# IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK RUSIA**

**&**

**HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI**

**ON THE 22nd OF AUGUST, 2024**

**FIRST APPEAL No. 450 of 2014**

***KOMAL***

*Versus*

***MAYARAM***

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**Appearance:**

*Shri Sudeep Bhargava learned counsel for the appellant.*

*Shri Anirudh Saxena, learned counsel for the respondent.*

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**ORDER**

***Per*: *Justice Vivek Rusia***

Appellant/wife has filed this present appeal under Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred to as "HMA") against a judgment dated 12.02.2014, whereby the 3rd Additional District Judge, Ujjain (M.P.) has dismissed the suit filed under Section 12 of HMA.

02. Facts of the case in short are as under:

2.1. The marriage of the appellant was solemnized with the respondent on 21.05.2009 under Hindu customs and rituals, the appellant approached the District Court by way of an application under Section 11 and 12 of HMA seeking a decree of nullity of marriage as void or voidable on the ground that at the time of marriage, she was 15 years of age and the respondent concealed the fact that he is blindness in one eye. After marriage, she lived with her husband, but they did not

consummate their marriage. Later on, she came to know that the respondent cannot see from one eye, therefore, on this ground, the marriage dated 21.05.2009 is either void or is liable to be declared as voidable.

2.2. After receipt of the summons, the respondent appeared and filed the reply that the marriage of the appellant was performed by her mother, maternal uncle and maternal grandfather with him, he was not aware of her age, she is living with her parents and now she is not interested in living with him.

2.3. The learned District Judge framed 5 issues for adjudication which are as under:

| क. | वाद विषय | निष्कर्ष |
|---|---|---|
| 1- | क्या वादिया कोमल का विवाह 21.05.09 को सम्पन्न हुआ ? | "प्रमाणित" |
| 2- | क्या वादिया कोमल विवाह के समय अवयस्क थी ? | "प्रमाणित" |
| 3- | क्या प्रतिवादी मायाराम की विवाह के पूर्व एक आंख खराब थी ? | "प्रमाणित" |
| 4- | क्या वादिया कोमल तथा प्रतिवादी के मध्य हुआ विवाह शून्य है ? | "अप्रमाणित" |
| 5- | सहायता एवं व्यय ? | "निर्णय के अंतिम पैरा अनुसार" |

2.4. The appellant examined Manohar Singh i.e. father, according to him, the marriage of the appellant was performed by his father-in-law without consulting him when his daughter was 15 years of age hence the marriage is nullity. The appellant examined herself after attaining the age of 18 years and according to her, she used to live in the house of maternal Uncle Banshilal who performed her marriage without her consent, at that time she was 15 years of age. She has exhibited her marksheets and educational qualification certificates.

2.5. In rebuttal, the respondent examined himself and Ramsingh.

After bearing in mind the evidence that came on record, the learned Additional District Judge answered issue No.1 that the marriage was solemnized on 21.05.2009, at the time of marriage appellant was minor and before marriage and before the marriage the respondent was blind in one eye. The learned Additional District Judge answered issue No.4 against the appellant by holding that the marriage cannot be declared void or voidable under Sections 11 and 12 of HMA. Vide judgment dated 12.02.2004 dismissed the suit. Hence, this first appeal before this Court.

03. Shri Sudeep Bhargava, learned counsel appearing for the appellant submits that under Section 5 of HMA, the conditions for Hindu marriage are prescribed and the marriage is liable to be solemnized between any two Hindus if the conditions mentioned in Clause (i) to (iv) are fulfilled. As per Clause (iii) the bridegroom should have completed the age of 'twenty-one years' and the bride should have completed the age of 'eighteen years' at the time of the marriage. Learned counsel has further submitted that under Section 11 of HMA, any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party, if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5 of HMA. It is further submitted by the learned counsel that admittedly, this section does not include Clause (iii) of section 5 of HMA. Even under Section 12 of HMA, the marriage shall be voidable and may be annulled by a decree of nullity on the ground mentioned in clause (a) to (d). The learned Additional District Judge has dismissed the suit relying on a judgment passed by this Court in the case of ***Gindan V/s Barelal, AIR 1976 M.P. 83***, but in the said judgment, the effect of Section 3 of The Prohibition of Child Marriage Act, 2006 (hereinafter referred as "PCMA, 2006") was not considered which says that every

child marriage whether solemnized before or after commencement of this Act shall be voidable at the option of contracting party who was a child at the time of marriage. It is further submitted that at the time of marriage, the appellant was minor as held by the civil Court, therefore, under this Section the learned Court ought to have declared the marriage voidable.

04. Learned counsel of the appellant has placed reliance on a judgment passed by the Hon'ble Apex Court in case of ***Independent Thought V/s Union of India and another, (2017) 10 Supreme Court Cases 800*** in which in para 128 the Hon'ble Apex Court held that after PCMA, 2006 was enacted, both the Hindu Marriage Act, 1955 and the Dissolution of Muslim Marriages Act, 1939 also should have been suitably amended, but this has not been done. He has also placed reliance on a judgment passed by the Full Bench of Madras High Court in case of ***T. Sivakumar V/s The Inspector of Police, Thiruvallur and others, 2011 (5) CTC 689*** in which it has been held that the marriage contracted with a female less than 18 years and more than 15 years is not a void marriage, but it is only a voidable marriage and it cannot be called as a valid marriage. Shri Bhargava further submits that the appellant and respondent have been living separately since 2010 i.e. 14 years and there is no possibility of their reunion, therefore, the decree of divorce may be passed.

05. *Per contra* Shri Anirudh Saxena, learned counsel appearing for the respondent/husband contends that the learned Additional District Judge has not committed any error of law while dismissing the suit on the ground that the marriage cannot be declared void or voidable when one of the contracting party was minor at the time of marriage. The HMA only provides punishment for contravention of clause (iii) of Section 5 unless the HMA is amended. As suggested by the Apex Court,

the marriage of the appellant and respondent cannot be declared voidable hence, the present appeal be dismissed.

We have heard learned counsel for the parties and perused the entire record.

***Appreciation and conclusion:***

06. Facts of the case which are not in dispute that the marriage of appellant and respondent was solemnized on 21.05.2009 and at the time of marriage, the appellant/wife was 15 years of age and the respondent/husband was suffering from blindness in one eye. The appellant filed a civil suit before the 3rd Additional District Judge, Ujjain seeking a declaration of marriage void / voidable under Section 5 r/w Sections 11 and 12 of HMA. After the establishment of the Family Court, this civil suit was not transferred to the Family Court, Ujjain and was tried as a Regular A-Class civil suit. The learned trial Judge recorded the findings in favour of the appellant that the marriage was solemnized on 21.05.2009 and at the time of marriage she was minor and one eye of the respondent did not have vision, but the suit has been dismissed that the marriage cannot be declared null and void on a petition presented by either of the party on the ground mentioned in Section 12 of HMA in which the breach of Clause (iii) of Section 5 does not find place.

07. At the time of marriage as well as during the pendency of the suit, the PCMA, 2006 was very much enforced. Section 3 of PCMA, 2006 specifically mandates that every child marriage whether solemnized 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 marriage provided that the petition was annulling a child marriage by a decree of nullity 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 marriage. Therefore, the District Court is a competent Court under this Act of PCMA, 2006 to declare the marriage voidable in a petition filed for annulling the child marriage by decree of nullity.

08. In this case, the appellant was minor, therefore, she filed a civil suit under the guardianship of her father. However, by ignorance of the law, the decree of declaration of marriage void was sought under Sections 5, 11 and 12 of HMA instead of Section 3 of PCMA, 2006. This Child Marriage Act has been enacted with aims and objects to make provision to declare child marriage as voidable and give a legitimate status of a child born out of such marriage to empower the Court to issue injunctions prohibiting solemnization of the marriage of a minor child. The Hon'ble Apex Court in the case of ***Independent Thought*** *(supra)* has held that a marriage contracted with a female less than 15 years or more than 15 years of age is not a void marriage, but it is only a voidable marriage.

09. The Hon'ble Apex Court in the case of ***Bhagwati Alias Reena V/s Anil Choubey, (2017) 13 Supreme Court Cases 582*** has again held that it is no more *res integra* that child marriage is voidable at the option of a minor spouse at the time of marriage and as per Section 12 of PCMA, 2006, only minor spouse has the right to seek annulment of the marriage.

10. It is correct that in HMA the marriage in which the bridegroom is below 16 years old cannot be declared void or voidable under sections 11/ 12 of HMA and the District Court is a competent Court under the Act of PCMA, 2006 to declare the marriage voidable in a petition filed for annulling the child marriage by decree of nullity. On the doctrine of "*pari materia*", reference to other statutes dealing with the same subject or forming part of the same system is a permissible aid to the

construction of provisions in a statute. See the following observations contained in ***Principles of Statutory Interpretation*** **by G.P. Singh (8th Edn.), Syn. 4, at pp. 235 to 239**:

"*Statutes in pari materia*

> *It has already been seen that a statute must be read as a whole as words are to be understood in their context. Extension of this rule of context permits reference to other statutes in pari materia i.e. statutes dealing with the same subject-matter or forming part of the same system. Viscount Simonds in a passage already noticed conceived it to be a right and duty to construe every word of a statute in its context and he used the word context in its widest sense including 'other statutes in pari materia'. As stated by Lord Mansfield 'where there are different statutes in pari materia though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system and as explanatory of each other'.*
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> *The application of this rule of construction has the merit of avoiding any apparent contradiction between a series of statutes dealing with the same subject; it allows the use of an earlier statute to throw light on the meaning of a phrase used in a later statute in the same context; it permits the raising of a presumption, in the absence of any context indicating a contrary intention, that the same meaning attaches to the same words in a later statute as in an earlier statute if the words are used in similar connection in the two statutes; and it enables the use of a later statute as parliamentary exposition of the meaning of ambiguous expressions in an earlier statute."*

11. In the case of ***Board of Trustees of the Port of Bombay V/s Sriyanesh Knitters, (1999) 7 SCC 359*** the Supreme Court of India held as under:-

> ***11.*** *The MPT Act is not, in our opinion, an exhaustive and comprehensive code and the said Act has to be read together with other Acts wherever the MPT Act is silent in respect of any matter. The MPT Act itself refers to other enactments which would clearly indicate that the MPT Act is not a complete code in itself which ousts the applicability of other Acts. The preamble of the Act does not show that it is a codifying Act so as to exclude the applicability of other laws of the land. Even if it is a codifying Act unless a contrary intention appears it is presumed not to be intended to change the law. (See Bennion's Statutory Interpretation, 2nd Edn., p. 444.) Furthermore where codifying statute is silent on a point then it is permissible to look at other laws. In this connection it will be useful to refer to the following observation of the House of Lords in Pioneer Aggregates (UK) Ltd. v. Secy. of State for the Environment [(1984) 2 All ER 358, 363 (HL)] (All ER at p. 363):*
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> *"Planning law, though a comprehensive code imposed in the public interest, is, of course, based on land law. Where the code is silent or*

*ambiguous, resort to the principles of private law (especially property and contract law) may be necessary so that the courts may resolve difficulties by application of common law or equitable principles. But such cases will be exceptional. And, if the statute law covers the situation, it will be an impermissible exercise of the judicial function to go beyond the statutory provision by applying such principles merely because they may appear to achieve a fairer solution to the problem being considered. As ever in the field of statute law it is the duty of the courts to give effect to the intention of Parliament as evinced by the statute, or statutory code, considered as a whole."*

***12.*** *In J.K. Steel Ltd. v. Union of India [AIR 1970 SC 1173 : (1969) 2 SCR 481] it was held that cognate and pari materia legislation should be read together as forming one system and as interpreting and enforcing each other. In Vidyacharan Shukla v. Khubchand Baghel [AIR 1964 SC 1099 : (1964) 6 SCR 129] it was held that the Code of Civil Procedure has to be read along with the Limitation Act. In State of Madras v. A. Vaidyanatha Iyer [AIR 1958 SC 61 : 1958 SCR 580, 590] SCR at p. 590 it was held that the Prevention of Corruption Act should be read along with the Evidence Act. In Mannan Lal v. Chhotaka Bibi [(1970) 1 SCC 769 : (1971) 1 SCR 253] it was held that the Code of Civil Procedure has to be read along with the Court Fees Act. In Vasudev Ramchandra Shelat v. Pranlal Jayanand Thakkar [(1974) 2 SCC 323 : (1975) 1 SCR 534] this Court observed that the Companies Act should be read along with the Transfer of Property Act.*

***13.*** *From the aforesaid decisions it clearly follows that it is permissible to read the provisions of two Acts together when the same are complementary to each other. In fact some provisions of the MPT Act themselves show that other laws are applicable.*

12. Even otherwise, it is a case of cruelty also, the marriage of a minor girl with a major male will cause mental as well as physical cruelty as she was not ready to perform the martial obligations, therefore, under Section 13 of HMA also she could have claimed the divorce from the husband / respondent.

13. In view of the above, we set aside the judgment and decree dated 12.02.2014 and declare the marriage null and void.

14. Accordingly, this Writ Petition is **disposed of**.

**(VIVEK RUSIA)**
**JUDGE**

**(BINOD KUMAR DWIVEDI)**
**JUDGE**

Divyansh