advocate
for the respondents.

SURESHWAR THAKUR, J.

1. The present appellant filed a Hindu Marriage petition bearing No.171 (RBT) of 2016/2018, before the Family Court, Bhiwani. The said petition was filed under Section 11 of the Hindu Marriage Act (hereinafter referred to as 'the HMA'), wherein, he claimed the passing of a decree, thus declaring the marriage solemnized inter-se the appellant and respondent to be a nullity, thus on the ground that without the passing of a lawful decree whereby became annulled the marital ties solemnized by the respondent with one Maha Singh, rather she contracted marriage with the appellant herein.

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(supra), the said petition was dismissed, thus leading the appellant to make an appeal thereagainst, through his instituting the instant appeal before this Court.

Brief facts of the case

3. The marriage of petitioner was solemnized with the respondent on 15.07.2002 at Sainipura Jatwara, Sonapat, Tehsil and District Sonapat, according to Hindu rites and ceremonies. The marriage was duly consummated and two children, namely Saurabh (son) and Sakshi (daughter) were born out of their said wedlock. The petitioner is deaf and dumb by birth and is 100% disable. The respondent is handicapped of one leg, however, she can walk easily without any support. The petitioner and respondent were living a smooth life but after sometime, differences developed between the parties. The parents of respondent started pressurizing the petitioner to get himself separated from the family and to take his share in the property but petitioner could not get himself separated because of his dependency on his parents and his physical disability. The respondent is living separately from petitioner and his family members since the year 2007, though she is living in the house of petitioner's father along-with her daughter Sakshi. The respondent compelled the petitioner and his family members to vacate the house, owing to which, petitioner and his family members started living in the fields. The respondent got registered a false case under Section 12 of the DV Act, and also filed a petition under Section 125 Cr.P.C against petitioner and his family members. It was averred that the respondent also moved false written

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in which allegations made by the respondent were found false. A divorce petition under Section 13 (1) of the Hindu Marriage Act, 1955 was filed by petitioner against respondent but the same was got dismissed as withdrawn on 16.11.2016. It is further submitted that at the time of engagement, the petitioner was told that respondent had taken divorce from her previous husband and that she is thereby able to perform a valid second marriage. During cross-examination of the respondent in divorce petition, on 02.11.2016, the petitioner came to know that earlier the respondent was married with one Maha Singh son of Lal Chand, resident of Gannaur, District Sonapat and she had not taken divorce from her previous husband till 15.07.2002. Before the marriage of petitioner with respondent, the name and address of her previous husband were not disclosed to petitioner and his family members. Later on, Maha Singh (previous husband of respondent) filed divorce petition against respondent on 28.03.2002 and their marriage was dissolved by ex-parte decree of divorce on 01.10.2002, passed by the Court of Shri Surinder Kumar, learned Add District Judge, Sonapat, in which it was specifically ordered that the marriage of respondent Renu and Maha Singh stands dissolved w.e.f. 01.10.2002. Thus, before entering in the marriage with petitioner, respondent was having a living spouse, hence marriage of petitioner and respondent is liable to be declared a null and void-ab-initio marriage.

4. On notice, respondent appeared before the Court and filed written statement taking preliminary objections of *locus standi*, maintainability etc. On merits, it is submitted that the marriage of

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Sonepat, according to Hindu rites and ceremonies by spending huge amount by the parents of respondent and sufficient dowry articles were given in the marriage. The respondent was earlier married but she took divorce from her previous husband owing to some matrimonial disputes and performed second marriage with petitioner. The petitioner is deaf and dumb from his childhood and respondent is also handicapped from one leg, therefore, respondent performed her second marriage with petitioner. The petitioner got his education from Deaf and Dumb School Mission. The petitioner is capable to speak and listen everything and is also running the business of sewing/knitting in front portion of his residential house. The petitioner and his family members being greedy persons were not satisfied with the dowry brought by respondent and they used to taunt the respondent on the demand of dowry. The petitioner and his family members demanded motorcycle and valuable golden jewellery. When the respondent showed her inability, then she was given merciless beatings in the presence of her parents. The respondent was kept hungry and was confined in a room without providing any food and water. The respondent gave birth to both children under tension but still no change came in the behaviour of the petitioner and his family members. When the respondent told these facts to her parents, then they tried to sensitize the petitioner and his family members but they flatly refused to keep and maintain the respondent without fulfillment of their demand. The father and brother of petitioner, under the influence of liquor, used to keep bad eye upon the respondent and also misbehaved with her. The respondent was

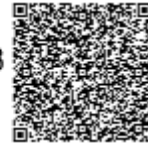
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of his father and brother. The respondent was forcibly dragged from her matrimonial home and she along with her daughter was kept in a separate portion of their residential house, which is adjacent to their house, while son is in their custody. Panchayat was convened but petitioner and his family members were adamant on their demand of dowry. On 19.05.2013, respondent was given merciless beatings at midnight and the respondent informed the police but the police in collusion with petitioner and his family members gave threat to the respondent to withdraw her complaint or legal action should be taken against her. Thereafter, respondent moved application before SHO, PS City Bhiwani but no action has been taken. On 26.07.2014, petitioner at the instance of his family members gave excessive beatings to respondent and she was admitted in General Hospital, Bhiwani, where MLR of the respondent was issued and her statement was also recorded by the police but no action has been taken by the police against petitioner and his family members till today. On 30.05.2014, when respondent came from her parental home, then she was also given beatings. As such, the petitioner had treated the respondent with mental and physical cruelty and is responsible for such desertion. Earlier also, the petitioner filed a divorce petition under Section 13 (1) (ia) (ib) of the Hindu Marriage Act, 1955 in the year 2014 bearing CIS No.DMC-400-2014, however, the said petition was got dismissed as withdrawn on 16.11.2016 even after concluding evidence on behalf of both the parties.

5. From the pleading of the parties, the following issues

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1) *Whether the petitioner is entitled to a decree of nullity of marriage on the grounds mentioned in the petition ? OPP*

2) *Whether the present petition is not maintainable in the present form ? OPR*

3) *Whether the petitioner has no locus standi or cause of action to file the present petition ? OPR*

4) *Whether the petitioner is estopped from filing of present petition ? OPR*

5) *Whether the petitioner has not come to the Court with clean hands and suppressed true and material facts from the Court ? OPR*

6. In order to prove his case, the petitioner got examined his father Tek Ram as PW-1 and further examined himself as PW-2. In her defence, the respondent Renu examined herself as RW-1.

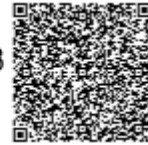
7. The relevant answers, as meted to the said struck issues (supra), thus by the Family Court below are extracted hereinafter.

Issue No. 1 and 5

“31. The marriage in between the parties to petition was solemnized on 15.07.2002 and this petition under Section 11 of the Hindu Marriage Act, 1955 for seeking annulment of marriage was filed by present petitioner on 23.11.2016 i.e. after a period of more than 14 years. The consequences of treating the marriage void are so serious and far reaching and are likely to affect innocent persons such as children.

32. Considering oral as well as documentary evidence produced on behalf of both the parties, and after hearing the learned counsels for both the parties, this Court reached at a considered opinion that the petitioner not came to the Court with clean hands. Further petitioner

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himself is not supporting his case when he appeared in the witness box as he not uttered even a single word regard annulment of marriage by decree of nullity. The testimony of PW-1 Tek Ram (father of petitioner) itself is not sufficient to allow the petition, hence issue No. 1 is decided in against the petitioner and issue No. 5 is decided in favour of respondent.

Issues No. 2 to 4

33. Onus to prove these issues was upon the respondent. However, these issues were not pressed during the course of arguments. Accordingly, these issues are disposed of being not pressed.”

Grounds of Appeal

8. The respondent-wife had solemnized marriage with the appellant-husband on 15.07.2002, however, her earlier marriage with one Maha Singh was dissolved rather subsequent thereto, hence on 01.10.2002, by a decree of divorce becoming passed by the learned Additional District Judge, Sonipat. Therefore, the fact (supra) thus is conclusive proof, that the marriage between the appellant and the respondent rather is null and void. The respondent has solemnized the present marriage, which is based upon fraud and concealment of the facts (supra) by her, thus, fraud has been committed upon the appellant. Therefore, the marriage concerned is a nullity, thereby the impugned judgment is liable to be set aside and the appellant is entitled to a rendition of a decree dissolving his marriage with the respondent.

9. The appellant after knowing the fact that his marriage with respondent is a nullity in the eyes of law, therefore, he withdrew the petition filed under Section 13 of the HMA for rendition of a decree of divorce and filed a fresh petition under Section 11 of the HMA.

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Resultantly therebys, it is contended that the bar as expostulated in Order 23 of the CPC, provisions whereof are extracted hereinafter, is not attracted to the instant petition, irrespective of the factum that the earlier petition became simpliciter dismissed as withdrawn but without leave to institute a fresh petition becoming granted to the petitioner-appellant herein.

Order XXIII

1. Withdrawal of suit or abandonment of part of claim

(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied,-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be preclude from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to

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permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.

Inferences of this Court.

10. The most significant fact which emerges, is that, the marital partners entered into matrimony in the year 2002. However, evidently at the time of the respondent solemnizing marriage with the present petitioner, she was lawfully wedded with one Maha Singh. However, though the said marriage performed by the respondent became dissolved, through a decree of divorce becoming passed on 01.10.2002, by the learned Additional District Judge, Sonipat. Nonetheless, when there is a minimal gap of about three months in the respondent solemnizing marriage with the present petitioner and the passing of a decree (supra), whereby her previous marriage with Maha Singh became dissolved.

11. Be that as it may, this Court is required to be both pragmatic besides is required to be mindful to the factum that, the marriage which became entered on 15.07.2002 between the parties at *lis'* rather had lasted for almost twelve years, since the stage when the petitioner had filed a petition under Section 13 (1) of the HMA, whereby he sought rendition of a decree of divorce, thus on the ground of cruelty. However, the said petition was dismissed as withdrawn on 16.11.2016. Though the present petitioner became barred to institute a second petition, thus on the same grounds and same causes of action against his respondent-wife, especially when no leave to institute a fresh petition was granted. However, it appears that the said bar, *prima*

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the petitioner before the learned Family Court concerned.

12. The reason for making the above inference ensues from the factum that knowledge, rather in respect of the respondent solemnizing marriage with the petitioner, despite at the relevant stage, hers not through rendition of a valid decree of divorce, begetting dissolution of her earlier marriage with one Maha Singh, thus became acquired during the course of the makings of cross-examination upon the respondent in the said earlier Hindu Marriage petition. Though *prima facie*, the subsequent nullification as claimed by the present appellant vis-a-vis his marriage with the respondent rather on the ground that the said marriage was void ab initio, thus was a valid recourse. Nonetheless, with the petitioner evidently becoming then awakened with respect to the above fact, therebys he could amend the pleadings, thus with unequivocal echoings therein, that as such, the petition filed under Section 13 (1) of the HMA, be permitted to with the leave of the Court, become amended to a petition under Section 11 of the HMA. However, the petitioner omitted to do so. The said omission does have a telling effect, inasmuch as, qua therebys the said plea became abandoned. In sequel, the abandonment of the said plea, thus invites the rigor of the statutory principles incorporated in Order 23 of the CPC, provisions whereof, candidly speak that unless the previous petition is permitted to be withdrawn, thus with liberty to institute a successive petition, thereupon, the statutory bar created thereunders becomes fully activated against the petitioner.

13. Moreover, even if assumingly despite the petitioner becoming awakened, thus during the course of trial qua the earlier

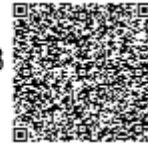
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petition, about the marriage solemnized inter-se him and the respondent, being a nullity, thus on the ground that the respondent's previous marriage with Maha Singh became dissolved subsequent to his entering into matrimony with the present petitioner, therebys too, the petitioner may be yet have even without asking for leave from the learned trial Judge, rather for causing amendment (supra) to the petition filed under Section 13 (1) of the HMA, rather taken to withdraw the earlier petition, but with liberty to file a fresh petition enclosing therein, the factum of the instant marriage being declared to be a nullity. However he omitted to do so, therebys too the said bar becomes re-enforcingly attracted.

14. The further sequel of the omission (supra) is but that the allegations made in the instant petition, against the respondent, thus are deemed to be ideally or frivolously raised. The reason for drawing the above inference becomes boosted from the factum qua the marital partners rather for an elongated spell of time, thus commencing since 15.07.2002 upto the year 2014, rather theirs conjoining in matrimony. The said prolonged spell of their conjoining(s) in matrimony, thus brings forth, the inevitable corollary, that there was condonation by the petitioner of the factum, that at the time of hers entering into matrimony with him, she already, rather without a decree of divorce being granted rather was holding a subsisting marriage with one Maha Singh. Moreover, the mere minimal gap of almost three months in the respondent solemnizing marriage with the petitioner and the passing of a decree of divorce by the learned Additional District Judge, Sonapat,

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thus does not impel this Court to conclude that there was post 01.10.2002, any lawful marriage inter-se the respondent and Maha Singh, especially when subsequent thereto both lived as husband and wife, thereby there was but condonation of the contestable factum that the matrimony, as became entered prior to 01.10.2002, being a nullity on the ground, that at the stage (supra) there was no decree passed by the learned Family Court concerned, thus annulling the matrimonial ties of the respondent with one Maha Singh. Even otherwise, though the factum of a void marriage can be agitated at any stage, but the right to raise an agitation in respect of the above is required to be curtailed in the face of the facts surrounding any void matrimony becoming entered into amongst the matrimonial spouses. The relevant fact for denying the said agitation to the aggrieved from a void marriage, is but, the prolonged spell of both cohabiting besides from the evident fact that the earlier marriage became nullified, thus merely within a period of three months, since the joinings into matrimony of the present estranged married couple concerned.

Final Order of this Court.

15. In aftermath, this Court finds no merit in the appeal and with the observations aforesaid, the same is dismissed.
16. No order as to costs.
17. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

26.07.2024