IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). 6966 OF 2011

SHIROMANI JAIN **Appellant(s)**

VERSUS

DR. ASHOK KUMAR JAIN & ANR. **Respondent(s)**

O R D E R

Heard Mr. S.S. Khanduja, learned counsel appearing for the appellant and Ms. Anitha Shenoy, learned counsel appearing for the respondents.

Aggrieved by the judgment and decree passed by the Family Court dismissing application preferred by the wife under Section 17 of the Hindu Marriage Act, 1955 (in short 'the Act'), which has been affirmed by the High Court vide judgment and order dated 3.1.2006 passed in F.A. No. 306 of 2003.

Prayer in the application was that second marriage between Dr. Ashok Kumar Jain and Smt. Jyoti Jain was void and it be declared that the appellant was the legally wedded wife of the respondent- Dr. Ashok Kumar Jain. According to the appellant her marriage with Dr. Ashok Kumar Jain was performed on 2.3.1992 at Kundalpur in a Jain Temple

according to Hindu rites by taking seven steps and father of the appellant gave dowry of Rs.2,00,000/- (Rupees two lakhs only). Thereafter the appellant and the respondent No.1 resided together as husband and wife and admittedly gave birth to a male child- Manu in the year 1996.

She was ultimately thrown out of the house alongwith her son by Dr. Ashok Kumar Jain for not bringing sufficient dowry.

Thereafter the respondent- Dr. Ashok Kumar Jain filed an application under Section 9 of the Act for restitution of conjugal rights. It was pleaded that appellant was wife of respondent no.1- Dr. Ashok Kumar Jain and respondent no.1- Dr. Ashok Kumar Jain at several paragraphs of application mentioned that there was marriage between him and the appellant. However, the said case was dismissed in default of the appearance of Dr. Ashok Kumar Jain. Thereafter without obtaining divorce from the appellant, Dr. Ashok Kumar Jain has performed re-marriage with respondent no.2- Smt. Jyoti Jain on 13.05.2001 which was illegal and void as per the provisions of Section 17 of the Act.

The respondent- Dr. Ashok Kumar Jain in his reply contended that no marriage was performed with the applicant as per the Hindu rites, only an agreement had been entered into between the parties. He later on came to know that notarised agreement could not be said to be valid form of marriage. Respondent No.2 had performed marriage with the respondent No.1- Dr. Ashok Kumar Jain in a Jain Temple in

the year 2001.

The Family Court had passed judgment on 27.2.2003 dismissing the application holding that performance of marriage in accordance with Hindu rites has not been proved by the appellant. Relatives have not been examined and only the Agreement had been relied upon. The High Court had affirmed the judgment and order passed by the Family Court hence the appellant has come up in the appeal.

Learned counsel appearing on behalf of the appellant has submitted that the averments made in the application filed under Section 9 of the Act had not been taken into consideration either by the Family Court or by the High Court in which prayer had been made for restitution of the conjugal rights. Living together had not been denied apart from the fact that the son was born out of the wedlock has also not been disputed by Dr. Ashok Kumar Jain. The statement was made by the appellant that marriage was performed as per Hindu rites. Two witnesses have been examined to support factum of marriage, it was not necessary to multiply the witnesses. As such the courts below have committed error of law while dismissing the application filed under Section 17 of the Act.

Learned counsel appearing on behalf of the respondents has strenuously urged that Agreement had been executed on 16.1.1992. There is no cogent evidence indicating that marriage as per Hindu rites had been performed. Merely execution of the agreement could not be said to be valid

form of the marriage. Learned counsel had relied upon the decision of this Court in *Bhaurao Shankar Lokhande & Anr.* vs *State Of Maharashtra & Anr.* [AIR 1965 SC 1564] and *Gopal Lal* vs. *State of Rajasthan* [(1979)2 SCC 170).

It was further submitted that the male child- Manu was born in the year 1996. And the son born out of the relationship of appellant and respondent no.1 is 21 years by now. Parties have not been living together for the last 18 years; maintenance had been paid by the respondent No.1- Dr. Ashok Kumar Jain to the appellant and a sum aggregating to Rs. 8,00,000/- (Rupees eight lakhs) had been paid by now. At present maintenance rate is Rs.6,000/- (Rupees six thousand only) per month. The performance of second marriage has also not been proved. As such application under Section 17 of the Act has rightly been dismissed. There is daughter born out of the living together of respondent nos. 1 and 2. Daughter from second wife is aged about 14 years by now.

Thus, no interference need to be made in the peculiar facts and circumstances of the case particularly when the appellant is a practicing advocate.

After hearing learned counsel for the parties at length and going through the entire evidence on record including the judgments and the agreement, we are of the considered opinion that the Family Court as well as the High Court have not properly looked into the application filed under Section 9 of the Act by the respondent no.1 himself in which at several places he had categorically mentioned that

marriage of the appellant with respondent no.1 Dr. Ashok Kumar Jain had taken place. In view of the candid admission at several places, there was absolutely no doubt that marriage had taken place and that the factum of execution of agreement was not in dispute. Shiromani Jain has again supported factum of marriage. She had not been effectively cross examined. She had been supported by Sanjay Jain and Chandra Jain with respect to the fact that marriage had been performed in their presence at Kundalpur in Jain Temple. There is absolutely nothing to doubt their version. It was not necessary to multiply the witnesses. Particularly in view of the vital admissions made in the application filed under section 9 of the Act there is absolutely nothing to discard the statement of the appellant -wife as to performance of marriage as per Hindu rites particularly when they lived as husband and wife and male child-Manu was born in the year 1996. Statement of Dr. Ashok Kumar Jain is evasive. There is no effective cross examination of applicant and her witnesses. Without obtaining divorce, it was not open to respondent no.1 to perform re-marriage. It appears from the pleadings also that he had performed re-marriage again in the Jain temple in the year 2001 which could not have been performed without obtaining divorce from the appellant. Thus the second marriage has to be adjudged as void.

It is apparent that the second marriage had been performed in a temple and respondent no.1 and 2 started

living together and they have given birth to a female child also thus the facts and circumstances give rise to support the submission raised by the appellant that the second marriage had been performed. It is proved that the respondent no. 1 had married not only with the appellant but also with respondent no.2 also.

Learned counsel has relied upon the decision of this Court in *Bhaurao Shankar Lokhande's* case *(supra)* in which this court has laid down thus:

> **"5. The word 'solemnize' means, in connection with a marriage, 'to celebrate the marriage with proper ceremonies and in due form', according to the Shorter Oxford Dictionary. It follows, therefore, that unless the marriage is 'celebrated or performed with proper ceremonies and due form' it cannot be said to be 'solemnized'. It is therefore essential, for the purpose of Section 17 of the Act, that the marriage to which Section 494 IPC applies on account of the provisions of the Act, should have been celebrated with proper ceremonies and in due form. Merely going through certain ceremonies with the intention that the parties be taken to be married, will not make them ceremonies Prescribed by law or approved by any established custom**
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> **6.We are of opinion that unless the marriage which. took place between appellant no. 1 and Kamlabai in February 1962 was performed in accordance with the requirements of the law applicable to a marriage between the parties, the marriage cannot be said to have been 'solemnized' and therefore appellant no. 1 cannot be held to have committed the offence under Section 494 I.P.C.**
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> **7. We may now determine what the essential ceremonies for a valid marriage between the parties are. It is alleged for the respondent that the marriage between appellant no. 1 and Kamlabai was in 'gandharva' form, as modified by the custom prevailing among the Maharashtrians. It is noted in**

Mullas Hindu Law, 12th Edition, at p. 605 :

> **"The Gandharva marriage is the voluntary union of a youth and a damsel which springs from desire and sensual inclination. It has at times been erroneously described as an euphemism for concubinage. This view is based on a total misconception of the leading texts of the Smritis. It may be noted that the essential marriage ceremonies are as much a requisite part of this form of marriage as of any other unless it is shown that some modification of those ceremonies has been introduced by custom in any particular community or caste."**

He has also relied upon decision in *Gopal Ram's case* (*supra*), relevant paragraphs are as follows:

> **"3. The essential ingredients of which are: (i) that the accused spouse must have contracted the first marriage (ii) that while the first marriage was subsisting the spouse concerned must have contracted a second marriage, and (iii) that both the marriages must be valid in the sense that the necessary ceremonies required by the personal law governing the parties had been duly performed**
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> **5. What Section 17 contemplates is that the second marriage must be according to the ceremonies required by law. If the marriage is void its voidness would only lead to civil consequences arising from such marriage. Section 17 makes it absolutely clear that the provision has to be read in harmony and conjunction with the provisions of Section 494 of the Penal Code which has been extracted above. Section 17 clearly provides that provisions of Sections 494 and 495 of the Penal Code shall apply accordingly. In other words though the marriage may be void under Section 17, by reason of the fact that it was contracted while the first marriage was subsisting the case squarely falls within the four corners of Section 494 and by contracting the second marriage the accused incurs the penalty imposed by the said statute. Thus the combined effect of Section 17 of Hindu Marriage Act and Section 494 I.P.C. is that when a person contracts a second marriage after the coming into force of the said Act, while the**

first marriage is subsisting he commits the offence of bigamy. (Emphasis ours). This matter no longer res integra as it concluded by a decision of this Court in Bhaurao Shankar Lokhande and Anr. v. State of Maharashtra & Anr. This Court while considering the question of bigamy qua the provisions of Section 17 observed as follows:

"Section 17 provides that any marriage between two Hindus solemnized after the commencement of the Act is void if at the date of such marriage either party had a husband or wife living, and that the provisions of Sections 494 and 495 I.P.C. shall apply accordingly. The marriage between two Hindus is void in view of Section 17 if two conditions are satisfied: (i) the marriage is solemnized after the commencement of the Act;

(ii) at the date of such marriage, either party had a spouse living. If the marriage which took place between the appellant and Kamlabai in February 1962 cannot be said to be 'solemnized', that marriage will not be void by virtue of Section 17 of the Act and Section 494 I.P.C. will not apply to such parties to the marriage as had a spouse living".

The word 'solemnize' means, in connection with a marriage, 'to celebrate the marriage with proper ceremonies and in due form', according to the Shorter Oxford Dictionary. It follows, therefore, that unless the marriage is 'celebrated or performed with proper ceremonies and in due form' it cannot be said to be 'solemnized'. It is therefore essential, for the purpose of Section 17 of the Act that the marriage to which Section 494 I.P.C. applies on account of the provisions of the Act should have been celebrated with proper ceremonies and in due form".

It was thus pointed out by this Court that Section 17 of the Hindu Marriage Act requires that the marriage must be properly solemnized in the sense that the necessary ceremonies required by law or by custom must be duly performed. Once these ceremonies are proved to have been performed the marriage become properly solemnized and if contracted while the first marriage is still subsisting the provisions of Section 494 will apply automatically. In a

> **decision of this Court in Kanwal Ram & Ors. v. The Himachal Pradesh Administration the earlier case was noticed by the Court and relied upon. The matter has also been fully discussed in Priya Bala Ghosh v. Suresh Chandra Ghosh. In view of the authorities of this Court, therefore, the following position emerges: where a spouse contracts a second marriage while the first marriage is still subsisting the spouse would be guilty of bigamy under Section 494 if it is proved that the second marriage was a valid one in the sense that the necessary ceremonies required by law or by custom have been actually performed. The voidness of the marriage under Section 17 of the Hindu Marriage Act is in fact one of the essential ingredients of Section 494 because the second marriage will become void only because of the provisions of Section 17 of the Hindu Marriage Act. In these circumstances, therefore, we are unable to accept the contention of Mr. Mulla that the second marriage being void Section 494 will have no application. It was next contended by Mr. Mulla that there is no legal evidence to show that the second marriage which is said to be a nata marriage was actually performed. We are afraid, we are unable to go into this question because three courts have concurrently found as a fact that the parties were governed by custom of nata marriage and the two essential ceremonies of this marriage are:**
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> > **(1) that the husband should take a pitcher full of water from the head of the prospective wife;**
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> > **(2) that the wife should wear chura by the husband."**

There is no dispute about the aforesaid principles but the facts and circumstances and the evidence adduced in the instant case makes it clear that both the marriages had been performed as per Hindu rites. Factum of second marriage is also supported by the reply to application filed by Dr. Ashok Kumar Jain under Section 17 of the Act to annul the second marriage performed by him. He has taken a false

stand that it was only by virtue of an agreement he entered into the first marriage. There is nothing to doubt the version of the appellant in this case which is supported by the witnesses and the agreements also buttress the plea of appellant. There is admission with respect to the second marriage and that too in a temple, the mode adopted by the respondent no. 1 in both marriages was of performing the marriage in temples, the factum of second marriage as per rites in temple also cannot be discarded and disbelieved in the facts and circumstances projected in the instant case and supported by the conduct of the parties. In view of the aforesaid, we have no hesitation to allow the appeal. The judgment and orders passed by the courts below are set aside. Second marriage is declared to be void. It is declared that appellant is legally wedded wife of respondent no.1 Dr. Ashok Kumar Jain.

The appeal is allowed. No order as to costs.

.....J.
(ARUN MISHRA)

.....J.
(MOHAN M. SHANTANAGOUDAR)

NEW DELHI;
AUGUST 23, 2017

ITEM NO.102 COURT NO.11 SECTION IV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 6966/2011

SHIROMANI JAIN **Appellant(s)**

VERSUS

DR. ASHOK KUMAR JAIN & ANR. **Respondent(s)**

Date : 23-08-2017 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Appellant(s) **Mr. S.S. Khanduja, Adv.**
Dr. Nanda, Adv.
Mr. Yash Pal Dhingra, AOR

For Respondent(s) **Ms. Manjula Gupta, AOR**

Ms. Anitha Shenoy, AOR
Ms. Srishti Agnihotri,Adv.

UPON hearing the counsel the Court made the following
O R D E R

Second marriage is declared to be void. The appellant is declared aslegally wedded wife of respondent no.1 Dr. Ashok Kumar Jain.

The appeal is allowed in terms of the signed order.

(NEELAM GULATI) **(TAPAN KUMAR CHAKRABORTY)**
COURT MASTER (SH) **BRANCH OFFICER**
(SIGNED ORDER IS PLACED ON THE FILE)