



2026:AHC:51207-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL DEFECTIVE No. - 672 of 2025

Neha Jaykishore Mehrolia

.....Appellant(s)

Versus

Rahul Sisodia

.....Respondent(s)

Counsel for Appellant(s)	:	Ashwani Kumar Sachan, Saurabh Sachan
Counsel for Respondent(s)	:	Ajai Kumar Srivastava

Court No. - 29

HON'BLE ARINDAM SINHA, J.

HON'BLE SATYA VEER SINGH, J.

(Per Arindam Sinha, J.)

1. Mr. Saurabh Sachan, learned advocate appears on behalf applicant-appellant and presses for admission of the appeal on condonation of reported delay of 654 days. Mr. Ajai Kumar Srivastava, learned advocate appears for respondent.

2. Applicant-appellant was wife in the marriage declared void by judgment dated 18th August, 2023 of the Family Court. Mr. Sachan presses for admission on submission that respondent took ground under section 12(1)(c) in Hindu Marriage Act, 1955. Sub-clause (ii) under clause (a) in sub-section (2) of section 12 bars respondent from having taken the ground since he, subsequent to filing of the petition, cohabitated with his client and there was a baby from the union.

3. The application for condonation of delay was moved on 18th February, 2026. Paragraph 3 from our order made that day is reproduced below.

"3. There is an element of necessity to hear merits of applicant's case, even for answering the question on condonation of delay. As such list the application and appeal on 12th March, 2026 marked at 02:00 pm."

4. Mr. Sachan relies on several judgments. Firstly, view taken by a Division Bench of Calcutta High Court on **judgment dated 9th February, 1988 in C.O. no.3334 of 1987 [Binapani Hatui (Smt.) Vs. Ashoke Kumar Hauti]** reported in **1987(92) Cal WN 900**. Paragraph 3 from the judgment (Law

Finder print) is reproduced below.

*"3. It appears from the plaint of the said suit that the plaintiff opposite party filed a suit for declaration that the marriage solemnized between the plaintiff opposite party and the defendant petitioner Sm. Binapani Hatui under the Hindu Marriage Act was null and void because the said defendant petitioner was pregnant by some other person at the time of the marriage. It appears to us that any marriage solemnized after the commencement of the Hindu Marriage Act is not null and void on the ground that the wife was at the time of marriage pregnant by some other person but such marriage shall be voidable and it may be annulled by a decree of nullity under section 12 of the Hindu Marriage Act. **The learned Counsel for the defendant-petitioner is justified in his contention that for annulling a marriage on such ground, an application is to be made under the provisions of the Hindu Marriage Act before the appropriate forum, and a declaratory suit cannot be instituted.** In any event, no declaration can be made in the suit that such marriage was null and void from the beginning. He has, therefore, rightly contended that the application for injunction should not have been entertained in a suit which on the face of it appears to be misconceived."*

(emphasis supplied)

He next relies on view taken by a learned single Judge of Punjab and Haryana High Court on **judgment dated 19th January, 2007 in F.A.O. no.76-M of 2002 (O&M) (Balwinder Kaur Vs. Gurmukh Singh)**. Paragraph 12 from the judgment (Law Finder print) is reproduced below.

*"12. The consequences of declaring a marriage as void are serious and far-reaching. Such declaration not only effects parties to the marriage but it also effects the innocent persons, such as children born from the marriage. Therefore, the question of declaring a marriage nullity should not be lightly taken and decided until and unless it is clearly established that a ground provided under Section 11 of the Act for declaring the marriage void exists. Section 11 of the Act provides that a marriage can be declared null and void on a petition presented by either of the parties, if it was performed in contravention of any of the conditions specified in clauses (i), (iv) and (v) of Section 5. Clause (i) of Section 5 provides that at the time of solemnization of a marriage between two Hindus, neither of the party should have a spouse living at the time of the said marriage. Thus, if a spouse is already married and performs second marriage during the subsistence of the first marriage, the second marriage will be void marriage and either party to the said marriage can get declared the said marriage as void. **When in a petition for declaring a marriage***

*nullity, the factum of previous marriage is denied by the respondent, the burden lies on the petitioner to prove that a valid marriage was subsisting between the spouse and the third person at the time of the marriage in question. To establish that there was a previous valid marriage, he is required to plead and prove the essential ceremonies of the said marriage. To prove a valid marriage under the Hindu Law, it has to be established that marriage was performed in accordance with the customary rites and ceremonies, as required under Section 7 of the Act. The customary rites and ceremonies must be shown to have been followed and performed at the time of marriage to prove a marriage to be valid. The evidence regarding the performance of marriage according to Hindu Law must be brought on record to show that there had been a valid marriage. In order to perform a valid marriage under the provisions of the Act, two essential ceremonies had to be performed, namely, (1) Invocation before the sacred fire and (2) Saptapadi, and the absence of these two essential ceremonies invalidates the marriage. Such invalidity could not be cured simply by registration of marriage. If there was a valid marriage, registration of that marriage under section 8 of the Act becomes a proof of the valid marriage under the Act. **If there was no valid marriage, the registration also does not come to the rescue of the respondent to claim that there had been a valid marriage because of registration.** It is well settled that under the Hindu Law, for a valid marriage, a marriage should be established to be solemnized with proper ceremonies either by Saptapadi or by any other ceremony sanctioned by custom. In *Mausami Chakraborty v. Subrata Guha Roy*, (supra), it has been held that where the factum of marriage is disputed, essential ceremonies constituting the marriage must be pleaded and proved. The evidence regarding performance of the marriage according to Hindu rites must be brought on record to show that the marriage was valid. **The registration certificate of the marriage issued by the authority itself is no proof of valid marriage, until and unless it is proved that the said marriage was validly performed in accordance with the provisions of the Act.** The validity of the marriage does not depend on registration or omission to make any entry in the register. The registration certificate itself is not a conclusive proof of a valid marriage. Similarly, in *Joyita Saha v. Rajesh Kumar Pandey* (supra), a Division Bench of Calcutta High Court held that a certificate issued under section 16 of the Special Marriage Act is not conclusive proof of marriage solemnized under the Act. The marriage under the Act can be said to be solemnized only if ceremonies of marriage are performed as per Section 7 of the Act. **In *Priya Bala Ghosh v. Suresh Chandra Ghosh* (supra), the Supreme Court has held that even an admission of marriage by an accused is no evidence of marriage for the purpose of proving an offence of bigamy***

or adultery, when the witnesses have not proved that the essential ceremonies had been proved."

(emphasis supplied)

5. Lastly, Mr. Sachan relies on view taken by a learned single Judge of this Court on **judgment dated 19th October, 1984 in Devendra Kumar Verma Vs. Chand Rani** reported in **AIR 1985 (All) 155**, paragraphs 4 and 5. Paragraph 4 from the judgment (Lawsuit print) is reproduced below.

"[4] Under Section 12 of the Hindu Marriage Act voidable marriages have been considered providing for annulment of marriage including on ground of fraud and then Section 12(2)(ii) of the Act provides that the petition in annulling the marriage on ground of fraud as provided under Section 12(1)(c) of the Act, shall not be entertained if the petitioner has with his or her full consent lived with the other party to the marriage as husband or, wife after... the fraud had been discovered. The first appellate court held that this provision was attracted hence the marriage could not be annulled. Learned counsel for the appellant urged that condonation must mean complete and actual reconciliation. In that connection reliance has been placed upon the case of Dr. N. G. Dastane v. Mrs. S. Dastane AIR 1975 SC 1534 and two English cases, (1) Mackrell v. Mackrell (1948) 2 All ER 858 and (2) Burch v. Burch (1958) 1 All ER 848. So far as the two English cases are concerned, I may, at the outset, observe that the Western conception concerning sanctity of the ties differ from Indian conception. In fact, in Western countries divorce can be claimed also on any very petty ground which would be considered flimsy by the Indian Society and in the matter of annulment of marriage and divorce the provisions under the Hindu Marriage Act are not so liberal and wide as under the English law. Still to touch upon the English cases I may observe that principle laid down in the case of Mackrell (supra) is that reconciliation being the test of condonation and the fact that parties continued to live in the same house or the fact that the guilty party is reinstated in his or her former position is indeed, evidence from which reconciliation may be inferred, but it is by no means conclusive. The principle laid down in the case of Burch (supra) is concerning inference. It has been laid down in that case that the circumstances were not such that the husband had taken back the wife regardless of whether she had or had not been guilty of adultery. The observation simply deals with the factual position that before the wife's confession to the husband the latter was not aware of any facts which may lead to a belief in wife's adultery. I may now consider the principles laid down in the Supreme Court case of Dastane v. Dastane (supra). In para 55 the Supreme Court observed that condonation means forgiveness of the matrimonial

offence and the restoration of offending spouse to the same position as he or she occupied before the offence was committed. To constitute condonation there must be, therefore, two things: forgiveness and restoration. In para 56 the Supreme Court further observed that the evidence showing that the spouses led a normal sexual life even after a series of acts of cruelty by one spouse is proof that the other spouse condoned that cruelty. It was also observed that intercourse is not a necessary ingredient of condonation because there may be evidence otherwise to show that the offending spouse has been forgiven and/has been received back into the position previously occupied in the home. There is a further observation that intercourse in particular circumstances would also give rise to a strong inference of condonation with due requirements, forgiveness and restoration."

(emphasis supplied)

Mr. Sachan presses for admission of the appeal.

6. Mr. Srivastava draws attention to notarised affidavit dated 23rd January, 2021 said to be sworn by appellant. He relies on contents therein. Relevant are statements of the deponent saying, she had suppressed that her first marriage was subsisting, to marry respondent. Statements in paragraph 16 are reproduced below.

*"16. That the Deponent solemnly affirms and declares that the Deponent is aware of the pendency of Suit bearing Case No. 2368/2020 as filed by the Rahul Sisodia before the Hon'ble Court of Principal Judge (Family Court) Ghaziabad U/s 12(1)(c) of Hindu Marriage Act, 1955. **The Deponent has received the Summon in respect to the suit along-with the copy of Petition and all its attachments/annexures.** That Deponent has aware that the next dates in the case pending are 18.02.2021 and 25.02.2021."*

(emphasis supplied)

Bringing focus to the application for condonation of delay of 654 days Mr. Srivastava submits, there is clear statement in paragraph 16 of the affidavit that appellant had received summons in the suit. As such, in impugned judgment there is record that appellant had appeared. On subsequent omission the suit was set ex-parte against her. She again appeared and then disappeared. The suit was once again set ex-parte against her and resulted in impugned judgment. On query he draws attention to paragraph 22 in his client's petition before the Family Court. The paragraph is reproduced below.

*"22. That after creating a huge ruckus the **respondent due to reasons best***

known come back from Mumbai to the petitioner and his family members on 23.01.2021 wherein the accepted the ones of her mistake furthermore the respondent even signed an affidavit which clearly stated above mentioned facts along with surety the respondent with not resort to initiate/file any false and concocted criminal Proceeding/Police Complaints against the petitioner and his family. Copy annexed with evidence."

(emphasis supplied)

He opposes the application.

7. Mr. Sachan in reply submits, there was reunion between the parties. His client was under impression everything was alright and, therefore, stopped appearing in the suit. It was not in her knowledge that respondent had carried on with it, to result in ex-parte impugned judgment. He reiterates his above submissions seeking condonation of the delay and for the appeal to be admitted.

8. For purpose of adjudicating the condonation of delay application, in the facts and circumstances we looked at the judgment. We find, the Family Court had said about participation of appellant in the trial as would appear from a paragraph therefrom, reproduced below.

"Although the defendant has appeared in the matter, she has not filed her written statement and the matter was proceeded ex- parte on 02.12.2021, which was recalled on 20.03.2022. The matter was again proceeded ex-parte on 11.07.2022, which has not been recalled till today. Even after getting the previous ex-parte order recalled on 20.03.2022, the defendant did not appear and file her W.S., and subsequently, the matter again proceeded ex-parte on the aforesaid date, which is 11.07.2022. The petitioner has got him examined as P.W.-1 and has also got his sister examined as P.W.2, but no cross-examination of the witnesses has taken place, as the matter has proceeded ex-parte."

(emphasis supplied)

The Family Court went on to adjudicate respondent's case on merits, ex-parte against appellant. It does appear from impugned judgment that the Family Court considered sub-section (2) under section 12 regarding respondent's consent. The Family Court then went on to consider aforesaid affidavit dated 23rd January, 2021 tendered as document 20(c), to pass order that the marriage was void under section 11 of Hindu Marriage Act, 1955. Section 11 is reproduced below.

"11. Void marriages.—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 one of the conditions specified in clauses (i), (iv) and (v) of section 5."

Clause (i) under section 5 is reproduced below.

"5.

(i) neither party has a spouse living at the time of the marriage.

....."

9. There is no element of consent in section 11, as provided under section 12. Appellant has relied on the Punjab and Haryana High Court view to effect that when an earlier marriage is cited to obtain verdict of nullity, the earlier marriage must be proved on evidence. In the view there is reference to section 7 of Hindu Marriage Act, 1955. Section 7 is reproduced below.

"7. Ceremonies for a Hindu marriage.—(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the Saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken."

We do see that section 7 is an enabling provision. It says, a Hindu marriage may be solemnized in accordance with the customs, rights and ceremonies. Respondent contended that appellant had a subsisting prior marriage. Also that appellant had sworn said affidavit dated 23rd January, 2021. In the petition he alleged so and annexed copy of the affidavit. There is no dispute that appellant had received the summons. She appeared in the Family Court but did not file written statement. There may have been settlement, union and co-habitation afterward during pendency of the proceeding, for which she stopped appearing but, she did appear in the suit in response to the summons and did not file written statement. In these facts, to expect respondent to prove ceremonies of appellant's earlier marriage, to which he was not party and by no stretch of imagination an invitee, would render the admission of marriage as not amounting to proof of it. This aspect has not been dealt with in the view relied upon by appellant. Moreover, the Supreme Court in **The State of Bombay Vs. Kathi Kalu Oghad** reported in **(1962) 3 SCR 10** declared the law on meaning of "to be a witness". A passage from the judgment of said Court having Bench strength of 11 learned Judges, is reproduced below.

*"The matter may be looked at from another point of view. The giving of finger impression or of specimen signature or of handwriting, strictly speaking, is not "to be a witness". **"To be a witness" means imparting knowledge in respect of relevant fact, by means of oral statements or statements in writing, by a person who has personal knowledge of the facts to be communicated to a court or to a person holding an enquiry or investigation. A person is said 'to be a witness' to a certain state of facts which has to be determined by a court or authority authorised to come to a decision, by testifying to what he has seen, or something he has heard which is capable of being heard and is not hit by the rule excluding hearsay or giving his opinion, as an expert, in respect of matters in controversy."***

(emphasis supplied)

The Calcutta High Court view in **Binapani Hatui** (supra) is distinguishable on fact, inasmuch as, view was declaratory suit in the civil Court was not maintainable as the Family Court had to be moved. View taken by a learned single Judge of this Court in **Devendra Kumar Verma** (supra) does not help applicant because in this case the marriage was annulled under section 11 on application of clause (i) under section 5. The condonation, forgiveness and restoration was discussed in context of provisions in section 12(1).

10. We see that appellant is seen to have knowingly not put in her defence in the suit after she had notice of specific allegations regarding her subsisting prior marriage and the notarised affidavit alleged to have been sworn by her. Accordingly the Family Court proceeded to deal with the suit. For purpose of adjudication of condonation of delay under section 5 in Limitation Act, 1963 we are to see that there is explanation for the delay. Section 5 is reproduced below.

*"5. Extension of prescribed period in certain cases.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period **if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.**"*

(emphasis supplied)

The Supreme Court in **Collector, Land Acquisition, Anantnag Vs. Katiji** reported in **AIR 1987 SC 1353** said in paragraph 2 of the principle of liberal approach, as reproduced below.

"2. Refusing to condone delay can result in a meritorious matter being

thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties."

Hence, on liberal approach we looked at impugned judgment. The Supreme Court later, considering amongst others, **Collector, Land Acquisition, Anantnag** (supra), in **Shivamma (dead) by LRs. Vs. Karnataka Housing Board** available at **2025 SCC OnLine SC 1969**, paragraph 258 said that while considering the plea for condonation of delay, the Court must not start with the merits of the main matter. The Court owes a duty to first ascertain the *bona fides* of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the Court may bring into aid the merits of the matter for the purpose of condoning the delay. There is no explanation, let alone bona fide explanation given in the application. Applicant-appellant sought to explain away almost 2 years' delay by alleging late discovery of impugned judgment and, inter alia, not being in sound financial condition for 4 months thereafter to take steps.

11. We are unable to accept cause shown for the delay. The application under section 5 is dismissed. Accordingly, the appeal is also dismissed.

March 12, 2026

Kpy

(Arindam Sinha,J.)

(Satya Veer Singh,J.)