

AD – 12
Ct No.16
12.05.2026
(SSS)

SA 41 of 2025
with
CAN 1 of 2022

Smt. Sabitri Lohar
Vs.
Phelaram Lohar and Ors.

Mr. Sibashis Ghosh,
Mr. Sudipta Dasgupta,
Mr. Arka Nandi,
Ms. Suryatapa Das,
Mr. Rithik Basu

.....For the appellant.

Mr. Debrup Chowdhury,
Mr. Arkaprabha Roy

....For the respondents.

1. The present appeal has been preferred against a judgment of reversal.
2. The plaintiff/appellant filed a suit for declaration that she was the legally married wife of one Shibram Lohar, since deceased, and for consequential reliefs relating to the retiral benefits of the said Shibram.
3. The learned Trial Judge considered the evidence of the parties and came to the conclusion that there were discrepancies in the versions of the defendants' witnesses regarding the actual age of the defendants/respondents. It was further observed, more crucially, that at the time of

alleged marriage of defendant no. 1/respondent, she was of the age of 10 years. Therefore, it was held that the marriage between the defendant no. 1/respondent and the deceased Shibram was in contravention of the statutory provision of Section 5(iii) of the Hindu Marriage Act, 1955 which suggests that during the solemnization of the Hindu marriage, the bride-groom ought to have completed the age of 21 years and the bride 18 years. It was further observed that violation of the provision of law does not declare marriage as void but as voidable and the same can be regularized. However, thereafter, proceeding on the premise of alleged violation of the Child Marriage Restraint Act, 1929, the learned Trial Judge held that the said marriage was invalid.

4. The First Appellate Court reversed such findings on a detailed consideration of the evidence. The learned First Appellate Judge, *inter alia*, considered that the defendant no. 1, as DW1, categorically asserted in her oral evidence that she was married to Shibram on July 3, 1970 and from the said wedlock, a son and a daughter were born, namely Felaram and Laxmi. Furthermore, it was corroborated in the evidence of the defendants' witnesses that Nandalal was the barber and Jyoti Bamun was the priest of the

marriage, both of whom were dead as per DW3. DW4, an independent witness of the locality, stated in his evidence that all formalities, rites and customs, including Saptapadi, were performed in the marriage between Shibram and Latika, the defendant no. 1/respondent.

5. Thus, the First Appellate Court considered the entire evidence and came to the conclusion that the marriage between defendant no. 1 and Shibram was conclusively proved by oral evidence.

6. The First Appellate Court also reversed the finding of the learned Trial Judge to the effect that the marriage was invalid.

7. Although the appellant argues that the defendant no. 1 failed to prove her marriage with Shibram by corroborative evidence and that the registration certificate of the purported marriage of the plaintiff/appellant ought to have been considered, in a Hindu marriage, it is well-settled, although registration certificate creates a presumption of the marriage, the same is rebuttable. A Hindu marriage, to be conclusive, does not require a registration certificate, which is only a proof of marriage, but the performance of Saptapadi and other rituals as per Hindu rites and customs, as enumerated in the Hindu Marriage Act, 1955. Since the First Appellate

Court accepted the evidence in respect of the marriage with defendant no. 1/respondent with Shibram on the basis of the defendants' witnesss' versions, which exercise was not done by the learned Trial Judge, who proceeded on the basis of irrelevant factors such as the minor age discrepancies of the defendants as well as on the patently erroneous presumption that the marriage between the parties was invalid in terms of the Chid Marriage Restraint Act, which statute has no bearing on the validity of a Hindu marriage, we find that there was no illegality or legal error in the judgment of the First Appellate Court.

8. It is to be noted, as also considered by the learned First Appellate Judge, on the premise of the judgments cited before him, that an under-age marriage is neither void nor voidable under the Hindu Marriage Act.

9. In such view of the matter, the subsequent registration certificate of marriage of the plaintiff/appellant carries no meaning, since there was already a subsisting marriage between the defendant no.1/respondent and Shibram (since deceased), which was believed on the basis of evidence by the First Appellate Court.

10. In any event, the appreciation of evidence is a pure question of fact and there is no reason as to

why the Second Appellate Court should look into the same and reassess the evidence at this stage.

11. We find no substantial question of law involved, since the patent legal error committed by the Trial Court, as discussed above, was merely corrected by the First Appellate Court in holding that the marriage between the defendant no. 1/respondent and Shibram was valid in the eye of law.

12. Accordingly, there is no scope of interference.

13. Hence, SA 41 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

14. Accordingly, CAN 1 of 2022 is also dismissed.

15. There will be no order as to costs.

16. Urgent Photostat certified copies, if applied for, be furnished to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

(Biswaroop Chowdhury, J.)