

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.616 OF 2025
IN
S.C. SUIT NO.3109 OF 2015**

Anita Advani,
Age 52 years, Flat No.504, B-Wing,
5th Floor, Marian House, 29th Road,
Bandra (W), Mumbai-400 050

... Appellant
Org. Plaintiff

Versus

1. Dimple Jatin Khanna,
201-A, Vastu Building,
Military Road, Juhu,
Mumbai-400 049
2. Twinkle Rajiv Bhatia,
Palm Beach Apartment,
Ground Floor, Gandhi Gram Road,
Juhu, Mumbai-400049
3. Rajiv Hari Om Bhatia,
Palm Beach Apartment,
Ground Floor, Gandhi Gram Road,
Juhu, Mumbai-400049
4. Rinki Samir Saran,
201-A, Vastu Building,
Military Road, Juhu,
Mumbai – 400 049

... Respondents/
Org. Defendant
Nos. 1 to 4

Ms. Preeti Singh a/w Mr. Sunklan Porwal, Ms. Kajal Solanki and Mr. Ashwin Pimpale i/b SSB Legal & Advisory for the Appellant

Ms. Pooja Kane a/w Mr. Ishaan Choudhary and Mr. Dhir Pandit i/b IC Legal for the Respondents

CORAM : SHARMILA U. DESHMUKH, J.
RESERVED ON : 26th MARCH 2026
PRONOUNCED ON : 1st APRIL 2026

JUDGMENT:

1. The First Appeal is at the instance of the original Plaintiff, being aggrieved by the order dated 15th July 2017 passed by the City Civil Court at Dindoshi, Borivali Division, Goregaon, Mumbai, dismissing the suit on an application filed under Order VII Rule 11(d) of the Code of Civil Procedure (for short, '**CPC**').

2. The Plaintiff filed S.C. Suit No 3109 of 2015 in the City Civil Court against the wife, daughters and son in law of the deceased Jatin Khanna seeking a declaration that the Plaintiff was in a relationship with the deceased in nature of marriage and is the widow of the deceased. The Defendant No 2 filed an application under Order VII Rule 11 of CPC seeking dismissal of the suit on the ground that the suit is barred by law broadly on the ground that (a) the marriage between the deceased and the Defendant No 1 was not dissolved and under Hindu Marriage Act, there can be no marriage if one of the party had a spouse living and

hence there can be no declaration granted that the Plaintiff was a widow of the deceased (b) both parties were not qualified to enter into legal marriage as per judicial pronouncement and resultantly there can be no declaration sought of the relationship being in nature of marriage and (c) the Bombay High Court had quashed the complaint filed under the Protection of Women from Domestic Violence Act, 2005 (for short, **"D.V.Act"**) holding that the Plaintiff has failed to make out any case that she is living in a relationship in nature of marriage with the deceased. The application came to be opposed by the Plaintiff by filing its reply Affidavit dated 22nd June, 2017.

3. Vide the impugned order, the application came to be allowed by the Trial Court dismissing the suit leading to the filing of the present Appeal.

4. Ms. Preeti Singh, Learned Counsel appearing for the Plaintiff would draw attention of this Court to prayer clause (a) of the plaint to contend that the relief sought was in two distinct parts i.e. declaration that the Plaintiff was in relationship with the deceased in the nature of marriage and that the Plaintiff is the widow of the deceased. She submits that even if the latter part of relief of being declared as widow cannot be sustained, there are sufficient averments in the plaint to

sustain the relief sought as regards the declaration of the relationship being in nature of marriage.

5. She has taken this Court in detail through the averments of the plaint to submit that since the year 1984, there was a breakdown of the marriage between the deceased and the Defendant No. 1, that the deceased was staying separately from his legally wedded wife, that it was the Plaintiff and deceased who were living under one roof since several years and had projected to the society at large about their relationship being in nature of marriage. She submits that there are specific pleadings in the plaint that the deceased and the Plaintiff have celebrated all festivals together and that the Plaintiff had also advanced financial help to the deceased for the purpose of renovating their premises. She submits that there are different kinds of live in relationship and in the present case, the deceased and the Plaintiff were living together sharing a common residence and the estranged wife was living separately. She submits that the relationship between the Plaintiff and deceased was thus monogamous in character.

6. She submits that the impugned order rejects the plaint on the ground that no fruitful purpose would be served by going ahead with the matter for evidence, without specifying the specific bar in law. She

submits that the decision in the case of **D. Velusamy v. D. Patchaiammal**¹ will not apply, as in that case, the facts were completely different and the Hon'ble Apex Court was considering the issue of a claim of palimony. She would further submit that the decision in the case of **Indra Sarma v. V.K.V. Sarma**² is clearly distinguishable on facts.

7. *Per contra*, Ms. Kane, Learned Counsel appearing for the Respondent would point out the pleadings in the plaint to submit that the relief sought in the plaint was for a declaration of the relationship being in the nature of marriage and that the Plaintiff is widow of the deceased. She submits that it is an admitted position in the pleadings that the deceased had a subsisting marriage, and in view thereof, no such declaration could have been sought and provisions of Section 5 and Section 17 of the Hindu Marriage Act militate against grant of such relief. She submits that the Trial Court has rightly considered the decision in the case of **D. Velusamy v. D. Patchaiammal** (supra). She would submit that the Hon'ble Apex Court, in the case of **Dahiben v. Arvindbhai Kalyanji Bhanusali**³, has held that the Court, under Order VII Rule 11 could determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case

1 (2010) 10 SCC 469

2 (2013) 15 SCC 755

3 (2020) 7 SCC 366

for rejecting the plaint at the threshold is made out. She submits that, as the suit was contrary to the judicial dicta, such proceedings were required to be nipped in the bud, which is the finding of the Trial Court in opining that no fruitful purpose would be served by going ahead with the matter for evidence.

8. The issue which arises for consideration is, whether the suit could have been dismissed under Order VII Rule 11(d) of the CPC as being barred by law.

9. Vide the impugned order, the Trial Court noted the pleadings in the plaint and considered the provisions of Section 5 and Section 7 of Hindu Marriage Act providing for conditions of valid marriage. The Trial Court noted the decision of the Hon'ble Apex Court in the case of **D. Velusamy v. D. Patchaiammal** (supra), setting out the requirements for granting of declaration as to relationship being in nature of marriage, the decision of Bombay High Court in proceedings seeking quashing of D.V. proceedings and held that in view of the specific bar in law to grant any relief to the Plaintiff, no fruitful purpose would be served by going ahead with the matter for evidence, and allowed the application and disposed of the suit.

10. The application was filed under Order VII Rule 11 of CPC which permits the Court to summarily dismiss the suit where the eventualities set out therein are satisfied. The power of summary disposal under Order VII and Rule 11 of CPC was considered by the Hon'ble Apex Court in **Dahiben v. Arvinbhai Kalyanji Bhanusali** (supra), and it held that the remedy is an independent and special remedy wherein the Court is empowered to summarily dismiss the suit at the threshold if it is satisfied that the action should be terminated on any of the grounds contained in this provision. In paragraph 23.9, the Hon'ble Apex Court recognised the power of the Court to determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

11. Ms. Singh cited the decision of **Indra Sarma v. V.K.V. Sarma** (supra), and strangely sought to distinguish the said decision. Neither the Trial Court nor Ms. Kane had relied upon the said decision. Be that as it may. In the said decision, the Hon'ble Apex Court discussed the characteristics of marriage and marital relationship and analysed the concept of relationship in nature of marriage. It held in paragraph 57 as under:

"57. The appellant, admittedly, entered into a live-in relationship with the respondent knowing that he was a married person, with wife and two children, hence, the generic proposition laid down by the Privy Council in *Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy* – (1928) 27 LW 678 : AIR 1927 PC 185, that where a man and a woman are proved to have lived together as husband and wife, the law presumes that they are living together in consequence of a valid marriage will not apply and, hence, the relationship between the appellant and the respondent was not a relationship in the nature of a marriage, and the status of the appellant was that of a concubine. A concubine cannot maintain a relationship in the nature of marriage because such a relationship will not have exclusivity and will not be monogamous in character. Reference may also be made to the judgments of this Court in *Badri Prasad v. Director of Consolidation*-(1978) 3 SCC 527 and *Tulsa v. Durghatiya*-(2008) 4 SCC 520."

12. The decision was attempted to be distinguished by Ms. Singh on the ground that in present case, the relationship between the Plaintiff and the deceased was monogamous. Pertinently, the Hon'ble Apex Court noted the decision of ***Gokal Chand vs Parvin Kumari***⁴ that relationship by way of a bigamous marriage that is maintaining an adulterous relationship cannot be said to be a relationship in nature of marriage.

13. The decision of ***D. Velusamy vs D. Patchaiammal*** (supra), arose out of proceedings under Section 125 of the Code of Criminal Procedure, where the claim was that the Applicant was married to the Appellant therein and that he had left her after two or three years of living together with her in her father's house. The Family Court and the

⁴ AIR 1952 SCC 520
SQ Pathan

High Court had held that Appellant was married to the Applicant and not to one Lakshmi as claimed by Appellant. As Lakshmi was not party to the proceedings, the Hon'ble Apex Court did not consider the Applicant as wife of the Appellant and examined the issue from the aspect of D.V Act as regards relationship in nature of marriage. The Hon'ble Apex Court specifically held that, in facts therein, it was not called upon to decide whether in India there could be a valid claim for palimony on the basis of contract, express or implied as no such case was made out. The Hon'ble Apex Court crystallised the tests required to be satisfied where a relationship in the nature of marriage is claimed, in paragraph 31, as under:

“31. In our opinion a “relationship in the nature of marriage” is akin to a common law marriage. Common law marriages require that although not being formally married:

- (a) The couple must hold themselves out to society as being akin to spouses.
- (b) They must be of legal age to marry.
- (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.
- (d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses *for a significant period of time.*

In our opinion a “relationship in the nature of marriage” under the 2005 Act must also fulfill the above requirements, and in addition the parties must have lived together in a “shared household” as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a “domestic relationship”.”

14. The Hon’ble Apex Court held in paragraph 32 that not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned above must be satisfied. It held that if a man has a “keep” whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in nature of marriage. The decision will have to be read for the tests which have been formulated by the Hon’ble Apex Court in case where relationship in nature of marriage is claimed. In the present case, the relief sought is precisely of declaration that the relationship between the Plaintiff and deceased was in nature of marriage. Having asked for the declaration, the Plaintiff’s case will have satisfy the tests laid down in **D. Velusamy v. D. Patchaiammal** (supra).

15. With this background, the plaint is perused, it is pleaded that the Plaintiff and the deceased were in a relationship akin to marriage in a

shared household, and that the declaration sought in prayer clause (a) reads as under:

“(a) That this Hon’ble Court may be pleased to pass an order declaring that the Plaintiff was in a relationship with the Deceased in the nature of marriage and is the widow of the deceased, Mr. Rajesh Khanna alias Mr. Jatin Khanna.”

16. The frame of the suit is that the relationship between the deceased and the Plaintiff had the essential characteristics of marriage and constituted a relationship in nature of marriage and upon death of the deceased, the Plaintiff is a widow of the deceased. Ms. Singh would attempt to dissect the composite prayer clause (a) into two parts;; one for declaration of relationship being in nature of marriage and the other part of declaration of being widow of the deceased. She would submit that even if the latter declaration could not be granted, the former relief is substantiated from the pleadings. The distinction would restrict the suit to a declaration of relationship in nature of marriage and such claim would be hit by the proviso to Section 34 which provides that no such declaration shall be made where the Plaintiff being able to seek further relief than mere declaration omits to do so. The declaration of being a widow of deceased is the further relief which the Plaintiff seeks and it is Ms. Singh’s contention that the relief may not be granted. It

would also be material to note the pleadings in paragraph 39 of the plaint, which refers to the Will of the deceased alleged to have been fraudulently obtained by Defendant Nos. 1 and 2, and that Defendant Nos. 1 and 2 have fraudulently obtained the Will so as to deprive the Plaintiff of her legal rights, for which she is still entitled to as spouse of the deceased. In paragraph 42, the Plaintiff has set out the details of the probate petition filed by the Defendant and that the Plaintiff is in the process of taking steps for revocation of the probate. In view of the pleadings, it is evident that the substantive relief sought is of being declared as widow of the deceased which is a necessary sequitur of the declaration that the Plaintiff was in relationship with the deceased in the nature of marriage.

17. Even accepting that the relief sought in prayer clause (a) are two distinct reliefs, the admitted position of the subsistence of the marriage between the deceased and Defendant No 1, the relief would be barred by law and judicial dicta. In absence of requirements of valid marriage as set out in the provisions of Hindu Marriage Act as the essential conditions of valid marriage under Section 5 and Section 7 are not satisfied, the relationship partakes the character of live in relationship. The concept of a live-in relationship was statutorily recognized upon the

enactment of the D.V. Act by introducing Section 2(f), which defined “domestic relationship” to mean a relationship between two persons who live or have, at any point of time, lived together in a shared household through a relationship in the nature of marriage.

18. The declaration of the relationship being in nature of marriage would require applicability of the tests as laid down in the decision of **D. Velusamy v. D. Patchaiammal** (supra). There has to be cumulative satisfaction of the tests laid down in Paragraph 31 of the said decision and sub paragraph (c) of Paragraph 31, which lays down the criteria that the parties must be otherwise qualified to enter into a legal marriage, including being unmarried, is clearly not satisfied in the present case. The tests formulated by the Hon’ble Apex Court would indicate that the declaration of this nature seeks equivalence with marriage and marital relationship and must therefore also satisfy the essential tests for valid marriage although not formally married. The distinction between monogamous or polygamous live in relationship cannot exclude the satisfaction of the tests laid down in **D. Velusamy v. D. Patchaiammal** (supra), which is clearly not satisfied in present case.

19. The Learned Trial Court has rightly considered the decision in the case of **D. Velusamy v. D. Patchaiammal** (supra) and has examined the

pleadings of the plaint in light of the said decision to hold that the requirement is not satisfied in the present case and that no fruitful purpose would be served by going ahead with the matter for evidence, which is in consonance with the judicial pronouncement in the case of **Dahiben v. Arvindbhai Kalyanji Bhanusali** (supra), and in particular paragraph 23.9, which provides for rejection of the plaint where the assertions made in the plaint are contrary to the judicial dicta. It is held that in such cases, it would be futile to permit the suit to proceed for trial and unnecessarily protract the proceedings, which is precisely what has been done by the Trial Court in exercise of powers under Order VII Rule 11 of the CPC.

20. In light of the above, there is no merit in the First Appeal. Resultantly, the Appeal stands dismissed.

21. The interim application, if any, does not survive for consideration and stands disposed of.

SHARMILA U. DESHMUKH, J.