

Court No. - 40**Case :-** SPECIAL APPEAL No. - 56 of 2024**Appellant :-** Rajni Rani**Respondent :-** State Of Up And 10 Others**Counsel for Appellant :-** Rakesh Kumar Rathore, Shyam Narayan Verma**Hon'ble Ashwani Kumar Mishra, J.****Hon'ble Syed Qamar Hasan Rizvi, J.**

1. Heard Sri Radha Kant Ojha, learned Senior Counsel for the appellant and Sri Siddharth Khare, learned counsel appearing on behalf of the opposite party.

2. This appeal arises out of an order passed by learned Single Judge in Writ-A No. 11483 of 2023 whereby the writ petition itself has been dismissed.

3. Facts of the case as have been noticed by learned Single Judge are that one Bhojraj Singh was an assistant teacher in Maharaja Tej Singh, Junior High School Aurandh, Vikash Khand Sultanganj, District Mainpuri. He superannuated on 30.06.2012 and later died on 02.10.2021. The petitioner/appellant came up with a case of payment of family pension on the ground that she has contracted marriage with late Bhojraj Singh and has been residing as such for the last several years. In order to put-forth its case, the petitioner-appellant contended that though Bhojraj Singh had initially contracted marriage with contesting private respondent Usha Devi but the marriage ultimately did not succeed and the marital parties parted ways. Proceeding under Section 125 Cr.P.C. had been initiated by Usha Devi in which a compromise was arrived at, as per which, the parties had separated. It was therefore urged that once Usha Devi parted ways with the deceased employee no right survived in her as against the deceased employee. The deceased employee contracted marriage with the present petitioner-appellant. Various documents have been relied upon in order to prove the factum of marriage. It also appears that in proceeding before the authorities, the petitioner-appellant also set up a claim of second marriage of Usha Devi which fact is specifically disputed by the private respondent. The appellant also claim to have obtained succession certificate and relying upon it claim for family pension was put-forth by the appellant which has been rejected by the authorities. The writ petition filed against such order has also been dismissed.

4. Learned Single Judge has returned a finding to the effect that the marriage legally contracted between Bhojraj Singh and Usha Devi could not have been dissolved except by a decree of competent court and merely in proceeding under Section 125 Cr.P.C. such marriage cannot be annulled. The claim of the appellant based on second marriage has therefore been rejected.

5. Aggrieved by the judgment of learned Single Judge, the appellant who is admittedly the later wife has filed the present appeal. On the previous occasion when the matter was heard, this Court had called upon the appellant to

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demonstrate as to whether a legally contracted marriage could be dissolved except by a decree of divorce passed by the competent forum. Order passed in that regard on 05.02.2024 reads as under:

"Learned counsel for the appellant seeks adjournment as he intends to further examine the law with regard to the impact of compromise between the parties and to what extent such compromise would provide an alternative to a decree of divorce otherwise contemplated under Section 13 of Hindu Marriage Act, 1955 by which alone a marriage can otherwise be dissolved.

List again as fresh on 19.2.2024."

6. Sri R.K. Ojha, learned Senior Counsel appearing on behalf of the appellate has vehemently urged that in the facts of the present case the claim of the appellant is clearly sustainable inasmuch as the previous marriage itself was dissolved by way of a compromise entered into between the parties in proceedings under Section 125 Cr.P.C. It is further submitted that the contesting opposite party has otherwise solemnized subsequent marriage, and therefore, the claim of family pension by the private respondent would be unsustainable. In order to support his contention, learned Senior Counsel for the appellant has placed reliance upon a judgment of Hon'ble Supreme Court in the case of **Deoki Panjhiyara Vs. Shashi Bhushan Narayan Azad & another**, reported in **2012 0 Supreme (SC) 899**. Reliance is placed upon paragraphs 18 & 19 of the said judgment which are reproduced hereinafter:

"In the present case, however, the appellant in her pleadings had clearly, categorically and consistently denied that she was married to any person known as Rohit Kumar Mishra. The legitimacy, authenticity and genuineness of the marriage certificate dated 18.4.2003 has also been questioned by the appellant. Though Section 11 of the aforesaid Act gives an option to either of the parties to a void marriage to seek a declaration of invalidity/nullity of such marriage, the exercise of such option cannot be understood to be in all situations voluntarily. Situations may arise when recourse to a court for a declaration regarding the nullity of a marriage claimed by one of the spouses to be a void marriage, will have to be insisted upon in departure to the normal rule. This, in our view, is the correct ratio of the decision of this Court in Yamunabadi (supra) and M.M. Malhotra (supra). In this regard, we may take note of a recent decision rendered by this Court in A. Subash Babu Vs. State of Andhra Pradesh & another [5] while dealing with the question whether the wife of a second marriage contracted during the validity of the first marriage of the husband would be a "person aggrieved" under Section 198(1)(c) of the Code of Criminal Procedure to maintain a complaint alleging commission of offences under Section 494 and 495 IPC by the husband. The passage extracted below effectively illuminates the issue:

"Though the law specifically does not cast obligation on either party to seek declaration of nullity of marriage and it may be open to the parties even without recourse to the Court to treat the marriage as a nullity, such a course is neither prudent nor intended and a declaration in terms of Section 11 of the Hindu Marriage Act will have to be asked for, for the purpose of precaution and/or record. Therefore, until the declaration contemplated by Section 11 of the Hindu Marriage Act is made by a competent Court, the woman with whom second marriage is solemnized continues to be the wife within the meaning of Section 494 IPC and would be entitled to maintain a complaint against her husband."

19. *In the present case, if according to the respondent, the marriage between him and the appellant was void on account of the previous marriage between the appellant and Rohit Kumar Mishra the respondent ought to have obtained the necessary declaration from the*

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competent court in view of the highly contentious questions raised by the appellant on the aforesaid score. It is only upon a declaration of nullity or annulment of the marriage between the parties by a competent court that any consideration of the question whether the parties had lived in a "relationship in the nature of marriage" would be justified. In the absence of any valid decree of nullity or the necessary declaration the court will have to proceed on the footing that the relationship between the parties is one of marriage and not in the nature of marriage. We would also like to emphasise that any determination of the validity of the marriage between the parties could have been made only by a competent court in an appropriate proceeding by and between the parties and in compliance with all other requirements of law. Mere production of a marriage certificate issued under Section 13 of the Special Marriage Act, 1954 in support of the claimed first marriage of the appellant with Rohit Kumar Mishra was not sufficient for any of the courts, including the High Court, to render a complete and effective decision with regard to the marital status of the parties and that too in a collateral proceeding for maintenance. Consequently, we hold that in the present case until the invalidation of the marriage between the appellant and the respondent is made by a competent court it would only be correct to proceed on the basis that the appellant continues to be the wife of the respondent so as to entitle her to claim all benefits and protection available under the DV Act, 2005."

7. Sri Siddharth Khare, learned counsel for the private opposite party submits that the plea of second marriage by the private respondent Usha Devi was not pleaded in writ and accept to make a vague allegations in that regard in this appeal no other material has been placed. Sri Siddharth Khare support the judgment of the learned Single Judge for the reasons contained therein. So far as the judgment of the Hon'ble Supreme Court in ***Deoki Panjhiyara*** (supra) is concerned, it is pointed out that the facts of that case are clearly distinguishable.

8. We have heard learned counsel for the parties and perused the material available on record.

9. The short question that arises for determination in the facts of the present case is as to whether the admitted marriage between Bhojraj Singh and Usha Devi could be dissolved by way of a compromise in proceedings under Section 125 Cr.P.C.? As a sequel to the above question, the issue that would arise is as to whether the claim of private respondent could be non suited on the ground that she has contracted a second marriage. It is also urged on behalf of the appellant that the question as to whether Usha Devi has contracted a second marriage ought to have been adjudicated by the competent court and the authorities, on their own, could not have returned a finding on that aspect.

10. So far as the proceedings under Section 125 Cr.P.C. are concerned, such proceedings are in respect of payment of maintenance to the deserted wife. The scope of the proceeding under Section 125 Cr.P.C. is limited i.e. with regard to determination of the amount of maintenance. In such proceeding the marriage between the parties cannot be dissolved by the court inasmuch as the jurisdiction of the court would be limited to determination of the aspect of maintenance. Even with the consent of the parties, the jurisdiction of the concerned court under Section 125 Cr.P.C. cannot be expanded so as to concede the power with such court to pass a decree of divorce. Law is well settled that consent of the parties cannot confer jurisdiction if it is otherwise not vested by law.

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11. Admittedly the parties herein are Hindu by religion and the marriage between them would be governed by the provisions of Hindu Marriage Act, 1955. It is undisputed that late Bhojraj Singh and Usha Devi were capable of entering into a marital alliance and that such a marriage was performed between the parties. This factum is undisputed. The question that would arise is as to how and in what manner such a marriage could be dissolved. The marriage between the parties since are governed by the provisions of the Hindu Marriage Act, 1955, the only manner in which such marriage can be dissolved is by passing of an appropriate decree by the competent court in accordance with the provisions of the Act of 1955. It is admitted that no such decree by a competent court was ever passed.

12. In that view of the matter, we are of the considered view that the marriage between the parties could not have been dissolved merely on the basis of a compromise allegedly entered into between the parties. Reliance has been placed by the learned counsel for the appellant upon the judgment of the Hon'ble Supreme Court in **Deoki Panjhiyara** (supra). In order to examine the judgment, it would be apt to refer to the facts of the case which are noticed in paragraph 3 of the judgment which are reproduced:

"While the Writ Petition was pending, the respondent sought a recall of the order dated 13.02.2008 on the ground that he could subsequently come to know that his marriage with the appellant was void on the ground that at the time of the said marriage the appellant was already married to one Rohit Kumar Mishra. In support, the respondent – husband had placed before the learned trial court the certificate of marriage dated 18.04.2003 between the appellant and the said Rohit Kumar Mishra issued by the competent authority under Section 13 of the Special Marriage Act, 1954 (hereinafter referred to as 'the Act of 1954')."

13. The above paragraph would go to show that the claim of the appellant of the first marriage being void was based upon the assertion that the other party was already married to one Rohit Kumar Mishra and during subsistence of such previous marriage the second marriage was performed which was void. It was in that context that the Hon'ble Supreme Court proceeded to make observations in paragraphs 18 & 19 of the judgment. In paragraph 19 the Court has specifically noticed that the claim of marriage, as had been put-forth, was disputed on the ground that the lady had already contracted a previous marriage, and therefore, the marriage solemnized with the appellant therein was a nullity. The conditions of a valid marriage have been noticed and it is thereafter that the Court has proceeded to observe that once the previous marriage was void a declaration of nullity or annulment of marriage between the parties by a competent court was not required. We find that the marriage between Bhojraj Singh and Usha Devi admittedly was the first marriage contracted by either of the parties and there was no allegation of incompetence of either of the persons to contract marriage. The plea of nullity of marriage therefore is not available on facts of the present case. The claim that subsequent in point of time Usha Devi has contracted marriage is a fact, which is specifically disputed by the contesting respondents. Unless a declaration in that regard is granted by the competent court, we are not inclined to interfere with the right of first wife to claim family pension etc. merely on the ground that either the marriage stood dissolved on account of a compromise in proceeding under Section 125 Cr.P.C. or on the ground that Usha

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Devi has subsequently contracted marriage with anyone else. For the reasons that have been recorded above, we find that this appeal lacks merit and is, accordingly, dismissed.

Order Date :- 12.3.2024

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