THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE B.R.MADHUSUDHAN RAO

FAMILY COURT APPEAL No.19 of 2025

Mr. Duvva Pavan Kumar, learned counsel for the appellant.
Sri U. Sri Pranav, learned counsel for the respondent

JUDGMENT: (*Per Hon'ble. Justice Moushumi Bhattacharya*)

1. The instant Family Court Appeal arises out of an order passed by the learned I Additional Family Court-cum-XIV Additional Metropolitan Sessions Court, Hyderabad, on 19.11.2024.

2. The impugned order was passed on an Original Petition (O.P.No.539 of 2021) filed by the appellant under sections 11, 5 and 25 of The Hindu Marriage Act, 1955 read with section 7 of The Family Courts Act, 1984 for a decree of nullity of marriage solemnized between the appellant and the respondent on the ground that the respondent was not divorced from his first wife on the date of his marriage to the appellant. The Appellant also prayed for a direction on the respondent to pay Rs.1 Crore as alimony under section 25 of the 1955 Act.

3. The Trial Court dismissed the appellant's petition for a decree of nullity of the marriage solemnized between the

appellant and the respondent on the ground that the appellant was aware of the respondent's first marriage and that the appellant failed to file any document proving the financial net worth of the respondent in support of her claim for permanent alimony.

4. We propose to deal with the impugned order in greater detail in the later part of this judgment.

Pleadings filed by the Parties:

5. The basis for filing the petition for a decree of nullity of marriage was by reason of the respondent suppressing the fact of his surviving spouse as on the date of the respondent's marriage with the appellant. The appellant and the respondent were married on 08.03.2018 at Lakshmi Narasimha Swamy Temple, Yadagirigutta, as per Hindu Rites and Customs and in the presence of elders and relatives. The appellant also complained that the respondent was controlling by nature and checked the appellant/petitioner's personal e-mails, messages and Whatsapp chats and misappropriated funds from the appellant's salary account.

6. However, the primary ground urged by the appellant for nullity of marriage was that the respondent committed fraud on

the appellant by lying about the dissolution of his first marriage. The appellant also complained that the respondent filed a petition for restitution of conjugal rights in 2019 before the Family Court at Visakhapatnam while the parties were in the process of finalizing the terms of their divorce by mutual consent. The appellant came to know that the respondent had filed a petition for anticipatory bail (Crl.M.P.No.2863 of 2020 in Crime No.978 of 2019) before the Metropolitan Sessions Judge, Hyderabad, wherein the respondent stated that his first marriage was dissolved in 2008 according to customary practices prevalent in his family.

7. The appellant accordingly prayed for a decree of nullity of her marriage with the respondent on the ground of the respondent not being divorced from his first wife and for the respondent to pay alimony of Rs.1 Crore.

8. The respondent filed a Counter to the petition denying and disputing the contentions raised by the appellant. The respondent stated that his first wife suffered from acute ill-health and that the respondent and his wife were divorced in accordance with customs and traditions with the consent of the parents of the first wife. The respondent stated that the appellant was aware of the respondent's first marriage and that

the appellant was also introduced to the respondent's daughter from his first marriage. The respondent did not deny the fact of his marriage with the appellant not being registered despite being performed on 08.03.2018 at Yadagirigutta, Telangana.

Submissions made on behalf of the appellant/petitioner:

9. Learned counsel appearing for the appellant/petitioner seeks to address the Court on several points including on the point of limitation since the impugned order was passed on 19.11.2024 and the present Appeal was filed on 28.01.2025. Counsel submits that the limitation for filing of the Appeal is saved by section 28(4) of the 1955 Act read with section 19(3) of the 1984 Act. Counsel has addressed us on 'Customary Divorce' which was the respondent's key argument regarding his first marriage and on the Rules regulating proceedings under the 1955 Act with regard to impleadment of a co-respondent.

10. Counsel has taken us through the facts of the case including the issue of desertion by the respondent and the consequences of the respondent marrying the appellant without divorcing his first wife within the framework of section 375 of The Indian Penal Code, 1860 (IPC)/section 63 of The Bharatiya Nyaya Sanhita, 2023 (BNS). Counsel has made a specific assertion that the appellant did not press for alimony before the

Trial Court and does not press for maintenance or alimony in the present Appeal. Counsel submits that no amount of alimony will compensate for the injustice caused to the appellant.

The Respondent remained un-represented in the Appeal despite service.

11. A perusal of the proceeding sheet dated 12.02.2025 shows that notice of the Appeal and the relevant documents were delivered to the respondent as well as counsel who represented the respondent in the Trial Court. Counsel for the appellant has taken us through the exchange of text and Whatsapp messages between counsel/his associates and counsel for the respondent.

12. The Memo of Proof of Service dated 10.02.2025 filed on behalf of the appellant shows satisfactory service on the respondent. The respondent however chose not to contest the present Appeal despite repeated notices. We hence proceeded to hear learned counsel appearing for the appellant.

Decision

13. We propose to deal with the arguments made on behalf of the appellant under individual heads of discussion for ease of reference.

14. The first caption deals with the issue of limitation in filing of the present Appeal under section 19 of The Family Courts Act, 1984.

A. Limitation:

15. The impugned order was passed on 19.11.2024. The appellant applied for a copy of the impugned order on 21.11.2024 which was received on 13.12.2024. The Appeal was filed on 28.01.2025 i.e., 46 days after the date of receipt of the order.

A1. On Facts:

16. Counsel has addressed the Court on the point whether the appellant could have filed a petition seeking annulment of marriage under section 12(2) of the 1955 Act within the prescribed period of limitation.

17. The relevant dates for this purpose are as follows:

- October, 2019 - The appellant's knowledge of the first marriage of the respondent not having been dissolved.
- 01.11.2019 – FIR filed by the appellant in 2019.
- October, 2020 – Limitation for filing a petition for annulling a marriage under section 12(2) of the 1955 Act [section 12(2) provides that notwithstanding anything contained in section 12(1) for annulling a marriage on the ground of

being voidable, no petition shall be entertained if the petition is presented more than one year after the fraud had been discovered (12(2)(a)(i))].

18. In the context of the dates given above, the appellant's limitation for filing the petition under section 12 of the 1955 Act expired in October 2020. The appellant however is covered by the relaxation of timelines declared by the Supreme Court in the wake of the Covid-19 pandemic, which extended from 15.03.2020 to 28.02.2022. The petitioner filed the O.P. seeking annulment of marriage on 02.02.2021. Therefore, the petition (O.P.No.539 of 2021) was filed during the Covid-19 exemption period and would hence fall within the relaxation granted by the Supreme Court in *Cognizance for Extension of Limitation, in Re*[1].

A2. The Law:

19. Section 28(4) of The Hindu Marriage Act, 1955 provides for an appeal being preferred within ninety days from the date of the decree or order passed by the Family Court.

Section 19(3) of The Family Courts Act, 1984 provides for an appeal being preferred within thirty days from the date of the judgment or order of a Family Court.

[1] (2022) 3 SCC 117

20. The conflict between the two sections was resolved in several decisions which confirmed that the applicable limitation period would be ninety days in matters arising under the 1955 Act.

21. The Scheme and purpose of the 1984 Act, which is to simplify the rules of evidence and procedure to enable a Family Court to effectively deal with disputes and provide a single platform for appeals to the High Court must be read in conjunction with the object of the 1955 Act. The 1955 Act is an enabler for expeditious disposal of proceedings under the said Act. A synergetic reading of the two Acts would require a resolution of the limitation period provided under the Acts.

22. Moreover, it is a settled rule of construction that every effort should be made to iron the creases out in two conflicting enactments and the more liberal enactment should be adopted for resolving the conflict. Both the 1955 Act and the 1984 Act are special statutes designed to ensure efficient resolution of conflicts within the family without subjecting the parties to further procedural hiccups. We also take recourse to the principle of law that when two interpretations are found to be equally possible, the Court may reasonably accept that the Legislature intended to prescribe a larger period of limitation:

Shivram Dodanna Shetty Vs. Sharmila Shivram Shetty[2], *Sonia Kunwar Singh Bedi Vs. Kunwar Singh Bedi*[3] and *Chaudary Chetnaben Dilipbhai Vs. Chaudary Dilipbhai Lavjibhai*[4].

23. The Court is accordingly satisfied on both counts of the limitation issue i.e., the filing of the appellant's O.P. for annulment of marriage under section 12(2) of the 1955 Act, and filing of the present Appeal under section 19(3) of the 1984 Act read with section 28(4) of the 1955 Act.

B. Customary Divorce:

24. A pleading of Customary Divorce must be proved by documentary or oral evidence.

25. The first time the respondent pleaded the fact of the appellant having constructive knowledge of the respondent's customary divorce with his first wife was in Crl.M.P.No.2863 of 2020 in Crime No.978 of 2019 on the file of the V Additional Metropolitan Sessions Judge, Hyderabad, on 23.12.2020. The statement made is as follows:

> *"It is further humbly submitted that the de facto complainant has constructive knowledge as on the date of marriage that the petitioner had dissolved his first*

[2] 2017 (1) MH.L.J 281
[3] 2014 SCC OnLine Bom 4605
[4] C.A.No.1095 of 2022 in F.A.No.18576 of 2022

marriage and divorced his first wife through customary practice and tradition prevalent in his family and relatives."

The next pleading made by the respondent was in his Counter to O.P.No.539 of 2021 (filed by the appellant in the Family Court). The pleading of the respondent is as follows:

"... on advise of both side well wishers respondent and his first wife Smt. Salukuti Subha taken customary divorce thereafter due to severe illness, first wife of respondent undergone coma from last 14 years on medical ground, and the respondent performed marriage with the petitioner after 10 years, by taken customary divorce with the consent of the parents of 1st wife, his daughter and well wishers of both families, which facts the petitioner known very well as being neighbours....."

B1. The Statutory Position:

26. The concept of Customary Divorce is recognized in section 29(2) of the 1955 Act. Section 29(2) is set out as under:

"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."

27. Notwithstanding the statutory recognition, the right recognized by custom must be proved by documentary or oral evidence.

28. Admittedly, the respondent in the present case did not lead any evidence of the customary divorce between the respondent and his first wife. The impugned order dated 19.11.2024 reflects that despite conditional orders, the respondent neither appeared nor filed his evidence. This means that the respondent declined to lead evidence to prove customary divorce from his first wife or otherwise. Apart from a mere pleading that the respondent obtained divorce through customary practice, no other evidence of the existence of such a customary practice or a document showing that the divorce was indeed obtained through such a customary practice was produced by the respondent.

29. Notably, the respondent also failed to lead any evidence or file any document evidencing his divorce from his first wife in his petition for restitution of conjugal rights (O.P.No.1865 of 2019) filed before the Additional Family Court at Visakhapatnam. It is settled law that no evidence can be led

beyond the pleadings: *Srinivas Raghavendra Rao Vs. Kumar Raman Rao*[5].

30. Significantly, in the petition for restitution of conjugal rights, the respondent filed a copy of the order passed in the divorce petition filed by the appellant but did not file any document with regard to his customary divorce from his first wife. Therefore, the Trial Court was under an obligation to frame an issue as to whether the respondent had properly pleaded the existence of a customary divorce in the community to which the respondent belonged and whether such customary divorce was in tune with the manner and formalities of the attending customs. The Trial Court should also have framed an issue and examined it in the light of the evidence led by the respondent to prove the customary divorce pleaded to the satisfaction of the Court.

B2. Case Law.

31. The Supreme Court in *Subramani Vs. M. Chandralekha*[6] examined this issue in the context of a claim that the marriage between the respondent and one Kandasamy stood dissolved under the customary law prevalent in the Vellala Gounder Community in Tamil Nadu. In the facts of that case, the Trial

[5] 2024 INSC 165
[6] (2005) 9 SCC 407

Court considered the oral and documentary evidence and concluded that the respondent was entitled to 1/2 share in 'A', 'C' and 'D' scheduled properties and 1/3 share in 'B' schedule property but dismissed the Suit for partition and separate possession of the suit schedule properties on the ground that the marriage between the respondent and the late Kandasamy stood dissolved under the custom of the community to which the parties belonged. The judgment and decree was upheld in First Appeal. In Second Appeal filed by the respondent, the Madras High Court adjudicated on the marriage dissolution Deed dated 25.10.1984 which was also the subject matter in issue before the Supreme Court. On perusal of the testimonies, the Supreme Court held that there was no custom prevalent in the concerned community for dissolving a marriage by mutual consent and the witnesses had also not stated the procedure to be followed under the prevalent custom. The Supreme Court further held that no evidence was led to prove that the Deed of dissolution of marriage was in conformity with the custom applicable to divorce in the community to which the parties belonged.

32. *Gurdit Singh Vs. Angrez Kaur* [7] - In this case, the respondent No.1/Angrez Kaur filed a Suit claiming the property

[7] AIR 1968 SC 142

as the widow of one Sunder Singh. The Trial Court decreed the Suit holding that the respondent No.1 had married Sunder Singh by '*Chadar Andazi*' and the marriage was valid. The Additional District Judge set aside the decree of the Trial Court in First Appeal and held that the marriage of the respondent No.1 with Sunder Singh during the lifetime of her first husband was invalid and was not justified by any custom and consequently, the respondent No.1 could not be treated as the widow of Sunder Singh. In Second Appeal, the Punjab High Court held that the question of custom had not been properly examined by the Trial Court or the First Appellate Court and framed an issue as to whether there was any custom among the tribes to which the parties belonged enabling the respondent No.1 to enter into a valid marriage by '*Chadar Andazi*' with Sunder Singh. The Supreme Court relied on 'The Digest of Customary Law' by Sir W.H. Rattigan and held that the existence of such a custom among Hindu Jats in the District of Jullundur permitting divorce was doubtful. The Supreme Court considered the witnesses examined by the appellant who testified that such a custom was indeed in existence which permitted a valid divorce by either the husband or wife and accordingly held that there was no reason why the divorced wife

could not marry a second husband in the lifetime of her first husband on dissolution of marriage.

33. A Division Bench of the erstwhile High Court of Andhra Pradesh at Hyderabad, in *Doddi Appa Rao Vs. General Manager, Telecom*[8] held that the 1955 Act recognises divorce by custom despite the grounds provided in section 13 of the said Act for dissolution of marriage.

34. In *G. Thimma Reddy Vs. The Special Tahsildar, Land Reforms*[9], a Single Bench of the erstwhile High Court of Andhra Pradesh at Hyderabad found that there was oral and documentary evidence to prove that the divorce had been effected by custom. The High Court considered the evidence of specific witnesses i.e., P.Ws.1-3 (the caste elders), P.W.4 (the first wife), P.W.2 (the scribe of the Deed of Divorce) and P.W.1 (the caste elder, who had attested the document) as well as the oral evidence of P.Ws.1-3 who spoke of the existing custom in the caste at the relevant period in the erstwhile taluks of Aluru, Ballari and Adoni. The High Court recorded its satisfaction of the existence of a custom in the caste of both the parties allowing divorce before the cast elders of the community.

[8] 2000 (1) CCC 146
[9] 1992 (3) ALT 733

35. Thus, the Courts in the above cases came to a specific finding on the existence of custom in the relevant community to support the finding of marriage/divorce.

36. In contrast, a Single Bench of the Calcutta High Court in *Krishna Veni Vs. Union of India*[10] considered the challenge made by Krishna Veni, the second wife of a freedom fighter, to the refusal of widow's pension by the Government of West Bengal on the ground that the Deed of divorce between the freedom fighter and his first wife was not acceptable under the 1955 Act in the absence of a decree for divorce obtained from a competent Court of law. The Court agreed with the rejection of the grant of pension on the ground that the deed of declaration of divorce produced by the petitioner was not proved and that the onus lies on the petitioner to bring the existence of a custom having the force of law. The Court held that the parties would have to revert to section 13 of the 1955 Act for dissolution of marriage by a decree of divorce in the absence of conclusive evidence.

B3. Conclusion

37. Section 13 of the 1955 Act provides the grounds and the procedural mechanism for dissolution of a marriage by a decree of divorce. Section 29(2) is an exception to the statutory

[10] 2021 SCC OnLine Cal 437

mechanism but overrides any statutory provisions where a right is recognized by custom or conferred by a special enactment for the purpose of dissolution of a Hindu marriage. Therefore, a customary divorce in the community is contrary to the general law of divorce. The exception would hence require specific pleadings and corroboration by way of evidence. The onus of establishing the fact of customary divorce rests on the person propounding such a custom.

38. In the present case, it is undisputed that the respondent did not lead any evidence for proving the alleged divorce by custom between the respondent and his first wife or that there was any compliance on the part of the respondent and his first wife with the manner or formalities peculiar to the custom for dissolution of marriage. Paragraph 4 of the impugned order records that the respondent failed to appear or file his evidence despite conditional orders and that "…. *the respondent evidence is eschewed"* (as recorded by the Trial Court).

39. We thus conclude that the respondent's alleged customary divorce with his first wife remained un-proved and unsubstantiated. The Trial Court should have framed an issue in this regard, analysed the same and arrived at a conclusion. The Trial Court singularly failed in this regard.

C. Rules To Regulate Proceedings Under The Hindu Marriage Act, 1955.

40. The Rules for regulating proceedings under the 1955 Act were framed by the erstwhile High Court of Andhra Pradesh in exercise of the powers conferred by sections 14 and 21 of the Hindu Marriage Act, 1955.

41. The petition filed by the appellant has only one respondent i.e., the person who married the appellant on 08.03.2018 at Yadagirigutta. The petition was filed under sections 5, 11 and 25 of the 1955 Act i.e., for annulment of marriage as being void and for permanent alimony.

42. The question before the Court is whether the non-impleadment of the first wife of the respondent would be contrary to the Rules To Regulate Proceedings Under The Hindu Marriage Act, 1955.

Rules 8(1) and (3) provide as follows:

> *"(1) Where a husband's petition alleges adultery on the part of respondent, the alleged adulterer shall if he is living, be made a co-respondent in the petition:*
>
> *Provided, however, that in case the adulterer's name, identity or whereabouts is unknown to the petitioner inspite of reasonable enquiries made and the Court is satisfied that it is just and expedient so to do, it shall, on the application of the petitioner, dispense with the naming of the co-respondent.*
>
> *(2) .....*

> *(3) In every petition under Section 11 of the Act on the ground that the condition in Section 5 (i) is contravened, the petitioner shall make the spouse alleged to be living at the time of the marriage a co-respondent."*

43. Rule 8(1) stipulates that where a husband's petition charges the respondent with adultery, the alleged adulterer shall be made a co-respondent in the petition if the alleged adulterer is alive on the date of filing of the petition. Rules 8(1) and (3) are similar to Order I Rule 3 and Order I Rule 10 of The Code of Civil Procedure, 1908 ('CPC') for all intents and purposes i.e., joinder of parties and defendants for the Court to effectively and completely adjudicate upon and settle all questions involved in the Suit.

44. It stands to reason that the evidence of adultery is required to be led before the Court to establish the truth of the accusation. The Court would hence be called upon to decide the basis of the allegation of adultery against the respondent and the third party. Hence, impleadment of the third party against who adulterous relations are imputed would be in consonance with the principles of natural justice to safeguard the character and reputation ramifications of the person alleged to have adulterous relations.

45. Moreover, though Rule 8(1) mandates the presence of a co-respondent, it does not make such requirement mandatory

for a petition to be maintained under section 13 under the ground of adultery. The proviso to Rule 8(1) clarifies that the Court can dispense with the requirement of a co-respondent where the details are unknown. The proviso to Rule 8(1) hence preserves practicality and dispenses with the requirement of naming the co-respondent where the Court deems it expedient to do so.

46. Further, Rule 8(3), which requires addition of a co-respondent in a petition under section 11 of the 1955 Act i.e., void marriages, cannot be equated to Rule 8(1) as the issue of whether the marriage is void is essentially a question of law rather than a question of fact. The presence or absence of a co-respondent, viewed from this angle, cannot be fatal to the outcome of the case.

C1. Case Law

47. The Supreme Court in *Anil Kumar Singh Vs. Shivnath Mishra*[11] held that a person may be added as a party-defendant without any relief being claimed against such person provided his/her presence is necessary for finality of the question involved in the Suit. The Supreme Court relied on *Razia Begum*

[11] (1995) 3 SCC 147

Vs. Sahebzadi Anwar Begum[12] which examined the question whether third parties claiming to be the third wife and sons were necessary and proper parties under Order I Rule 10(2) of the CPC and held that the rule may be relaxed in suitable cases.

48. A Single Bench of the Allahabad High Court in *Udai Narain Bajpai Vs. Smt.Kusum Bajpai*[13] relied on Rules 6(a) and 6(d) framed by the Allahabad High Court in exercise of powers conferred on it by sections 14 and 21 of the 1955 Act. Rule 6(a) contained an exception to the requirement of making the adulterer a co-respondent in a petition for divorce/judicial separation. Rule 6(d) permitted filing of a separate application with an affidavit giving the reasons for not making the adulterer a co-respondent. The Allahabad High Court relied on *Banwari Lal Vs. State of Bihar*[14] and held that the Court must see the legislative intent before deciding whether a particular provision in the statute is mandatory and contemplates invalidity upon non-compliance of the same.

49. The Orissa High Court in *Harekrushna Behera Vs. Manasi Jena*[15] noted the exceptions where the "paramour" may not be a

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[12] AIR 1958 SC 886
[13] AIR 1975 All 94
[14] AIR 1961 SC 849
[15] MANU/OR/0239/2024

necessary party to a petition for dissolution of marriage under section 13(1)(i) of the 1955 Act.

C2. The Present Facts:

50. The father of the respondent's first wife (Mr.Gangula Pratap Reddy) was examined as LW.4 in Crime No.978 of 2019 where his recorded statement was that his daughter and the respondent got married on 10.02.2000 and had a daughter thereafter. However, his daughter (the respondent's first wife) suffered a brain hemorrhage in November, 2006 due to the mental and physical harassment by the respondent. It was further recorded that L.W.4 later came to know that the respondent had got married to another lady without divorcing L.W.4's daughter. The statement is part of the Chargesheet in the said criminal case which is part of the Appeal papers. Apart from the statement made by the father of the respondent's first wife, counsel for the appellant has also argued that the respondent's first wife is presently in a comatose state and that no useful purpose would be served by making her a co-respondent as she will not be in a position to participate in the proceedings or assist the Court with regard to the issue under consideration.

51. We have considered the relevant Rules regulating the proceedings initiated under the 1955 Act and the decisions placed on the point of impleadment of a co-respondent in specific cases. We accept the contentions made on behalf of the appellant in favour of giving a comprehensive construction to the Rule. We are of the view that the presence of the respondent's first wife as a co-respondent to the *lis* before us is not necessary since this is not a case where the respondent's first wife would be required to be heard for preserving the principles of natural justice. This is also not a case where the adjudication would entail questions regarding her character, integrity or reputation. We must also take a practical view of the situation, since admittedly, the respondent's first wife has been in a state of coma for a while.

52. The requirement of impleading the respondent's first wife is hence dispensed with under an extended meaning given to the proviso to Rule 8(1) of the 1955 Rules. In other words, we do not find non-impleadment of the respondent's first wife to be fatal to the petition under sections 11, 5 and 25 of the 1955 Act or in the Appeal before us.

D. Is the Appellant entitled to Maintenance/Permanent Alimony?

53. Although the appellant does not wish to press for alimony in the Appeal, it is relevant to state that there is no embargo to grant of maintenance to a second wife: *Sukhdev Singh Vs. Sukhbir Kaur*[16] (recently pronounced by the Supreme Court on 12.02.2025). The Supreme Court answered the reference in the affirmative on whether alimony can be granted where the marriage has been declared void and opined that a spouse whose marriage has been declared void under section 9 of the 1955 Act is entitled to seek alimony and maintenance by invoking section 25 of the 1955 Act.

E. Would the Respondent be visited with the consequences of section 375 of The Indian Penal Code, 1860 and section 63 of The Bharatiya Nyaya Sanhita, 2023?

54. The discussion in the foregoing paragraphs of this judgment persuade us to conclude that the respondent married the appellant during the lifetime of his first wife without being covered by the exception carved out under section 29(2) of the 1955 Act with regard to customary divorce. This leads to the irrefutable presumption that the respondent knowingly

[16] 2025 INSC 197

cohabited with the appellant as her spouse from 08.03.2018 on the appellant's mistaken belief that the respondent had divorced his first wife.

55. Section 375 of the IPC and section 63 (d)(iv) of the BNS envisages specific situations and the necessary lack of volition in the act of rape or a mistaken assumption being the cause of the volition. The fourth condition of section 375 ("*Fourthly*") is attracted where there is knowledge on the part of the man that he is not the husband of the person on who he commits rape and that her consent is given only because she believes that he is her legally-wedded spouse or believes herself to be lawfully married to that person. The relevant clauses of section 375 of the IPC and section 63 (d)(iv) of the BNS are set out as under:

Section 375 of the IPC:

> *"Fourthly. - With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married."*

Section 63 (d)(iv) of the BNS:

> *"(iv) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married".*

56. Under section 5(i) read with section 11 of the 1955 Act, if the husband is already a married man, the subsequent marriage is void *ab initio* and has no sanctity in law. Since the respondent knew at the material point of time that he had a wife living at the time of entering into physical relations with the appellant and the appellant's consent to such physical relations was premised on her believing that the respondent is her lawfully-wedded husband, the respondent is guilty of the offence punishable under sections 375 and 376 of the IPC and alternatively, under sections 63 and 64 of the BNS.

57. The Supreme Court applied the "*Fourthly*" clause of section 375 of the IPC in *Bhupinder Singh Vs. U.T. of Chandigarh* [17] and held that the marriage between the complainant and the accused/appellant was void *ab initio* since the appellant/accused could not have lawfully married the complainant by reason of which the accused was guilty of the offence punishable under section 376 of the IPC.

58. We are hence of the considered view that the respondent committed rape on the appellant under the false pretext of being lawfully-wedded to the appellant.

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[17] (2008) 8 SCC 531

F. Desertion by the Respondent:

59. The respondent's Original Petition (O.P.No.1865 of 2019) before the Additional Family Court, Visakhapatnam, for restitution of conjugal rights was dismissed for default on 19.07.2022. There was no effort on the part of the respondent thereafter to restore the O.P. or challenge the order of dismissal. In fact, the respondent remained *ex parte* in O.P.No.539 of 2021 that is in the petition filed by the appellant for annulment of marriage.

60. Moreover, the respondent has remained unrepresented in the present Appeal and the whereabouts of the respondent is not known to the appellant for over 4 years. As stated above, the notice addressed to the respondent in the present Appeal was returned with an endorsement "no such person in the address". To put it simply, the respondent has made no effort to contest the Appeal or pursue the proceedings for restitution of conjugal rights filed before the Additional Family Court at Visakhapatnam.

61. We do not find any reason to take a lenient view of the respondent playing truant with the Court particularly where the Appeal has been heard over an extended period of time with

several opportunities to the respondent for being represented through counsel or appear in person.

62. We accordingly hold that the respondent is not inclined to contest the appeal as he has not shown any inclination or interest in his claim as the spouse of the appellant.

G. The impugned order dated 19.11.2024.

63. The impugned order opens itself up for criticism at many levels.

64. First, the Family Court imputes constructive knowledge to the appellant with regard to the divorce between the respondent and his first wife without any basis for reaching this conclusion. The Trial Court assumes that the appellant had knowledge of the divorce since the marriage between the appellant and the respondent was a "*love cum arranged marriage*". Not only is this finding completely irrelevant to the nature of the marriage performed between the parties but also is contrary to the record since the respondent has categorically stated in his counter to the petition that their marriage was an arranged marriage. The Family Court concludes that the appellant was at fault for not enquiring about the divorce of the respondent despite being married for six months.

65. The Trial Court indulges in findings which are both presumptuous and objectionable. An instance of this – the petitioner (appellant) is "*enjoying luxurious life and squeezing the money from the respondent*"; and again "*she is closing her eyes and watching the marriage*". The elaborate discussion regarding the quality of married life between the appellant and the respondent is replete with unnecessary factual details. The Trial Court concludes – without basis - that the appellant was at fault for not finding out more about the respondent's family.

66. The only finding given by the Trial Court is that the appellant is estopped from seeking the annulment of marriage on the ground of being the respondent's surviving wife since the appellant had knowledge of the same. The Trial Court, however, does not allude to any material fact or evidence in support of the finding of constructive knowledge on the part of the appellant. Moreover, both the decisions referred to by the Trial Court for denying alimony to the appellant namely *Mangala Bhivaji Lad Vs. Dhondiba Rambhau Aher*[18] and *Smt. Yamunabai Anantrao Adhav Vs. Ranantrao Shivram Adhav* decided by the Supreme Court on 27.01.1988 [citation not given in the impugned order]. *Smt.Yamunabai Anantrao Adhav* (supra) was referred to by the

[18] AIR 2010 Bom 122

Supreme Court in *Sukhdev Singh* (supra) where the Supreme Court held that even 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 under section 25 of the said Act. There is no discussion as to the relevance of these judgments in denying the appellant's prayer for annulment of marriage.

67. There is a patent contradiction in the findings and reasons given by the Family Court. While the Court denied alimony to the appellant on the basis of the appellant being the second wife, the Court refused to come to any finding with regard to the status of the marriage between the respondent and his first wife. A finding on this was necessary in the context of the appellant's petition seeking annulment of marriage under section 11 of the Act i.e., on the ground that the respondent had a surviving spouse on the date of his marriage with the appellant. To put it simply, the Trial Court failed to consider that the marriage between the appellant and the respondent, both Hindus, could not have been legally solemnized if the respondent had a spouse living at the time of the marriage.

68. Not having considered that point, the impugned finding that the appellant is disentitled to alimony as the second wife of the respondent is wholly perverse.

69. Another unsubstantiated finding is that the appellant obtained divorce from her first husband with an alimony of Rs.50.00 Lakhs and is now claiming permanent alimony of Rs.1 Crore from the respondent. The Trial Court utterly failed to consider that the respondent was equally accountable to disclose his assets in order to resist the claim of alimony. The impugned order does not disclose any direction on the parties to file their affidavits disclosing their respective assets

H. Conclusion:

70. Apart from the legal propositions being answered in favour of the appellant in the foregoing paragraphs, we are also of the view that the impugned order contains factual anomalies and errors of reasoning. The impugned order indicates that the Trial Court decided to weigh the odds heavily against the appellant without any legal or factual justification for doing so.

71. We accordingly deem it fit to set aside the impugned order dated 19.11.2024. The reasons for doing so are stated in the paragraphs above.

72. F.C.A.No.19 of 2025 is accordingly allowed. All connected applications are disposed of. There shall be no order as to costs.

Later:

73. At the time of pronouncing the judgment in Court today, an Advocate appeared and submitted that he had filed his Vakalatnama for the respondent yesterday.

74. As stated in the earlier section of this judgment, the Appeal has been heard from 31.01.2025 to 12.03.2025 and several notices were also received by the respondent. However, the respondent chose not to appear during this period and filed the Vakalatnama only yesterday. Hence, we proceeded to pronounce the judgment today.

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MOUSHUMI BHATTACHARYA, J

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B.R.MADHUSUDHAN RAO,J

Date: 26.03.2025
L.R. Copy to be marked.
B/o.
VA/BMS