

AFR

Neutral Citation No. - 2024:AHC:173333-DB

Court No. - 39

Case :- FIRST APPEAL No. - 213 of 2018

Appellant :- Sanjay Chudhary

Respondent :- Guddan @ Usha

Counsel for Appellant :- Anil Kumar Mehrotra, Srijan Mehrotra

Counsel for Respondent :- Anurag Vajpeyi, Bindu Kumari, Gaurav Tripathi

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Donadi Ramesh, J.

1. Heard Shri Anil Kumar Mehrotra, assisted by Shri Srijan Mehrotra and Shri Ashwani Kumar Patel, learned counsel for the appellant and Shri Gaurav Tripathi, learned counsel for the respondent.

2. Present appeal has been filed under Section 19 of the Family Courts Act, 1984, arising from the judgement and order dated 23.02.2018 passed by learned Principal Judge, Family Court, Gautam Buddha Nagar, in Suit No. 794 of 2013 (Sanjay Chudhary v. Guddan @ Usha), whereby declaration sought by the appellant, that his marriage with respondent, solemnised on 28.11.2004, was void, has been declined. The suit has been dismissed.

3. According to the facts proven before the learned trial court, the appellant was born on 07.08.1992 whereas the respondent was born on 01.01.1995. On 28.11.2004, the date of their marriage, the

appellant was about 12 years of age whereas the respondent was about 9 years of age. They would have attained the age of 18 years in the year 2010 and 2013, respectively. On 05.07.2013, claiming benefit of Section 3 of Prohibition of Child Marriage Act, 2006 (hereinafter referred to as the 'PCMA'), the appellant filed the above-described suit at age 20 years 10 months and 28 days. Initially, the suit was instituted under Section 12 (2) of the HMA. Later, upon amendment being allowed, direct relief was claimed under Section 3 of the PCMA. Relying on Section 2(a) of PCMA- that defines “child” and thus prescribes the age requirement for a valid marriage (like that provided under Section 5(3) of the Hindu Marriage Act, 1955- hereinafter referred to as the 'HMA'), the appellant claimed that his suit, thus filed, was within the limitation prescribed under Section 3(3) of PCMA. Other fact grounds were also pleaded to allege that the respondent never cohabited, etc.

4. In the objections (filed by the respondent) to that suit, amongst others, it was objected that the appellant had attained the age of majority i.e. 18 years in the year 2010 and therefore, the suit presented after expiry of two years therefrom i.e. beyond 07.08.2012, was barred by limitation prescribed under Section 3(3) of PCMA. Other objections were also raised for reason of earlier divorce suit filed and dismissed, as also for other facts and reasons describing the conduct

of the appellant indicating cohabitation as also election to the marriage, after attaining majority etc.

5. The learned Court below has categorically found that the marriage solemnised between the parties was a “child marriage” under PCMA. Yet, it has sustained the objections raised and has dismissed the suit filed by the appellant, primarily on the reasoning that prior to institution of the present proceeding, the appellant had instituted a divorce suit proceeding being Matrimonial Case No. 1110 of 2011, under Section 13 of HMA, on 17.09.2011. Though it was dismissed under Order 9 Rule 8 on 19.05.2012 the learned Court below has reasoned - by filing the divorce suit, the appellant had elected to confirm his “child marriage”. Further, no second suit may have been filed thereafter for the declaration sought. Then, conditions prescribed under section 12(2) of HMA have been found, not fulfilled. Also, the suit has been found instituted outside limitation. As to Section 3 PCMA, it has been held on his own showing the appellant had earlier pleaded, he wanted to live in matrimony with the respondent and that the parties cohabited for some time. Hence, their marriage is valid.

6. Shri Anil Mehrotra, learned counsel for the appellant would submit that word “major” and “majority” are not defined under PCMA. The concept of “majority” contained in the Majority Act, 1875 (hereinafter referred to as the Majority Act) has also not been borrowed in PCMA.

Referring to Section 2(a) of the PCMA it has been shown that it borrows the age requirement as prescribed under Section 5(iii) of H.M.A. Reference has been made to the phrase “child marriage” and the word “minor” defined under the PCMA. For ready reference provisions of Section 2(a), (b) and (f), read as below:-

"2. Definitions. In this Act, unless the context otherwise requires, -

(a) "child" means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age;

(b) "child marriage" means a marriage to which either of the contracting parties is a child

(c)

(d)

(e)

(f) "minor" means a person who, under the provisions of the Majority Act, 1875 (9 of 1875), is to be deemed not to have attained his majority;"

7. Then, heavy reliance has been placed on the legislative mandate contained in Section 3 of PCMA that prohibits “child marriage”, absolutely. Hence, we consider it appropriate to extract those provisions as below: -

"3. Child marriages to be voidable at the option of contracting party being a child.

(1) Every child marriage, whether solemnised before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage:

Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of the marriage.

(2) If at the time of filing a petition, the petitioner is a minor, the petition may be filed through his or her guardian or next friend along with the Child Marriage Prohibition Officer.

(3) The petition under this section may be filed at any time but before the child filing the petition completes two years of attaining majority.

(4) While granting a decree of nullity under this section, the district court shall make an order directing both the parties to the marriage and their parents or their guardians to return to the other party, his or her parents or guardian, as the case may be, the money, valuables, ornaments and other gifts received on the occasion of the marriage by them from the other side, or an amount equal to the value of such valuables, ornaments, other gifts and money:

Provided that no order under this section shall be passed unless the concerned parties have been given notices to appear before the district court and show cause why such order should not be passed."

8. On the other hand, learned counsel for the respondent has relied on the language of Section 9 of PCMA. For ready reference that provision is noted as below:

"9. Punishment for male adult marrying a child. - Whoever, being a male adult above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both."

Pari materia provision exists under Section 18 HMA.

9. Since the definition of the word "minor" under the PCMA refers to the Majority Act, we consider it appropriate to extract of Section 3(1) of the Majority Act. It reads as below: -

"3. Age of majority of persons domiciled in India.-(1) Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before."

10. Then, reliance has been placed on a Full Bench decision of the Madras High Court in **T. Sivakumar Vs. Inspector of Police, (2011) SCC Online Mad 1722**, wherein it has been observed as below: -

“18. A close reading of the above objects and reasons of the Prohibition of Child Marriage Act, would keep things beyond any pale of doubt that the Prohibition of Child Marriage Act is a special enactment for the purpose of effectively preventing the evil practice of solemnisation of child marriages and also to enhance the health of the child and the status of women, whereas, the Hindu Marriage Act is a general law regulating the Hindu marriages. Therefore, the Prohibition of Child Marriage Act, being a special law, will have overriding effect over the Hindu Marriage Act to the extent of any inconsistency between these two enactments. In view of the said settled position, undoubtedly, Section 3 of the Prohibition of Child Marriage Act will have overriding effect over the Hindu Marriage Act.

21. From a reading of the above, we infer that probably the Division Bench was of the view that if only a Petition is filed under Section 3 of the Prohibition of Child Marriage Act, the said marriage will be voidable. We are unable to agree with the said conclusion arrived at by the Division Bench. In our considered opinion, the marriage shall remain voidable [vide Section 3] and the said marriage shall be subsisting until it is avoided by filing a Petition for a decree of nullity by the child within the time prescribed in Section 3(3) of the Prohibition of Child Marriage Act. If, within two years from the date of attaining eighteen years in the case of a female and twenty-one years in the case of a male, a Petition is not filed before the District Court under Section 3(1) of the Prohibition of Child Marriage Act for annulling the marriage, the marriage shall become a full-fledged valid marriage. Similarly, after attaining eighteen years of age in the case of female, or twenty-one years of age in the case of a male, if she or he elects to accept the marriage, the marriage shall become a full-fledged valid marriage. Until such an event of acceptance of the marriage or lapse of limitation period as provided in Section 12(3) occurs, the marriage shall continue to remain as a voidable marriage. If the marriage is annulled as per Section 3(1) of the Prohibition of Child Marriage Act, the same shall take effect from the date of marriage and, in such an event, in the eye of law there shall be no marriage at all between the parties at any point of time.

26. But, in cited supra, the Division Bench has held that such a marriage between a boy aged more than 21 years and a girl aged less than 18 years is not voidable. In other words, according to the Division Bench such a child marriage celebrated in contravention of the Prohibition of Child Marriage Act is a valid marriage. With respect, we are of the opinion that it is not a correct interpretation. A plain reading of Section 3 of the Prohibition of Child Marriage Act would make it clear that such child marriage is only voidable. Therefore, we hold that though such a voidable marriage subsists and though some rights and liabilities emanate out of the same, until it is either accepted expressly or impliedly by the child after attaining the eligible age or annulled by a Court of law, such voidable marriage, cannot be either stated to be or equated to a “valid marriage” stricto sensu as per the classification referred to

above. Accordingly, we answer the first part of the 1st question referred to above.”

56. A plain reading of sub-section (3) would reflect that a petition under the above Section may be filed at any time but before the child completes two years of attaining majority. When does a child attains the age of majority is not expressly defined in the Act. However, Section 2(f) of the Prohibition of Child Marriage Act denies the term "minor" which reads as follows:

"2(f) "minor" means a person who, under the provisions of the Majority Act, 1875 (9 of 1875) is to be deemed not to have attained his majority."

As defined in Majority Act, 1875, a minor, either male or female, attains the age of majority on completing eighteen years of age. Keeping in mind the same, if we again look into sub-section (3) of Section 3 of the Prohibition of Child Marriage Act, the anomaly in the Act will emerge to light. In the case of a female, as per sub-section (3) since she attains the age of majority on completing the age of eighteen years, there can be no difficulty in understanding of the said provision to say that a petition for annulment should be filed within two years of attaining majority, i.e. before completing twenty years of age. But, in the case of a male, any marriage solemnised before he completes the age of twenty one years is a child marriage and the same is voidable. Therefore, he can be expected to file a Petition for annulment within two years after attaining the age of twenty-one years. But, sub-section (3) reads that such Petition should be filed when he completes two years of attaining majority which means before completing twenty years of age. For example, if the child marriage of a male takes place on his completing twenty years of age and if a literal interpretation is given to sub-section (3) of the Prohibition of Child Marriage Act, surely, he will not be in a position to file a Petition to annul the marriage. Such literal interpretation in the case of a male would create anomalous situation. It is too well settled that no provision of any law shall be interpreted in such a way to make it either anomalous or unworkable. Therefore, in our considered opinion, sub-section (3) of Section 3 shall be read that in the case of a male, a Petition for annulment of child marriage shall be filed before he completes two years of attaining twenty-one years of age. We are hopeful that the parliament will take note of the above anomaly and make necessary amendment to sub-section (3) to avoid any more complication.

(emphasis supplied)

11. Reliance has also been placed on similar reasoning offered by the Delhi High Court, in **Court On its Own Motion (Lajja Devi) Vs. State** 2012 SCC OnLine Del 3937, wherein it has been observed as under: -

"21. On that basis, view of the Full Bench of Madras High Court was that the law was enacted for the purpose of effectually

preventing evil practice of solemnisation of child marriages and also to enhance the health of the children and the status of the marriage and therefore, it was a special enactment in contrast with the HM Act, which is a general law regulating Hindu marriages. Thus, the PCM Act, being a special law, will have overriding effect over the HM Act to the extent of any inconsistency between the two enactments. For this reason, the Court took the view that Section 3 of this Act would have overriding effect over the HM Act and the marriage with a minor child would not be valid but voidable and would become valid if within two years from the date of attaining 18 years in the case of female and 21 years in the case of male, a petition is not filed before the District Court under Section 3(1) of the PCM Act for annulling the marriage. Similarly, after attaining eighteen years of age in the case of female, or twenty-one years of age in the case of a male, if she or he elects to accept the marriage, the marriage shall become a full-fledged valid marriage. Until such an event of acceptance of the marriage or lapse of limitation period, the marriage shall continue to remain as a voidable marriage.

...

39. As held above, PCM Act, 2006 does not render such a marriage as void but only declares it as voidable, though it leads to an anomalous situation where on the one hand child marriage is treated as offence which is punishable under law and on the other hand, it still treats this marriage as valid, i.e., voidable till it is declared as void. We would also hasten to add that there is no challenge to the validity of the provisions and therefore, declaration by the legislature of such a marriage as voidable even when it is treated as violation of human rights and also punishable as criminal offence as proper or not, cannot be gone into in these proceedings. The remedy lies with the legislature which should take adequate steps by not only incorporating changes under the PCM Act, 2006 but also corresponding amendments in various other laws noted above. In this behalf, we would like to point out that the Law Commission has made certain recommendations to improve the laws related to child marriage.

40. Be as it may, having regard to the legal/statutory position that stands as of now leaves us to answer first part of question No. 1 by concluding that the marriage contracted with a female of less than 18 years or a male of less than 21 years would not be a void marriage but voidable one, which would become valid if no steps are taken by such "child" within the meaning of Section 2(a) of the PCM Act, 2002 under Section 3 of the said Act seeking declaration of this marriage as void."

(emphasis supplied)

12. Next, heavy reliance has been placed on the decision of the Supreme Court in **Independent Thought Vs. Union of India and another, (2017) 10 SCC 800**, wherein it has been observed as below: -

“136. If one analyses the provisions of all the laws which have been referred to above, it is apparent that the legislature, in its wisdom, has universally enacted that a person below the age of 18 years is deemed to be a child unable to look after his or her own interests. It would be very important to note that, in 2013 IPC was amended, post the unfortunate “Nirbhaya” incident and the age of consent under clause Sixthly of Section 375 IPC was increased to 18 years. The position as on date is that under the Protection of Children from Sexual Offences Act, 2012; the Juvenile Justice (Care and Protection of Children) Act; the Child Marriage Restraint Act, 1929; the Protection of Women from Domestic Violence Act, 2005; the Majority Act, 1875; the Guardians and Wards Act, 1890; the Contract Act, 1872 and many other legislations, a person below the age of 18 years is considered to be a child unable to look after his or her own interests.

137. As far as marriage laws are concerned, as far back as 1978, the minimum age of marriage of a girl child was increased to 18 years. The Restraint Act, was replaced by the PCMA wherein also marriage of a girl child aged below 18 years is prohibited. However, Section 3 of the PCMA makes a child marriage voidable at the option of that party, who was a child at the time of marriage. The petition for annulling the child marriage must be filed within 2 years of the child attaining majority. Therefore, a girl who was married before she attained the age of 18 years, can get her marriage annulled before she attains the age of 20 years. Similarly, a male child can get the marriage annulled before attaining the age of 23 years. Even when the child is minor, a petition for annulment can be filed by the guardian or next friend of the child along with the Child Marriage Prohibition Officer. Unfortunately, both the number of prosecutions and the number of cases for annulment of marriage filed under PCMA are abysmally low.”

(emphasis supplied)

13. To enforce that reasoning on this Court, the sound principle in favour of observance of judicial discipline has been invoked. Thus, reliance has been placed on the ratio in **Secundrabad Club Etc. Vs. C.I.T.-V and ors., 2023 SCC OnLine SC 1004**, wherein the Supreme Court made the following observation: -

“...

20. As against the ratio decidendi of a judgment, an obiter dictum is an observation by a court on a legal question which may not be necessary for the decision pronounced by the court. However, the obiter dictum of the Supreme Court is binding under Article 141 to the extent of the observations on points raised and decided by the

Court in a case. Although the obiter dictum of the Supreme Court is binding on all courts, it has only persuasive authority as far as the Supreme Court itself is concerned.

(emphasis supplied)

14. As to the purpose and spirit of PCMA, reliance has been placed on decision of Delhi High Court in **Association for Social Justice & Research Vs. Union of India and Others, (2010) 95 AIC 422**, wherein it has been observed as below: -

9. The purpose and rationale behind the Prohibition of Child Marriage Act, 2006 is that there should not be a marriage of a child at a tender age as he/she is neither psychologically nor physically fit to get married. There could be various psychological and other implications of such marriage, particularly if the child happens to be a girl. In actuality, child marriage is a violation of human rights, compromising the development of girls and often resulting in early pregnancy and social isolation, with little education and poor vocational training reinforcing the gendered nature of poverty. Young married girls are a unique, though often invisible, group. Required to perform heavy amounts of domestic work, under pressure to demonstrate fertility, and responsible for raising children while still children themselves, married girls and child mothers face constrained decision making and reduced life choices. Boys are also affected by child marriage but the issue impacts girls in far larger numbers and with more intensity. Where a girl lives with a man and takes on the role of caregiver for him, the assumption is often that she has become an adult woman, even if she has not yet reached the age of 18. Some of the ill-effects of child marriage can be summarized as under:

(i) Girls who get married at an early age are often more susceptible to the health risks associated with early sexual initiation and childbearing, including HIV and obstetric fistula.

(ii) Young girls who lack status, power and maturity are often subjected to domestic violence, sexual abuse and social isolation.

(iii) Early marriage almost always deprives girls of their education or meaningful work, which contributes to persistent poverty

(iv) Child Marriage perpetuates an unrelenting cycle of gender inequality, sickness and poverty.

(v) Getting the girls married at an early age when they are not physically mature, leads to highest rates of maternal and child mortality.

Young mothers face higher risks during pregnancies including complications such as heavy bleeding, fistula, infection, anaemia, and eclampsia which contribute to higher mortality rates of both

mother and child. At a young age a girl has not developed fully and her body may strain under the effort of child birth, which can result in obstructed labour and obstetric fistula. Obstetric fistula can also be caused by the early sexual relations associated with child marriage, which take place sometimes even before menarche. Child marriage also has considerable implications for the social development of child brides, in terms of low levels of education, poor health and lack of agency and personal autonomy. The Forum on Marriage and the Rights of Women and Girls explains that 'where these elements are linked with gender inequities and biases for the majority of young girlsa their socialization which grooms them to be mothers and submissive wives, limits their development to only reproductive roles. A lack of education also means that young brides often lack knowledge about sexual relations, their bodies and reproduction, exacerbated by the cultural silence surrounding these subjects. This denies the girl the ability to make informed decisions about sexual relations, planning a family, and her health, yet another example of their lives in which they have no control. Women who marry early are more likely to suffer abuse and violence, with inevitable psychological as well as physical consequences. Studies indicate that women who marry at young ages are more likely to believe that it is sometimes acceptable for a husband to beat his wife, and are therefore more likely to experience domestic violence themselves. Violent behaviour can take the form of physical harm, physical harm, psychological attacks, threatening behaviour and forced sexual acts including rape. Abuse is sometimes perpetrated by the husband's family as well as the husband himself, and girls that enter families as a bride often become domestic slaves for the in-laws. Early marriage has also been linked to wife abandonment and increased levels of divorce or separation and child brides also face the risk of being widowed by their husbands who are often considerably older. In these instances, the wife is likely to suffer additional discrimination as in many cultures divorced, abandoned or widowed women suffer a loss of status, and may be ostracized by society and denied property rights.

(emphasis supplied)

15. Relying on the above, it has been submitted, the context in which the word “majority” has been used in Section 3(3) of PCMA must be decided by looking at that word through the prism of Section 2(a) of PCMA. To the extent a male may remain a “child” (for the purpose of PCMA), till he completes the age of 21, he may not attain “majority” for the purpose of Section 3(3) of PCMA. Therefore, the period of limitation to file a suit under Section 3 of PCMA may commence for a

male only upon his attaining the age of 21 years, and not earlier. Thus, the thrust of his submission is, the word “majority” must be interpreted in contrast to a “child” as defined under PCMA. That concept may alone govern the interpretation to be given to the words “attaining majority” appearing in section 3(3) of PCMA.

16. In that, reliance has been placed on a decision of the Supreme Court in **Girdhari Lal and Sons Vs. Balbir Nath Mathur and others**, (1986) 2 SCC 237 wherein it had been observed as below: -

“6. It may be worthwhile to restate and explain at this stage certain well-known principles of interpretation of statutes: Words are but mere vehicles of thought. They are meant to express or convey one's thoughts. Generally, a person's words and thoughts are coincidental. But if it is the legislature that has expressed itself by making the laws and difficulties arise in interpreting what the legislature has said, a legislature cannot be asked to sit to resolve those difficulties. The legislatures, unlike individuals, cannot come forward to explain themselves as often as difficulties of interpretation arise. So the task of interpreting the laws by finding out what the legislature meant is allotted to the courts. where the words of statutes are plain and unambiguous effect must be given to them. Intention of the legislature and not the words is paramount. Even where the words of statutes appear to be prima facie clear and unambiguous it may sometimes be possible that the plain meaning of the words does not convey and may even defeat the intention of the legislature; in such cases there, is no reason why the true intention of the legislature, if it can be determined, clearly by other means, should not be given effect. Words are meant to serve and not to govern and we are not to add the tyranny of words to the other tyrannies of the world.

7. Parliamentary intention may be gathered from several sources. First, of course, it must be gathered from the statute itself, next from the preamble to the statute, next from the Statement of Objects and Reasons, thereafter from parliamentary debates, reports of committees and commissions which preceded the legislation and finally from all legitimate and admissible sources from where there may be light. Regard must be had to legislative history too.

8. Once parliamentary intention is ascertained and the object and purpose of the legislation is known, it then becomes the duty of the

court to give the statute a purposeful or a functional interpretation. This is what is meant when, for example, it is said that measures aimed at social amelioration should receive liberal or beneficent construction. Again, the words of a statute may not be designed to meet the several un contemplated forensic situations that may arise. The draftsman may have designed his words to meet what Lord Simon of Glaisdale calls the “primary situation”. It will then become necessary for the court to impute an intention to Parliament in regard to “secondary situations”. Such “secondary intention” may be imputed in relation to a secondary situation so as to best serve the same purpose as the primary statutory intention does in relation to a primary situation.

9. So we see that the primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the court must then strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary the court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word if necessary.

16. Our own court has generally taken the view that ascertainment of legislative intent is a basic rule of statutory construction and that a rule of construction should be preferred which advances the purpose and object of a legislation and that though a construction, according to plain language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices or absurdities, vide K.P. Varghese v. ITO [(1981) 4 SCC 173 : 1981 SCC (Tax) 293] , State Bank of Travancore v. Mohd. M. Khan [(1981) 4 SCC 82] , Som Prakash Rekhi v. Union of India [(1981) 1 SCC 449 : 1981 SCC (L&S) 200] , Ravula Subba Rao v. CIT [AIR 1956 SC 604 : 1956 SCR 577] , Govindlal v. Agricultural Produce Market Committee [(1975) 2 SCC 482 : AIR 1976 SC 263 : (1976) 1 SCR 451] and Babaji Kondaji v. Nasik Merchants Coop. Bank Ltd. [(1984) 2 SCC 50].

17 Bearing these broad principles in mind if we now turn to the Delhi Rent Control Act, it is at once apparent that the Act is primarily devised to prevent unreasonable eviction of the tenants and subtenants from demised premises.....”

17. Further, according to Shri Mehrotra, any other interpretation would result in absurdity and an irreconcilable difficulty would arise.

If the period of limitation of two years is to be computed for a male

upon his attaining the age of 18 years, then, that limitation would expire on his completing the age of 20 years. Consequently, no marriage performed by a male “child” who may have attained age of 20 may ever be voided, though, the statute prohibits that marriage and contemplates such a marriage to be one involving a “child” and therefore voidable, at his instance. In that event, though a statutory remedy would exist - to seek that relief under Section 3(2) of PCMA, yet it may never be availed by a male “child” for lack of limitation available.

18. Reliance has been placed on **Kanai Lal Sur Vs. Paramnidhi Sadhukhan, AIR 1957 SC 907** wherein it has been observed: -

“6..... The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the courts would prefer to adopt the latter construction. It is only in such cases that it becomes relevant to consider the mischief and defect which the Act purports to remedy and correct. Indeed, Mr Chatterjee himself fairly conceded that he would not be justified in asking the court to put an undue strain on the words used in the section in order that a construction favourable to the thika tenants should be deduced. It is in the light of this legal position that we must now consider Section 5 sub-section (1) of West Bengal Act 2 of 1949, amended by West Bengal Act 6 of 1953.”

19. Further, relying on the rule of interpretation that a statute must be read as a whole, strength has been drawn from three decisions of the Supreme Court in **Osmania University Teachers' Association Vs. State of Andhra Pradesh and another, (1987) 4 SCC 671, Captain Subash**

Kumar Vs. Principal Officer, Mercantile Marine Department, Madras, (1991) 2 SCC 449 and Philips India Limited Vs. Labour Court, Madras and others, (1985) 3 SCC 103. In Osmania University Teachers' Association (supra), it has been observed as below: -

“25. It is The intention of the legislature has to be gathered by reading the statute as a whole. That is a rule which is now firmly established for the purpose of construction of statutes. The High Court appears to have gone on a tangent. The High Court would not have fallen into an error if it had perused the UGC Act as a whole and compared it with the Commissionerate Act or vice-versa.”

20. In **Captain Subash Kumar (supra)**, it has been observed as below: -

“20. There is not one who does not know that words are to be understood according to their subject matter. The subject matter of Part XII is investigations and inquiries into shipping casualty. Would “in any case” then mean in any case of shipping casualty? We have read the other relevant provisions of the Act. Nemo aliquam partem recti intelligere potest, antequam totum interum atque interum parlegerit. No one can properly understand any part of a statute till he has read through the whole again and again.”

21. Then, in **Philips India Limited (supra)**, it has been observed as below: -

“15. No canon of statutory construction is more firmly established than that the statute must be read as a whole. This is a general rule of construction applicable to all statutes alike which is spoken of as construction ex visceribus actus. This rule of statutory construction is so firmly established that it is variously styled as “elementary rule” [see Attorney General v. Bastow, (1957) 1 All ER 497] and as a “settled rule” [see Poppatlal Shah vs State of Madras, (1953) 1 SCC 492]. The only recognised exception to this well-laid principle is that it cannot be called in aid to alter the meaning of what is of itself clear and explicit. Lord Coke laid down that: “it is the most natural and genuine exposition of a statute, to construe one part of a statute by another part of the same statute, for that best expresseth meaning of the makers” [Quoted with approval in Punjab Beverages Pvt. Ltd. v. Suresh Chand, (1978) 2 SCC 144].”

22. Next, it has been submitted - if there are two interpretations possible, that which results in failure of the object of the statute must

be discarded. Thus, reliance has been placed on yet another decision of the Supreme Court in **M. Pentiah and others Vs. Muddala Veeramallappa and others**, AIR 1961 SC 1107 wherein it has been observed as below: -

“6. Before we consider this argument in some detail, it will be convenient at this stage to notice some of the well established rules of Construction which would help us to steer clear of the complications created by the Act. Maxwell on the Interpretation of Statutes, 10th Edn., says at p. 7 thus:

“... if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result”.

It is said in Craies on Statute Law, 5th Edn., at p. 82—

“Manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly to be avoided.”

Lord Davey in Canada Sugar Refining Co. v. R. [(1898) AC 735] provides another useful guide of correct perspective to such a problem in the following words:

“Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter.”

23. Last, it has been submitted, words of a statute must be interpreted with some imagination, keeping in mind the purpose of the statute. The Courts may reject the plain or grammatical sense of words used in a statute if that grammatical sense may defeat the object of the Act. No occasion may arise, to invoke *casus omissus* on part of the legislature, in such a case. Reliance has been placed on a decision of

the Supreme Court in **Padma Sundara Rao (dead) and Others Vs. State of T.N. and others, (2002) 3 SCC 533** wherein it has been observed: -

*“12. The rival pleas regarding rewriting of statute and casus omissus need careful consideration. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. “Statutes should be construed, not as theorems of Euclid”, Judge Learned Hand said, “but words must be construed with some imagination of the purposes which lie behind them”. (See *Lenigh Valley Coal Co. v. Yensavage* [218 FR 547] .) The view was reiterated in *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama* [(1990) 1 SCC 277 : AIR 1990 SC 981].*

*14. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd.* [(2000) 5 SCC 515]) The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in *Narasimhaiah case* [(1996) 3 SCC 88] . In *Nanjudaiah case* [(1996) 10 SCC 619] the period was further stretched to have the time period run from date of service of the High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only clause (i) and/or clause (ii) of the proviso to Section 6(1), but also by a non-prescribed period. Same can never be the legislative intent.*

*15. Two principles of construction — one relating to casus omissus and the other in regard to reading the statute as a whole — appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. “An intention to produce an unreasonable result”, said Danckwerts, L.J., in *Artemiou v. Procopiou* [(1966) 1 QB 878 : (1965) 3 All ER 539 : (1965) 3 WLR 1011 (CA)] (at All*

ER p. 544-I), “is not to be imputed to a statute if there is some other construction available”. Where to apply words literally would “defeat the obvious intention of the legislation and produce a wholly unreasonable result”, we must “do some violence to the words” and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in Luke v. IRC [1963 AC 557 : (1963) 1 All ER 655 : (1963) 2 WLR 559 (HL)] where at AC p. 577 he also observed : (All ER p. 664-I) “This is not a new problem, though our standard of drafting is such that it rarely emerges.”]”

24. Responding to the above, learned counsel for the respondent has first referred to the 13th Rajya Sabha Report of the Parliamentary Standing Committee dated 29.11.2005. It has thus been indicated that the matter of discrepancy with respect to the age of “majority” of a male and female party to a “child marriage” and its consequences on the remedy of its declaration as void, was debated. The incongruity arising in the facts similar to those involved in this appeal were discussed. At the same time, he would fairly submit that no statutory intervention has been made, in that regard. To that extent that report prepared - post enforcement of PCMA is extraneous to the dispute at hand. For its resolution, we only look at the existing statutory provisions.

25. Coming to the exact controversy involved in the present case, he would submit, preference be given to literal meaning of the words used in PCMA namely, “attaining majority”. He has relied on **Harbajan Singh Vs. Press Council of India and others, (2002) 3 SCC 722**, wherein it has been observed as below: -

“7. Ordinary, grammatical and full meaning is to be assigned to the words used while interpreting a provision to

honour the rule — the legislature chooses appropriate words to express what it intends, and therefore, must be attributed with such intention as is conveyed by the words employed so long as this does not result in absurdity or anomaly or unless material — intrinsic or external — is available to permit a departure from the rule.”

9.The learned author cites three quotations from speeches of Lord Reid in the House of Lords cases, the gist whereof is : (i) in determining the meaning of any word or phrase in a statute, ask for the natural or ordinary meaning of that word or phrase in its context in the statute and follow the same unless that meaning leads to some result which cannot reasonably be supposed to have been the legislative intent; (ii) rules of construction are our servants and not masters; and (iii) a statutory provision cannot be assigned a meaning which it cannot reasonably bear; if more than one meanings are capable you can choose one but beyond that you must not go. (p. 40, *ibid*) Justice G.P. Singh in his celebrated work — *Principles of Statutory Interpretation* (8th Edn., 2001) states (at p. 54):

“The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided.”

*The learned author states at another place (at p. 74, *ibid*) that the rule of literal construction whereby the words have to be assigned their natural and grammatical meaning can be departed from but subject to caution. The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning. A departure is permissible if it can be shown that the legal context in which the words are used or the object of the statute in which they occur requires a different meaning.....”*

26. Thus, according to him, PCMA uses two concepts with respect to eligibility or legal capacity to marry and legal capacity to bring a suit to seek annulment of a “child marriage”. Thus, PCMA uses the terms "child", “adult”, “minor” and "majority". While the word "child" has been defined under Section 2(a) of PCMA, its antonym word “adult” has not been defined. At the same time, under Section 2(f) of the PCMA, the word “minor” has been defined, yet its antonym word “major” has not been specifically defined. Yet, the concept of

“majority” as contained in the Majority Act has been consciously incorporated (in PCMA) by employing the well-recognised legislative tool – legislation by reference. According to him, though a male who is a “major” may not acquire the legal capacity to enter into a valid marriage below the age of 21 years, at the same time, by virtue of him ceasing to be a “minor” upon attaining the age of “majority”, he may acquire the legal capacity to institute a legal proceeding to seek annulment of a “child marriage” to which he may have been made a party, while he was below that age.

27. In that regard, heavy reliance has been placed on the language of Section 3(2) of the PCMA. It clearly indicates that any person who may be a “minor” may file a suit seeking to void their marriage through their guardian or next friend along with the Child Marriage Prohibition Officer. By necessary implication, a party to a “child marriage” who may later attain the age of 18 years may file such suit only, on his own.

28. Then, the proviso to Section 3(3) of PCMA is only a provision to provide for the period of limitation to bring a suit to declare a “child marriage” void. It applies to the person on whose behalf such suit may be brought may continue to be described as a “child” by virtue of the definition of that term under Section 2(a) of the Act. For Section 3 of PCMA that requirement of the definition may remain relevant only to

determine the legal capacity of the person who may institute that suit. By way of elaboration, it has been submitted, the suit to declare a “child marriage” void may be instituted by the parties to a “child marriage” (upon attaining the age of majority) or through their guardian or next kin, if such party be below the age of 18 years and therefore devoid of legal capacity to institute any legal proceeding. Whether such suit is instituted by the parties themselves or through their guardian or next kin, would have no bearing on the end of limitation to institute that suit. It would remain two years from the date of attaining “majority”.

29. Elaborating that submission, reliance has been placed on Section 9 of the PCMA to submit, though the Act uses the twin concepts of “child” and “minor” yet, the artificial concept of “child” under Section 2(a) of the PCMA, exists only to prescribe the legal age of marriage. At the same time, the legislature has consciously provided/prescribed punishment to males entering a “child marriage” though such a male thus be a “child” (at below 21 years of marriage). In that the legislature has acted on the age of “majority” attained by such a male under the Majority Act. In that regard, the legislature clearly treats such a male “child” to be an adult. That requires no elaboration in view of the phraseology (“male adult”) employed in Section 9 of the PCMA.

30. Thus, according to him, if the submission being advanced on behalf of the appellant is to be accepted, a conflict would arise in the two provisions namely Sections 3 and 9 of the PCMA. That must be avoided and both provisions must be harmonised. He has relied on **Dr. Jaishri Laxmanrao Patil Vs. Chief Minister (2021) 8 SCC 1** wherein the Supreme Court has observed as below: -

“206. In the 183rd Report of the Law Commission of India, M. Jagannadha Rao, J. observed that a statute is a will of legislature conveyed in the form of text. It is well-settled principle of law that as a statute is an edict of the legislature, the conventional way of interpreting or construing the statute is to see the intent of the legislature. The intention of legislature assimilates two aspects. One aspect carries the concept of “meaning” i.e. what the word means and another aspect conveys the concept of “purpose” and “object” or “reason” or “approach” pervading through the statute. The process of construction, therefore, combines both liberal and purposive approaches. However, necessity of interpretation would arise only where a language of the statutory provision is ambiguous, not clear or where two views are possible or where the provision gives a different meaning defeating the object of the statute. He supported his view by referring to two judgments of this Court in R.S. Nayak v. A.R. Antulay [R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183 : 1984 SCC (Cri) 172] and Grasim Industries Ltd. v. Collector of Customs [Grasim Industries Ltd. v. Collector of Customs, (2002) 4 SCC 297] . It was held in R.S. Nayak [R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183 : 1984 SCC (Cri) 172] that the plainest duty of the court is to give effect to the natural meaning of the words used in the provision if the words of the statute are clear and unambiguous.”

31. Therefore, in his submission, the object of the PCMA and the mischief it seeks to address must be given primacy, by giving full play to the literal meaning of the word "majority" used in Section 3(3) of the PCMA. Once a male acquires the legal capacity to institute a legal proceeding (to declare his marriage void) at age 18 years, and simultaneously law may also hold him accountable for the breach of PCMA, he may not be given any relaxation with respect to the start

point of limitation to institute a legal proceeding, beyond that age, too by much more i.e. three years than given to the person belonging to the other gender i.e. the female - who is overtly perceived to be the more vulnerable (by the legislature) and whose life and liberty interests, the legislature seeks to protect more. In that regard reliance has been placed on **Maulavi Hussein Haji Abraham Umarji Vs. State of Gujarat and another, (2004) 6 SCC 672** wherein the Supreme Court has been observed as below: -

“19. In D.R. Venkatachalam v. Dy. Transport Commr. [(1977) 2 SCC 273 : AIR 1977 SC 842] it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

“21. Two principles of construction — one relating to casus omissus and the other in regard to reading the statute as a whole — appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. “An intention to produce an unreasonable result”, said Danckwerts, L.J., Where to apply words literally would “defeat the obvious intention of the legislation and produce a wholly unreasonable result”, we must “do some violence to the words” and so achieve that obvious intention and produce a rational construction.”

32. The only reason for different age prescribed by the statute in the artificial concept of the “child” introduced by Section 2(a) of the PCMA remains - a social desirability in a typical Indian marriage.

Thus, the legislature expects the male to be educationally and financially better equipped than his female partner. Perhaps for that perceived bias prevailing in the society, the legislature recognises the artificial difference of age between male and female in the definition of “child” while prohibiting “child marriage”. There is no rationale available to assume that a male is biologically or physically or mentally or psychologically not equipped to be married at the age of 18 years and/or that he acquires such competence at the age of 21 years. The risks to physical and psychological health caused by childbirth at tender age, visit the female population as childbearing has its own effects and consequences on the general health and well-being on an underage female. Risk of death caused by childbirth is faced solely by the female population and never by the males.

33. Thus, according to him the spirit of the statute and its dominant purpose must be given primacy and the incongruency arising from the definition clause-Section 2(a) must be resolved accordingly. Reliance has been placed on **Union of India Vs. Elphinstone Spinning and Weaving Company Limited and others, (2001) 4 SCC 139**, wherein the Supreme Court has observed as below: -

“17. While examining a particular statute for finding out the legislative intent it is the attitude of Judges in arriving at a solution by striking a balance between the letter and spirit of the statute without acknowledging that they have in any way supplemented the statute would be the proper criterion. The duty of Judges is to expound and not to legislate is a fundamental rule. There is no doubt a marginal area in which the courts mould or creatively interpret legislation and they are thus finishers, refiners

and polishers of legislation which comes to them in a state requiring varying degrees of further processing. But by no stretch of imagination a Judge is entitled to add something more than what is there in the statute by way of a supposed intention of the legislature. It is, therefore, a cardinal principle of construction of statutes that the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. Applying the aforesaid principle we really fail to understand as to how the learned Judges of the Bombay High Court could come to a conclusion that the mismanagement must necessarily mean an element of fraud or dishonesty. Courts are not entitled to usurp legislative function under the guise of interpretation and they must avoid the danger of determining the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somehow fitted. Caution is all the more necessary in dealing with a legislation enacted to give effect to policies that are subject to bitter public and parliamentary controversy, for in controversial matters there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable; it is Parliament's opinion in these matters that is paramount. When the question arises as to the meaning of a certain provision in a statute it is not only legitimate but proper to read that provision in its context. The context means the statute as a whole, the previous state of law, other statutes in pari materia, the general scope of the statute and the mischief that it was intended to remedy.....”

34. Last, it has been submitted, the original suit was filed under Section 12 of the HMA with no reference to Section 3 of the PCMA. That suit remained pending till after the appellant attained the age of 23 years. Thereafter, for the first time, an amendment application was filed to describe the suit as one filed with reference to Section 3 of the PCMA. Therefore, in his submission, the suit seeking declaration of marriage to be void, was filed after the appellant attained the age of 23 years. It was time barred.

35. That objection has been met by Sri Mehrotra on the strength of the principle that an amendment to the pleading once allowed, would

relate back to the date of filing of the original proceeding. Here, the original suit had been filed before the appellant attained the age of 21 years. Therefore, the amendment made would relate back to that point in time. That amendment was never challenged. Therefore, it cannot be said that the suit was filed outside the limitation prescribed. He has placed reliance on a decision of **Madhya Pradesh High Court in Komal Vs. Mayatran, 2024 SCC Online MP 5315**.

36. Having heard learned counsel for the parties and having perused the record, we may first note that the HMA does not contain any provision to declare a “child marriage” void, though it contemplates criminal prosecution of male parties to such transactions. Earlier, HMA prescribed the age of marriage. It is consistent to PCMA, i.e. 18 years for females and 21 years for males. Yet, it stopped short of making any provision as to the legality of “child marriage” performed by underage male or female, or both. In contrast, Section 3 (1) of PCMA (the later enactment) clearly provides:

- (i) every “child marriage”;
- (ii) whether solemnized before or after commencement of that Act;
- (iii) shall be voidable;
- (iv) at the option of the contracting party, if they were a “child” at the time of such marriage.

37. The term “child marriage” is defined under Section 2 (b) of the PCMA. It clearly means a marriage where either of the contracting party is a “child”. The word “child” has been defined under Section 2(a) of the PCMA. Clearly, a male below 21 years of age is deemed to be a “child” for the purpose of PCMA. Similarly, a female below 18 years of age is deemed to be a “child”. It is admitted to the parties to the dispute that the appellant was about 12 years of age, whereas, the respondent was 9 years of age, at the time of their marriage solemnized on 28.11.2004. That transaction was a “child marriage”, admittedly voidable at the option of either party.

38. What therefore falls for our consideration is whether the remedy available for that declaration was applied for within limitation prescribed by the law. In the first place, PCMA is a complete code. It provides for all – the prescription of age for a valid marriage; the consequences and remedies in the event of an underage marriage and the limitation to seek the remedy against an underage marriage.

39. The remedy available to both parties to a “child marriage” is to seek a declaration from a competent Court that their marriage was void. However, that effect and remedy is optional i.e. to be availed upon the volition of either party to that marriage, but by no other. Thus, a “child marriage” is voidable but not void. Any party to such transaction must elect to confirm or void it.

40. With respect to the procedure to seek a declaration that a transaction of “child marriage” is void, Section 3(2) of the PCMA provides that a “minor” may file a suit seeking declaration that their marriage was void, through their guardian or next friend along with the Child Marriage Prohibition Officer.

41. Insofar as the PCMA does not make any provision - who may file such a suit (where the plaintiff may have attained the age of “majority”), it naturally follows from Section 3(2) of the PCMA, that such suit may be filed only by the person seeking that declaration, that right accruing to such person from “majority” attained.

42. Then Section 3(3) of the PCMA provides that a suit may be filed “at any time” but before the “child” filing the suit completes two years of “attaining majority”. Thus, the start point of limitation has been prescribed- “at any time”. Clearly, that would refer to any time after solemnization of a “child marriage” and not before. On the other hand, the end of limitation has been prescribed with reference to date of “attaining majority”. It has been fixed at the completion of two years therefrom. Therefore, it becomes material to ascertain - what would be the age when a “child” (either male or female), may attain “majority”.

43. The term “majority” and the phrase “attaining majority” have not been defined under the PCMA. At the same time, the word “minor”

has been defined under Section 2(f) of the PCMA to mean a person “deemed not to have attained his majority” under the Majority Act. Therefore, the legislature has defined the word “minor” as the opposite of a “major” under the Majority Act. Section 3 of the Majority Act provides for the “age of majority of persons domiciled in India, at 18 years and not before”.

44. Consistent thereto, Section 9 of the PCMA prescribes punishment to any “male adult”, who may marry a “child”. Thus, any “male adult”, “above 18 years of age”, who may contract a “child marriage” shall be punished with rigorous imprisonment, that may extend to two years or fine that may extend to one lakh INR, or both. Thus, Section 9 of the PCMA also uses the phrase “male adult” in the context and with reference to age of such person being more than 18 years i.e. such male who may have attained the age of majority under the Majority Act.

45. In our view, the PCMA uses two concepts. First, to deal with the menace of “child marriage”, the legislature devices a concept of “child”. In that it creates an artificial distinction between the male and female population in the country. Consistent to the provisions of the Majority Act, it assumes that in our society a female would cease to be a “child” at age 18 years, purely by work of unexplained legal fiction,

it artificially assumes that a male would remain a “child” up to the age of 21 years.

46. We recognize that that legislative prescription also involving legislatively drawn artificial distinction (on the strength of a legal fiction incorporated), may have arisen for two completely different and largely distinct considerations. First, the legislature sought to protect the female population from the vice of “child marriage”, inherently involving risks to their life and health upon premature and therefore wholly unhealthy and undesirable exposure sexual intercourse and early childbirth – both leading to serious risks to their health (both physical and physiological), and longevity. It thus prohibits performance of any marriage involving a female below 18 years of age. At the same time, it uses that legislative opportunity to confirm a pre-existing societal concern to allow the male population, three more years to equip itself-educationally and financially, before the responsibilities of a married life may arise.

47. If we look beyond the surface of things, the artificial distinction drawn by Section 2(a) of PCMA between male and female members of the population, is nothing but a vestige of patriarchy. In making that observation we first appreciate the positive legislative step, to allow three years further time to members of the society to complete their education and gain financial independence. Yet, by confining that

opportunity only to the male population and by deliberately denying and equal opportunity to the female population, the pre-existing patriarchal bias existing in the society and the statutory law has been confirmed. Thus, a legislative assumption appears to exist that in a matrimonial relationship, it is the male who would be elder of the two spouses and would bear the financial burden of running the family expenses while his female partner would remain a child bearer or a second party - not equal to the first, in all respects.

48. Otherwise, the legislature would have necessarily equipped the female population also with time till age 21 - to complete their education and become financially independent. Thus, the higher and more desirable, and in any case the Constitutionally protected and cherished goal of equality enshrined under Article 14 of the Constitution of India, may have remained unaddressed. Yet, this is a statutory appeal proceeding, not involving any issue of validity of PCMA. Hence, we decline to rule on that issue.

49. At the same time, the dominant purpose of the PCMA is to prohibit solemnisation of “child marriages” especially those involving girls of tender age. They may never be prematurely exposed to inherently unhealthy sexual intercourse and to attending risks to their health and early childbirth that may endanger their life and health, especially through institution of marriage. Thus, that legislatively

introduced social reform must be enforced scrupulously. The interpretation to Section 3 offered by the appellant does not serve that purpose.

50. At the same time, the interpretation being offered would allow for an unfair and absurd advantage to arise in favour of male adults between 18 and 21 years of age. They may knowingly perform “child marriage” with underage and/or adult females, exposing their spouses to risk of their marriage being declared void at the instance of such “male adult” three years after such a victim female spouse may have crossed age of 20 years. Thus, a male who may be 18 years of age may marry a female 18 years of age and still have that marriage declared void by filing a suit under Section 3 of the PCMA up to age 23, though the victim female may remain helpless and disabled in law in setting up any valid defence. Even where an underage female party to such a “child marriage” may herself elect to confirm such a transaction - at age 18 and in any case loose limitation to institute any suit proceeding to seek a declaration that the transaction was void, at age 20, the male party to that transaction may continue to claim limitation to institute such a suit till age 23 years. No constitutional or legislative or socially justifiable reason may ever exist to accept that scheme of the Act.

51. Thus, the concept of “majority” though not specifically defined, yet provides for the end date of limitation to file a suit under Section 3 of the PCMA. It must be interpreted carefully. Its’ opposite i.e. “minor” used in Section 3(2) of the PCMA has been defined under Section 2(f) of the PCMA - to mean a person, who has not attained the age of “majority”, within the meaning of the Majority Act. Once the word “minor” used in PCMA refers to a person below 18 years of age, clearly, a person more than 18 years of age would not be a “minor”. In absence of any other concept or legislative intent contained in PCMA, the antonym of the word “minor” i.e. “major” appears to have been used to express the opposite intent i.e. a person who is more than 18 years of age. Only then definition of the word “minor”, may make any sense.

52. Second, there is no doubt that no “minor”/person below 18 years of age (whether male or female), may ever file a suit under Section 3 of PCMA, on their own. Section 3(2) of the PCMA would apply universally to males and females. Therefore, any suit under Section 3 of the PCMA may be filed by a person below 18 years of age (whether male or female), only through their guardian or next friend along with the Child Marriage Prohibition Officer. Any doubt in that regard, stands removed by clear use of words “his or her” in Section 3 (2) of the PCMA. Therefore, unlike section 2(a) of PCMA, there the legislature has not employed age based gender distinction while

vesting legal capacity on individuals to institute a suit proceeding to seek a declaration that their “child marriage” is void. Whether filed by a male or a female, below age of 18 years, such suit must be filed only through the guardian or next friend, along with the specified statutory authority.

53. By way of necessary corollary to the above, any person whether male or female, who has attained the age of 18 years may file a suit seeking declaration that their marriage is void, only in his own capacity. Once the Parliament has vested that legal capacity to both male and female population alike (at age of 18 years), that person may be deemed to know all - the election to be made; remedy to be applied; the statutory procedure under which it may be applied and the limitation to apply. There is no reason, either explicit or implied, apparent or inherent, necessary or possible, to accept that males would need or may be permitted to seek such discretionary relief within three years extra limitation than provided to the female, for the same purpose.

54. Third, there no justification may exist - based on any biological or legislatively noticed fact or reason of existing societal practice, to infer that a male member of the society may remain a “child” incapacitated to institute a legal proceeding between 18 and 21 years of age. To the contrary, the legislature specifically recognizes that that

legal capacity arises also to the male, at the age of 18 years itself. Therefore, the limitation to institute that proceeding is singular, both for males and females.

55. Fourth, there exists intrinsic evidence in Section 9 of PCMA, that indicates that the legislative intent is otherwise. It is an offence for a “male adult” i.e. a male above 18 years of age to solemnise a “child marriage” i.e. a marriage with an underage girl. Such a “male adult” may be penalised with rigorous imprisonment that may extend to two years, and he may also be visited with a fine. Though the word “adult” has not been defined under the PCMA, at the same time, Section 9 itself uses the phrase “male adult” in conjunction to the phrase “above 18 years of age”.

56. Therefore, the explicit legislative intent is - to treat a male more than 18 years of age i.e. beginning 18 year and one day, as an “adult”. He is prohibited from solemnising a “child marriage”. Violation of that prohibition enforced by the law may visit him with penalty of rigorous imprisonment that may extend up to two years, and fine. Therefore, for that reason also we have no doubt that the Parliament clearly intended and provided by way of law, that the male of the society also attain the age of “majority” i.e. the age of discretion and decision making at 18 years of age. There exists no evidence of any other legislative intent -to extend the limitation to institute a

proceeding under section 3 of PCMA (by such offenders), by three extra years.

57. Only for other social practices, and other factors that may have been considered by the Parliament, adult females more than 18 years of age, may rarely solemnize a “child marriage” i.e. with a male below the marriageable age. Hence, they are not exposed to similar criminal prosecution. To us that may have arisen also from an observation of societal realities including - women suffer more from chronic patriarchy (more than males themselves) and are more vulnerable to be coerced or convinced into marriage not out of free will or choice, than their male counterpart.

58. We are conscious, the above construction may be perceived to lead to a minor incongruence as a male who may be married at age 20 years may never seek a declaration that his marriage was void. That would be for reason - two years of limitation would have expired at the age of 20 itself, though, such male would continue to be defined as a “child” within the meaning of Section 2(a) of the PCMA.

59. In our view the legislature presumes that such a person (whether male or female) wholly understands the consequences of his action - of transacting a “child marriage”. Therefore, he can never claim ignorance of the law or incapacity in law, after “attaining majority”. Being more than 18 years of age, he alone would elect to perform

such a transaction, and he alone would have the discretion to make that decision and to perform the transaction prohibited by the law. If he still enters that transaction, he may do so in full knowledge of the law that he shall be prosecuted under Section 9 of PCMA.

60. Once such a “male adult” i.e. a male more than 18 years of age would have elected to do so, it would always be recognised in law (on a deemed basis) that he had waived his right to void the transaction of “child marriage” performed by him. A “child marriage” being voidable and not void, we see no difficulty in law, in not recognising any right to a “male adult” i.e. a male more than 18 years of age, to seek relief in a civil proceeding that his marriage was void.

61. As noted above, where a male “minor” may have been subjected to a “child marriage” transaction, then, by virtue of the express provision of Section 3 (2) of the PCMA, after attaining the age of 18 years, he alone would have the legal capacity to institute a suit to declare that transaction void. In that event as well the cut-off point when the male party to a “child marriage” must elect to opt out or confirm his marriage, would be when he attains the cut-off age of 18 years. In that event, the transaction of “child marriage” would have been performed when such a male was a “minor”. Therefore, he would have limitation of two years (from the date of “attaining majority” i.e. 18 years) to institute the suit.

62. Therefore, no incongruity exists. In all such cases, once a “male adult” i.e. a male who may attain age more than 18 years on the date of occurrence of a “child marriage” may have no limitation to void his such “child marriage”, he having elected to perform that prohibited transaction. Also, a male one who may have been a “minor” on the date of occurrence of his “child marriage” and may attain “majority” later, would lose his right to void his marriage if he elects to confirm his “child marriage”, after “attaining majority”.

63. In the second event, such a “male adult”, though may file such a suit proceeding, the fact of election and/or waiver may be pleaded in defence. It would have to be examined on the strength of evidence. Legally, he may be described to have waived the option to get his marriage declared void by electing to confirm it. Only the female “child”/other party to the “child marriage” would have the option to exercise that right.

64. As recorded above, “child marriage” being voidable and not void, we see no legal impediment in reading the waiver (on part of the male adult), as we have. Any other construction if accepted would strengthen the cause of suppressive patriarchy and work against gender equality. There being no basis to the premise that the male acquires age of discretion and decision making at age 21, that interpretation if accepted may lead to absurd in any case wholly unfair

and unjust results as may only be counterproductive to the present and future goals of the society and the PCMA legislation itself.

65. In any case, the incongruity if any is seen to be extraneous considering the above discussion. The Parliament has criminalised a “child marriage” performed by a “male adult” i.e. a person more than 18 years of age. PCMA prescribes punishment – up to two years rigorous imprisonment and fine that may extend to INR one lakh. The transaction entered is an offence. It entails a heavy punishment. In its face, to thereafter give an option to such an offender to void his marriage, would be to give him an unfair bargain against criminal prosecution, if not in all at least in some cases where the offender male may be 18 years of age on the date of occurrence of “child marriage” involving females who may also be 18 years of age or more. In that light, the reasoning of the Madras High Court in **T. Shivakumar (Supra)** and of the Delhi High Court in **Lajja Devi (Supra)** may not persuade us to reach that conclusion. Therefore, we remain in respectful disagreement with the reasoning offered by the Madras High Court and the Delhi High Court.

66. At the same time much as we are convinced as above, we find ourselves unable to offer any distinction to the binding reasoning offered by the Supreme Court in **Independent Thought (supra)**, even though the issue that arose before the Supreme Court in that decision

was “whether sexual intercourse between a man and his wife being a girl between 15 to 18 years of age is rape?”, at the same time, the Supreme Court did consider the provisions of the PCMA, at length. In that, it considered the provisions of Sections 3, Section 2 (a) and Section 9 of PCMA and the decision of the Madras High Court in **T. Shivakumar (supra)**. Thereafter, it made the following pertinent discussion in paragraph 136. It reads as under: -

136. If one analyses the provisions of all the laws which have been referred to above, it is apparent that the legislature, in its wisdom, has universally enacted that a person below the age of 18 years is deemed to be a child unable to look after his or her own interests. It would be very important to note that, in 2013 IPC was amended, post the unfortunate “Nirbhaya” incident and the age of consent under clause Sixthly of Section 375 IPC was increased to 18 years. The position as on date is that under the Protection of Children from Sexual Offences Act, 2012; the Juvenile Justice (Care and Protection of Children) Act; the Child Marriage Restraint Act, 1929; the Protection of Women from Domestic Violence Act, 2005; the Majority Act, 1875; the Guardians and Wards Act, 1890; the Contract Act, 1872 and many other legislations, a person below the age of 18 years is considered to be a child unable to look after his or her own interests.

137.....Therefore, a girl who was married before she attained the age of 18 years, can get her marriage annulled before she attains the age of 20 years. Similarly, a male child can get the marriage annulled before attaining the age of 23 years.....

(emphasis supplied)

67. Then, in a recent three-judge bench decision of the Supreme Court in **Society for Enlightenment and Voluntary Action and another Vs. Union of India and others, 2024 INSC 790**, the following issue arose for consideration: -

“The Petitioner's primary grievance is that despite the enactment of the Prohibition of Child Marriage Act 2006, the rate of child marriages in India is alarming. The Petitioner seeks to address the

failure of authorities to prevent child marriages. The Petitioner has sought stronger enforcement mechanisms, awareness programs, the appointment of Child Marriage Prohibition Officers, and comprehensive support systems for child brides including education, healthcare, and compensation, to ensure the protection and welfare of vulnerable minors. Accordingly, the Petitioner prays for the issuance of effective guidelines”

In that it has been observed as below: -

"54. Section 9 of the PCMA prescribes that a man above the age of eighteen, who enters into a marriage with a minor girl is liable to be punished with rigorous imprisonment which may extend to two years or with a fine which may extend to one lakh rupees or both. The court is accordingly empowered to penalise an accused under Section 9 with imprisonment or a fine or both. The court is at liberty to exercise its options of imposing punishment based on the gravity of the offence, the circumstance of the marriage and the socio-economic power of the male over his child bride. In many instances, the marriage between a child bride and aged groom occurs at the instance of the groom incentivising the family of the girl to marry her off. The provision deals with such situations but also recognises the relative lack of involvement of a man who may be a young adult and enters into matrimony with a minor. The option of imprisonment and fine is a deviation from the other two penal provisions in the PCMA which mandate both, a fine and imprisonment, to be imposed on guilty convicts. The rationale of this option is to allow the judge a degree of latitude in assessing the culpability of the groom under Section 9 and impose a proportionate criminal sentence.

55. Despite the age of majority for a man to enter into a marriage being prescribed as twenty-one under Section 2(a) of the Act, his criminal liability for entering into a child marriage with a minor woman begins at eighteen. Therefore, two positions of law emerge from Section 9. First, a woman, regardless of her age is not liable for entering into a child marriage. Second, a man above the age of eighteen but under the age of twenty one is liable for marrying a girl who is under the age of eighteen. The legislative intent behind making a groom liable for entering child marriage is to recognise the relative control of the agency that a groom may have in relation to his marriage as opposed to a girl. .

56. In Hardev Singh v. Harpreet Kaur the appellant was under the age of twenty one and had married a woman who was twenty-three years old. The High Court of Punjab and Haryana directed an FIR to be registered under Section 9 of the PCMA against the wife for entering into a marriage with a man who was a minor under the PCMA. A two-Judge bench of this Court set aside the judgment of the High Court and held that the PCMA does not prescribe any punishment for an adult woman who marries a male child. This Court held that the Act recognises women as a vulnerable class and seeks to punish adult men who marry child brides. The Court further rejected the literal interpretation of Section 9 which would make a man between the ages of eighteen and twenty one who

marries an adult woman liable for child marriage. Therefore, no child as defined in Section 2(a) of the PCMA is liable under Section 9 for marrying an adult person.

57. Section 10 of PCMA stipulates that a person who performs, conducts, directs or abets any child marriage shall be punished with rigorous imprisonment which may extend to two years and shall be liable to a fine which may extend to one lakh rupees. The provision, unlike Section 9, does not allow the court to choose the option of imposing a fine or sentencing a term of imprisonment or both. A court adjudicating under Section 10 is mandated to impose a sentence of imprisonment as well as impose a fine."

68. We also note, in **Hardev Singh Vs. Harpreet Kaur and others (2020) 19 SCC 504**, an issue had arisen whether a male "child" about 17 years of age married to a female more than 18 years of age could be penalized under Section 9 of the PCMA. In that the Supreme Court first categorically ruled that there is no provision for prosecution of an adult female marrying a male "child". Then, the Supreme Court made the following pertinent observations: -

7.3. We are of the view that such an interpretation goes against the object of the Act as borne out in its legislative history. Undoubtedly, the Act is meant to eradicate the deplorable practice of child marriage which continues to be prevalent in many parts of our society. The Statement of Objects and Reasons declares that prohibition of child marriage is a major step towards enhancing the health of both male and female children, as well as enhancing the status of women in particular. Notably, therefore, a significant motivation behind the introduction of this legislation was to curb the disproportionate adverse impact of this practice on child brides in particular.

7.6. It is also pertinent in this regard to refer to the Prevention of Child Marriage Bill, 2004 ("the 2004 Bill") which preceded the 2006 Act. Clauses 2(a), 2(b) and 9 of the 2004 Bill are in pari materia with the corresponding sections of the 2006 Act, except insofar as Clause 9 of the 2004 Bill prescribed simple imprisonment, whereas, Section 9 of the 2006 Act prescribes rigorous imprisonment for the offence. The Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, in its Thirteenth Report, on the 2004 Bill, notes that although both men and women are deemed to have attained majority at 18 years of age under other laws, a differential metric has been adopted for the purposes of defining child marriage. A

higher age is prescribed for men, based on the prevailing societal notions that the age of 18 years is insufficient for a boy to attain the desired level of education and economic independence, and that an age gap ought to be maintained between the groom and the bride.

7.7. However, the 2004 Bill, as also the 2006 Act, treats men who are above the age of 18 as having sufficient maturity to be held responsible for marrying a female child. The Report also notes that the purpose of Clause 9 of the 2004 Bill is to provide adequate penal consequences for a male adult who marries a child.

However, an adult woman is exempt from punishment for marrying a male child as, in a society like ours, decisions regarding marriage are usually taken by the family members of the bride and groom, and women generally have little say in the matter. We hasten to emphasise that we do not wish to comment on the desirability of maintaining the aforesaid distinction in culpability. However, the context in which this distinction was considered appropriate by the legislature must be taken into account.

7.8. Section 9 of the 2006 Act must be viewed in the backdrop of this gender dimension to the practice of child marriage. Thus, it can be inferred that the intention behind punishing only male adults contracting child marriages is to protect minor young girls from the negative consequences thereof by creating a deterrent effect for prospective grooms who, by virtue of being above 18 years of age are deemed to have the capacity to opt out of such marriages. Nowhere from the discussion above can it be gleaned that the legislators sought to punish a male between the age of eighteen and twenty-one years who contracts into a marriage with a female adult. Instead, the 2006 Act affords such a male, who is a child for the purposes of the Act, the remedy of getting the marriage annulled by proceeding under Section 3 of the 2006 Act. Hence, the male adults between the age of eighteen and twenty-one years of age, who marry female adults cannot be brought under the ambit of Section 9, as this is not the mischief that the provision seeks to remedy.

(emphasis supplied)

69. In paragraph 7.8 quoted above, the Supreme Court clearly recognized that a male by virtue of attaining age of 18 years is deemed to have capacity to opt out of “child marriage”. For that reason, the provision for their prosecution in the event of their engaging in “child marriage” was upheld. At first, we were tempted to apply that reasoning, to our benefit. At the same time, in paragraph

no.9 of that report, further observation has been made by the Supreme Court. It reads as under: -

9. Having regard to the above discussion, Section 9 of the 2006 Act does not apply to the present case at all. By the way of abundant caution, we wish to clarify that we are not commenting on the validity of marriages entered into by a man aged between eighteen and twenty- one years and an adult woman. In such cases, the man may have the option to get his marriage annulled under Section 3 of the 2006 Act, subject to the conditions prescribed therein.

(emphasis supplied)

70. The above observations made by the Supreme Court as emphasized by us leave us with no choice. In spirit, those observations may run parallel to the observation made by the Supreme Court in **Independent Thought (supra)**. Once, the highest Court of the land has ruled that the male may have a right to seek annulment of a “child marriage”, up to the age 23, constitutionally, it is not for us to lay another law. **Hardev Singh (supra)** was noticed in **Society for Enlightenment and Voluntary Action (supra)**. Yet, no different expression of the law is contained in that three-judge bench decision of the Supreme Court. Thus, the present comes across as a case where our judicial conscience may only conform to judicial discipline. We leave the issue at that.

71. In view of the above, we are unable to sustain the reasoning offered by the learned Court below insofar as it has referred to and related to the conduct of the appellant of filing a divorce suit under section 13 HMA, prior to the institution of the suit under Section 3 of

PCMA. No explicit or implicit act of election was proven performed by the appellant, after “attaining majority” as may be read to his having confirmed/legalised the “child marriage” between the parties. Having instituted the later suit within limitation, he had not waived the option to void that transaction. Similarly, it is a fact that the present suit was filed without specific reference to Section 3(3) of PCMA. Yet, upon amendment made and allowed, it must be acknowledged that the amendment relates back to the date of institution of the suit.

72. Thus, mere incorrect section description may have no bearing on the scope of the statutory suit proceedings. Substantive rights claimed by the appellant must be tested on the strength of pre-existing statutory law in light of the amended pleadings. The suit was instituted before a competent court. Therefore, the learned court below has erred in dismissing the suit instituted by the appellant.

73. No other fact is required to be established or gone into before declaring the transaction of “child marriage”, void. First, material fact, that on the date of their marriage both parties to the marriage were “child” within the meaning of that term defined under Section 2(a) of the PCMA, is admitted. Therefore, their marriage was a “child marriage” as defined under Section 2(b) of PCMA.

74. Then, it not disputed that the suit had been filed by a party to the transaction of “child marriage”. It is wholly maintainable. As to the competence and capacity of the appellant to institute the suit proceeding, there is no doubt. The appellant was more than 18 years of age. He alone could have filed that suit in his individual capacity. Last, as to limitation, we have already reached a conclusion considering the decision of the Supreme Court primarily in **Independent Thought (supra)** read with **Hardev Singh (supra)**, that the appellant had limitation available up to 23 years of age, to institute that suit. Undoubtedly, on the date of institution of the suit by the appellant he was less than 23 years of age. Therefore, the suit was instituted within limitation, it having been instituted before expiry of 2 years from the date the appellant ceased to be a “child” i.e. attained 21 years of age.

75. No other issue is to be dealt with. The findings recorded by the learned court below to the effect that earlier the appellant had instituted proceedings under Section 13 of the Hindu Marriage Act, that failed or that the present proceedings were originally instituted under Section 12(2) of the Hindu Marriage Act or that the amendment was made later to set-up ground of Section 3 PCMA and the other fact finding with respect to conduct of the parties up to the time the appellant sought a declaration under Section 3 of PCMA fade into insignificance, in view of the foregoing discussion. In any case, it was

not proven by the respondent that the appellant had ever elected to confirm his “child marriage” after “attaining majority” or that he ever waived his right to void that transaction. The learned court below ought to have granted the relief prayed.

76. What last survives for our consideration is, provision for maintenance and residence of the respondent. In that, counsel for the respondent has (in the alternative), pressed for INR 50,00,000/- towards permanent alimony and a residential house for the residence of the respondent. On his part, the appellant has offered to pay permanent alimony @ INR 15,00,000/-, at most. Insofar as the respondent has continued to reside with her parents the prayer for residential accommodation made by the respondent is declined. As to permanent alimony, we peg the amount at INR 25,00,000/-.

77. Accordingly, the order of the learned court below cannot be sustained. It is set-aside. The transaction of “child marriage” performed between the parties is declared void. Let INR 25,00,000/- be paid to the respondent within a period of one month. Failing that, the awarded amount shall carry interest @ 8% after one month till the date of its actual payment. No other relief has been pressed under Section 3(4) of the PCMA or otherwise.

78. Appeal is **allowed** as above. No order as to costs.

Order Date :- 25.10.2024
SA/A. Gautam/Abhilash/Prakhar

(Donadi Ramesh, J.) (S.D. Singh, J.)