HIGH COURT OF ANDHRA PRADESH

* * * *

CIVIL MISCELLANEOUS APPEAL No. 52 of 2024

Between:

Sanka Anil Kumar

.....APPELLANT

AND

Sanka Sruthi @ Sujatha

.....RESPONDENT

DATE OF JUDGMENT PRONOUNCED: **14.02.2025**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE SRI JUSTICE CHALLA GUNARANJAN

1.	Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No
2.	Whether the copies of judgment may be marked to Law Reporters/Journals	Yes/No
3.	Whether Your Lordships wish to see the fair copy of the Judgment?	Yes/No

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RAVI NATH TILHARI, J

_____

CHALLA GUNARANJAN, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**
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! Counsel for the Appellant : Appeared in-person
(Smt. Nimmagadda Revathi,
Amicus curiae)

Counsel for the Respondent : Ms. Taddi Sowmya Naidu

< Gist :

> Head Note:

? Cases Referred:

1. (1978) 3 SCC 258
2. (2002) 2 SCC 73
3. (2018) 9 SCC 691
4. (2020) 11 SCC 253
5. (2007) 4 SCC 511
6. (2021) 3 SCC 742
7. 2022 (1) Mh.L.J 713
8. AIR 1945 PC 188
9. (1964) 2 SCR 538
10. 2023 SCC OnLine SC 1127
11. 2023 SCC OnLine SC 497

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE CHALLA GUNARANJAN

CIVIL MISCELLANEOUS APPEAL No. 52 OF 2024

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri Sanka Anil Kumar, appellant, appearing in person through virtual mode, Smt. Nimmagadda Revathi, learned *amicus curiae*, and Ms. Taddi Sowmya Naidu, learned counsel for the respondent.

2. The appellant and the respondent-Sanka Sruthi @ Sujatha were married on 31.10.2020 as per the Hindu customs and rites.

3. The H.M.O.P.No.35 of 2022 was filed by the respondent-wife seeking decree of divorce under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 by dissolving her marriage with the appellant dated 31.10.2020. The case set up was that the marriage was not consummated. The appellant did not have any interest to lead conjugal life, for no reasons. The respondent went to her father's house and continued to live with her parents at Bobbili. Panchayat was held in the presence of the elders to resolve the dispute. The appellant though attended, but did not cooperate and resolution could not take place. The respondent suffered with mental agony, mental cruelty and neglect of the appellant. She issued a legal notice on 08.06.2021 for restitution of the conjugal rights, which was replied with false averments. Consequently, the petition for divorce was filed.

4. The appellant/husband denied the case of the respondent. The marriage was not denied. He submitted that the marriage was consummated.

The respondent went to her parents house on the pretext of some ceremony there and finally did not return, though in between they lived together from 01.01.2021 to 13.01.2021 at Gajuwaka. He further stated that the caste elders made conciliation on 04.08.2021 and 13.08.2021, but the respondent/wife failed to associate the appellant and for no justifiable reasons, she gave report against the appellant and his family members on 15.08.2021 making allegations of matrimonial cruelty. The appellant gave reply on 01.07.2021 to the notice of the respondent/wife asking her to come and perform the conjugal rights but she failed to respond for that notice. So, the appellant also filed FCOP.No.1836 of 2021 before the Family Court, Visakhapatnam for restitution of conjugal rights. He prayed to dismiss the divorce petition.

5. The learned trial Court framed the following points for consideration:

1. "Whether the petitioner proved the grounds on which the relief of annulment of marriage is sought for?
2. Whether the petitioner proved the grounds on which the relief of divorce sought for?
3. Whether the petitioner is entitled for the decree of divorce as prayed by annulling her marriage with the respondent?"

6. In HMOP No.35 of 2022, the respondent/wife examined herself as PW 1 and further examined one Varanasi Nagaraju as PW 2 and marked Exs.A1 and A2, the documents relating to wedding invitation and photograph of marriage. The appellant examined himself as RW 1 and produced no documents.

7. On point No.1, the finding was recorded that there was no material to prove that the appellant was an impotent. So, on that point, there was no

sufficient material/evidence to satisfy the Court to nullify the marriage by declaring it as void under Section 12 (1) (a) of the Hindu Marriage Act, 1955.

8. On point No.2, the finding was recorded that the appellant intentionally avoided and refused to lead sexual life with the respondent, without any reasonable cause and thereby committed mental cruelty upon the wife. So, the condition under Section 13 (1) (ia) of Hindu Marriage Act, 1955 to seek divorce on the ground of cruelty was satisfied.

9. On point No.3, the petition was allowed and the divorce decree was granted.

10. In this appeal on 08.02.2024 the interim suspension of operation of the decree of divorce was granted. The respondent, in spite of the proof of service filed by the appellant-party in person, did not appear, on 24.06.2024 on which date an order was passed that the intimation of the appeal be given to the respondent and also to her father by the District Legal Services Authority and acknowledgment of the written intimation be also filed. The Order dated 24.06.2024 also mentioned that the consequences of overturning of the judgment and decree of divorce be also intimated. On 08.07.2024 the appellant submitted that in spite of the interim order dated 08.02.2024, the respondent/wife remarried on 04.04.2024 and for that reason, she was not appearing before the Court. By order dated 08.07.2024, the jurisdictional Member Secretary of the Legal Services Authority was requested to positively submit the report with respect to the acknowledgment pursuant to the previous order dated 24.04.2024. The respondent then put her appearance through

counsel on 15.07.2024, the next date, and her counsel submitted that the respondent re-married on 03.02.2024, after the period of limitation in filing the appeal. However, on calculation of the limitation period, this Court found and recorded in the Order dated 15.07.2024 that, the period of limitation of 90 days after excluding the date of decree was up to 04.02.2024. So, the appeal was filed within the limitation period. The respondent remarried during the limitation period for filing appeal, though the interim order was granted on 07.02.2024.

11. Considering the remarriage during the period of limitation for filing appeal and contrary to the provisions of Section 15 of the Hindu Marriage Act, as also that any order to be passed in this appeal, if, of reversal of divorce decree, may affect the status of the respondent with her 2nd husband on remarriage, this Court directed for service of the notice of the appeal on Patnana Santhosh, S/o. Patnana Narayana Rao, C/o. Ramalayam street, Kurmanna palem, Visakhapatnam, contact Ph.No.7702914014 (the 2nd husband) through the High Court Legal Services Committee, through the Chairman, District Legal Services Authority, Visakhapatnam. The respondent/wife was also directed to file affidavit of the willingness of the said Patnana Santhosh to contest the present appeal, also granting liberty to the said Patnana Santhosh to appear and contest the appeal, if he so wanted. Finally, after the orders dated 06.11.2024 and 13.11.2024, the respondent/wife filed memo, annexing there with the affidavit of Sri Patnana Santhosh to the effect in para-3 thereof that since the respondent is already a party to the

proceedings in the present appeal and contesting the same, he did not intend to come on record.

12. The appellant appearing in-person was also asked, by the Court to be provided the counsel to argue on his behalf, but he refused and insisted that he would appear as party-in-person and argue his case himself.

13. The Court appointed Ms. Nimmagadda Revathi, learned advocate, as *amicus curiae* to assist the Court.

14. The appellant-in-person submitted that the divorce petition was filed after one year by wife. She stayed only 15 days. She filed the criminal case under Section 498-A IPC on false and frivolous grounds. There was no cruelty by him. The respondent/wife, in fact, did not show interest in the marital life. There was no demand of dowry or any kind of monetary or financial benefit by the appellant. The respondent/wife herself did not show interest in leading marital life with the appellant. The appellant also filed FCOP No.1836 of 2021 for restitution of conjugal rights, which was pending before the Family Court of Visakhapatnam, and because of the decision in HMOP.No.35 of 2022, the said case has in fact been rendered infructuous. The appellant suffered mental and physical trauma and his reputation was also damaged. The false cases filed by the respondent/wife, viz., CC.No.437 of 2021, DVC.No.8 of 2022 and MC.No.30 of 2021 are all pending. He submitted that the decree of divorce deserves to be set aside and the second marriage is not valid.

15. Ms. Nimmagadda Revathi, learned *amicus curiae,* submitted mainly on the legal aspect on the validity of the remarriage. She submitted that in

view of Section 15 of the Hindu Marriage Act, remarriage could not take place before the expiry of period of limitation for filing appeal. If the appeal had been filed within the period of limitation, during its pendency also remarriage could not take place. Section 15 of the Hindu Marriage Act itself provided for such bar on remarriage. She submitted that irrespective of stay or no stay in appeal filed within limitation period, the remarriage could not take place. She also submitted that as per the date of the remarriage disclosed by the respondent, the remarriage had taken place during the period of limitation for filing the appeal, which on the face of it, was contrary to the mandate under law to Section 15 of the Hindu Marriage Act. On the effect of remarriage, in violation of Section 15 of the Hindu Marriage Act, she placed reliance on the following judgments:

1. ***Lila Gupta v. Laxmi Narain***[1]
2. ***Savitri Pandey v. Prem Chandra Pandey***[2]
3. ***Anurag Mittal v. Shaily Mishra Mittal***[3]
4. ***Krishnaveni Rai v. Pankaj Rai***[4]

16. Ms. Taddi Sowmya Naudym learned counsel for the respondent supported the decree. She submitted that a specific finding has been recorded on point No.2 on consideration of the evidence on record. The conclusion drawn by the learned trial Court is correct. The same deserves not to be

[1] (1978) 3 SCC 258
[2] (2002) 2 SCC 73
[3] (2018) 9 SCC 691
[4] (2020) 11 SCC 253

interfered with, as it does not suffer from any illegality. On such finding of cruelty, the decree of divorce has rightly been granted.

17. Learned counsel for the respondent further submitted that so far as the remarriage is concerned, the same was solemnized after the expiry of period of limitation of 90 days for filing the appeal, and consequently, such remarriage, after the decree of divorce from the first husband, is perfectly valid. She also submitted that by the time the marriage was solemnized, there was no stay of decree of divorce by this Court. She placed reliance on the following judgments:

1. ***Anurag Mittal v. Shaily Mishra Mittal*** (supra-3)
2. ***Samar Ghosh v. Jaya Ghosh***[5]
3. ***Joydeep Majumdar v. Bharti Jaiswal Majumdar***[6]
4. ***Darshana v. Alok Namdeo Borkar***[7]
5. ***Krishnaveni Rai v. Pankaj Rai*** (supra-4)

18. We have considered the aforesaid submissions and perused the material on record.

19. The following points arise for our consideration:

A. The validity of remarriage (second marriage of the respondent) in contravention of the Section 15 of the Hindu Marriage Act, in other words, if on grant of divorce, a party remarries during the period of limitation for filing an appeal or even after filing of the appeal during its pendency, what would be the effect of Section 15 of

[5] (2007) 4 SCC 511
[6] (2021) 3 SCC 742
[7] 2022 (1) Mh.L.J 713

Hindu Marriage Act on such marriage, whether such a remarriage would be valid, void or voidable?

B. Whether the decree of divorce under challenge deserves to be maintained or it calls for interference in the exercise of the appellate jurisdiction?

20. To deal with the first point, we produce Section 15 of the Hindu Marriage Act, as under:

> "**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."

21. Section 15 of the Hindu Marriage Act provides as to when the divorcee may marry again, as per this section, 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 if an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again. According to this section, after expiry of the period of limitation for filing appeal and if appeal has not been filed or if the appeal has been filed, which has been dismissed, then it shall be lawful for the parties to the decree of divorce to marry again.

22. In ***Lila Gupta*** (supra), the facts were that one Rajendra Kumar, whose widow appellant therein Smt. Lila Gupta claimed to be had contracted a marriage with one Sarla Gupta. Both Rajendra Kumar and Sarla Gupta filed suit against each other praying for decree of divorce. The suits ended in a decree of divorce on 08.04.1963. Rajendra Kumar, soon thereafter, on May 25, 1963 contracted second marriage with Smt. Lila Gupta. Rajendra Kumar expired on May 7, 1975. Disputes arose in consolidation proceedings between Smt.Lila Gupta and the brothers and brother's sons of Rajendra Kumar about succession to the Bhumidhari rights. The status of Smt.Lila Gupta as widow was also challenged on the ground that her marriage was void having been contracted in violation of the provision contained in the proviso to Section 15 of the Hindu Marriage Act, 1955. The Deputy Director of Consolidation upheld the claim of Smt. Lila Gupta. In the petition under Article 227 of the Constitution of India, the High Court of Allahabad, opined that the marriage of Rajendra Kumar with Smt. Lila Gupta being in contravention of the proviso to Section 15 was null and void. The petition was allowed. The appeals were also dismissed by the Division Bench. The matter approached the Hon'ble Apex Court.

23. Section 15 of the Hindu Marriage Act, as it then existed contained a proviso, which was later on by amendment, deleted. The said section with its proviso was as under:

> "15. When a marriage has been dissolved by 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:

Provided that it shall not be lawful for the respective parties to marry again unless at the date of such marriage at least one year has elapsed from the date of the decree in the Court of the first instance."

24. The Hon'ble Apex Court held that the scheme of the Act provides for treating certain marriages as void and some marriages which are made punishable are 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. In the concurring judgment Hon'ble Justice R.S.Pathak (as he then was), also held that the marriage of Rajendra Kumar with Smt. Lila Gupta, was not void and she was entitled to be considered as his wife. The Hon'ble Apex Court in ***Lila Gupta*** (supra) took the view that on comprehensive review of the relevant provisions of the Act, the legislative thrust was that every marriage solemnized in contravention of one or other condition prescribed for valid marriage was not void. Section 5 prescribed six conditions for valid marriage. Section 11 rendered marriage solemnized in contravention of conditions (i), (iv) and (v) of Section 5 only, void. It was observed that the law while prescribing conditions for valid marriage simultaneously prescribed that breach of some of the conditions, but not all, would render the marriage void. Simultaneously, the Act was conspicuously silent on the effect on a marriage solemnized in contravention or breach of the time bound prohibition enacted in Section 15. It was also observed that while a marriage solemnized in contravention of clauses (iii), (iv), (v) and (vi) of Section

5 was made penal, a marriage in contravention of the prohibition prescribed by the proviso to Section 15 does not attract any penalty. The Hon'ble Apex Court further observed that the Act was suggestively silent on the question as to what was the effect on the marriage contracted by two persons one or both of whom were incapacitated from contracting marriage at the time when it was contracted in view of the fact that a period of one year had not elapsed since the dissolution of their earlier marriage by a decree of divorce granted by the Court of first instance. Such a marriage was not expressly declared void nor made punishable though marriage in breach of conditions (i), (iv) and (v) were expressly declared void and marriages in breach of conditions (iii), (iv), (v) and (vi) of Section 5 were specifically made punishable by Section 18. Those express provisions would show that Parliament was aware about treating any specific marriage void and only specific marriages punishable. The express provision *prima facie* would go a long way to negative any suggestion of a marriage being void though not covered by Section 11 such as in breach of proviso to Section 15 as being void by necessary implication. The net effect of it was, the Hon'ble Apex Court held that, at any rate Parliament did not think fit to treat such marriage void or that it was so opposed to public policy as to make it punishable.

25. The Hon'ble Apex Court in ***Lila Gupa*** (supra) also referred to the judgment in the case of ***Marsh v. Marsh***[8]. There the statute prohibited marriage by parties whose marriage was dissolved by a decree of divorce

[8] AIR 1945 PC 188

during the period of limitation prescribed for appeal. The contention was that such marriage in violation of a statutory prohibition was void. Such contention was negatived. It was held that the decree was absolutely a valid decree and it dissolved the marriage from the moment it was pronounced and at the date when the appeal by the intervener abated, it stood unreversed. The fact that neither spouse could remarry until the time for appealing had expired, in no way affected the full operation of the decree. It is a judgment in *rem* and unless and until a Court of Appeal reversed it, the marriage for all purposes was at an end. It was also observed that the parties to the marriage do that at their own risk of ultimate result in the appeal. The parties could not ask the Court to revoke the special leave to appeal or the appeal on that ground, i.e., ground of remarriage.

26. Paragraph Nos.6, 9 and 13 of ***Lila Gupta*** (supra) read as under:

> "**6.** A comprehensive review of the relevant provisions of the Act unmistakably manifests the legislative thrust that every marriage solemnised in contravention of one or other condition prescribed for valid marriage is not void. Section 5 prescribes six conditions for valid marriage. Section 11 renders marriage solemnised in contravention of conditions (*i*), (*iv*) and (*v*) of Section 5 only, void. Two incontrovertible propositions emerge from a combined reading of Sections 5 and 11 and other provisions of the Act, that the Act specifies conditions for valid marriage and a marriage contracted in breach of some but not all of them renders the marriage void. The statute thus prescribes conditions for valid marriage and also does not leave it to inference that each one of such conditions is mandatory and a contravention, violation or breach of any one of them would be treated as a breach of a pre-requisite for a valid marriage rendering it void. The law while prescribing conditions for valid marriage simultaneously prescribes that breach of some of the conditions but not all

would render the marriage void. Simultaneously, the Act is conspicuously silent on the effect on a marriage solemnised in contravention or breach of the time bound prohibition enacted in Section 15. A further aspect that stares into the face is that while a marriage solemnised in contravention of clauses (*iii*), (*iv*), (*v*) and (*vi*) of Section 5 is made penal, a marriage in contravention of the prohibition prescribed by the proviso does not attract any penalty. The Act is suggestively silent on the question as to what is the effect on the marriage contracted by two persons one or both of whom were incapacitated from contracting marriage at the time when it was contracted in view of the fact that a period of one year had not elapsed since the dissolution of their earlier marriage by a decree of divorce granted by the Court of first instance. Such a marriage is not expressly declared void nor made punishable though marriage in breach of conditions (*i*), (*iv*) and (*v*) are expressly declared void and marriages in breach of conditions (*iii*), (*iv*), (*v*) and (*vi*) of Section 5 are specifically made punishable by Section 18. These express provisions would show that Parliament was aware about treating any specific marriage void and only specific marriages punishable. This express provision prima facie would go a long way to negative any suggestion of a marriage being void though not covered by Section 11 such as in breach of proviso to Section 15 as being void by necessary implication. The net effect of it is that at any rate Parliament did not think fit to treat such marriage void or that it is so opposed to public policy as to make it punishable.

x x x x x x x

9. In the Act under discussion there is a specific provision for treating certain marriages contracted in breach of certain conditions prescribed for valid marriage in the same Act as void and simultaneously no specific provision having been made for treating certain other marriages in breach of certain conditions as void. In this background even though the proviso is couched in prohibitory and negative language, in the absence of an express provision it is not possible to infer nullity in respect of a marriage contracted by a person under incapacity prescribed by the proviso.

x x x x x x x

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 marriage 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"."

27. In ***Savitri Pandey*** (supra), in which the divorced spouse remarried after the period of limitation of filing appeal, the Hon'ble Apex Court held that if despite the pendency of the appeal, the appellant therein chose to solemnize the second marriage, the adventure was deemed to have been undertaken at her own risk and the ultimate consequences arising of the judgment in the appeal pending in the High Court. No person could be permitted to flout the course of justice by his or her overt and covert acts.

28. Another aspect in ***Savitri Pandey*** (supra) was that, by that time, under Section 28 (4) of the Hindu Marriage Act, the period of limitation for filing the appeal was 30 days, which, the Hon'ble Apex Court observed, to be insufficient and inadequate. In the absence of appeal within such short time, the other party could solemnize the marriage and make attempt to frustrate the appeal right on the other side. So, it was opined that a minimum period of 90 days might be prescribed for filing appeal against any judgment and decree under the Act and any marriage solemnized during the period was deemed to be void. The Hon'ble Apex Court held that appropriate legislation was required to be made in that regard.

29. After the said judgment, Section 28 (4) of the Hindu Marriage Act was amended so as to provide the period of limitation for filing appeal of 90 days. However, it has not been provided that any marriage solemnized during the period of limitation shall be deemed to be void.

30. So, we are of the view that even after amendment, extending the period of limitation for filing the appeal from 30 days to 90 days, if the marriage

is solemnized during the period of limitation for filing the appeal and in contravention of Section 15 of the Hindu Marriage Act, the consequences would not be that the marriage would be void. The marriage would not be void, in view of the law as laid down in ***Lila Gupta*** (supra). The marriage would still be a valid marriage, but it would be subject to the outcome of the pending appeal. In other words, if the appeal reverses the decree of divorce, necessary consequences shall follow, or all such consequences as may be provided by the judgment of appellate Court. It would be so, in view of the observations made in ***Savitri Pandey*** (supra) that, if despite pendency of the appeal, the appellant chose to solemnize the second marriage, that would be undertaken at the own risk of such party and subject to ultimate consequences arising of the judgment in the pending appeal.

31. In ***Anurag Mittal*** (supra), the marriage was held during pendency of the appeal against the decree of divorce. In the said case, an application for withdrawal of the appeal was filed on 28.11.2011. The appeal was dismissed as withdrawn on 20.12.2011. The marriage was solemnized on 06.12.2011, i.e., during the pendency of the appeal, but after filing of the application for withdrawal. The Hon'ble Apex Court observed that Order 23 Rule 1(1) CPC gives an absolute right to the plaintiff to withdraw his suit or abandon any part of his claim. The said Order was applicable to appeals as well. Applying the law as in ***Bijayananda Patnaik* v. *Satrughna Sahu***[9], the Hon'ble Apex Court held that the appeal shall be deemed to have been withdrawn on 28.11.2011

[9] (1964) 2 SCR 538

i.e., the date of the filing of the application for withdrawal. So, on 06.12.2011 which is the date of the marriage, there was no violation of Section 5 (1).

32. What follows from this judgment in ***Anurag Mittal*** (supra) is that once the appeal was deemed to have been withdrawn on the date of filing of application for withdrawal and if the marriage was solemnized after filing of the application for withdrawal, which may be, during pendency of the application for withdrawal and as such during pendency of appeal, the remarriage shall be deemed to have been solemnized not during the pendency of the appeal, Section 15 of the Hindu Marriage Act would not be attracted to such a remarriage. The Hon'ble Apex Court held that applying the principles of purposive construction of Section 15 of the Hindu Marriage Act till the dismissal of the appeal could not apply because the parties have settled and decided not to pursue the appeal. In the said case, the High Court came to the conclusion that the marriage dated 06.12.2011 was void, in view of Section 15 of the Hindu Marriage Act. The said view was held as erroneous. The judgment of the High Court was set aside. So, from this judgment also, it follows that the marriage even if in violation of Section 15 of the Hindu Marriage Act, would not be void.

33. In ***Krishnaveni Rai*** (supra), the Hon'ble Apex Court reiterated that Section 15 of the Hindu Marriage Act clarifies that when a marriage has been dissolved by a decree of divorce, and 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 preferred, or an appeal having been presented

but the same having been dismissed, it shall be lawful for either party to the marriage to marry again. Had it been the legislative intent that a marriage during the pendency of an appeal should be declared void, Section 11 would have expressly provided so. The Hon'ble Apex Court further, referring to the case of ***Anurag Mittal*** (supra) held that the object of Section 15 was to provide protection to the person who had filed appeal against the decree of dissolution of marriage and to ensure that such appeal was not frustrated. The protection afforded by Section 15 was primarily to a person contesting the decree of divorce.

34. In ***Krishnaveni Rai*** (supra) appeal was filed against decree of divorce after expiry of period of limitation. The Hon'ble Apex Court observed that the bar under Section 15 of the Hindu Marriage Act applied only if there was an appeal filed within a period of limitation and not afterwards, upon condonation of delay in filing an appeal unless of course, the decree of divorce was stayed or there was an interim order of court, restraining the parties or any of them remarrying during the pendency of the appeal.

35. In ***Krishnaveni Rai*** (supra) the Hon'ble Apex Court considered the provisions of Section 15 of the Hindu Marriage Act after its amendment.

36. Paragraph Nos.23 to 28 and 32 of ***Krishnaveni Rai*** (supra) read as under:

> "**23.** It is well settled that a marriage which is null and void is no marriage in the eye of the law. Where the marriage is a nullity application for maintenance is liable to be set aside on that ground alone. Under Section 5 of

the Hindu Marriage Act, a marriage may validly be solemnised between any two Hindus, subject to the following conditions:

23.1. Neither party has a spouse living at the time of marriage [Section 5(*i*) of the Hindu Marriage Act].

23.2. Neither party was incapable of giving valid consent of the marriage in circumstances specified in Section 5(*ii*) of the Hindu Marriage Act.

23.3. The parties to the marriage are of requisite age, that is, the bridegroom should have completed 21 years of age and the bride 18 years of age, at the time of marriage [Section 5(*iii*) of the Hindu Marriage Act].

23.4. The parties should not be within the degree of prohibited relationship unless the custom or usage governing each of them permits such marriage [Section 5(*iv*) of the Hindu Marriage Act].

23.5. Parties are not sapindas of each other unless the custom or usage governing each of them permits between two. [Section 5(*v*) of the Hindu Marriage Act].

24. Section 11 of the Hindu Marriage Act provides that 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 of the conditions in clauses (*i*), (*iv*) and (*v*) of Section 5.

25. A careful reading of Sections 5, 11 and 15 makes it amply clear that while Section 5 specifies the conditions on which a marriage may be solemnised between two Hindus, only contravention of some of those conditions render a marriage void.

26. Marriage in contravention of Section 5(*i*) of the Hindu Marriage Act, that is, where either party or both have a spouse living at the time of marriage is void. Similarly, a marriage is void if the parties to the marriage are within the degrees of prohibited relationship unless the custom or usage governing each of them permits of such marriage, or if the parties are sapindas of each other unless, again, the custom or usage governing each of them permits marriage between the two. [Sections 5(*iv*) and 5(*v*)]

27. Contravention of Sections 5(*ii*) or 5(*iii*) of the Hindu Marriage Act does not render the marriage null and void. In such a case, the marriage is voidable at the option of the underaged party to the marriage or the party who could not have validly consented to the marriage.

28. Section 15 clarifies that when a marriage has been dissolved by a decree of divorce, and 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 preferred, or an appeal has been presented but the same has been dismissed, it shall be lawful for either party to the marriage to marry again. Had it been the legislative intent that a marriage during the pendency of an appeal should be declared void, Section 11 would expressly have provided so.

32. The bar, if any, under Section 15 of the Hindu Marriage Act applies only if there is an appeal filed within the period of limitation, and not afterwards upon condonation of delay in filing an appeal unless of course, the decree of divorce is stayed or there is an interim order of court, restraining the parties or any of them from remarrying during the pendency of the appeal."

37. Thus considered. On point No.'A' we hold that the marriage by the party (parties) to divorce decree in contravention or violation of Section 15 of the Hindu Marriage Act, i.e., party marrying again within a period of limitation for filing appeal against the divorce decree or during the pendency of the appeal filed within limitation, shall not be void. Such re-marriage would still be a valid marriage, but the parties to such re-marriage would be doing it at their own risk of ultimate result in the appeal. In other words, such valid re-marriage would remain subject to the ultimate result of the appeal filed against the divorce decree.

38. In ***Darshana*** (supra), the High Court of Bombay at Nagpur held that the marriage contracted during the period prescribed by Section 15 of the

Hindu Marriage Act, 1955 would not be void but merely invalid. So far this judgment is concerned, we are partly in agreement that the marriage contracted contrary to the provisions of Section 15 of the Act would not be void, but with respect, we are not in agreement with the view that it is merely invalid. For the discussion made above, we are of the view that such a marriage is also not invalid. But is a perfectly valid marriage, which is subject to the outcome of the appeal, and shall abide by the result of the appeal and the directions, if any, issued in the appeal.

Point No.'B':

39. The learned Court has recorded in its judgment that the husband had no interest to lead happy marital life with the wife and thereby neglected the wife by refusing to lead sexual life without any reasonable cause and thereby committed much mental cruelty on wife. On that ground of mental cruelty, divorce was granted.

40. Submission of the appellant was that in arriving at such finding, the learned Court has wrongly read the admission of the appellant though there was no such admission that he did not cooperate for sexual life. He submitted that mere admission that there was no relationship of husband and wife did not mean that it was because of the appellant. So, his submission was that the finding on the ground of mental cruelty based on such relationship between the parties suffers from perversity.

41. The learned *amicus curiae* also pointed out that there was no such admission.

42. Learned counsel for the respondent also could not point out from the evidence of the appellant as RW 1 before the learned Court that there was any such admission. However, she submitted that unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason, amounted to mental cruelty. She relied upon one of the illustrations of 'mental cruelty', as in ***Samar Ghosh*** (supra) in para-101 (xii):

> "(*xii*) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty."

43. The submission of the learned counsel for the respondent was that for the said reason, the appellant caused mental cruelty to the wife and therefore, the decree of divorce granted by the learned Court is sustainable. The appellant submitted that there was no unilateral decision of the appellant of refusal to lead marital life with the wife. He submitted that it was the wife's refusal and non-cooperation.

44. We have gone through the evidence of RW 1 and from perusal of the evidence, what transpires is that the admission was only of no physical relationship, but not that it was because of the appellant. It is in the evidence of RW 1 that, after 13.01.2021 the parties never resided together. Their marriage date is 31.10.2020. It is further in his evidence that he informed to the caste elders in the meeting that the wife was not interested to lead life with him. The wife as PW 1 in her chief-examination deposed that "*But there is no connotation or cohabitation between me and respondent*". In cross

examination, she deposed that "*Around 2 years and five months back my marriage was solemnized. In these two years five months, I stayed with respondent only for 15 days*." She deposed further 'in camera proceedings' to which we are not referring here, but the evidence of PW 1, on a perusal, is to the effect that the husband did not lead marital life. She added that she was also not interested, making the allegation of impotency on the husband. On this aspect, the finding has been recorded by the learned Court that the respondent was not impotent. Such finding is not under challenge. Consequently, we are not entering into that aspect and are not interfering with such finding. We also do not approve the finding that the husband was solely responsible for not leading the marital life. From the evidence on record, it is observed that both the parties are responsible for not being able to lead the marital life, though both of them are leveling the allegations against each other. The only fact which is not in dispute is that they were not leading marital life, and one accusing the other for the same. Therefore, it cannot be disputed or doubted that because of such life, there would be mental cruelty on the wife.

45. In ***Samar Ghosh*** (supra) on the point of 'mental cruelty' the Hon'ble Apex Court observed and held that the mental cruelty cannot remain static. It is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. What may be the mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. No uniform standard can

ever be laid down for guidance. The Hon'ble Apex Court, however, indicated the instances of mental cruelty, illustratively though not exhaustively.

46. It is apt to refer paragraph-101 of ***Samar Ghosh*** (supra) as under:

"**101.** No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(*i*) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(*ii*) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(*iii*) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(*iv*) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(*v*) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(*vi*) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(*vii*) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(*viii*) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(*ix*) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(*x*) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(*xi*) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(*xii*) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(*xiii*) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(*xiv*) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

47. In ***Joydeep Majumdar*** (supra), the Hon'ble Apex Court observed that the degree of tolerance will vary from one couple to another and the Court will have to bear in mind the background, the level of education and also the

status of the parties, in order to determine whether the cruelty alleged was sufficient to justify dissolution of marriage.

48. Recently, in ***Roopa Soni v. Kamalnarayan Soni***[10] the Hon'ble Apex Court held that the word 'cruelty' under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 has got no fixed meaning, and therefore, gives a very wide discretion to the court to apply it liberally and contextually. Paras 5 and 6 of ***Roopa Soni*** (supra) are as under:

> "5. The word 'cruelty' under Section 13(1)(ia) of the Act of 1955 has got no fixed meaning, and therefore, gives a very wide discretion to the Court to apply it liberally and contextually. What is cruelty in one case may not be the same for another. As stated, it has to be applied from person to person while taking note of the attending circumstances.
>
> 6. In *Vishwanath Agrawal* v. *Sarla Vishwanath Agrawal*, (2012) 7 SCC 288 this Court sufficiently sets out:
>
> "22. The expression "cruelty" has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.
>
> 25. After so stating, this Court observed in *Shobha Rani case* [(1988) 1 SCC 105 : 1988 SCC (Cri) 60] about the marked change in life in modern times and the sea change in matrimonial duties and responsibilities. It has been observed that : (SCC p. 108, para 5)
>
> "5. … when a spouse makes a complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are

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accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance."

26. Their Lordships in *Shobha Rani case* [(1988) 1 SCC 105 : 1988 SCC (Cri) 60] referred to the observations made in *Sheldon* v. *Sheldon* [[1966] P. 62 : [1966] 2 WLR 993 : [1966] 2 All ER 257 (CA)] wherein Lord Denning stated, "the categories of cruelty are not closed". Thereafter, the Bench proceeded to state thus : (*Shobha Rani case* [(1988) 1 SCC 105 : 1988 SCC (Cri) 60], SCC p. 109, paras 5-6)

"5. … Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty.

6. These preliminary observations are intended to emphasise that the court in matrimonial cases is not concerned with ideals in family life. The court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord Reid observed in *Gollins* v. *Gollins* [[1964] A.C. 644 : [1963] 3 WLR 176 : [1963] 2 All ER 966 (HL)] : (All ER p. 972 G-H) '… In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with this man or this woman.'"

32. In *Samar Ghosh* v. *Jaya Ghosh* [(2007) 4 SCC 511], this Court, after surveying the previous decisions and referring to the concept of cruelty, which includes mental cruelty, in *English, American, Canadian and Australian cases*, has observed that : (SCC pp. 545-46, paras 99-100)

"99. … The human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in the other case. The concept of cruelty differs from person to person depending upon his upbringing,

level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. **There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances…."**

(emphasis supplied)"

49. In ***Rakesh Raman v. Kavita***[11] the Hon'ble Apex Court observed that the long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the bitterness between the two has to be read as 'cruelty' under Section 13 (1) (ia) of the Hindu Marriage Act.

50. In ***Rakesh Raman*** (supra), the married couples were living separately for last 25 years with multiple court cases between them, the Hon'ble Apex Court observed that the continuation of such a marriage would only mean giving sanction to cruelty which each is inflicting on the other. Para 21 of ***Rakesh Raman*** (supra) reads as under:

"21. We have a married couple before us who have barely stayed together as a couple for four years and **who have now been living separately for the last 25 years**. There is no child out of the wedlock. The **matrimonial bond is completely broken and is beyond repair**. We have no doubt that **this relationship must end as its continuation is causing cruelty on both the**

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> **sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1)(ia) of the 1955 Act.** We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock."

51. In the present case, the fact remains from the evidence of both the parties, PW 1, the wife and RW 1, the husband that, they are not leading marital life. Though there may not be unilateral refusal to lead marital life and it may be due to both the parties or may be anyone of them, undisputedly there was no sexual life. The parties have been living separately, since long. The respondent/wife has also remarried. Under the facts and circumstances, they cannot lead happy married life together. Their marriage, in fact, was broken down irretrievably. It became a dead relationship. The same has to be read as cruelty under Section 13 (1) (ia) of the Hindu Marriage Act.

52. We are of the view that under the circumstances, if this Court interferes with the decree passed by the learned Court, that would add to the miseries of the parties.

53. On Point-B, we thus hold that the judgment and decree of the learned Court granting divorce deserves to be maintained.

Result:

54. We do not find it a case for interference with the decree of divorce granted by the learned Court.

55. We put on record the words of appreciation for learned *amicus curie* for the assistance extended to the Court.

56. The appeal is dismissed. The parties to bear their own costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

CHALLA GUNARANJAN, J

Date: 14.02.2025
Dsr

Note:
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