

SUPREME COURT OF INDIA

Swapnanjali Sandeep Patil

Vs.

Sandeep Ananda Patil

SLP (Civil)No.25080 of 2016

(L.Nageshwara Rao and M.R.Shah,JJ.,)

06.03.2019

JUDGMENT

M.R.Shah,J.,

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 09.03.2016 passed by the High Court of Judicature at Bombay in First Appeal No.342 of 2015 by which the High Court has dismissed the said appeal filed by the original applicant and has sigjconfirmed the judgment and decree dated 01.12.2014 passed by the learned District Judge, Pune in Marriage Petition No.55 of 2012 by which the learned District Judge dismissed the said marriage petition, the original applicant/appellant-wife has preferred the present appeal.

3. The facts leading to the present appeal in nutshell are as under:

- (a) That the appellant herein married with respondent- husband on 05.04.2010.
- (b) That their marriage was an inter-caste marriage.
- (c) According to the appellant-wife the respondent-husband started harassing her in various ways.
- (d) That he used to come in a drunken state and he withdrew money from the bank account of the appellant by using her credit card. Therefore, on 30.06.2012 the appellant left the matrimonial house and took shelter in her parental home.
- (e) According to the appellant-wife, while gathering her personal belongings for leaving the house, the appellant came across a zerox copy of Marriage Dissolution Deed, dated 14.12.2009 between the respondent and his first wife.

(f) She realized that the respondent had married her without obtaining the decree of divorce from the competent court and that at that time of marriage the respondent was having a living spouse and that he has suppressed the fact of the first marriage from the appellant.

(g) Therefore, the appellant-wife filed Marriage Petition No.55 of 2012 in the Court of District Court, Pune under Section 25 of the Special Marriage Act, 1954, for declaration of marriage as null and void.

4. Thus, according to the appellant, the respondent obtained her consent for marriage by fraud; the appellant was ignorant to the first marriage of the respondent at the time of marriage; the respondent, at the time of registration of marriage, in the document of marriage has declared himself as bachelor; that he concealed the fact of his earlier marriage which was in existence on the date of marriage of the appellant with the respondent; and that at the time of her marriage with the respondent, the respondent's first marriage was subsisting and therefore according to the appellant, she is entitled for declaration of nullity of marriage.

5. The application was vehemently opposed by the respondent-husband. According to the respondent-husband, prior to his marriage with the applicant, they were having a love affair; that the respondent married with the daughter of his maternal uncle on 08.03.2007 at Bhusawal and the applicant was in knowledge of the said fact. According to the respondent, after his marriage he started residing with his wife at Dehu Road. According to the respondent, at the time of their marriage on 05.04.2010, the applicant was in knowledge of his first marriage and despite the same she married with him. According to the respondent, at the time of marriage, as such, he was not at all willing to marry to the applicant, however, because of the pressure of the applicant and her threat to commit suicide he was compelled to marry the applicant. It was also the case on behalf of the respondent-husband that there was a customary divorce between the respondent and his first wife, which was prior to the solemnization of the marriage between the applicant and the respondent. Therefore, it was the specific case on behalf of the respondent-husband that neither there was any fraud nor there was any suppression of his first marriage by the respondent-husband and therefore it was prayed to dismiss the petition.

6. The learned trial court framed the following issues:

“(1) Whether marriage of petitioner and respondent performed on 5.4.2010 under Special Marriage Act by suppressing previous marriage of respondent, performed on 8.3.2007 with Savita Patil in the said marriage was in existence on the date of marriage of party?

(2) Whether consent of petitioner has been sought by respondent for the above marriage by suppressing previous marriage?

(3) Whether respondent has meted out mental cruelty to petitioner?

(4) Whether petitioner has forced the respondent to perform marriage with her by giving threat of suicide having knowledge of substitution of marriage of respondent with Savita Patil?

(5) Whether the petitioner justified decree of divorce?

(6) What order?"

7. That the learned trial court dismissed the marriage petition by observing that as the applicant is seeking nullity of marriage only on the grounds that she was ill-treated by the respondent and on the date of marriage the respondent was having a subsisting first marriage and her consent to the marriage was obtained by fraud, none of the above grounds is a ground for nullity of marriage as per the provisions of the Section 25 of the Special Marriage Act, 1954 (hereinafter referred to as the 'Act'). The learned trial court therefore did not go into the details of the allegations and counter-allegations made in the plaint and the written statement on the ground that the case of the applicant does not fall in any of the provisions enumerated under Section 25 of the Act and therefore the applicant is not entitled for a decree of nullity of marriage.

8. Learned trial court also observed that even the application was out of period of limitation as according to the provisions of Section 25 of the Act, the period of limitation is one year after the coercion had ceased or, as the case may be, the fraud had been discovered or the petitioner has with his or her free consent lived with other party to the marriage as husband and wife after the coercion had ceased or, as the case may be, the fraud had been discovered.

9. Feeling aggrieved and dissatisfied with the judgment and decree passed by the learned trial court dismissing her marriage petition, the appellant-wife preferred the appeal before the Bombay High Court bearing First Appeal No.342 of 2015. Before the High Court the grievance made on behalf of the appellant was that the district court has decided the issue of limitation without framing the issue on that ground. It was submitted that since no issue was framed, the appellant did not get an opportunity to lead the evidence and, therefore, first she was deprived of an opportunity of leading the evidence to show the fact as regards the knowledge of the earlier marriage of respondent, and the same has not been specifically pleaded anywhere. Therefore, it was submitted that in the absence of any such pleadings, there could not have been any evidence as regards the fact of knowledge. The High Court did not accept the same by observing that though ordinarily in the absence of framing an issue and giving an opportunity to the parties to lead evidence, the issue cannot be decided, in the present case, there is sufficient evidence before the court that the appellant was, in fact, well aware of the fact of earlier marriage of the respondent and the customary divorce obtained by him and, therefore, the uncontroverted evidence of the respondent has established that in fact the appellant was the cause of divorce of the respondent from his first wife. By observing so, the High Court has dismissed the first appeal.

10. Feeling aggrieved and dissatisfied with the impugned judgment passed by the High Court, the appellant-wife has preferred the present appeal.

10.1 Shri Vinay Navare, learned Counsel has appeared on behalf of the appellant-wife and Shri Sushil Kumar Jain, learned Senior Advocate has appeared as an Amicus Curiae on behalf of the respondent-husband.

11. Shri Navare, learned Advocate has vehemently submitted that, in the present case, both the learned trial court as well as the High Court have not at all considered Section 24 of the Act. Relying upon Section 24 of the Act, it is vehemently submitted by Shri Navare that, at the time of marriage between the appellant and the respondent, the first marriage of the respondent with his first wife was subsisting and therefore the marriage between the appellant and respondent was a nullity/void marriage. It is submitted that, in the present case, neither the district court nor the High Court had considered Section 24 of the Act and only considered Section 25 of the Act.

11.1 Further, it is vehemently submitted by Shri Navare that though it was the case on behalf of respondent-husband that there was a customary divorce between the respondent-husband and his first wife, which was prior to the marriage between the appellant and the respondent, neither there was any specific issue framed by the learned trial court nor even the respondent-husband led any evidence and prayed for the customary divorce between the respondent-husband and his first wife. It is submitted, therefore, in absence of proving customary divorce between the respondent-husband and his first wife, there was a subsisting marriage between the respondent-husband and his first wife at the time of the marriage between the appellant and the respondent and therefore Section 24 read with Section 4 of the Act was required to be considered.

11.2 It is submitted by learned advocate appearing on behalf of the appellant-wife that so far as for the declaration sought for in view of Section 24 of the Act is concerned, there is no period of limitation provided, as a declaration for a void marriage can be sought at any time, as the void marriage as is void and nullity. It is submitted therefore the limitation provided under Section 25 of the Act shall not be applicable in a case where the declaration for nullity of marriage is sought in view of Section 24 read with Section 4 of the Act is concerned.

11.3 Making the above submissions, it is prayed to allow the present appeal.

12. Present appeal is vehemently opposed by Shri Jain, learned Senior advocate appearing as an Amicus Curiae on behalf of the respondent-husband. It is vehemently submitted by Shri Jain that, in the facts and circumstances of the case, both the learned trial court as well as the High Court have rightly dismissed the marriage petition and have rightly refused to grant the relief of declaration of nullity of marriage between the appellant and the respondent, considering Section 25 of the Act and by observing that the marriage petition was barred by period of limitation, as provided under Section 25 of the Act.

12.1 It is further submitted by Shri Jain that it was the specific case on behalf of the respondent-husband that, at the time of marriage, the appellant was in the knowledge of the first marriage of the respondent with his first wife. It is submitted

that as such she was the root cause for the divorce between the respondent and his first wife. It is submitted that as such the customary divorce had taken place between the respondent-husband and his first wife much prior to the date of marriage between the appellant and the respondent. It is submitted, therefore, when there was already a dissolution of marriage between the respondent and his first wife, by way of customary divorce, which was much prior to the marriage between the appellant and the respondent and, therefore the marriage between the appellant and the respondent cannot be said to be void under Section 24 of the Act.

12.2 Shri Jain, learned Senior Counsel has heavily relied upon the decision of this Court in the case of *Ass Kaur (Smt) (Deceased) by LRs v. Kartar Singh (Dead) by LRs¹* and the case of *Laxmibai (Dead) through LRs v. Bhagwantbuva (Dead) through LRs²*.

12.3 Making the above submissions, it is prayed to dismiss the present appeal.

13. Heard the learned counsel appearing on behalf of the respective parties at length.

13.1 At the outset it is required to be noted that the appellant filed the marriage petition for a declaration to declare her marriage with the respondent as null and void on the ground that, at the time of their marriage, the first marriage of the respondent with his first wife was subsisting; that the respondent committed a fraud and suppressed the material fact of his first marriage, and in fact, in the registration form he stated himself to be a bachelor. On the other hand, it was the case on behalf of the respondent that neither there was any suppression nor any fraud committed by him. It was the case on behalf of the respondent that the appellant was in the knowledge of his first marriage and that as such there was a customary divorce between the respondent and his first wife, which was much prior to the marriage between the appellant and the respondent. That the learned trial court dismissed the marriage petition on the ground that none of the grounds stated in the plaint for declaration of the marriage between the appellant and respondent as null and void, would fall within Section 25 of the Act and that, even otherwise, the marriage petition is beyond the period of limitation as prescribed in explanation to Section 25 of the Act. It is required to be noted that, however, neither the trial court nor even the High Court at all considered Section 24 read with Section 4 of the Act nor considered the case on behalf of the appellant that as at the time of her marriage with the respondent, the respondent's first marriage was subsisting and therefore the marriage between the appellant and the respondent would be void and nullity.

13.2 As per Section 4 of the Act, the marriage between any two persons may be solemnized under the Special Marriage Act if at the time of the marriage neither party has a spouse living. Section 24 of the Act provides that any marriage solemnized under the Special Marriage 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 any of the conditions specified in clauses (a), (b), (c) and (d) of Section 4 has not been fulfilled. Clause (a) of Section 4 provides that neither party

shall have a spouse living at the time of marriage. Therefore, considering Section 24 read with Section 4 of the Act, if at the time of marriage either of the party has spouse living, then the said marriage is a void marriage and a decree of nullity can be passed on a petition presented by either party thereto against the other party. No period of limitation is prescribed so far as presentation of petition for declaration to declare a marriage being nullity/void marriage, under Section 24 of the Act and rightly so, as once the marriage is void the same is a nullity and at any time the same can be declared as nullity being a void marriage. Therefore, both the trial court as well as the High Court have committed an error in observing that the marriage petition was barred by limitation. While holding so, both the trial court as well as the High Court had considered first proviso to Section 25 of the Act. In the facts and circumstances of the case, we are of the opinion that Section 25 of the Act shall not be applicable and Section 24 of the Act would be applicable which does not provide for any period of limitation like first proviso to Section 25 of the Act.

14. Now, so far as the submission on behalf of the respondent-husband that there was already a customary divorce between him and his first wife, which was much prior to the marriage between the appellant and the respondent and that the appellant was in the knowledge of his first marriage is concerned, at the outset, it is required to be noted that as such there is no specific issue framed by the learned trial court on the alleged customary divorce between the respondent and his first wife. Even there was no specific issue framed with respect to the limitation. There was not even an issue framed with respect to the knowledge of the appellant that she was having the knowledge of the first marriage of the respondent with his first wife. In absence of any such issue framed, the learned trial court as well as the High Court have committed a grave error in observing that there was a customary divorce between the respondent-husband and his first wife. There must be a specific issue framed by the Court on the aforesaid and the same is required to be established and proved by leading evidence. In the present case, neither an issue has been framed nor even the respondent husband has led any evidence and proved that there was a customary divorce between respondent and his first wife. Even the respondent-husband was required to prove that such a customary divorce was permissible in their caste/community. In the absence of any such issue or any evidence, the Courts below were not justified in observing that there was a customary divorce between the respondent and his first wife. Therefore, in absence of the above, it can be said that at the time of marriage between the appellant and the respondent, the respondent had a living spouse and, therefore, considering Section 24 read with Section 4 of the Act, the marriage between the appellant and respondent was void and the appellant was entitled to a decree of nullity at her instance. Therefore, both the Courts below have materially erred in rejecting the marriage petition. For the reasons stated above, we are of the opinion that the appellant is entitled to a decree of nullity of the marriage between the appellant and the respondent.

15. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court dated 09.03.2016 passed in First Appeal No.342/2015, as well as the judgment and decree passed by the learned district court, dismissing the marriage petition, are hereby quashed and set aside. The Marriage Petition No.55 of 2012 is hereby decreed and there shall be a decree of nullity of the

marriage of the appellant-wife with the respondent-husband, solemnized on 05.04.2010 before the Marriage Officer, Pune. Consequently, the marriage between the appellant-wife and the respondent-husband solemnized on 05.04.2010 before the Marriage Officer, Pune is hereby declared as null and void. No costs.

Judgment Referred.

¹(2007) 5 SCC 0561