N.Rajendran vs S.Valli on 3 February, 2022

Author: K. M. Joseph

Bench: Hrishikesh Roy, K.M. Joseph

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3293 OF 2012

N.RAJENDRAN APPELLANT(S)

VERSUS

S.VALLI RESPONDENT(S)

JUDGMENT

K. M. JOSEPH, J.

1. By the impugned judgment, the High Court has reversed the decree of dissolution of the marriage between the appellant and the respondent which is passed under Section 13 (1) (ia) of the Hindu Marriage Act, 1955.

2. We have heard Mr. K.S Mahadevan, learned counsel for the appellant and Mr. Gautam Narayan, learned counsel for the respondent.

3. The appellant and the respondent were married as per the Hindu rites and customs on 29.08.1999. According to the appellant, there were certain differences between his sister and the respondent's brother, who were married to each other, which led to the appellant's sister returning to her parental house. Further, the case of the appellant is that the respondent left the appellant on 18.01.2000 and returned to her parental home. She did not return home. She stood accused of cruelty and accordingly, the divorce petition was filed on 05.03.2001 seeking dissolution. The Family Court allowed the petition by its decree dated 23.07.2004. An appeal was carried by the respondent before the Madras High Court under Section 19 of the Family Courts Act, 1984 and it was filed on 09.09.2004. According to the appellant, since the period for filing an appeal by the respondent had expired, he re-married on 31.10.2004 on the strength of the decree of dissolution dated 23.07.2004. He was served with the notice in the matter in May, 2005. Respondent, in fact, filed a petition seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act on

27.12.2004 and the same is still pending.

4. The learned counsel for the appellant, Mr. K.S Mahadevan, would submit that the High Court has clearly erred in reversing the judgment of the Family Court. He would submit that this is a case of matrimonial cruelty practised by the respondent. The Trial Court has after considering the evidence rendered a finding to justify the grant of dissolution of the marriage. It is pointed out that there was a strained relationship between the respondent and the appellant's sister. It must be noticed here that the appellant's sister was married to the brother of the respondent on 24.05.1999, prior to the marriage between the appellant and the respondent on 29.08.1999. It is pointed out that on the evidence, finding was rendered by the trial court that strain between the respondent and the appellant's sister had a telling effect on the relationship between the appellant and the respondent. The learned counsel for the appellant contended that the respondent would threaten to commit suicide. What is more, the learned counsel for the appellant would further contend that though the appellant requested the respondent to come back. But she refused, stating that in view of the fact that she had gone to deliver a child, she needed more time. She had requested for five months. In fact, the father of the respondent passed away on 03.02.2001. It is further contended that the attitude of the respondent is reflected by the admitted fact that the respondent did not file any petition seeking restitution of conjugal rights. If she was genuinely interested in coming back and staying with the appellant, she would have done that. It is pointed out further that the findings rendered by the High Court about there not being any strained relationship between the respondent and her sister-in-law is unsustainable. He pointed out the contradictions in the impugned judgment in this regard. He would contrast the finding that there was no such strain with the finding that there was a strained relationship between the families. The respondent was never willing to live with the appellant. The finding of the High Court that the respondent was always ready and willing to rejoin is criticized as being unsustainable on facts. It is pointed out in this regard that the intention to return was not reflected in the pleadings, and it finds expression for the first time in the evidence of the respondent only.

5. It is further contended that the finding of the High Court about the effect of the respondent taking with her all jewels and belongings, which was a fact relied on by the Family Court to find that the respondent was not interested in living with the appellant, cannot be sustained on the ground that it is speculative and the finding of the High Court is bereft of any evidence in support thereof. Two views being possible, it is contended the High Court should not have reversed the view of the Trial Court. It is further contended that the appellant and the respondent have been living separately since 18.01.2000. 22 Years have passed away. A long and continuous separation, the marriage is as of today only a legal fiction. It is a tie beyond repair, the entire substratum having evaporated. The sanctity of the marriage is lost. It is, therefore, contended that the judgment of the High Court must be overturned. Next, it is contended that the appeal filed by the respondent under Section 19 was clearly beyond time. It is pointed out that when the High Court has rejected the contention that the period of 90 days is available to appeal the decree, it has erred in finding that the appeal was filed within time on the wings of the provisions of Section 12 of the Limitation Act.

Learned counsel would contend that the finding is in the teeth of Section 29 (3) of the Limitation Act. He further pointed out that Section 19 of the Family Courts Act is a code in itself and it is

evident from Section 20 which declares that Section 20 will have effect notwithstanding anything inconsistent with any other law. He would further contend, in this regard, most pertinently that Section 19 (1) contemplates that the provisions of the Code of Civil Procedure will not stand in the way of the overwhelming operation of Section 19 of the Family Courts Act. In other words, he contends that in a case which falls under the Code of Civil Procedure, it is mandatory that an appeal should be accompanied by a certified copy but when Section 19(1) is properly appreciated, this requirement must be treated as having been taken away. Equally, he dwells upon Section 19(1) to contend that the provisions of the Family Courts Act will have effect notwithstanding anything which is contrary to any other law. Thus, the period of 30 days in Section 19 must be adhered to by the prospective appellant. Hence, the appellant is not entitled to exclude any period with the aid of the Limitation Act. He would contend that the High Court has wrongly relied upon Section 29(2) of the Limitation Act. This being a law relating to marriage and divorce, it fell squarely within the four walls of Section 29(3). In this regard, he would contend that while an appeal before the High Court under Section 19 is not a suit, it would certainly be a proceeding within the meaning of Section 29(3). He would submit that the judgment of this Court reported in Lata Kamat v. Vilas1, etc. was a matter which fell to be considered under Section 28 of the 1989 (2) SCC 613 Hindu Marriage Act. Having regard to the pronounced differences in the provisions of the Family Courts Act, in particular, Sections 19 and 20, the word 'proceeding' in Section 29(3) would embrace an appeal which is carried under Section 19. He would next contend that under Section 15 of the Hindu Marriage Act, the appeal must be presented in time. The word "presented" according to Mr. K.S Mahadevan, Ld. Counsel, cannot be allowed to be interpreted in a pedantic manner and it should not be understood as the mere pushing of an appeal into the files of the Court. In other words, an appeal will be treated as "presented" within the meaning of Section 15 only when it is not only filed but further moved and brought up before the Court on the judicial side. Though the appeal was filed on 09.09.2004, it is pointed out that the application for stay of decree was signed as early as on 30.08.2004. The appeal was kept ready and it was not filed immediately deliberately. The moment, the respondent came to know that the appellant got re- married on 30.01.2004, she moved an application for stay on 01.11.2004. Therefore, she deliberately wanted to know whether the appellant would re-marry. Thereafter, she moved the application for stay on 18.11.2004, and obtained the stay on the said date. Therefore, it is contended that it is impossible to determine as to when a party who suffers a decree is likely to file an appeal. It is the conduct of the respondent which is harped upon to contend that she may not be granted any relief.

6. Per contra, Shri Gautam Narayan, learned counsel for the respondent would point out that no case whatsoever was made out at any point of time for the appellant to seek a dissolution of marriage. After the marriage, finding that, she was pregnant, and as is natural, she went to her parental house. The pregnancy was not a smooth affair. It was actually complicated. Her father passed away. Circumstances beyond her control constrained her to stay at her parental house and it has nothing to do with lack of inclination on the part of the respondent to fulfill her obligations under the marital tie. It is pointed out that the allegations which found favour with the Family Court are clearly not of a standard, which would attract the ground of cruelty contemplated by the law giver. No ground whatsoever existed for the Family Court to grant a decree of dissolution. It is pointed out that the High Court has exhaustively discussed the matter with reference to the circumstances and has correctly come to the conclusion that there is no cruelty at all. The

respondent is entirely blameless. She is a teacher. There is a son in the marriage. It is pointed out that the appellant has not at all taken any interest in his own son. He would point out as far as the question relating to the applicability of Section 29(3) of the Limitation Act is concerned, Section 19 of the Family Courts Act is a special provision within the meaning of Section 29(2) and it is, therefore, Section 29(2) which would apply. He would point out that word 'proceeding' in Section 29(3) must be confined to proceedings akin to a suit, which means that original proceedings brought by the parties and not an appeal carried in the matter.

7. He also would contend that there is no merit at all in the contention about the interpretation sought to be placed on the word "presented" in Section 15 of the Hindu Marriage Act. He would further point out that the Court may notice the facts and the plight of the respondent, who is blameless but for the unholy haste with which her husband, has rushed into a marriage.

8. As far as the contention of the learned counsel for the appellant that the High Court erred in the matter of reversing the decree of the Family Court is concerned, we are of the view that there is absolutely no merit in the contention. Undoubtedly, to describe the marriage as short-lived will not extricate the appellant from the rightful share of blame that falls on his shoulders. The marriage took place on 29.09.1999. Having become pregnant, the respondent left for her matrimonial home on 18.01.2000. The child was born on 29.08.2000. The father of the respondent died in February, 2001.

9. The haste with which the appellant has instituted proceedings is clearly made out by the fact that the appellant moved the petition before the Family Court on 05.03.2001. In other words, the petition is filed within a period of less than two years of the date of marriage. Cruelty, undoubtedly, can consist of physical as also mental cruelty. It is a matter to be decided on the facts of each case. But we are of the clear view that by any yardstick the case sought to be made by the appellant was without any basis. The evidence in this case consisted of the oral testimony of the appellant PW-1, and the oral testimony of the respondent is RW-1. Apart from that, exhibits A-1 & A-2, as such do not throw any light on the cruelty alleged against the respondent. The High Court has clearly found that there was no basis at all in the allegation of cruelty, which even as reiterated before us, consists in the so-called strained relationship between the respondent and the appellant's sister. The High Court rightly noted that having regard to the date of the marriage of the appellant's sister, which is prior to the appellant's marriage, it cannot be a case where there was a strain between them, as in such a case, the marriage between the respondent and the appellant would not have taken place, in the first place. Making up the case of a strained relationship between the appellant and the respondent as a ground of cruelty is beyond our comprehension. To our query to the learned counsel for the appellant as to whether there are any other circumstances or instances of cruelty, learned counsel of appellant apart from pointing out to the threat to commit suicide and refusal to come back, was unable to point out any other specific instance of cruelty. As regards, the respondent not coming back, it is quite clear that respondent being pregnant, she had to go to her parental house. This was but natural. The pregnancy was not a smooth one as pointed out. If the wife decided to stay for some more time in her own parent's house, after the delivery of the child, it is beyond our comprehension as to how such a case could have been brought before the Court, and more importantly without even waiting for a reasonable period of time. The appellant was not even

keeping in mind the fact that had fathered a child, rushes to the Court and files the petition seeking divorce. We cannot be oblivious to the death of the father of the respondent on 03.02.2001. Keeping in view these facts, we do not see any ground being made out by the appellant for interfering with the findings that there is no cruelty made out by the appellant on the part of the respondent. The learned counsel for the respondent points out that there is no evidence for the alleged threat to commit suicide and we do not think that there is any material produced which can be believed apart from what can we describe as normal wear and tear, which is normal to most marriages, if not all. There is nothing which is made out to justify a decree of dissolution of marriage on the ground of cruelty by the respondent.

10. The next argument advanced by the appellant that having regard to the provisions of Section 15 and the appellant having re-married on 31.10.2004, the matter must be considered and disposed of in the light of the second marriage which is entirely lawful. The appeal was filed on 09.09.2004, which is beyond the period of 30 days stipulated in Section 19 of the Family Courts Act. The High Court has found that the appeal is within time, noticing that after the decree was passed by the Family Court on 23.07.2004, an application for a certified copy was made by the respondent on 31.07.2004 and the period spent in obtaining the copy is to be excluded. When a certified copy was made available on 19.08.2004, the respondent, according to the appellant, signed the application for stay on 30.08.2004. The appeal was prepared on 01.09.2004. The appeal was filed only on 09.09.2004. Therefore, if the period spent in applying and obtaining a certified copy is excluded, the appeal is well within time as found by the High Court. If the appellant is justified in contending that the Court could not have allowed the respondent to seek shelter under Section 12 of the Limitation Act, the appeal would be beyond time and the 2nd marriage contracted by the appellant would be entirely lawful.

11. In order to the appreciate the contention of the appellant, we must advert to Section 15 of the Hindu Marriage Act, 1955. It reads as follows:

> "When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again."

12. Section 19 of the Family Courts Act is to be noticed next, which reads as follows:

> "(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure,1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.
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> (2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties2 [or from an order passed under Chapter IX of the Code of

Criminal Procedure, 1973 (2 of 1974):

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991 (59 of 1991).] (3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

[(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding.] [(5)] Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court."

13. Equally we must notice, Section 20 of the Family Courts Act, which reads as under:

"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

14. The other set of provisions which must be noticed is Section 29 of the Limitation Act which reads as under:

"29. Savings.—(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend."

15. On the one hand, it is the case of learned counsel for the appellant that having regard to the provisions of Family Courts Act, i.e., Section 19, Section 29(3) would clearly apply and, therefore, the Limitation Act would not apply. Since the Limitation Act would not apply, the period spent in applying for a certified copy and obtaining the same cannot be excluded by the respondent in calculating the period of limitation.

16. The learned counsel for the respondent on the other hand, would contend that it is Section 29(2) which would apply. Another allied argument which we must notice is that the appeal though filed on 09.09.2004, cannot be treated as having been presented on 09.09.2004.

17. Section 29(3) in its earlier avatar under the Limitation Act, 1908 reads as follows:

> "(3) Nothing in this Act shall apply to suits under the Indian Divorce Act (4 of 1869)."

18. This meant that there is no period of limitation, and that the Limitation Act did not apply to a suit for divorce under the Indian Divorce Act, 1869. The Third Report of the Law Commission on the Limitation Act, 1908 had this to say about the need for change.

"Para 60. Sub-section (3) makes this Act inapplicable to suits under the Divorce Act, 1869. There are other Acts like the Parsi Marriage and Divorce Act and the Special Marriage Act, dealing with marriage and divorce. The reasons for excluding proceedings under the Divorce Act, 1869 are equally applicable to proceedings under these other Acts. We recommend that the sub-section may be amplified to include all Acts relating to matrimonial causes. The Acts to be included may be specified when drafting the amendment to the section

19. This question as to whether the Limitation Act would apply to an appeal under the matrimonial laws is not res integra. No doubt, under the auspices of Section 28 of the Hindu Marriage Act, in the decision of this Court reported in Lata Kamat (supra), we need only notice the following paragraph:

> "12.The Schedule in the Limitation Act does not provide for an appeal, under the Hindu Marriage Act but it is only provided in sub- section (4) of Section 28 of the Hindu Marriage Act. Thus the limitation provided in sub-section (4) of Section 28 is different from the Schedule of the Limitation Act. Accordingly to sub-section (2) of Section 29, provisions contained in Sections 4 to 24 will be applicable unless they are not expressly excluded. It is clear that the provisions of the Act do not exclude operation of provisions of Sections 4 to 24 of the Limitation Act and therefore it could not be said that these provisions will not be applicable. It is therefore clear that to an appeal under Section 28 of the Hindu Marriage Act, provisions contained in Section 12 sub-section (2) will be applicable, therefore the time required for obtaining copies of the judgment will have to be excluded for computing the period of limitation for appeal. A Division Bench of Delhi High Court in Chandra Dev Chadha case held as under : (AIR pp. 24-25) The Hindu Marriage Act is a special law.

That this "special law" prescribes" for an appeal a period of limitation" is also evident. The period of limitation is 30 days. It is a period different from that prescribed in the First Schedule to the Limitation Act, 1963. But when we turn to the First Schedule, we find there is no provision in the First Schedule for an appeal against the decree or order passed under the Hindu Marriage Act. Now it has been held that the test of a "prescription of a period of limitation different from the period prescribed by the First Schedule" as laid down in Section 29(2), Limitation Act, 1963 is satisfied even in a case where a difference between the special law and Limitation Act arose by omissions to provide for a limitation to a particular proceeding under the Limitation Act, see, Canara Bank, Bombay v. Warden Insurance Co. Ltd. Bombay, AIR 19 Bom approved by the Supreme Court in Vidyacharan Shukla v. Khubchand.

Once the test is satisfied the provisions of Ss, 3, 4 to 24, Limitation Act, 1963 would at once apply to the special law. The result is that the court hearing the appeal from the decree or order passed under the Hindu Marriage Act would under Section 3 of the Limitation Act have power to dismiss the appeal if made after the period of limitation of 30 days prescribed therefor by the special law. Similarly, under Section 5 for sufficient cause it will have the power to condone delay. Likewise, under Section 12(2) the time spent in obtaining a certified copy of the decree or order appealed from will be excluded. If it is so, Section 12(2) of the Limitation Act is attracted, and the appellants in all the three appeals will be entitled to exclude the time taken by them for obtaining certified copy of the decree and order. The appeals are, therefore, within time.

Similar is the view taken by the Calcutta High Court in Smt. Sipra Dey case and also the M.P. High Court in Kantibai case. It is therefore clear that the contention advanced by the learned counsel for the respondent on the basis of the Limitation Act also is of no substance."

20. We may also notice that this subject has engaged the High Court on a more elaborate basis. Apart from the decision of the Delhi High Court. This Court also noticed the judgment of the Division Bench of Calcutta High Court which has exhaustively considered the issue and the decision is reported in Sm. Sipra Dey v. Ajit Kumar Dey2. In the said case, the Court has given the rationale for the change that was brought about in the provisions of Section 29(3) in the Limitation Act, 1963.

The Legislature wished to extend the protection from the Limitation Act, as it were, in regard to the word 'proceedings' in matrimonial matters to persons other than those who were covered by the provisions of section 29(3) in the Limitation Act, 1908. Protection under Section 29(3) of the 1908 Act was available to those who are governed by the Indian Divorce Act. The AIR 1988 Calcutta 28 rationale appears to be that by the very nature, matrimonial matters like Restitution of Conjugal Rights, Divorce, Guardianship, are matters for which it may not be appropriate to fix a period of limitation. It would not be in the interest of justice qua the parties and, therefore, not in the interest of society. It is this principle which was extended to cases, as for instance, to proceedings under the Special Marriage Act, where parties were governed by the Special Marriage Act, and the Parsi Marriage Act and any other law which related to matrimonial matters. But when it comes to providing for an appeal from the original proceedings, it is an entirely different proposition. It is in the interest of the parties and also the society at large that a period of limitation is fixed within which the verdict of the Court at the bottom of the judicial hierarchy is called in question. There

must be certainty and certainty in point of time and it is viewed in this regard, that we must understand the meaning of the word “proceeding” in Section 29(3).

21. We have no difficulty in contemplating that shorn of the context provided in Section 29(3), and placed in a different setting, the word “proceeding” may embrace an appeal. However, in the context of Section 29(3) and having regard to the history of the legislation, it is quite clear that the intent of the legislature was to take in proceedings before the original court by way of a petition as are contemplated in various provisions of the Hindu Marriage Act as for instance. Further we would notice that as was in fact correctly noticed by the Calcutta High Court in the judgment (supra), that in Sections 3,4,5,12,13,29, 30 & 31 of the Limitation Act, the expression ‘appeal’ is expressly used. What is more apposite is in Section 29 itself, which is at the center of the controversy before us, Section 29(2) on the one hand, expressly uses the word ‘appeal’, whereas when it comes to Section 29(3), the legislature has carefully chosen the word ‘proceedings’. Going by the company, the word “proceedings” keeps, namely a suit, it in no uncertain terms indicates that what the legislature had in mind was original proceedings and not appellate proceedings. In fact, a learned Single Judge of the Kerala High Court had dealt with this issue in the judgment reported in Kuttimalu v. Subramonian3 and his views on similar lines, stands approved by the full Bench of Kerala High Court in Kunnarath Yesoda v. Manathanath Narayanan4. It is relevant to notice the following paragraphs from the judgment of the full Bench of the Kerala High Court:

> “16. The second contention relates to the meaning of the expression "other proceeding"
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> in Section 29(3) of the Limitation Act. As has been rightly held in Kuttimalu v. Subramonian 1981 Ker LT 602 : (AIR 1981 NOC
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> 221) following Chander Dev v. Rani Bala, AIR 1979 Delhi 22, the statutory bar under Section 29(3) is limited to suits and other proceedings both of which are original in nature and not to appeals which belong to a distinct and separate category. We are in entire agreement with the reasoning and conclusion of Balagangadharan Nair, J. in 1981 Ker LT 602 : (AIR 1981 NOC 221).

17. The contention therefore that the appeal under the Hindu Marriage Act against a decree for divorce should be filed within 30 days of the date of the decree, whether a certified copy has been obtained or not and even if the appellate Court closes after the decree has been passed or order has been made and remain so closed for over 30 days therefrom cannot be accepted. Section 15 of the Hindu Marriage Act only declares that it shall be lawful for either party to the marriage to marry again under certain 3 1981 KLT 602 4 AIR 1985 Ker 220 circumstances. From this it does not follow that a right to remarry enures automatically after the expiry of 30 days from the date of the decree of divorce. If an appeal is presented, one will have to wait till it is dismissed. If there is a right of appeal, the time for filing the appeal should have expired without the appeal being filed, taking into consideration the time required for obtaining the certified copy. The period for filing the appeal does not expire if once the delay in filing the appeal is condoned. The computation of time under Section 10 of the General Clauses Act, 1897 when the court or office is closed also extends the time beyond

30 days. Thus Section 15, on its face, indicates that it is not the legislative intention that a right to remarry arises exactly after 30 days of the decree of divorce.

18. Reliance was placed on Section 23(4) of the Hindu Marriage Act which provides: --

> "In every case where a marriage is dissolved by a decree of divorce the court passing the decree shall give a copy thereof free of cost to each of the parties".

The contention was advanced that an applicant was entitled to a copy free of cost and therefore the time taken to obtain a certified copy cannot be excluded. Our attention was also drawn to Section 363(1) of the Criminal Procedure Code under which :

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> "When the accused is sentenced to imprisonment, a copy of the judgment shall, immediately after the pronouncement of the judgment, be given to him free of cost". Section 15 of the Hindu Marriage Act only enables the applicant to obtain a copy free of cost; but does not statutorily prescribe the time during which the copy has to be delivered. Section 23(4) does not advance the contention of the appellant that the time required to obtain the certified copy cannot be excluded."
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> 22. Taking up the contents of paragraph 18 above, we find that it is again a circumstance which sufficiently deals with the argument of Shri K.S. Mahadevan, learned counsel for the appellant, that a certified copy may not be necessary. As noticed by the High Court, a free copy may be supplied as per the requirement under the Family Courts Act but that is a far cry from holding that an appeal can be carried without a certified copy.

In this regard, we are again fortified by a Rule which has been made under Section 21 of the Family Court Act. The Madras High Court has framed Rule 52 of the Family Courts (Procedure) Rules, 1996 which reads as follows:

> "Copy of judgment or order to be filed with appeal- Every appeal under section19(1) of the Act shall be accompanied by a copy certified to be true copy by the court which passed the Judgment."
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> 23. This plainly would suffice to repel the contention of the appellant that an appeal can be maintained within thirty days even if it is in the absence of a certified copy. Coming further to the arguments of the learned counsel for the appellant that Section 19 overrides the provisions of the Code of Civil Procedure and there may not be any need to have a certified copy of the judgment, we find this argument to be clearly untenable having regard to Rule 52 made by the Madras High Court under the said Section 21 of the very Act namely, the Family Courts Act. The non-obstante clause in Section 19 actually has a different purport and scope and it was not meant to sweep

away all requirements as existed in law for maintaining an appeal.

24. Equally, without substance is the contention of the appellant based on Section 19(3) of the Act. It constituted a special law within the meaning of Section 29(2) of the Limitation Act. It must be noticed that the Family Courts Act itself was based on the overwhelming realization that a specialized institution which must resort increasingly to efforts of reconciliation between the parties be established.

It must be noticed that even with the promulgation of the Act, unless a Family Court is established, the Courts which were earlier dealing with the provisions would continue to have jurisdiction. With the establishment of Family Court and the jurisdiction it was to exercise under Section 7 of the Act, this Court is of the view that the Family Courts Act must be read along with the cognate enactments. In other words, the Family Courts Act is not a standalone Act. It draws sustenance from Acts like the Hindu Marriage Act. This is for the reason that a petition within the meaning, for instance, of the Hindu Marriage Act, after a Family Court is established in India, is to be dealt with by the Family Court, on the grounds as provided under the Hindu Marriage Act. In fact, a mere perusal of Section 7 of the Family Courts Act would show that it speaks about suits and proceedings. Therefore, reading Section 7 of the Family Courts Act with Section 29 of the Limitation Act, also fortifies us in our finding that the word 'proceedings' within the meaning of Section 29(3) is to be confined to the original proceedings.

25. We also do not find any merit in the contention based on Section 20. Section 20 gives overriding effect to the Family Courts Act, notwithstanding anything which is inconsistent with any other Act. It is true that it is intended to have an overwhelming sway even in the teeth of other provisions. But in order to apply Section 20, and to rule out Section 12 of the Limitation Act, the appellant must succeed in the first place in eliminating the application of Section 29(2) of the Limitation Act. Once Section 29(2) applies, the Family Courts Act would be a special enactment providing for special period of limitation as contemplated in Section 19 but bringing in its train, the provisions of Sections 4 to 24 of the Limitation Act. Section 12 of the Limitation Act is legitimately available to a prospective appellant. It is also conducive to the interest of justice. In fact, it is incomprehensible how on one hand, the law commands through Rule 52 of the Rules that a certified copy must accompany an appeal, and yet a decision declaring the marriage dissolved could hold a litigant to ransom, when she has no right to file an appeal without a certified copy, and yet a successful party before the original court is left free to remarry before the period runs out under the Limitation Act.

26. There is thus nothing inconsistent in Section 12 read with Section 29(2) of the Limitation Act with Section 19 of the Family Courts Act.

Therefore, we find that there is no merit at all in the contention of the appellant that the provisions of Section 20 will override the provisions of Section 12 of the Limitation Act thereby rendering the appeal filed by the respondent beyond time.

27. The further argument addressed by the learned counsel for the appellant, Shri K.S.Mahadevan, that the respondent filed an appeal on 09.09.2004 and therefore it was not an appeal which was

presented within the meaning of Section 15 of the Hindu Marriage Act, is without any merit at all. In fact, Section 3 of the Limitation Act uses the word "prefers" in the context of an appeal. Section 15 no doubt uses the word "presented". What Section 15 intends is to place a time limit on the right of the unsuccessful party to challenge a proceeding by which the marriage has been declared dissolved. In Lata Kamat (supra), we notice that this Court has clarified that though Section 15 uses the word "dissolved", it has been interpreted to also apply to cases where the marriage is pronounced null and void keeping in view the interests of justice. Thus, the intention of the Legislature was to give effect to the decree for dissolution, if the unsuccessful party does not move the appellate court within time. The argument of the learned counsel for the appellant that not only must the appellant file the appeal, or prefer the appeal or present the appeal, but he must also ensure that the appeal comes on the judicial side of the High Court is clearly without any basis. Therefore, we find that the appeal on being filed on 09.09.2004 must be treated as having been presented within the meaning of Section 15 of the Act. The upshot of the discussion is that the appellant has not made out a case to overturn the findings on merits. Equally, as the appellant failed in persuading us to hold that the appeal was not filed within the period stipulated in Section 19 of the Family Courts Act or that the appeal was not presented during the period of Section 15 within time, the second marriage which is relied upon by the appellant clearly took place in contravention of mandate of Section 15 of the Hindu Marriage Act and we have no hesitation in holding that the High Court was entirely right in its findings.

28. The question lingers, unfortunately, however, as to whether this should be the end of the enquiry by this Court in the facts of this case. The parties have beyond dispute been living separately since 18.01.2000, in other words, for more than 22 years. Should we rest content with affirming the impugned judgment which we find beyond reproach? Should we hearken to the plea of the learned counsel for the appellant that declining to interfere with the judgment should not lead to a situation where the parties will never be able to cohabitate as husband and wife and what is more, third parties have made their appearance on the scene in the form a second wife and son born to her on 25.02.2004 and yet the marriage remains intact. There is a son born to the appellant from the second marriage which is contracted undoubtedly in violation of Section 15. It is pointed out by learned counsel for the respondent that the son was born in the second marriage to the appellant even prior to the pronouncement of dissolution by the Family Court.

29. Article 142 of the Constitution undoubtedly clothes this Court with a reservoir of power to pass orders as would reach complete justice to the parties. What comes to mind is the concept of irretrievable breakdown of marriage. Undoubtedly, though there have been reports of the Law Commission in this regard recommending changes in the law, as of today the statute does not provide for irretrievable breakdown of marriage as a ground. However, this Court has on a number of occasions exercised its power and granted dissolution of marriage on the ground of irretrievable breakdown of marriage based on Article 142. In this regard, learned counsel for respondent pointed out that this is not a case for exercising power under Article

142. He addressed this submission, reminding us of the conduct of the appellant throughout. He would submit that the respondent is completely without blame. She was always ready and willing. The findings as found by the High Court being confirmed, no occasion arises for this Court to exercise power under Article 142. We record this submission for as a prefatory remark to indicate

that this is not a case where both parties are agreeable for a dissolution by way of irretrievable breakdown of marriage. But that then leads us to the question as to whether the consent of the parties is necessary to order dissolution of marriage on the ground of irretrievable breakdown. This again, is not res integra. We may notice that this Court has in a catena of decisions discussed this very aspect. The judgment reported in R. Srinivas Kumar v. R. Shametha5 reads as under:

> "7. Now so far as submission on behalf of the respondent wife that unless there is a consent by both the parties, even in exercise of powers under Article 142 of the Constitution of India the marriage cannot be dissolved on the ground of irretrievable breakdown of marriage is concerned, the aforesaid has no substance. If both the parties to the marriage agree for separation permanently and/or consent for divorce, in that case, certainly both the parties can move the competent court for a decree of divorce by mutual consent. Only in a case where one of the parties do not agree and give consent, only then the powers under Article 142 of the Constitution of India are required to be invoked to do substantial justice between the parties, considering the (2019) 9 SCC 409 facts and circumstances of the case.

However, at the same time, the interest of the wife is also required to be protected financially so that she may not have to suffer financially in future and she may not have to depend upon others."

30. We may also notice the judgment of this Court reported in Munish Kakkar v. Nidhi Kakkar6 which reads as under:

> "18. No doubt there is no consent of the respondent. But there is also, in real terms, no willingness of the parties, including of the respondent to live together. There are only bitter memories and angst against each other. This angst has got extended in the case of the respondent to somehow not permit the appellant to get a decree of divorce and "live his life", forgetting that both parties would be able to live their lives in a better manner, separately, as both parties suffer from an obsession with legal proceedings, as reflected from the submissions before us."

31. We may also notice the judgment of this Court reported in Sivasankaran v. Santhimeenal7 which reads as under:

> "19. We are, thus, faced with a marriage which never took of from the first day. The marriage was never consummated and the parties have been living separately from the date of marriage for almost 20 years. The (2020) 14 SCC 657 2021 SCC Online SC 702 appellant remarried after 6 years of the marriage, 5 years of which were spent in Trial Court proceedings. The marriage took place soon after the decree of divorce was granted. All mediation efforts have failed.

20. In view of the legal position which we have referred to aforesaid, these continuing acts of the respondent would amount to cruelty even if the same had not arisen as a cause prior to the institution of the petition, as was found by the Trial Court. This conduct shows disintegration of

marital unity and thus disintegration of the marriage. In fact, there was no initial integration itself which would allow disintegration afterwards. The fact that there have been continued allegations and litigative proceedings and that can amount to cruelty is an aspect taken note of by this court. The marriage having not taken of from its inception and 5 years having been spent in the Trial Court, it is difficult to accept that the marriage soon after the decree of divorce, within 6 days, albeit 6 years after the initial inception of marriage, amounts to conduct which can be held against the appellant.

21. In the conspectus of all the aforesaid facts, this is one case where both the ground of irretrievable breakdown of marriage and the ground of cruelty on account of subsequent facts would favour the grant of decree of divorce in favour of the appellant.

22. We are, thus, of the view that a decree of divorce dissolving the marriage between the parties be passed not only in exercise of powers under Article 142 of the Constitution of India on account of irretrievable breakdown of marriage, but also on account of cruelty under Section 13(1)(i-a) of the Act in light of the subsequent conduct of the respondent during the pendency of judicial proceedings at various stages."

32. Having found that consent of the parties is not necessary to declare a marriage dissolved, we cannot be unmindful of the facts as they exist in reality. There has been a marriage which took place on 31.10.2004. There is a child born in the said marriage. No doubt being in contravention of Section 15, it becomes a fait accompli but at the same time we do not reasonably perceive any possibility of the appellant and the respondent cohabiting as husband and wife. Whatever life was there in the marriage has been snuffed out by the passage of time, the appearance of new parties and vanishing of any bond between the parties. Not even the slightest possibility of rapprochement between the appellant and the respondent exists for reasons though which are entirely due to the actions of the appellant and for which the respondent cannot be blamed. The marriage between the appellant and the respondent has become dead. It can be described as a point of no return. There is no possibility of the appellant and the respondent stitching together any kind of a reasonable relationship as the tie between the parties has broken beyond repair and having regard to the facts of this case, we would think that it would be in the interest of justice and to do complete justice to the parties that we should pass an order dissolving the marriage between the appellant and the respondent.

33. We make it clear that this decision of ours is not based on our approval of the conduct of the appellant nor is it based on sitting in judgment over the conduct of the respondent. In other words, we find that respondent is blameless in the matter but the facts as they have unfolded and the developments which have taken place, render it unavoidable for us to consider dissolution of marriage as the best course open in the interest of justice.

34. Accordingly, while we affirm the judgment of the High Court and refuse to grant a decree of dissolution on the ground of cruelty by the respondent, we in exercise of our power under Article 142 of the Constitution declare the marriage between the appellant and the respondent as dissolved. This will be on condition that the appellant will pay a sum of Rs.20,000,00/- (Rupees twenty lakhs)

to the respondent by way of a demand draft within a period of eight weeks from today. We further make it clear that this will be without prejudice to all the rights available to the son who was born in the marriage between the appellant and the respondent under law in regard to property rights. Till the amount is paid as aforesaid, the appellant will continue to be liable to pay Rs.7000/- per month to the respondent.

35. The appeal is disposed of as above.

……J. [K.M. JOSEPH] ……J. [HRISHIKESH ROY] New Delhi;

February 03, 2022.