

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

FA No. 68 of 2024
+
CAN 2 of 2025

Bodhirupa Mukherjee
-vs-
Milinda Lahiri

For the appellant : Mr. Partha Pratim Roy,
Ms. Sudeshna Basu Thakur,
Ms. Upasana Das

For the respondent : None.

Heard on : April 17, 2025.

Judgment on : April 17, 2025.

Sabyasachi Bhattacharyya, J.:

1. The present appeal has been preferred by the plaintiff/wife in a suit filed under Section 24 of the Special Marriage Act, 1954 (in short "the Act of 1954"), seeking declaration that the

marriage solemnized between the parties on December 1, 2021 and registered on June 7, 2022 is void *ab initio* and for a direction on the Marriage Registrar, Siliguri, to strike off the registration of the marriage from the Marriage Register with immediate effect.

2. Despite repeated service, none appears to contest the appeal and as such, the same is taken up for hearing *ex parte* as per our previous direction.
3. The premise of the suit was that the respondent/husband married the appellant herein under Hindu rites and customs on December 1, 2021, which subsequently culminated in a registration under Section 13 of the Act of 1954 on June 7, 2022. The said marriage, it is alleged, was solemnized by the husband practicing deception on the appellant inasmuch the respondent/husband suppressed his subsisting previous marriage with a third party (whose name is deliberately not being disclosed here in order to protect her privacy) on November 8, 2018.
4. It is contended that the prior marriage of the respondent/husband was an admitted position. To prove the same, the present appellant exhibited the plaint of a

Matrimonial Suit, bearing Matrimonial Suit No. 3338 of 2019, filed by the respondent before the learned District Judge at Alipore, District- South 24 Parganas, where it was categorically admitted by the husband that he had solemnized a marriage with the defendant therein and sought a decree of divorce.

5. In the said suit, the defendant therein filed her written statement, substantially admitting the factum of such previous marriage.
6. The learned Trial Judge, in the present case, proceeded on the premise that the previous suit for divorce was fixed for *ex parte* hearing, which according to the learned Trial Judge meant that the said suit was yet to be decided. The learned Trial Judge observed that it was not established that the husband had a prior subsisting marriage, since the previous matrimonial suit was yet to be decided and that before the suit is decided, the learned Court cannot opine that the marriage is void *ab initio* as her husband had a spouse living at the time of marriage.
7. It is submitted that the culmination of the previous suit had nothing to do with the present suit, since the factum of

suppression was borne out by the admitted position as evident from the pleadings of the husband in his previous suit.

8. Upon a careful perusal of the exhibits in the present suit, we find that the plaint of Matrimonial Suit No. 3338 of 2019, filed by the respondent/husband against a third party, was marked as Exhibit P2. From the said document, it is clear that the respondent/husband admitted therein that he had solemnized a marriage with the defendant in the said suit on November 8, 2018 whereas the solemnization of the marriage with the present appellant/wife took place on December 1, 2021. The registration of the marriage between the present parties under Section 13 of the Act of 1954 took place on June 7, 2022, both during subsistence of the said marriage.
9. Notably, the learned Trial Judge, in the impugned judgment, found that even as on the date of the judgment, the previous suit of the husband was pending and the same was fixed for *ex parte* hearing on March 11, 2024. As such, it was clearly proved by the appellant in the trial court that at least between November 8, 2018, that is, the date of the admitted previous marriage of the respondent/husband, and the date of the judgment impugned herein, the said marriage was subsisting,

as the previous suit of the husband seeking divorce was still pending.

10. Thus, on the date of the marriage between the present parties, the prior marriage of the husband was clearly subsisting.

11. The learned Trial Judge proceeded on an erroneous premise in proceeding on the basis that the outcome of the present suit depended on the result of the previous suit of the husband. However, nothing hinges on the same, since even if the husband was successful in obtaining a divorce decree against his previous wife, the same would not purge the guilt of the husband, within the contemplation of the relevant provisions of the Act of 1954 as well as the Hindu Marriage Act, 1955 (in short “ the 1955 Act”), of suppression of his previous marriage to the appellant at the time of their marriage.

12. Section 4(a) of the Act of 1954 provides that one of the conditions relating to solemnization of a special marriage is that neither party has a spouse living. Section 24 of the Act of 1954 provides that in case of non fulfillment of any of the

conditions specified in Section 4(a), any marriage solemnized under the Act shall be null and void.

13. On the other hand, Section 5(i) of the Hindu Marriage Act, 1955 similarly provides that one of the conditions of a valid Hindu marriage is that neither spouse has a spouse living at the time of marriage. Section 11 of the 1955 Act provides that on a petition presented by either party against the other, such a marriage, solemnized in contravention of Section 5(i) of the Act, can be declared to be a nullity.

14. Thus, the relevant juncture is the point of time when the marriage between the present parties took place, since if on such date there was a valid subsisting marriage of the respondent with a third party, the present marriage would be rendered null and void *ab initio*, under the respective provisions of Section 4 of the Act of 1954 and Section 5 of the 1955 Act, irrespective of a declaration being granted on a petition filed under Section 24 of the Act of 1954 or Section 11 of the 1955 Act.

15. Such position of law is sanctioned by the judgment rendered by the Supreme Court in the case of *Smt. Yamunabai Anantrao Adhav A Vs. Ranantrao Shivram Adhav*

and another reported at (1988) 1 SCC 530, cited by the appellant, where it was observed categorically that it is not essential to obtain a formal declaration of nullity from a court in a proceeding specifically commenced for the purpose and a marriage which is covered by the respective provisions of Section 11 of the 1955 Act is void *ipso jure*, that is, void from the very inception and has to be ignored as not existing in law at all, if and when such question arises. The Supreme Court went on to observe in the said reported judgment, in connection with a proceeding under Section 125 of the Criminal Procedure Code, that such a marriage is a complete nullity in the eye of law and can be totally ignored.

16. Finding support from such ratio, we are of the clear opinion that in view of the specific admission of the husband in his plaint in Matrimonial Suit No. 3338 of 2019 filed before the Learned District Judge at Alipore, District- South 24 Parganas that he had a subsisting valid marriage with a third party on the date of the marriage contracted with the present appellant. Thus, the learned Trial judge acted with palpable illegality in refusing to grant a decree declaring the marriage between the present parties to be a nullity.

17. Irrespective of whether subsequently the previous marriage of the respondent is severed by a decree of divorce or not, the very admission of subsistence of a prior marriage on the date of the marriage between the present parties is sufficient to grant a decree declaring that the marriage between the present parties to be a nullity *ab initio* under Section 5 of the 1955 Act, alternatively, under Section 4 of the Act of 1954.
18. At this juncture, it may be recorded that this Court is not unmindful of the fact that the appellant admitted in paragraph 4 of her plaint that a marriage was solemnized between the present parties as per Hindu rites and customs on December 1, 2021, prior to the registration of the marriage between them under Section 13 of the Act of 1954 on June 7, 2022.
19. Thus, a question may arise as to whether a Hindu marriage having been solemnized earlier than the registration under the Act of 1954, the former prevails and the suit ought to have been filed under the 1955 Act and not the Act of 1954.
20. However, considering the complexity of the situation, since in the present case, the parties chose to avail of the relevant provisions of both statutes and a single composite application under the two statutes is not maintainable, as well as taking

into consideration that the lives of several people are concerned in the matter, we are loathe to relegate the appellant to a further suit under the 1955 Act.

21. In any event, even if such a suit was to be filed, all the reliefs sought in the present suit might not have been granted there as well, since even if the Hindu marriage was declared to a nullity, the marriage solemnized by registration under Section 13 of the Act of 1954 would still survive and the conundrum which is before us would be perpetuated.
22. As such, we propose to proceed on the premise that the parties elected to have a marriage between themselves under Section 13 of the Act of 1954 and that the application from which the instant appeal arises was a valid application in the eye of law.
23. In any event, following the ratio of the judgment of the Supreme Court as cited above, we are of the opinion that either way, even the marriage contracted between the present parties under the 1955 Act was a nullity and void *ab initio* and as such, can be ignored by the parties.
24. Keeping in view of such considerations, the impugned judgment cannot survive the scrutiny of law.

25. Accordingly, FA No. 68 of 2024 is allowed *ex parte*, thereby setting aside the impugned judgment and decree dated January 19, 2024 passed by the learned Additional District Judge, Third Court at Asansol, District- Paschim Bardhaman, in Matrimonial Suit No. 77 of 2023 (CIS No. Mat 420 of 2023).
26. We hereby declare the marriage solemnized between the parties herein on December 1, 2021 and subsequently registered on June 7, 2022 to be void *ab initio* and a nullity in the eye of law.
27. Consequentially, we direct the Marriage Registrar, Siliguri, to strike off the particulars regarding registration of the marriage between the parties from the concerned Marriage Register with immediate effect.
28. There will be no order as to costs.
29. A formal decree be drawn up accordingly.
30. In view of disposal of the appeal, the connected application, bearing CAN 2 of 2025 is also disposed of.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)