



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 25 OF 2024
WITH
INTERIM APPLICATION (St.) NO. 14314 OF 2024

Mrs. Vandana Ramchandra Jaiswal ... Appellant/Applicant

Vs.

Suresh Ramajor Jaiswal ... Respondent

Mr. Muraleedharan K.C. a/w. Mr. Gurudev Madham for the appellant.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.
DATED: 28 FEBRUARY 2025

P.C.

1. This appeal assails the judgment and order dated 22 August, 2019 passed by the learned Judge of Family Court, Bandra in Petition No. A-1175 of 2018 filed by the respondent for divorce under Section 11 of the Hindu Marriage Act, 1955.

2. The case of the respondent was that on the date of marriage with the respondent, i.e., on 28 May, 2015, the appellant was already married to one Ashok Jaiswal and the said marriage was solemnized on 26 January, 2005. It is contended that the said marriage was not dissolved. The appellant had not disclosed such fact to the respondent was the case of the respondent in the proceedings filed before the Family Court.

3. In the impugned order, it is observed by the Family Court that it was seen from the record, that the respondent was duly served vide bailiff report at Exhibit 6, however, however, the respondent had failed to appear. Therefore, by an order dated 4 February, 2019 passed below Exhibit 1 the case was ordered to proceed ex-parte.

4. Considering that the case of the respondent had remained uncontested, by the impugned judgment and order, the Family Court on examining the record, recorded a finding in the affirmative on two issues as framed, namely, Whether the petitioner-Suresh Jaiswal proved that the respondent-Vandana Jaiswal had a spouse living at the time of marriage; and secondly, whether the petitioner-husband was entitled for the relief as claimed. The divorce petition filed by the husband accordingly came to be allowed in terms of the following order:

- “1) The petition is partly allowed.
- 2) The marriage between Suresh and Vandana which was solemnized on 28.05.2015 is hereby dissolved by decree of nullity with effect from the date of decree.
- 3) The petitioner shall bear his own cost.
- 4) A copy of decree, at once be given free of cost to the petitioner as per section 23(4) of the Hindu Marriage Act, 1955.
- 5) A copy of decree be also sent to the respondent by registered post acknowledgement on the address given in the petition.
- 6) Decree be drawn up accordingly.”

5. Learned counsel for the appellant has limited contentions to urge, in assailing the impugned order. He has fairly stated that the appellant in fact was married twice, before the marriage between the appellant and respondent was solemnized on 28 May, 2015. It is stated that firstly she got married to one Rajesh Jaiswal and thereafter her second marriage was with Ashok Jaiswal, as also recorded in paragraph 8 of the impugned order. It is his contention that both these marriages were not dissolved in the manner known to law. The only contention as urged by the learned counsel for the appellant is that the Family Court has not taken into consideration that the appellant would be required to be granted a permanent alimony. It is his submission that even in adjudicating a plea under Section 11 of the Hindu Marriage Act, if the marriage is declared to be a nullity, the appellant nonetheless would be entitled to a permanent alimony and/or maintenance considering the settled principles of law. Thus, the contention is that merely on the ground that as the permanent alimony has not been granted to the appellant, the impugned judgment and order ought to be set aside.

6. In our opinion, such plea is raised before this Court by the appellant for the first time. It is an original plea. In the facts of the present case, the finding of the Family Court that the appellant at the time of marriage was married to one Ashok Jaiswal, is not being disputed as also that there was no decree of divorce granted by any Court in relation to the said marriage, Thus, no fault can be found in the findings as recorded by the learned Judge

of the Family Court in granting a decree of divorce under Section 11 of the Hindu Marriage Act. Insofar as the plea of the appellant for maintenance is concerned, in our opinion, considering the provisions of Section 25 of the Hindu Marriage Act, which provides for permanent alimony and maintenance, such plea and/or a prayer can be maintained even after the proceedings under Section 11 are disposed of. Sub-section (1) of Section 25 reads thus:

“Section 25 – Permanent alimony and maintenance

(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.”

7. In the aforesaid circumstances, in our opinion, in the facts of the present case, it would be appropriate that the appellant moves an application before the Family Court for any relief of a permanent alimony and maintenance, if the appellant is so entitled in law. If such application is filed, the Family Court would be required to adjudicate the same in accordance with law.

8. At this stage, learned counsel for the appellant submits that an application under Section 25 of the Hindu Marriage Act shall be filed by the

appellant within a period of four weeks from today. If the same is filed, let the same be adjudicated on merits and without an objection as to limitation, for the reason that the appellant was bonafide pursuing the present proceedings. Ordered accordingly.

9. Appeal is disposed of in terms of the aforesaid order. No costs.

10. In view of disposal of appeal, Interim Application would not survive and the same is accordingly disposed of.

11. Parties to act on the authenticated copy of this order.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)