

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.M-297 of 2013
Date of Decision: 17.1.2014

Harkanwalpreet Singh

..... Appellant

Versus

Harshpreet Kaur

.....Respondent

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MS. JUSTICE NAVITA SINGH**

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Present: Mr. Balbir Singh Sewak, Advocate,
for the appellant.

Mr. Manvinder Singh Sidhu, Advocate,
for the respondent.

S.S. SARON, J.

Mr. Manvinder Singh Sidhu, Advocate has put in appearance on behalf of the respondent-Harshpreet Kaur. The Vakalatnama and the affidavit of Harshpreet Kaur-respondent that have been filed by him in Court today are taken on record. In the affidavit that has been filed by the respondent, it is inter-alia stated by her that she has no objection, if the present appeal is allowed.

Heard learned counsel for the parties.

The appellant filed a petition under Section 11 of the Hindu Marriage Act, 1955 ('Act'-for short) for declaring the marriage between the parties to be a nullity. It is submitted that the marriage between the parties was solemnized by Anand Karaj ceremony at Gurudwara Jyoti Sarup, Nabha Gate, Sangrur on 21.2.2007. After marriage, the parties lived and cohabited as husband and wife at Dhuri, District Sangrur. The parties last resided together at Village Pandori, Tehsil

Jagraon, District Ludhiana. From the marriage, they had two children namely Akalroop Kaur (daughter) and Jasmeet Singh (son). The respondent-Harshpreet Kaur shifted to America alongwith the minor children and thereafter, she has not returned.

It is alleged by the appellant that in the month of June, 2012, he came to know that the respondent-Harshpreet Kaur was already married with one Varinder Singh Thandi son of Davinder Singh, resident of Village Manakwal, Post Office Gill, Ludhiana. A divorce petition was pending between the respondent-Harshpreet Kaur and said Varinder Singh Thandi since 23.12.2006, which was decided on 18.1.2010. As the marriage of the respondent with her previous husband was subsisting at the time of solemnization of the marriage of the appellant with the respondent, therefore, according to the appellant, the present marriage between the parties was a nullity. The appellant after coming to know of the previous marriage of the respondent with Varinder Singh Thandi, in the month of June, 2012, contacted the respondent but he got no response. There was no cohabitation between the parties after June, 2012.

On notice in the trial Court, the respondent put in appearance through her counsel but later she did not appear to contest the petition and was proceeded ex parte. The appellant examined himself as PW-1 and deposed his affidavit (Ex.PA); Inderjit Kaur (PW-2) was examined and she deposed her affidavit (Ex.PB). The copy of the judgment dated 18.1.2010 (Ex.P-3) and copy of decree sheet dated 18.1.2010 (Ex.P-4) whereby divorce was granted to the respondent in respect of her earlier marriage, were tendered in evidence; besides, copy of marriage certificate and copy of corrigendum of marriage certificate (Ex.P-1 and P-2 respectively) were tendered in evidence.

The learned Additional District Judge, Ludhiana after considering the evidence and material on record came to conclusion that the marriage was solemnized between the parties on 21.2.2007 and it was well nigh impossible that the factum of earlier marriage was not in the knowledge of the appellant, particularly when the parties had lived and cohabited together for a considerable period and two children were born from the marriage. It was held that the appellant was guilty of suppression of material facts from the Court as he had failed to disclose as to how long the respondent continued living with him and on which date and year, she left for America. He also failed to disclose the age of his children. As per copy of judgment and decree (Ex.P-3 and Ex.P-4), the marriage between the respondent and Varinder Singh Thandi was dissolved by a decree of divorce on 18.1.2010 while the present petition seeking nullity of the marriage between the parties was filed on 16.8.2012. Besides, the petition on which the judgment and decree dated 18.1.2010 (Ex.P-3 and Ex.P-4) were passed was filed on 23.12.2006. As such, it was held that it cannot be said that the appellant was ignorant of the earlier marriage of the respondent. The very fact that the present petition had been filed after over 2-1/2 years of the divorce decree between the respondent and Varinder Singh Thandi according to the learned trial Court, showed that there was an inordinate delay in filing the present petition seeking nullity of the marriage. The learned trial Court accordingly drew an inference of collusiveness between the parties. Once the earlier marriage had been dissolved by the Court, the present marriage, it was held was not liable to be annuled on the basis of Section 5(i) of the Act. The petitioner by his own act and conduct was estopped from filing the petition for annulment of the marriage. The present petition was nothing but an abuse of the process of the Court.

In the affidavit that has been filed in Court today, it has been deposed by the respondent-Harshpreet Kaur that her marriage was solemnized with Varinder Singh Thandi on 06.8.2006. The respondent filed a divorce petition against said Varinder Singh Thandi on 23.12.2006. It was allowed on 18.1.2010. During the pendency of the said divorce petition, she solemnized her second marriage on 21.2.2007 with the appellant-Harkanwalpreet Singh Mander. The latter filed a petition under Section 11 of the Act on 16.8.2012. She appeared before the learned Additional District Judge, Ludhiana where the petition was pending through her counsel. At that time, she was in India as she arrived on 01.1.2012 and thereafter left for USA on 05.10.2012. She had again come to India on 10.1.2014 and was residing with her parents. She had no objection if the present appeal was allowed.

We have given our thoughtful consideration to the facts and circumstances of the case. The provision of Section 5 of the Act inter-alia enjoin that a marriage may be solemnized between any two Hindus, if the conditions envisaged therein are fulfilled. The condition envisaged by clause (i) is that neither party has a spouse living at the time of the marriage. Admittedly, the respondent-Harshpreet Kaur had a spouse living namely Varinder Singh Thandi at the time when her marriage was solemnized with the appellant-Harkanwalpreet Singh on 21.2.2007. She got a divorce from said Varinder Singh Thandi on 18.1.2010 i.e. after the marriage between the parties.

In terms of Section 11 of the Act, which relates to void marriages, it is envisaged that any marriage solemnized after the commencement of the 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 one of the

conditions specified in clauses (i), (iv) and (v) of Section 5 of the Act. Admittely, clause (i) of Section 5 of the Act has been contravened in the present case.

In the facts and circumstances, the respondent has admitted the case of the appellant. It is accepted by her that she had a spouse living at the time of her marriage with the appellant. This indeed contravenes Section 5(i) of the Act. As such merely because they have been married for a considerable time, it cannot per se be said that they are acting in collusion with each other. It is better if the marriage is declared null and void on the basis of the accepted position rather than making the parties go through a protracted litigative process. Besides, it is the statutory provision of Section 5(i) of the Act, which has been infringed and there is no estoppel against a statute. Therefore, in view of the admission on the part of the respondent that she had a spouse living at the time when her marriage was solemnized with the appellant-Harkanwalpreet Singh, we find no reason, why the marriage between the parties should not be declared void as it contravenes Section 5(i) of the Act.

Accordingly, the appeal is allowed and the judgment and decree of the learned trial Court is set aside and the marriage between the parties is declared void. There shall be no order as to costs.

(S. S. SARON)
JUDGE

(NAVITA SINGH)
JUDGE

17.1.2014
G. Bhardwaj