JUDICIAL ATTITUDE ON THE NULLITY OF FOREIGN MARRIAGE

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There are various case laws is available on the topic of nullity in a foreign marriage in India these are decided by the various High Courts and Supreme Court of India and foreign Courts also.

In the case of Mrs. M. v. Mr. A[i] where an appeal filed in the Bombay High Court by the wife appellant and had prayed for a decree of nullity, her marriage was solemnized at Huston, U.S.A. On the other hand, wife prayed for a decree of divorce on the ground of cruelty. This petition was initially filed before the trial Court under the stipulations of the Special Marriage Act, 1954, which applied to the spouses by virtue of the stipulations of Section 18 of the Foreign Marriage Act, 1969. The trial Court dismissed this petition on the ground that the Court was not vested with the mandatory jurisdiction, as this is an obligation of law that the petitioner must have been residing in India constantly for a period of three years without delay preceding the filing of the petition.

Further, the High Court observed that this Section refers to a time of not less than three years without delay preceding the filing of the petition and that the learned trial Court was not reasonable in having grafted on the word 'continuously.' The complexity that had arisen in this case centered on the fact that the petitioner had left India in December, 1986 and returned in August, 1987 and the petition was presented on April, 1988. The Court also took into account the fact that the petitioner had not emigrated from India which was recognized by the fact that, she had gone out of the Country only on a 'tourist visit' and she did really come back and has been enduringly domiciled and resident in India all through. The Court said that in marital legislations in this Country, the law confers local jurisdiction on a Court if the party concerned is in fact resident there and not on the basis of casual short- term visits.

The finding in the case of Neeraja Saraph v. Jayant Saraph[ii], was decided in the following facts: the wife appellant who got married to a software engineer working in United States was still demanding to get her visa to join her husband, who had returned after the marriage, when she received the petition for annulment of marriage presented by her husband in the U.S. Court. She presented a suit for damages in such situations as she had suffered not just psychologically and spiritually but had also renounced her job in eagerness of her going away to the US. The trial Court passed a decree of Rs. 22 lakhs and the High Court in appeal stayed the execution of the decree pending concluding disposal on the stipulation of deposit of Rs 1 Lakh in the Court. On the appeal by the wife the Supreme Court customized the High Court's order in favour of the wife by enhancing the deposit amount to Rs. 3 Lakh.

Although, the order was on a restricted ground in an interim application, this matter demonstrates the possibility of suit for damages by wife in such matters. This is also relevant that the Court passed some obiter explanations which are that, possibility of a statute conservation interests of women can be scrutinized by including such stipulations as: firstly, No marriage between a NRI and an Indian woman which has taken place in India can be annulled by a foreign Court; secondly, provision can be made for sufficient alimony to the wife in the property of the husband both in India and in a foreign country and thirdly, the decree awarded by Indian Courts can be made executable in foreign Courts both on theory of comity and by entering into reciprocal agreements like Section 44A of the Civil Procedure Code, 1908 which makes a foreign decree executable as it would have been a decree granted by that Court.

The English Courts are commonly happy to recognize the legality of marriages contracted in a foreign country by those usually resident there, although other Countries' rules prevailing sometimes eligibility and almost forever paperwork are dissimilar from those which appropriate in England. In the matter of Bibi v. Chief Adjudication Officer[iii], P was the first wife of H who is a British citizen usually domiciled in the UK. H and P solemnized the marriage in 1966 in Bangladesh and in 1969 H married again with a second wife W2 in Bangladesh. Both P and W2 remained living in Bangladesh until 1986, when P and her offspring joined H in the UK. H died in 1988 and P claimed a widowed mother's payment under Section 25 of the Social Security Act 1975. Her demand was dismissed and the Court of Appeal upheld the denial. Stipulation had been made by regulation for the payment of advantage to some survivors of potentially polygamous marriages, which were actually monogamous said Ward L. J., but

where the marriage was actually polygamous none of the wives was a widow entitled to the advantage in question in law.

A marriage may be either void or voidable. If it is voidable, the marriage remains valid until it is formally annulled by an order of the Court and a decree of annulment may be sought only by one or both of the spouses during the lifetime of 1both. A void marriage is void ab initio. Giving as her reason H's apparently un-caring and un-loving attitude towards her. H apologized and said he had supposed a formal relationship would be suitable until they were appropriately married but W declined to admit this apology and maintained her denial to go through with the religious ceremony. H was awarded a decree of nullity for W's wilful denial to consummate the marriage.

The paperwork's of marriage involve announcements of consent by both spouses and even if the officiant were to go ahead in the nonattendance of such announcements the marriage is void. Obvious consent cannot be real consent, though, if it is the consequence of insanity, duress which does not essentially have the similar meaning as in criminal law or contract or an error as to the identity of the other or the nature of the ceremony. In another case of Durham v. Durham[iv], the Earl of Durham sought a decree of nullity and claimed his wife had not had the mental capability required for marriage. The judge said the contract of marriage is a very easy one which does not need a high degree of cleverness to understand. But a person who understands the verbal communication of the ceremony can still be affected by delusions or other insanity so as to have no real appreciation of its significance. On the facts petition was dismissed and the judge decided that wife had enough capability at the time of the marriage though her condition had deteriorated later.

In the matter of Singh v. Kaur[v], A Sikh P sought annulment of his marriage on grounds of duress. The marriage, when he was 21 had been arranged by his parents; P had protested powerfully but had been told that denial would lead to dishonor for his family and that he would have to depart the family house and renounce his place in the family business. The Court of Appeal affirmed the judge's denial to award a decree of nullity and there had been no threats to P's life, limb or liberty. Further, in the case of Hirani v. Hirani[vi] A Hindu woman W, living with her parents, went through a marriage arranged by her parents, but the marriage was never consummated and she left her husband after 6 weeks. W sought a decree of nullity on the grounds of her parents' duress but primarily failed because there was no proof 1of any threat to her life, limb or liberty. The Court of Appeal awarded the decree of nullity.

In Ram Awadh v. State of U.P.,& ors.,[vii] and Deepa v. Balaji,[viii] both cases the courts observed that are governed under the personal laws to which the parties are subjected to, such as Hindu Marriage Act, 1955, Indian Divorce Act, 1869, Parsi Marriage and Divorce Act, 1936, Dissolution of Muslim Marriages Act, 1939, in view of Muslim Personal Law (Shariat) Application Act, 1937 'Sharia' of Islamic law, Foreign Marriage Act, 1969 and for those who have no faith in any religion or rationalists the Special Marriages Act, 1954. In the matrimonial proceedings instituted under the said personal laws, the wife and children can seek maintenance against the husband/father, as the case may be. It is to provide them financial support. It is for their survival, as long as the matrimonial proceedings are pending. Thus, they came to be called 'pendent lite maintenance'. It is also a 'temporary alimony' to the wife. They are in the nature of granting 'interim relief, 'interim measure', 'interim protection'.

In the latest case of Swapnanjali Sandeep Patil v. Sandeep Ananda Patil[ix], the facts of this case is that the respondent obtained wife-appellant's approval for marriage by fraud as the respondent at the time of registration of marriage, in the document of marriage has announced himself as single although the first marriage of respondent was subsisting and consequently according to the wife-appellant that she have a right for announcement of nullity of marriage. The Hon'ble Supreme Court observed that bearing in mind Section 24 read with Section 4 of the Act, if at the time of marriage either of the spouses has spouse living then such marriage is a void marriage and a decree of nullity can be granted on a petition filed by either spouse thereto against the other spouse.

Further held that, no period of limitation is prescribed so far as filing of petition for announcement to announce a marriage being nullity/void marriage, under Section 24 of the Act and rightly so, as once the marriage is void the same is a nullity and at any time the same may be declared as nullity being a void marriage. Consequently, both the trial Courts and the High Court have committed a mistake in deciding that the nullity petition was barred by limitation. While holding so, both the trial Court and the High Court had measured first proviso to Section 25 of the Act. In the facts and circumstances of the case, we are of the opinion that Section 25 of the Act will not be applicable and Section 24 of the Act would be applicable which does not given for any period of limitation like first proviso to Section 25 of 1the Act.

The learned trial Courts and the High Court have committed a serious error in deciding that there was a customary divorce between the respondent and his first wife-petitioner. There should be a definite issue Framed by the Court on the aforesaid and the similar is needed to

be established and proved by leading evidence. In the present case, neither an issue has been framed nor has even the respondent-husband lead any evidence and proved that there was a customary divorce between respondent and his wife.

Thus, the respondent-husband was needed to prove that such a customary divorce was allowable in their caste/community. In the nonattendance of any such subject or any evidence, the trial Courts were not reasonable in deciding that there was a customary divorce between the respondent and his first wife. Consequently, in deficiency of the above bearing in mind Section 24 read with Section 4 of the Act, the marriage between the appellant and respondent was void and the appellant was permitted to a decree of nullity at her instance. Therefore, both the Courts below have materially erred in dismissing the petition. For the reasons stated above, the bench is of the view that the appellant is entitled to a decree of nullity of the marriage between the appellant and the respondent and the present appeal succeeds.

So, A void marriage is not a marriage at all, i.e. from the commencement of marriage, it does not exist. It is called marriage because there are only two people who have undergone ceremonies of a marriage. Since, they completely require the capability to marry; they cannot become wife and husband just by undergoing marriage ceremonies. In other words, a void marriage does not provide rise to any legal results. No Court decree is necessary in the matter of void marriages. Still when a decree is issued by the Court, it plainly announces the marriage to be null and void. This is not the Court's decree that constructs such a marriage void. This is an accessible truth that the marriage is void and the Court is only creation a realistic judicial

Declaration. In accord with Section 24 of 1the Special Marriage Act, 1954, either spouse may file a petition for nullity to marriage.

On the other hand a voidable marriage is completely valid. Only one of the spouses to the marriage can request it to be avoided. If one of the spouses declines to demand the annulment of the marriage, the marriage shall continue valid. If one of the spouses pass away before the annulment than no one can dispute the marriage and it shall continue valid everlastingly. All the legal propositions of a valid marriage flow as long as it is not avoided. The grounds for voidable marriages are set out in Section 25 of 1the Special Marriage Act.

Thus, in concluding mode of this chapter it is clear that, traditionally the law of nullity of marriage is concerned with the impediments to marriages. On the basis of impediments, destructive impediments and obstructive impediments, the notion of void and voidable

marriages was developed in the Ecclesiastical law. This distinction was carried over to Common law even after the Ecclesiastical Courts ceased to have jurisdiction in marital cases. This distinction has been carried over all throughout and now into the newest legislation in the series, the Matrimonial Causes Act, 1973.

From English law, this distinction was received by the colonies, including India. An extraordinary improvement that has taken place in India in the law of marriages is that infringement of some of the obstructive impediments does not render the marriage voidable or void; if solemnised, the marriage is completely valid. The objective of providing this exacting remedy for a foreign marriage through the Special Marriage Act not in specified in the Foreign Marriage Act, 1969 is to give the spouses an option to dissolve their marriage.

Further, very few cases were found on the remedy of 1nullity on the foreign marriage or marriage solemnized under the Foreign Marriage Act, 1969, where lots of problem arises relating to marital remedy as well dissolution of marriage, the issue of ex-parte decree by Foreign Court also arises. The facial appearance is only due to be short of strong Private International Law as well ambiguity present in the Foreign Marriage Act. To finish the problems relating to foreign marriages the Government has to amend the Foreign Marriage Act, 1969 and have to present muscular legislature for the Private International Law.

In this chapter, the researcher has tried to analyze and investigate the scope, concept, essential elements, types, validity and merits and demerits of various factors which affect the remedy of the nullity in a foreign marriage with the help of the various case laws given by the Hon'ble High Courts, Apex Court and Foreign Courts also and legal stipulations enumerated in the Foreign Marriage Act, 1969 and Special Marriage Act, 1954. After that, here one significant question arises in regard of nullity in a foreign marriage, that the ground mentioned for void marriage in Section 24(i) similarly Section 4 of the Foreign Marriage Act that unsound mind of party and age of party, these both grounds should be grounds of voidable marriage.

The researcher has completed this chapter with the help of Section 24, 25 and 26 of chapter VI of the Special Marriage Act read with Section 18 of the Foreign Marriage Act. Lastly, in a concluding mode of this chapter, the researcher have a opinion that various rules originated by the case laws and provisions relating to the foreign marriage in the petition for the nullity of marriage shall apply completely in the matter of foreign marriage with the help of 1the Special Marriage Act, 1954.

ENDNOTES

[i] (1993) DMC 384
[ii] (1991)I DMC 238(MP)
[iii] (1997) Times 10/7/97, CA
[iv] (2007)II DMC 608 (Jhar.)
[v] AIR 2007 Ori 83.
[vi] (1982e) 4 FLR 232 CA.
[vii] Appeal No. 192 of 12017 decided on 16 July 2019 by Allahabad High Court
[viii] C.R.P. (PD) No. 1366 of 12017 decided on 13 April 2017 by Madras High Court
[ix] SLP No. 25080/2016 and Decided on March 2019 (Non-reportable).