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

Date of Decision: 19.03.2021

\+ MAT.APP. (F.C.) 45/2021 & CM APPLs. 10784-85/2021

SH. PRAHLAD SINGH ..... Appellant
Through: Mr. Paramjeet Singh, Adv.

versus

SMT. SEEMA @ VIDHYA ..... Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present appeal assails the judgment and order dated 20.05.2020 passed by the learned Additional Principal Judge, Family Court, Tis Hazari in HMA No. 261/2017 which had been preferred by the appellant seeking a decree of nullity declaring his marriage with the respondent as being null and void.

2. The marriage of the appellant Mr. Prahlad Singh with the respondent, Ms. Seema was solemnized, as per Hindu rites and customs, on 05.05.2009 in Delhi. They have a daughter from this wedlock.

3. In 2017, the appellant/petitioner instituted HMA No 261/2017 before the learned Family Court on the ground that he had been duped into the marriage

by the respondent. He claimed that the respondent had concealed her previous marriage to one Mr. Praveen Kumar, with whom her relationship had deteriorated to such an extent that both of them had registered FIRs against the other. The appellant further claimed that the respondent, before getting married to him, had not obtained a divorce from the said Mr. Praveen Kumar, which implied that their marriage was *void ab initio*.

4. Before the learned Family Court, the respondent contended that (i) she had never hidden her previous marriage from the respondent and that he knew of the same. She claimed that he had helped her obtain a customary divorce from Mr. Praveen Kumar; and that (ii) she had not committed any act of domestic violence against the family of the appellant and rather, it was her who had been subjected to the same. She even underwent a medical examination at the Lal Bahadur Shastri Hospital after one such violent incident, which she could prove by way of the MLC issued, and was eventually compelled to file a complaint against the appellant's father under Section 354 IPC after he had tried to outrage her modesty.

5. In the heels of this written statement, the appellant filed a replication and then an application seeking a judgment on admissions, under Order XII Rule 6 of the Civil Procedure Code. This application was dismissed by the learned Family Court and, at the appellate stage, by the learned Single Judge as also the learned Division Bench of this Court. However, once pleadings were complete, on 02 04.2019, the learned Family Court framed the following issues for the purpose of a final adjudication:

> *(1). Whether the respondent was having a spouse living at the time of his marriage with the petitioner as alleged in the petition? OPP*
> *(2). Whether this marriage between the petitioner and the respondent is liable to be declared null and void by a decree of nullity, as prayed in the petition? OPP*
> *(3). Whether the petitioner is entitled for the relief as prayed in the petition? OPP*
> *(4). Relief*

6. Ultimately, the impugned order came to be passed, rejecting the appellant's claim that as on the date of the marriage between the parties herein, the marriage between the respondent and Mr. Pravin Kumar was still subsisting. The learned Family Court delved into the custom of dissolving marriages without moving a Court of law and, instead, approaching the concerned *panchayat* and held that the same was a recognised and widely prevalent custom amongst the Jaats of Jalandhar and other neighbouring districts. The learned Family Court observed that since both the appellant and the respondent belonged to the Jaat community in Uttar Pradesh which practiced the custom as well, there was no question of penalising only the respondent for failing to approach the Court for a formal decree of divorce, when the appellant himself had availed of the same custom for the purpose of dissolving his marriage with his previous wife. The relevant extracts of the impugned judgment which contain the reasoning adopted by the learned Family Court read as under:

> "*27. I am of the opinion that in the facts of this case, the judgements relied on behalf of the petitioner would not be*

attracted. In this case, it is not in dispute that there is such a custom prevalent in the community to which the parties belong. The petitioner himself, admittedly before his marriage to the respondent, was married to one Ms. Mamta. The petitioner in his cross examination dated 04.02.2020 admitted that he had taken divorce from Ms. Mamta. The petitioner admitted that the said divorce between him and Ms. Mamta was not granted by any court and it was a Panchayati divorce. Thus there is sufficient material on record of this case to show that in the community to which the parties belong, Panchayati divorce is a permissible mode of divorce.

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29. Further, it is not in dispute that the parties had undertaken all marriage ceremonies in accordance with Hindu rites and customs. Before the disputes precipitated between them, the parties lived together as husband and wife and were treated as such. They had a girl child from this wedlock. Parents of the petitioner were also treating the respondent as wife of the petitioner as would become clear from a copy of the document on the file whereby the respondent with the daughter was allowed to live on the II Floor of the premises belonging to the mother of the petitioner and a copy of the plaint of civil suit filed by the mother of the petitioner for eviction of the respondent from his premises. In these documents the respondent has been described as the wife of the petitioner. In such circumstances, a strong presumption would arise that the respondent is the legally wedded wife of the petitioner and it was for the petitioner to plead and lead evidence to show the contrary.

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35. It is the case of the petitioner that in this case he came to know about the subsistence of marriage between the respondent and Praveen Kumar only after filing the petition for divorce in the year 2013 and thus he withdrew that petition and filed the preent petition. Respondent has maintained that the petitioner and his family were aware of all facts and they were shown all relevant documents. She has also maintained that the petitioner and his father were actively involved in preparation of divorce papers of the respondent with Praveen Kumar and they had accompanied her at the time she went for notarization of that deed. She has also alleged that the Advocate who had prepared her own documents for divorce was the same person who had prepared the documents

of divorce for the petitioner. The petitioner did not file the documents relating to his own divorce with Ms. Mamta by customary mode in this court even though it was specifically pointed out in the written statement filed by the respondent and questions were asked to the petitioner in his cross-examination. The respondent had also filed an application seeking production of documents relating to divorce of the petitioner. Fact that both parties had taken divorce in similar manner and may be through the same Advocate would show that both parties were aware of all facts and believed that their marriages with their earlier spouses stood dissolved. Section 23(1)(a) of the Hindu Marriage Act stipulates that in any proceedings under this Act, the court needs to be satisfied that the petitioner is not in any way taking advantage of his or her own wrong or disability for the purpose of relief. The petitioner has raised the plea of nullity of marriage only after matrimonial disputes developed between the parties and litigation started. Material on record to my mind, shows that the petitioner had full knowledge of all relevant facts relating to marriage of the respondent with the respondent. In the event, the petitioner desires to do so; he would be required to file a petition for divorce in accordance with law. Fact that the petitioner had earlier filed a petition for divorce which he withdrew and then filed the present petition would not be sufficient to conclude that the petitioner was not aware about the alleged subsistence of marriage of respondent with Praveen Kumar."

7. Aggrieved by the aforesaid findings, the present appeal has been filed. Assailing the impugned order, learned counsel for the appellant, at the outset, submits that at the time of his marriage to the respondent, her marriage to Praveen Kumar was still subsisting, thereby rendering her marriage to the appellant a nullity. He further avers that the respondent had neither proved that she belongs to the Jaat community nor led any evidence to prove the custom of obtaining divorces without approaching the Court He, therefore, contends that the marriage of the respondent could be dissolved by the grant of decree of

divorce under the Hindu Marriage Act, and, therefore, the respondent could not claim that her marriage with Mr. Pravin Kumar stood dissolved through the deed of dissolution dated 06.01.2009. He, thus, contends that the respondent's previous marriage is still subsisting and the marriage between the parties herein was void ab initio, which was not appreciated by the learned Family Court.

8. We have heard learned counsel for the appellant and perused the record, and are unable to find any infirmity in the decision of the learned Family Court.

9. While the appellant has contended that he did not know of the respondent's earlier marriage, this was denied by the respondent who claimed that rather- it was the appellant who had been married earlier to one Ms. Mamta, which position came to be established at the time of cross-examination before the learned Family Court. The respondent contended that her former marriage with Mr. Praveen Kumar was, like the earlier marriage of the appellant with Ms. Mamta, dissolved through the customary marriage dissolution process practiced in the Jaat community to which they belonged. She even contended that the document of this customary divorce, in her case, was prepared by the same Advocate who had done it previously for the appellant and Ms. Mamta. It also remains a matter of record that the appellant had admitted before the learned Family Court that his family and he were closely involved in the mediation which the respondent had been ordered to have with her former husband at the Allahabad High Court Mediation Centre.

10. As it turns out, this was a case where both the parties have admitted to having other marriages which predated their marriage to each other. They both stated to have dissolved their respective marriages through deeds of dissolution

executed in the presence of the Panchayat, rather than pursuing a formal decree of divorce through the Family Court. They claimed that this was customary for Jaats of Jalandhar and neighbouring districts. It appears that this type of customary divorce is not foreign to the Indian courts and has already been recognized and dealt with in numerous decisions of the Supreme Court and this Court; it is also recognized and accepted under Section 29(2) of the Hindu Marriage Act which permits marriages to be dissolved in accordance with the custom governing the parties. This position was also considered by the learned Family Court which had explored the prevalent position of law by referring to the decisions of the Delhi High Court in ***Balwinder Singh Vs. Gurpal Kaur****AIR 1985 Delhi 14* and of the Supreme Court in ***Gurdit Singh Vs. Angrez Kaur****AIR 1968 SC 142*; the relevant extracts from the impugned judgment in this regard, read as under:

> *"23. Dissolution of marriage by divorce was unknown to Hindu law. However, in certain communities divorce was recognized by custom and the courts upheld such custom when it was not opposed to public policy. It was in this background that the social customs and usages which have on account of continuous and uniform observance over the years acquired force of law amongst certain communities have been expressly saved by Section 29(2) of the Hindu Marriage Act. A Hindu marriage may now be dissolved either under section 13 of the Act or under any special enactment or in accordance with any custom applicable to the parties. [See Balwinder Singh vs. Gurpal Kaur, (AIR 1985 Delhi 14].*
> *24. The petitioner admittedly belongs to Jaat community. The petitioner in his cross-examination dated 04.02.2020 said that he did not know if the respondent also belongs to Jaat community and he was not able to disclose the community to which the respondent belongs. The respondent in her evidence has stated that she belongs to Jaat community. The respondent in her cross-examination was suggested that she does not belong to Jaat*

> *community. This suggestion was denied by her. The respondent was not suggested as to which other community she belongs. The deed of dissolution of marriage dated 06.01.2009 (Ex.RW1/D1) records that the respondent belongs to Jaat community. I see no reason to disbelieve the respondent that she belongs to Jaat community.*
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> *25. Hon'ble Suprme Court in the case of Gurdit Singh vs. Angrez Kaur, [AIR 1968 SC 142] had recognized that among the Hindu Jaats of Jalandhar, there is a custom by which the husband can dissolve his marriage with his wife without moving to a court of law. Subsequently in Balwinder Singh vs. Gurpal Kaur, AIR 1985 Delhi 14, Hon'ble Delhi High Court held that such custom was prevalent not only among the Jaats of Jalandhar but among Jaats of various other neighboring districts. In this case the respondent has stated that she and the petitioner both belong to Jaat community residing at Uttar Pradesh."*

11. While the appellant has contended that the respondent is not entitled to obtain a divorce under such customary provisions, he does not deny that the custom of obtaining divorce in Jaat community has been duly recognized by the Supreme Court viz. the Jaat community in Jalandhar, and by this Court as regards the Jaats of Jalanadhar and various neighbouring districts. The appellant has also been unable to rebut the respondent's plea that she, like the appellant, also belonged to the Jaat community which practiced this custom, by adducing any material evidence before the learned Family Court, or before us today. Moreover, the fact that the respondent's former husband, Mr. Praveen Kumar, has neither disputed their divorce nor claimed restitution of conjugal rights, was taken into consideration as well by the learned Family Court.

12. Another factor that weighed with the learned Family Court was that though the marriage between the parties was solemnized in 2009 and they were blessed with a daughter, the appellant had preferred the petition seeking a

divorce only in 2015, after the passage of almost six years from the date of their marriage. We are inclined to agree with the learned Family Court that this delay, in itself, exposed the gaps in the appellant's plea that he was neither aware of the respondent's earlier marriage, nor of her customary divorce from her former husband.

13. In these circumstances, we find absolutely no infirmity in the impugned order.

14. The appeal, along with the pending applications is dismissed with no order as to costs.

(REKHA PALLI)
JUDGE

(VIPIN SANGHI)
JUDGE

MARCH 19, 2021
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