IN THE HIGH Court OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CONTEMPT PETITION NO. 239 OF 2017
IN
SECOND APPEAL NO.11 OF 2016

Kanchan W/o Prashant Bagade,
Aged about 35 years, Occupation : Household,
R/o Old City, Akola, Tq. Akola, District Akola. .... PETITIONER

// VERSUS //

Prashant Manikrao Bagade,
Age 40, years, Occu. Teacher,
R/o. C/o. New English High School,
Ramdas Peth, Akola, Tq. Akola. .... RESPONDENT

Shri T. G. Bansod, Advocate for the petitioner.
Shri S. S. Jagtap, Advocate for the respondent.

CORAM : A. S. KILOR, J.

Reserved on : 3rd February, 2020
Pronounced on : 8th September, 2020.

JUDGMENT:

By way of the present contempt petition, the petitioner is seeking action under Section 12(3) of the Contempt of Court Act, 1971 (hereinafter in short “the Act, 1971”) against the respondent for alleged willful disobedience of ‘other process of a Court’ by performing marriage in contravention of the provision of Section 15 of the Hindu Marriage Act, 1955 (hereinafter in short “the Act, 1955”).

2. The brief facts which are relevant for the present contempt petition are as follows:

The respondent herein had preferred a petition under Section 13 of the Act, 1955 against the petitioner herein for dissolution of marriage solemnized on 28.12.2003, on the ground of cruelty and desertion, which was opposed by the petitioner by filling written statement.

3. The learned Joint Civil Judge Senior Division, Akola vide its judgment and decree dated 29.10.2009, dismissed the petition, by holding that the respondent herein failed to prove cruelty and desertion.

4. This judgment and decree was questioned in Regular Civil Appeal No.167 of 2009, by the respondent, which was allowed and thereby declared that the marriage between the petitioner and the respondent stands dissolved by decree of divorce.

5. The petitioner filed Second Appeal which is pending before this Court.

6. During the pendency of appeal the present contempt petition has been filed, alleging that the respondent had performed

second marriage, in contravention of the mandate of the provision of Section 15 of the Act, 1955, which is a willful disobedience of 'other process of a Court' as provided by Section 2 (b) of the Act, 1971.

7. Heard Shri T. G. Bansod, learned counsel for the petitioner and Shri S. S. Jagtap, learned counsel for the respondent.

8. Shri Bansod learned counsel for the petitioner submits that Section 15 of the Act, 1955 creates incapacity to marry during the pendency of appeal. It is submitted that Sub-Section (b) and (c) of Section 2 of the Act, 1971 make it evident that in order to constitute civil contempt there has to be a willful disobedience to any judgment or 'other process of a Court'. The expression 'process of a Court' would necessarily include a right to file an appeal within the period of limitation and if any, element of that right is defeated by the conduct of holder of a decree of divorce then it would constitute willful disobedience of 'other process of the Court' under section 2(b) the Act, 1971.

9. He further submits that the act of the respondent entering into second marriage during the pendency of appeal amounts to willful disobedience of 'other process of the Court' and

as such action against the respondent under the provisions of the Act, 1971, needs to be taken.

10. Shri Bansod, learned counsel for the petitioner in support of his contention, has heavily relied upon the judgment of the Punjab and Haryana High Court in the case ***Jasbir Kaur Vs. Kuljit Singh,*** reported in ***AIR 2008 Panjab and Haryana 168.***

11. He also submits that whenever adjournment was sought by the respondent in the said appeal, he had given undertaking to this Court, that he would not perform marriage during the pendency of the appeal. It is submitted that there is a wilful breach of an undertaking given to this Court.

12. Shri Sayajee Jagtap, learned counsel for the respondent, per contra, draws attention of this Court to the affidavit filed by the respondent, wherein he has tendered his sincere and unconditional apology for the disobedience/non-compliance, if any, on the part of the respondent.

13. Shri Jagtap, learned counsel for the respondent submits that any marriage in contravention of Section 15 of the Act, 1955, is not void. He in support of his contention relied upon the judgment of the Hon'ble the Supreme Court of India in the case of ***Smt. Lila***

Gupta Vs. Laxmi Narain and others, reported in ***(1978) 3 SCC 258*** and the judgment in the case of ***Anurag Mittal Vs. Shaily Mishra Mittal***, reported in ***(2018) 9 SCC 691***.

14. Shri Jagtap, learned counsel for respondent denied that the respondent had given undertaking at any time before this Court that he would not perform the marriage during the pendency of appeal.

15. To consider the rival contentions of both the parties, I have perused the record and the judgments cited by both the parties.

16. The record depicts following undisputed facts:

a) The respondent filed petition for dissolution of marriage under Section 13 of the Act, 1955.

b) The learned Joint Civil Judge Senior Diviison, Akola vide its judgment and decree dated 29.10.2009 dismissed the petition of the respondent.

c) The respondent preferred Regular Appeal which was allowed vide judgment and decree dated 25.11.2015 and thereby decree of dissolution of marriage came to be passed in favour of the respondent.

d) The petitioner filed Second Appeal under Section 100 of Code of Civil Procedure, challenging the judgment and decree dated 25.11.2015 passed by Ad-hoc District Judge-I, Akola in RCA No.167 of 2009 on 21.12.2015 within a period of limitation.

e) The respondent filed caveat in Second appeal and counsel for the respondent recorded its appearance on 12.01.2016.

f) The respondent performed second marriage on 20.03.2016 i.e. during the pendency of appeal.

17. In the backdrop of above referred undisputed facts and considering the contentions raised by the respective counsels, the questions which fall for consideration are as follows:

> *"(i) Whether the performance of second marriage by the respondent on 20.03.2016 during the pendency of appeal is unlawful in view of prohibition stipulated under Section 15 of the Act, 1955, and if yes ?*
>
> *(ii) Whether contravention of Section 15 of the Act, 1955 amounts to willful disobedience of 'other process of a Court' as provided in Section 2(b) of the Act of 1971 ?"*

18. At this juncture, it is necessary to refer to Section 15 of the Act 1955, which reads thus:

> *Section 15:- "Divorced persons when may marry again. - When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having*

been presented or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again."

19. The Hon'ble the Supreme Court of India in the case of ***Anurag Mittal Vs. Shaily Mishra Mittal*** (supra) has observed the object of Section 15 in paragraph No.27, which reads thus:

"Section 15 of the Act provides that it shall be lawful for either party to marry again after dissolution of a marriage if there is no right of appeal against the decree. A second marriage by either party shall be lawful only after dismissal of an appeal against the decree of divorce, if filed. If there is no right of appeal, the decree of divorce remains final and that either party to the marriage is free to marry again. In case an appeal is presented, any marriage before dismissal of the appeal shall not be lawful. The object of the provision is to provide protection to the person who has filed an appeal against the decree of dissolution of marriage and to ensure that the said appeal is not frustrated. The purpose of Section 15 of the Act is to avert complications that would arise due to a second marriage during the pendency of the appeal, in case the decree of dissolution of marriage is reversed. The protection that is afforded by Section 15 is primarily to a person who is contesting the decree of divorce."

20. The Hon'ble the Supreme Court of India in clear terms, has observed that in case an appeal is presented, any marriage before dismissal of the appeal shall not be lawful. It is further observed by the Hon'ble the Supreme Court of India in the aforesaid Judgment that the purpose of Section 15 of the Act is avert the complication that would arise due to second marriage during the pendency of the appeal, in case the decree of dissolution of marriage is reversed and the protection that is afforded by Section 15 is primarily to a person who is contesting the decree of divorce.

21. Admittedly, in the present matter, the Second Appeal was filed in this Court within limitation. The record shows that the respondent had complete knowledge about filing of appeal as the respondent was on caveat and the counsel for respondent had recorded his appearance on 12.01.2016 i.e. prior to performance of marriage on 20.03.2016.

22. Thus, I have no hesitation to hold that the respondent ignored the prohibition and performed the second marriage under an incapacity to marry, stipulated under Section 15 of the Act, 1955. Hence, the performance of second marriage by the respondent on 22.03.2016, during the pendency of appeal, is in contravention of Section 15 of Act, 1955.

23. Now moving to the second question. The Division Bench of the Panjab and Haryana High Court in the case of ***Jasbir Kaur Vs. Kuljit Singh*** (supra), while considering the issue 'whether performance of a marriage after filing of appeal, an unlawful act in terms of Section 15 of the Act, 1955, amount to wilful disobedience to the "other process of the Court" disclosing a Civil Contempt within the meaning of Section 2(b) of the Act, 1971 ?', has held that the expression 'process of Court' used in Sub Section (b) and (c) of Section 2 of the Act, 1971, would necessarily include the right to

file an appeal within the period of limitation. Any attempt on behalf of the spouse in whose favour decree of dissolution of marriage is passed, to defeat the purpose of filing the First Appeal or nullifying the right of the losing spouse then it would be covered by the expression 'willful disobedience of other process of a Court'.

24. With due respect, I record my disagreement with the said preposition, for the reasons recorded herein below.

25. The Hon'ble the Supreme Court of India in the case of ***Utkal Contractors and Joinery Pvt. Ltd. and others Vs. State of Orissa and others,*** reported in ***1987 (3) SCC 279*** has held that a statute is best understood as we know the reason for it. The reason for a statute is the safest guide to its interpretation. The word of a statute take their colour from the reason for it. The relevant Portion of the judgment reads thus:

> *"9. In considering the rival submissions of the learned counsel and in defining and construing the area and the content of the Act and its provisions, it is necessary to make certain general observations regarding the interpreta- tion of statutes. A statute is best understood as we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. How do we discover the reason for a statute? There are external and internal aids. The external aids are Statement of Objects and Reasons when the Bill is presented to Parliament, the reports of Committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the sail to the wind, the interpreter*

may proceed ahead. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation; nor can it be assumed to make pointless legislation. Parliament does not indulge in legislation merely to state what it is unnecessary to state or to do what is already validly done. Parliament may not be assumed to legislate unnecessarily. Again, while the words of an enactment are important, the context is no less important. For instance,

> *....the fact that general words are used in a statute is not in itself a conclusive reason why every case falling literally within them should be governed by that statute, and the context of an Act may well indicate that wide or general words should be given a restrictive meaning"*

26. It is clear from the above referred judgment that no provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. Similarly, the setting and the pattern are important.

27. The Punjab and Haryana High Court while construing the expression ‘other process of a Court’ used in clause (b) of section 2 of the Act, 1975, construed it in isolation without taking into consideration the said provision as a whole.

28. Thus, to find out the import of the expression ‘other

process of a court', which is a general term, the principle of *Ejusdem Generis* would be helpful to apply, in the present matter.

29. The Hon'ble the Supreme Court of India had an occasion to interpret the general term 'steps in the proceedings' used in Section 34 of the Arbitration Act, 1940 in the case of ***Food Corporation of India and another Vs. Yadav Engineer and Contractor,*** reported in ***1982 (2) Supreme Court Cases 499***, wherein it has observed as follows:

> "10. ….The principle of ejusdem generis must help in finding out the import of the general words because it is a well-established rule in the construction of statutes that general terms following particular ones apply to such persons or things as are ejusdem generis with these comprehended in the language of the legislature. In Ashbury Railway Carriage & Iran Co. v. Riche, the question of construction of the object of a Company: 'to carry on business of mechanical engineers and general contractors', came in for consideration and it was said that the generality of the expression 'general contractors' was limited to the previous words 'mechanical engineers' on the principle of ejusdem generis….."

30. In the above backdrop it is necessary to refer to the definition of 'civil contempt' given under Section 2 (b) of the Act, 1971, which is as follows:

> ***Civil contempt***:- *"Civil contempt means willful disobedience to any judgments, decree, direction, order, writ or other process of a Court or willful breach of an undertaking given to a Court."*

31. In clause (b) section 2 particular words, 'judgment',

'decree', 'direction', 'order' and 'writ' are used before the general term 'other process of a Court'. It is thus necessary to first look into the meaning of above mentioned and referred particular words to understand the import of the expression 'other process of a Court'.

32. The word 'judgment' means a decision of a Court regarding the rights and liabilities of parties in a legal action or proceeding. The word 'decree' means a judgment of a Court, that announces the legal consequences of the facts found in a case and orders that the Court's decision be carried out. The term 'writ' refers to a formal legal document that orders a person or entity to perform or to cease performing specific action or deed. At the same time, the words 'direction' and 'order' indicate 'command' by the Court in any proceeding filed before the Court.

33. In the words 'judgments', 'decree', 'direction', 'order' and 'writ', which precede the general term 'other process of a Court', in the provision of Section 2 (b) of the Act, 1971, one thing is common that is 'command'.

34. In the light of the above discussion, I am of the considered view that the expression 'willful disobedience of process of a Court' used under Section 2 (b) of the Act, 1971, must also be

related to disobedience of some command issued by the Court during the process of a Court which includes various stages between filing of any proceeding to final decision by the Court. During these stages various commands need to be issued by the Court, like issuance of summons, deposit of cost, compelling appearance of any expert or person as a witness, production of documents or record etc., disobedience of any such command may come within the ambit of 'willful disobedience of other process of a Court' as provided in Clause (b) of Section 2 of the Act, 1971. But at any stretch of imagination it cannot be said that contravention of provision of Section 15, amounts to willful disobedience of 'other process of a Court' under the provisions of the Act, 1971.

35. In the said backdrop, I am of the considered view that performance of a second marriage during the pendency of appeal would be a contravention or a breach of prohibition stipulated under Section 15 of the Act, 1955, but in any case, it would not amount to disobedience of any command of the Court consequently such act would not fall within the ambit of the expression 'willful disobedience of other process of a Court' under Clause (b) of Section 2 of the Act, 1971.

36. To look at such contravention from other angle, which

according to me is also relevant, it would be appropriate to take into consideration the observations made by the Hon'ble the Supreme Court of India in the case of ***Lila Gupta Vs. Laxmi Narain and others***, reported in ***1978 (3) SCC 258***, which reads thus:

> *"13. To say that such provision continues the marriage tie even after the decree of divorce for the period of incapacity is to attribute a certain status to the parties whose marriage is already dissolved by divorce and for which there is no legal sanction. A decree of divorce breaks the marital tie and the parties forfeit the status of husband and wife in relation to each other. Each one becomes competent to contract another marriage as provided by Section 15. Merely because each one of them is prohibited from contracting a second marriage for a certain period it could not be said that despite there being a decree of divorce for certain purposes the first manage subsists or is presumed to subsist. Some incident of marriage does survive the decree of divorce; say, liability to pay permanent alimony but on that account it cannot be said that the marriage subsists beyond the date of decree of divorce. Section 13 which provides for divorce in terms says that a marriage solemnised may on a petition presented by the husband or the wife be dissolved by a decree of divorce on one or more of the grounds mentioned in that section. The dissolution is complete once the decree is made, subject of course, to appeal. But a final decree of divorce in terms dissolves the marriage. No incident of such dissolved marriage can bridge and bind the parties whose marriage is dissolved by divorce at a time posterior to the date of decree. An incapacity for second marriage for a certain period does not have effect of treating the former marriage as subsisting. During the period of incapacity the parties cannot be said to be the spouses within the meaning of clause (i), sub-section (1) of Section 5. The word 'spouse' has been understood to connote a husband or a wife which term itself postulates a subsisting marriage. The word 'spouse' in sub-section (1) of Section 5 cannot be interpreted to mean a former spouse because even after the divorce when a second marriage is contracted if the former spouse is living that would not prohibit the parties from contracting the marriage within the meaning of clause (i) of sub-section (1) of Section 5. The expression 'spouse' in clause (i), sub-section (1) of Section 5 by its very context would not include within its meaning the expression ' former spouse'.*
>
> *20. Thus, examining the matter from all possible angles and*

> *keeping in view the fact that the scheme of the Act provides for treating certain marriages void and simultaneously some marriages which are made punishable yet not void and no consequences having been provided for in respect of the marriage in contravention of the proviso to Section 15, it cannot be said that such marriage would be void."*

37. The Hon'ble the Supreme Court of India in the case of ***Anuraj Mittal Vs. Shaily Mishra Mittal***, reported in ***2018 (9) SCC 691***, reiterated the said position and held that if the provision of law prescribes an incapacity to marry and yet the person marries while under that incapacity, the marriage would not be void in the absence any express provision in that regard. Para 33 of the said judgment reads thus:

> *"33. What is held in essence is that if a provision of law prescribes an incapacity to marry and yet the person marries while under that incapacity, the marriage would not be void in the absence of an express provision that declares nullity. Quae incapacity imposed by statute, there is no difference between an incapacity imposed by negative language such as "it shall not be lawful" or an incapacity imposed by positive language like "it shall be lawful (in certain conditions, in the absence of which it is impliedly unlawful)". It would thus appear that the law is already settled by this Court that a marriage contracted during a prescribed period will not be void because it was contracted under an incapacity. Obviously, this would have no bearing on the other conditions of a valid marriage. The decision in Lila Gupta case thus covers the present case on law."*

38. From the said judgments it is clear that having not been provided consequences in respect of marriage performed in contravention of the provision to Section 15 of the Act, 1955, it cannot be said that such marriage would be void. At the same time no provision for punishment is provided in the Act, 1955, in case of

the contravention of the provision of Section 15.

39. In the light of above observations, I am of the firm view that the Second marriage performed by the respondent in contravention of Section 15 of the Act, 1955, would not fall within the purview of clause (b) of Section 2 of the Act,1971 and therefore, it cannot be held that the respondent has committed 'civil contempt', in the present matter.

40. The contention of the petitioner that whenever, the adjournment was sought by the respondent in the Second Appeal, an undertaking was given, that the respondent would not perform marriage during the pendency of the appeal. Thus, according to him, it is a breach of undertakings and therefore, he is liable to be punished under the provisions of the Act, 1971.

41. The record does not support this contention of the petitioner. In none of the orders, granting adjournment to the respondent or to the petitioner, there is mention of such undertaking given by the respondent. In absence of such undertaking on record, I am not inclined to hold that there is a breach of undertaking. In the circumstances, the present petition deserves to be dismissed on this count also.

42. Accordingly, contempt petition is dismissed. No order as to costs.

JUDGE

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