



2026:DHC:4769-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 16.03.2026

Pronounced on: 29.05.2026

+ MAT.APP. (F.C.) 236/2019, CM APPL.8446/2020, CM APPL.29030/2025, CM APPL.40643/2019

GAYATRI

.....Appellant

Through: Ms. Meera Kaura Patel
(DHCLSC) with Ms.
Ritika Saini, Ms. Monika
Chaudhary & Mr. Prince
Goyal, Advs. along with
Appellant in person.

versus

SRIPAL SINGH

.....Respondent

Through: Mr. Jaskaran Singh, Adv
(through VC)

CORAM:

HON'BLE MR. JUSTICE VIVEK CHAUDHARY

HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

CM.APPL 40643/2019 (delay)

1. The present application has been filed by the appellant under Section 5 of the Limitation Act, 1963 read with section 151 of the Code of Civil Procedure, 1908, seeking condonation of delay of 337 days in filing the accompanying appeal.

2. Having considered the averments made in the application and noting that no objection is raised by the learned counsel appearing for the respondent during the course of hearing, this Court is satisfied that



sufficient cause has been shown for condonation of delay. Accordingly, the delay of 337 days in filing the present appeal is condoned.

3. The present application stands disposed of.

MAT.APP. (F.C.) 236/2019, CM APPL. 40642/2019 (Interim relief) & CM APPL. 18837/2023 (U/s 25 HMA)

4. The present appeal assails the Judgment dated 23.07.2018 (“impugned judgment”) passed by the learned Principal Judge, Family Courts, West District, Tis Hazari Courts, Delhi (“Family Court”) in HMA No. 1709/2018, whereby the marriage between the appellant/wife and respondent/husband was declared null and *void ab initio* under Section 11 of the Hindu Marriage Act, 1955 (“HMA”), on the ground that it contravened Section 5 (i) thereof.

5. The facts necessary for the adjudication of the present appeal are that the marriage between the parties was solemnized on 21.06.2013, in accordance with Hindu rites and customs. At the time of marriage, respondent-husband was a widower with three children from his previous marriage. The appellant had also been previously married. Her case is that her previous marriage stood dissolved through a customary divorce before a Panchayat, and that she had not been in contact with her former husband for over 25 years. It is also an admitted position, even before the Family Court, that she had not taken divorce from her previous husband from any competent court.

6. The respondent-husband filed a petition under Section 11 of the HMA seeking a declaration that the marriage was *void* on account of



the subsistence of the appellant's earlier marriage. The Family Court allowed the petition and declared the marriage between the parties herein as null and *void* on the ground that the appellant-wife had failed to prove that she was legally divorced from her former husband at the time of marriage with the respondent. Aggrieved thereby, the present appeal is filed.

7. Learned counsel for the appellant has questioned the correctness of the view as expressed in the impugned judgment, asserting that the Family Court gravely erred in declaring the marriage null and *void* by ignoring material evidence on record, particularly the testimony of RW-2 (Padma), which establishes that the respondent-husband was fully aware of the appellant's prior marriage and customary divorce. Additionally, she places reliance on Section 23(1)(a) of the HMA to contend that a party cannot be permitted to take advantage of his own wrong. It is submitted that the respondent, having entered into the marriage with full knowledge of the appellant's prior marriage and alleged customary divorce, is precluded from seeking a declaration of nullity on that very ground. Secondly, it is submitted that the Family Court failed to appreciate that customary divorces, especially those effected through Panchayat in accordance with community practices, do not mandatorily require formal documentation, and the appellant's status as a divorcee stood duly disclosed and accepted at the time of marriage between the parties.

8. It is further submitted that the appellant, an illiterate and economically dependent woman, is misled and prejudiced by the



respondent's conduct and the impugned judgment, which not only overlooks the subsisting marital relationship and cohabitation between the parties but also disregards her entitlement to maintenance under settled principles of law. Lastly, it is submitted that even if the marriage is held to be *void*, the appellant remains entitled to maintenance *pendente lite* under Section 24 of the HMA or in the alternative, to permanent alimony under Section 25 of the HMA, having regard to the facts and circumstances of the case. Reliance is placed upon ***Sukhdev Singh v. Sukhbir Kaur***, 2025 INSC 197, wherein the Supreme Court held that a spouse in a *void* marriage may seek maintenance *pendente lite* or permanent alimony under Section 24 or 25 of the HMA, depending upon the facts and circumstances of the case. However, grant of such relief is always discretionary.

9. On the other hand, learned counsel for the respondent submits that the appellant has utterly failed to discharge the burden of proving dissolution of her prior marriage, as no cogent or admissible evidence of any customary divorce was produced before the Family Court, and the sole testimony of RW-2 is insufficient to establish such a plea. Secondly, it is urged that unless a valid customary divorce is proved, the earlier marriage, can only be dissolved in accordance with statutory provisions, otherwise subsequent marriage would be rendered *void ab initio* due to subsistence of the earlier marriage. Lastly, it is submitted that the appellant, whose former husband is admittedly alive and with whom no legally recognized divorce has taken place, cannot claim any legal rights against the respondent,



including maintenance.

10. Before proceeding further, it is appropriate to take note of statutory provisions of the HMA:

“4. Overriding effect of Act. — Save as otherwise expressly provided in this Act, —

(a) any text rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.

HINDU MARRIAGES

5. Conditions for a Hindu marriage.— A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:—

(i) neither party has a spouse living at the time of the marriage;

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11. Void marriages.— Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto [against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

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29. Savings.—(1) A marriage solemnized between Hindus before the commencement of this Act, which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid by reason only of the fact that the parties thereto belonged to the same gotra or pravara or belonged to different religions, castes or sub-divisions of the same caste.

(2) Nothing contained in this Act shall be deemed to affect any right recognised by custom or



conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.

(3) Nothing contained in this Act shall affect any proceeding under any law for the time being in force for declaring any marriage to be null and void or for annulling or dissolving any marriage or for judicial separation pending at the commencement of this Act, and any such proceeding may be continued and determined as if this Act had not been passed.

(4) Nothing contained in this Act shall be deemed to affect the provisions contained in the Special Marriage Act, 1954, (43 of 1954) with respect to marriages between Hindus solemnized under that Act, whether before or after the commencement of this Act.”

11. Section 5 (i) of the HMA mandates that neither party should have a spouse living at the time of marriage. A contravention thereof renders the marriage *void* under Section 11 thereof.

12. While Section 4 of the HMA gives overriding effect to the Act over prior customs, Section 29(2) saves the right to obtain dissolution of marriage through custom. However, it must be a valid custom and also strictly proved.

13. In ***Bhimashya v. Janabi***, (2013) 13 SCC 627, the Supreme Court held that a valid custom must be ancient, certain, reasonable, and continuously observed. The relevant portion is reproduced herein below-

“25. A custom is a particular rule which has existed either actually or presumptively from time immemorial and has obtained the force of law in a particular locality, although contrary to or not consistent with the general common law of the realm. A custom to be valid must have four



essential attributes. First, it must be immemorial; secondly, it must be reasonable; thirdly, it must have continued without interruption since its immemorial origin, and fourthly, it must be certain in respect of its nature generally as well as in respect of the locality where it is alleged to obtain and the persons whom it is alleged to affect.”

14. In **Saraswathi Ammal v. Jagadambal**, (1953) 1 SCC 362, the Supreme Court held that a custom may be proved through authoritative texts, judicial recognition, or long and continuous usage. The burden to establish a valid custom contrary to codified law lies heavily on the party asserting it, and such custom cannot be presumed, extended by analogy, or established on mere assumptions. The relevant portion is reproduced herein below-

“28. The correct approach to a case where a party seeks to prove custom is the one pointed out by their lordships of the Privy Council in Abdul Hussein Khan v. Soma Dero. It was there said that it is incumbent on a party setting up a custom to allege and prove the custom on which he relies and it is not any theory of custom or deductions from other customs which can be made a rule of decision but only any custom applicable to the parties concerned that can be the rule of decision in a particular case. It is well settled that custom cannot be extended by analogy. It must be established inductively, not deductively and it cannot be established by a priori methods. Theory and custom are antitheses, custom cannot be a matter of mere theory but must always be a matter of fact and one custom cannot be deduced from another. A community living in one particular district may have evolved a particular custom but from that it does not follow that the community living in another district is necessarily following the same-custom.”

15. Similarly, in **Yamanaji H. Jadhav v. Nirmala**, (2002) 2 SCC



637, it was held that customary divorce, being an exception to general law, must be specifically pleaded and strictly established holding as follows-

*“7. In the view that we are inclined to take in this appeal, we do not think it is necessary for us to go into the contentions advanced by the learned counsel for the parties in this case, because we find that the courts below have erroneously proceeded on the basis that the divorce deed relied upon by the parties in question was a document which is acceptable in law. It is to be noted that the deed in question is purported to be a document which is claimed to be in conformity with the customs applicable for divorce in the community to which the parties to this litigation belong to. As per the Hindu law administered by courts in India divorce was not recognised as a means to put an end to marriage, which was always considered to be a sacrament, with only exception where it is recognised by custom. Public policy, good morals and the interests of society were considered to require and ensure that, if at all, severance should be allowed only in the manner and for the reason or cause specified in law. **Thus such a custom being an exception to the general law of divorce ought to have been specially pleaded and established by the party propounding such custom since the said custom of divorce is contrary to the law of the land and which, if not proved, will be a practice opposed to public policy.** Therefore, there was an obligation on the trial court to have framed an issue whether there was proper pleadings by the party contending the existence of a customary divorce in the community to which the parties belonged and whether such customary divorce and compliance with the manner or formalities attendant thereto was in fact established in the case on hand to the satisfaction of the court. In the instant case, we have perused the pleadings of the parties before the trial court and we do not find any material to show that prevalence of any such customary divorce in the community, based on which the document of divorce was brought into existence was ever pleaded by the defendant as required by law or any*



*evidence was led in this case to substantiate the same. It is true that in the courts below the parties did not specifically join issue in regard to this question and the lawyers appearing for the parties did orally agree that the document in question was in fact in accordance with the customary divorce prevailing in the community to which the parties belonged but this consensus on the part of the counsel or lack of sufficient pleading in the plaint or in the written statement would not, in our opinion, permit the court to countenance the plea of customary divorce **unless and until such customary divorce is properly established in a court of law.** In our opinion, even though the plaintiff might not have questioned the validity of the customary divorce, the court ought to have appreciated the consequences of there not being a customary divorce based on which the document of divorce has come into existence bearing in mind that a divorce by consent is also not recognisable by a court unless specifically permitted by law. Therefore, we are of the opinion to do complete justice in this case it is necessary that the trial court be directed to frame a specific issue in regard to customary divorce based on which the divorce deed dated 26-6-1982 has come into existence and which is the subject-matter of the suit in question. In this regard, we permit the parties to amend the pleadings, if they so desire and also to lead evidence to the limited extent of proving the existence of a provision for customary divorce (otherwise through the process of or outside court) in their community and then test the validity of the divorce deed dated 26-6-1982 based on the finding arrived at in deciding the new issue.”*

(emphasis supplied)

16. In the present case, the appellant has failed to establish the existence or prevalence of a customary practice of divorce within her community. No cogent oral or documentary evidence is led to demonstrate either that such a valid custom exists and is continuously followed, or that the appellant's earlier marriage was dissolved in



accordance with such a custom.

17. The principal ground raised by the appellant is that the marriage between the parties was arranged through one lady Padma, and that the respondent was fully aware of her prior marriage and the alleged customary divorce. Padma was examined as RW-2 before the Family Court. She stated that she knew both parties and that the respondent had been informed about the appellant's earlier marriage and its purported dissolution. In any event, her testimony, even if accepted in its entirety, does not establish the existence of a legally recognized custom of divorce, nor does it prove that the appellant's earlier marriage stood validly dissolved in accordance with such a custom.

18. The Family Court has, in our view, correctly held that such evidence falls short of the strict standard required to prove a valid custom, which must be ancient, certain, reasonable, and continuously observed. The appellant has not produced any material, whether in the nature of prior instances, judicial recognition, or authoritative texts to substantiate the existence of a customary practice of dissolution of marriage before Panchayat in her community.

19. In these circumstances, the reliance placed by the appellant on the testimony of RW-2 may, at best, indicate that the respondent was aware of her prior marriage. However, such knowledge cannot cure the legal defect arising from the subsistence of the earlier marriage, nor can it be construed as proof of a valid dissolution thereof.

20. The reliance placed by learned counsel for the appellant on Section 23(1)(a) of the HMA is also misplaced and does not advance



her case. The said provision, which embodies the principle that a party cannot take advantage of his or her own wrong, has no application to marriages which are *void ab initio*. A void marriage is *non est* in the eyes of law and is treated as having never come into existence from its inception. The present case is not one of a voidable marriage, where considerations under Section 23(1)(a) may arise, but of a marriage which is *void* under Section 11 for contravention of Section 5 (i) of the HMA, an altogether distinct legal consequence. The appellant cannot circumvent the statutory mandate by invoking equitable considerations under Section 23(1)(a). A plain reading makes it clear that the said provision does not apply to marriages solemnized in contravention of Section 5(i) but applies to marriages falling within Section 5(ii)(a), (b) and (c) thereof. Hence, Section 23(1)(a) has no application to *void* marriages solemnized in violation of Section 5(i).

21. Hence, the provision makes the legislative intent abundantly clear that the principle of a party not being permitted to take advantage of his or her own wrong cannot be invoked in cases of marriages which are *void ab initio*. Mere knowledge on the part of the respondent regarding the appellant's previous marriage or alleged customary divorce cannot validate a marriage which is *void ab initio* in the eyes of law.

22. Therefore, in the absence of any legally admissible evidence establishing the dissolution of the appellant's earlier marriage, it must be held that the said marriage was subsisting at the time of her marriage with the respondent. The subsequent marriage is, therefore,



in clear contravention of Section 5(i) of the HMA and is *void* under Section 11 thereof.

23. Turning to the issue of interim maintenance *pendente lite* and permanent alimony/maintenance, it is well settled that the grant of maintenance *pendente lite* or permanent alimony under Section 24 & 25 of the HMA respectively, is not precluded merely because the marriage has been declared *void* under Section 11 of HMA. The entitlement must be determined on the facts and circumstances of each case and grant of such relief is always discretionary. The relevant portion of ***Sukhdev Singh*** (supra) is reproduced herein below -

“28. Accordingly, we answer the questions as follows:

a. A spouse whose marriage has been declared void under Section 11 of the 1955 Act is entitled to seek permanent alimony or maintenance from the other spouse by invoking Section 25 of the 1955 Act. Whether such a relief of permanent alimony can be granted or not always depends on the facts of each case and the conduct of the parties. The grant of relief under Section 25 is always discretionary; and

b. Even if a court comes to a prima facie conclusion that the marriage between the parties is void or voidable, pending the final disposal of the proceeding under the 1955 Act, the court is not precluded from granting maintenance pendente lite provided the conditions mentioned in Section 24 are satisfied. While deciding the prayer for interim relief under Section 24, the Court will always take into consideration the conduct of the party seeking the relief, as the grant of relief under Section 24 is always discretionary.”

24. In the present case, the appellant is an indigent and destitute woman residing in an old age home, with no independent source of income, property, or familial support. The parties had admittedly



cohabited as husband and wife after the marriage, giving rise to a relationship akin to marriage and a legitimate expectation of financial support. The respondent is a retired government employee receiving a regular pension with no substantial liabilities, as per the affidavit filed by him dated 29.05.2023. He is, therefore, in a comparatively better financial position to provide support. In these circumstances, denial of maintenance would result in grave hardship and injustice to the appellant. This Court is of the considered view that this is a fit case for grant of reasonable maintenance to secure her sustenance and dignity.

25. Accordingly, having regard to the fact that the Family Court had earlier granted interim maintenance to the tune of Rs. 5,000/- per month to the appellant *vide* order dated 23.10.2015, at a time when the respondent was still in service, till disposal of the original petition. Considering that an appeal is a continuation of the original proceedings, as well as keeping in view the financial condition of the appellant and the means of the respondent, this Court deems it appropriate to direct the respondent to pay a sum of Rs. 9,000/- per month to the appellant towards maintenance from the date of filing of the present appeal till the date of this judgment. The arrears shall be cleared within a period of six months from today. It is further clarified that any amount received by the appellant towards maintenance for the said period in any other proceedings is liable to be adjusted against the maintenance awarded under the present judgement.

26. Further, having regard to the status of the parties, the financial condition of the appellant, and the means of the respondent, this Court



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also considers it just and proper to award permanent alimony in favour of the appellant under Section 25 of the HMA. Accordingly, the respondent is directed to pay a sum of Rs.9,000/- per month to the appellant towards permanent alimony and maintenance with effect from the date of this judgment, payable on or before the 10th day of each calendar month.

27. In view of the foregoing discussion, we do not find any reason to interfere with the impugned Judgement dated 23.07.2018 passed by the Family Court and the same is upheld. However, the appellant is held entitled to maintenance in the terms mentioned hereinabove.

28. The appeal, along with all pending applications, stands disposed of in the above terms.

VIVEK CHAUDHARY, J.

RENU BHATNAGAR, J.

MAY 29, 2026/p/kz/nc