

vgm  
IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**FAMILY COURT APPEAL NO. 172 OF 2010  
WITH  
CIVIL APPLICATION NO. 148 OF 2011,  
CIVIL APPLICATION NO. 149 OF 2011  
AND  
CIVIL APPLICATION NO. 27 OF 2012**

Ankita Dhandeep Salot ...Appellant

V/s.

Dhandeep Gautam Salot & Anr. ...Respondents

Mr. C.G. Gavnekar, *Amicus Curiae*

Mr. Vinod Jadhav for the Appellant

Mr. S.S. Kudalkar for the Respondents

**CORAM: A.M. KHANWILKAR AND  
N.M. JAMDAR, JJ.**

**DATE: MARCH 06, 2012**

**P.C.:-**

The appeal is directed against the judgment and order dated 4<sup>th</sup> October, 2010 passed below Civil Miscellaneous Application No. 59 of 2010.

2. Respondent No.1 filed Petition No. A-1178 of 2008 for divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955. *Ex-parte* decree was passed in the said petition on 23<sup>rd</sup> December, 2009. The appellant filed application for setting aside the said *ex-parte* decree, being Civil Miscellaneous Application No. 59 of 2010, on 3<sup>rd</sup> March, 2010. Respondent No.1 claims to have entered into second marriage with respondent No. 2 on 1<sup>st</sup> May, 2010 after waiting for reasonable period after passing of the decree dated 23<sup>rd</sup> December, 2009. It is only after the second marriage, the application for setting aside the *ex-parte* decree was served on respondent No. 1 on 5<sup>th</sup> May, 2010.

3. Respondent No. 1, however, proceeded to get the second marriage with respondent No. 2 registered on 19<sup>th</sup> May, 2010. Respondent No. 1 then moved application before the Family Court, praying that, in view of the subsequent developments, the application preferred by the appellant for setting aside th *ex-parte* decree has become infructuous. The Family Court, by the impugned judgment and order, was pleased to reject the application preferred by the appellant for setting aside the *ex-parte* decree of divorce in respect of her marriage with respondent No. 1.

4. As a result, the appellant filed the present appeal, which has been admitted on 3<sup>rd</sup> March, 2011. During the pendency of this appeal, the abovenumbered applications have been filed for reliefs referred to therein. According to the appellant, she was misled by respondent No. 1. She verily believed respondent No. 1 when he mentioned that she should not be worried about the service of notice on her from the Family Court, including the decree passed by the Family Court.

5. That allegation has been countered by respondent No. 1 before this Court. Nevertheless, respondent No. 1, during the course of arguments of the proceedings, through counsel, submitted that he will not mind, if the parties are relegated before the Family Court for re-trial of Petition No. A-1178 of 2008 filed by him for divorce under Section 13(1)(ia) of the Hindu Marriage Act in relation to the marriage solemnised on 13<sup>th</sup> November, 2006 at Bandra, Mumbai, as per the Hindu Vedic Rites and Customs with the appellant. He, however, submits that the statement made by respondent No. 1 may not be construed as acceptance of allegations made by the appellant *qua* him, including of having misled her in believing that the notice served on her received from the Family Court was inconsequential.

6. Further, without prejudice to the rights and contentions of the respondents, the respondents are willing to go back before the Family Court for fresh trial of the petition, from the stage of filing of the Written Statement by the appellant, to give one opportunity to the appellant. The counsel for the appellant, on instructions, submits that the appellant has no objection for adopting this course, as she would get opportunity to contest the proceedings filed by respondent No. 1 against her. At the same time, the appellant may be permitted to urge that the second marriage performed by respondent No. 1 with respondent No. 2 on 1<sup>st</sup> May, 2010 and registered on 19<sup>th</sup> May, 2010 is illegal, nullity and not binding on her and to be made subject to the outcome of the proceedings filed by respondent No. 1 against her. The appellant submits that that aspect may be kept open to be tried before the Family Court on its own merits.

7. In view of the above, by consent, we proceed to set aside the judgment and order passed by Family Court No. 5, Mumbai, dated 4<sup>th</sup> May, 2010 in Civil Miscellaneous Application No. 59 of 2010, and, instead, allow the said Civil Miscellaneous Application No. 59 of 2010. As a result, Petition No. A-1178 of 2008 is restored to the file of the Family Court, to be tried afresh from the stage of filing of Written

Statement by the respondent herein. This is without prejudice to the rights and contentions of the parties. All questions to be decided in the said proceedings or in the proposed proceedings to be taken out by the appellant herein will have to be decided on their own merits in accordance with law after giving opportunity of hearing to both parties.

8. While parting, we may place on record that, since the counsel appearing for the appellant and the respondents were not very clear about the status of the second marriage, if the *ex-parte* decree passed on 23<sup>rd</sup> December, 2009 was to be set aside, we requested Mr. C.G. Gavnekar to assist us on the said legal aspect. He graciously accepted the said request. He has invited our attention to several decisions of the Supreme Court as well as of our High Court.

9. We may usefully refer to the decision of three-Judges Bench of the Apex Court in the case of *Lila Gupta v. Laxmi Narain*, reported in AIR 1978 S.C. 1351, wherein the Apex Court, dealing with similar circumstances, has opined that, keeping in view the fact that the scheme of the Hindu Marriage 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 the re-marriage after the statutory period provided for appeal against the decree of divorce is over, would be void.

10. We express our gratitude to Mr. Gavnekar for the able assistance given by him and also for having prepared the matter at short notice.

11. Accordingly, the appeal is disposed of on the above terms. In view of the disposal of the appeal, we do not intend to examine the controversy raised in any of the Civil Applications. The same are also disposed of, with liberty to the parties to agitate those reliefs before the Family Court, where the petition will proceed in terms of this order. The parties shall appear before the Family Court at Bandra, Mumbai, on 26<sup>th</sup> March, 2012, when the Family Court would proceed in the matter, keeping in view all the observations made hitherto. No order as to costs.

12. The amount deposited by respondent No. 1 in this Court in terms of order dated 14<sup>th</sup> October, 2011 be remitted to the Family Court at Bandra, Mumbai, to be credited in proceedings, being Petition No. A-

1178 of 2008. The parties will be free to file application before the Family Court for appropriate relief with regard to the said amount, as may be advised. The Family Court to pass order thereon on its own merits.

13. Both parties are present, and were asked whether the disposal of the appeal proceedings before this Court on the above terms is acceptable to them. Both of them have been explained the consequences flowing from this order, and have willingly accepted the said arrangement.

**N.M. JAMDAR, J.**

**A.M. KHANWILKAR, J.**