Supreme Court of India
Smt. Lata Kamat vs Vilas on 29 March, 1989
Equivalent citations: 1989 AIR 1477, 1989 SCR (2) 137
Author: G Oza
Bench: Oza, G.L. (J)

PETITIONER:
SMT. LATA KAMAT

Vs.

RESPONDENT:
VILAS

DATE OF JUDGMENT29/03/1989

BENCH:
OZA, G.L. (J)
BENCH:
OZA, G.L. (J)
PANDIAN, S.R. (J)

CITATION:
1989 AIR 1477 1989 SCR (2) 137
1989 SCC (2) 613 JT 1989 (3) 48
1989 SCALE (1)867

ACT:
Hindu Marriage Act 1956: Sections 11, 12, 13 and 28---Decree of nullity and decree of divorce--Distinction between--Marriage declared nullity--Wife filing appeal--Husband marrying after trial Court decree but before the filing of the appeal--Appeal whether rendered infructuous
Indian Limitation Act 1963: Sections 4, 24 and 29--Applicability of provisions of Act to an appeal under section 28 Hindu Marriage Act 1956--Time required for obtaining copies of judgment to be excluded.

HEADNOTE:
A decree in favour of the respondent-husband was granted

by the Trial Court declaring his marriage with the appella
nt
to be a nullity under section 12(1)(d) of the Hindu Marria
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Act, 1956 on the ground that the wife at the time of ma
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riage was pregnant by some one other than the respondent.
In
the appeal filed by the appellant, the respondent raised
a
preliminary objection contending that the appeal was n
ot
tenable and had been rendered infructuous because he h
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re-married before the filing of the appeal. The Appella
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Court allowed the preliminary objection and dismissed t
he
appeal, and the High Court dismissed the second appeal.

Before this Court it was contended on behalf of t
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appellant that (i) the word 'divorce' has been used
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section 15 in a broader sense and, in view of the langua
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used in that section, it is not possible to distingui
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between a decree of nullity under section 11 or 12 a
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decree of divorce under section 13; (ii) the interpretati
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put by the lower courts, on the basis of judgments of so
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of the High Courts, that section 15 will not apply to
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decree under section 12 but would only apply when there is
a
decree under section 13, does not appear to be correct
as
the scope and language of section 15 coupled with the la
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guage of section 28, had not been considered by any one
of
these courts; and (iii) even if it is held that section
15
applies to a decree under section 12, the respondent h
ad
re-married after the period of limitation had expired,
as
the provisions of the Limitation Act will not apply in vi
ew
of the section 29(3) of that Act, and therefore the period

for obtaining copies of the judgment excluded under section 12 clause will not be available to the appellant.

Allowing the appeal, it was,

HELD: (1) It is no doubt true that section 12 and section 13 have different phraseology. In section 12 it is said that the "marriage may be annulled by a decree of nullity" whereas in section 13, the phraseology used is "dissolved by a decree of divorce". Though in substance the meaning of the two may be different under the circumstances and on the facts of each case, but the legal meaning or the effect, is that by intervention of the court the relationship between two spouses has been severed either in accordance with the provisions of section 12 or in accordance with the provisions of section 13. Probably it is because of this reason that the phrase 'decree of nullity' and 'decree of divorce' have not been defined. [143A-B]

(2) Under the provisions of section 28 all decrees made by the Court in any proceeding under this Act are appealable. In order to provide an appeal against all decrees section 28 has used a very wide terminology which includes decrees under sections 11, 12 and 13, and so far as this is concerned it could hardly be contested as the language of section 28 itself is so clear. [143G-H]

(3) If it is accepted that section 15 will not apply to cases when a decree is passed under section 11 or 12, it will mean that as soon as a decree is passed the party aggrieved may appeal but the other party by remarriage would make the appeal infructuous and therefore the right of appeal of one of the parties to the decree under section

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will be subject to the act of the other party in cases whe
re
decree is passed under section 11 or 12. But if it were so,
the Legislature would have provided a separate provision f
or
appeal when there is a decree under section 13 and a diffe
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ent provision for appeal when there is a decree under sec
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tion 11 or 12 as the right of appeal against a decree und
er
section 11 or 12 could only be a limited right subject
to
the desire of the other party. [144H; 145A-B]
(4) The Legislature in its wisdom had enacted section
28
conferring a right of appeal which is unqualified, unre
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strictive and not depending on the mercy or desire of
a
party against all decrees in any proceeding under the Act.
Hence, the only interpretation which could be put on the
langsuage of section 15 should be that which will be consis
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entsewith section 28. Therefore, the phrase 'marriage has
been dissolved
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by a decree of divorce' in section 15 will only mean whe
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the relationship of marriage has been brought to an end
by
the process of court by a decree, which will include
a
decree sunder section 11, 12 or 13. The view taken by the
courts below is accordingly not sustainable. [145C-D; 147F
]

Chandra Mohini Srivastava v. Avinash Prasad Srivastava

JUDGMENT:

Anr., [1967] 1 SCR 864; Tejinder Kaur v. Gurmit Singh, A IR [1988] SC 839; Vathsala v. N. Manoharan, AIR (1969) Madr as 405, referred to.

Mohanmurari v. Srnt. Kusumkumari, AIR (1965) M.P. 19 4;

Jamboo Prasad Jain v. Smt. Malti Prabha, AIR 1979 Allahab ad 260; Pramod Sharma v. Smt. Radha, AIR (1976) Punjab 35 5, overruled.

(5) So far as clause (3) of Section 29 of the Limitati on Act is concerned, the impact of it will be that the prov i-

sions of the Limitation Act will not apply so far as a su it or an original proceeding under the Hindu Marriage Act is concerned, but clause (3) will not govern an appeal. [149E ] (6) To an appeal under section 28 of the Hindu Marria ge Act, provisions contained in section 12 clause (2) of t he Limitation Act will be applicable, and therefore, the ti me required for obtaining copies of the judgment will have to be excluded for computing the period of limitation f or appeal. [149G-H] Chander Dev Chadha v. Smt. Rani Bala, AIR (1979) Del hi 22; Smt. Sipra Dey v. Ajit Kumar Dey, AIR (1988) Cal 28 a nd Kantibai v. Kamal Singh Thakur, AIR (1978) M.P. 245, r e-

ferred to.

& CIVIL APPELLATE JURISDICTION: Civil Appeal No. 708 of 1988.

From the Judgment and Order dated 20.2. 1987 of t he Bombay High Court in S.A. No. 282 of 1985. Mrs. Shyamla Pappu, K.K. Rai and Mrs. Indira Sawhney f or the Appellant.

G.L. Sanghi and A.K. Sanghi for the Respondent. The Judgment of the Court was delivered by OZA, J. This appeal after leave has been filed by the appe l-

lant wife arising out of a decree under Section 12(1)(d) of t he Hindu Marriage Act (hereinafter referred to as the 'Act'), a decree declaring the marriage a nullity. The respondent husband instituted a petition on 7 th March, 1984 for a declaration that the marriage of t he respondent with the appellant wife was a nullity under su b-

section (1) sub-clause (d) of section 12 of the Act on t he ground that appellant, the wife at the time of marriage wi th the respondent was pregnant by some one other than t he respondent. The appellant wife contested the allegations a nd ultimately the IIIrd Joint Civil Judge, Senior Divisi on Nagput granted a decree in favour of the respondent by h is judgment dated 3rd May, 1985 declaring the marriage to be a nullity.

The appellant wife filed a regular civil appeal No. 4 of 1985 on 19.7.1985 before the IInd Additional Distri ct Judge, Nagput. Before this appeal could be filed, the r e-

spondent husband married one Miss Sarita daughter of Laxma n-

rao Modak on 27.6.1985, and in the appeal filed by t he appellant, the respondent raised a preliminary objecti on contending that after passing of the judgment and decr ee dated 3.5.1985 by the trial court he has married Sari ta daughter of Laxmanrao Modak on 27.6.1985. It was furth er alleged in the application that this marriage was solemnis ed on 27.6.1985 when there was no

impediment against the r e-

spondent husband which could come in his way for contracti ng this marriage as the parties were relegated to the positi on as if they were not married and therefore this marria ge performed on 27.6.1985 of respondent with Sarita was leg al and valid and the consequence of this is that the appe al filed by the appellant was not tenable having been render ed infructuous. The IInd Additional District Judge, Nagpur vi de his order dated 17.8.1985 allowed the objection of t he respondent and dismissed the appeal as infructuous with a direction to the parties to bear their own respective cost s.

Against this the appellant preferred a second appe al before the High Court. The High Court by its judgment dat ed 20.2.1987 dismissed the appeal holding that as the appe al was filed by the appellant after the re-marriage of t he respondent it has become infructuous. The learned Judge al so dismissed the application for maintenance pendent elite a nd aggrieved by this judgment of the High Court after obtaini ng leave this appeal is filed in this Court. It was contended by learned counsel for the appella nt that the language of Sec. 15 clearly goes to show that it refers to a marriage which has been dissolved and it also talks of fight of appeal against the decree. In view of this language used in Sec. 15 it is not possible to distinguish between a decr ee of nullity under Section 11 or 12 and decree of divor ce under Section 13. It was contended that the word 'divorc e' has been used in this provision in a broader sense indica t-

ing that where the marriage is dissolved or the relationsh ip is brought to an end by decree of court whether it is by declaring the marriage invalid or dissolving it by a decr ee but result is the same and it was contended that it is because of this that in this Act there is neither any sp e-

cific definition provided for the term 'divorce' or a decr ee of divorce. It was also contended that when language of Section 15 refers to a fight of appeal will have to look to the provision providing for an appeal and Sec. 28 of the A ct which provides for appeals against all decrees made by t he court in proceedings under this Act. It was therefore co n-

tended that the interpretation put by the lower court on t he basis of judgments of some of the High Courts that Sec.

will not apply to a decree under Sec. 12 but would on ly apply when there is a decree under Sec. 13 does not appe ar to be the correct view and on this basis it was contended by learned counsel for the appellant that the courts below we re wrong in coming to the conclusion that the appeal had beco me infructuous because the respondent has married a seco nd time.

Learned counsel also referred to meaning of the wo rd 'divorce' in Webster's Third New International Dictiona ry and Shorter Oxford English Dictionary. Learned counsel in support of her contentions referred to the two decisions of this Court in Chandra Mohini Srivastava v. Avinash Pras ad Srivastava & another, [1967] 1 SCR 864 and Tejinder Kaur v.

Gurmit Singh, AIR 1988 SC 839 Although on the basis of the se decisions what was contended was that the provisions of t he Act have to be interpreted broadly. Learned counsel al so placed reliance on the decision in Vathsala v. N. Manohara n, AIR 1969 Madras 405. Learned counsel however, conceded th at there are decisions in Mohanmurari v. Smt. Kusumkumari, A IR 1965 M.P. 194;. Jamboo Prasad Jain v. Smt. Malti Prabha a nd Anr., AIR 1979 Allahabad 260 and Pramod Sharma v. Sm t.

Radha, AIR 1976 Punjab 355 where the question of Section in relation to a decree under Sec. 12 has been specifical ly considered and decided against the appellant, but learn ed counsel contended that the scope and language of Sec.

coupled with the language of Sec. 28 has not been consider ed by any one of these courts. Learned counsel for the respon d-

ent on the other hand contended that the language of Sec.

refers to "marriage dissolved by decree for divorce" where as in the present case, the mar-

riage was not dissolved by decree of divorce. The marria ge was declared as nullity under Sections 11 and 12 of the Ac t.

Sections 11 and 12 of the Act, according to the learn ed counsel, talk of annulment of marriage "by decree of null i-

ty" and it was contended that it is because of this that t he various High Courts have taken a view that Sec. 15 will n ot apply to cases where a marriage is annulled by a decree of nullity in accordance with Sections 11 or 12 of the Ac t.

Learned counsel however frankly conceded that so far as Se c.

28 is concerned, the language is so wide that an appeal wi ll lie even against a decree under Section 11 or 12 and if an appeal lies under Sec. 28 even against the order or a decr ee passed under Sections 11 or 12, the phrase 'if there is su ch a right of appeal, the time for filing has expired witho ut an appeal having been presented' are to be given its mea n-

ing, it would be clear that Sec. 15 also will apply to decrees by which the marriage is either dissolved or a n-

nulled i.e. decrees which are passed under Sec. 12 or und er Sec. 13. Learned counsel in face of this raised anoth er contention pertaining to the application of the Limitati on Act which we will examine later. In order to understand the meaning of Sec. 15 of the A ct it would be better if we first notice that the words 'decr ee for divorce' or 'decree for nullity' has not been defined in any one of the provisions of this Act. Sec. 12 clause (1) of the Act reads:

"Any marriage solemnized, whether before or after the co m-

mencement of this Act, shall be voidable and may be annull ed by a decree of nullity on any of the following groun ds namely,--

Similarly Sec. 13 clause (1) of the Act reads: (1) Any marriage solemnized, whether before or after t he commencement of this Act may, on a petition presented by either the husband or wife, be dissolved by a decree of divorce on the ground that the other party,--

It is no doubt true that these two sections have differe nt phraseology. In section 12 it is said that the marriage be annulled by a decree of nullity whereas in Section 13, t he phraseology used is "dissolved by decree of divorce" but in substance the meaning of the two may be different under t he circumstances and on the facts of each case but the leg al meaning or the effect is that by intervention of the cou rt the relationship between two spouses has been severed eith er in accordance with the provisions of Section 12 or in a c-

cordance with the provisions of Section 13. Probably it is because of this reason that the phrase 'decree of nullit y' and 'decree of divorce' have not been defined. Sec. 28 of the Act reads:

"28. Appeal from decrees and orders (1) All decrees made by the court in any proceeding under this Act shall, subject to the provisions of sub-section (3), be applicable as decre es of the court made in the exercise of its original civ il jurisdiction, and every such appeal shall lie to the Cou rt to which appeals ordinarily lie from the decisions of t he court given in the exercise of its original civil jurisdi c-

tion.

(2) Orders made by the Court in any proceeding under th is Act, under Section 25 or Section 26 shall, subject to t he provisions of sub-section (3), be appealable if they are n ot interim orders, and every such appeal shall lie to the cou rt to which appeals ordinarily lie from the decision of t he Court given in exercise of its original civil jurisdiction ;

(3) There shall be no appeal under this section on t he subject of costs only.

(4) Every appeal under this section shall be preferr ed within a period of thirty days from the date of the decr ee or order. ' ' Under this provision all decrees made by the Court in a ny proceeding under this Act are appealable. Apparently a ny proceeding under this Act will refer to a proceeding inst i-

tuted under Section 13 or a proceeding instituted und er Sections 11 or 12 as Sections 11 or 12 talks of 'decree f or nullity' and Section 13 talks of 'decree for divorce' but in order to provide an appeal against all decrees Section has used a very wide terminology which include decrees und er Sections 11, 12 and 13 and so far as this is concerned it could hardly be contested as the language of Section itself is so clear. It is in this context that we analyse the language of Section 15. It reads: "Divorced persons when may marry again-When a marriage h as been dissolved by a decree of divorce and

either there is no fight of appeal against the decree or, if there is such a fight of appeal, the time for appealing has expired witho ut an appeal having been presented or an appeal has been pr e-

sented but has been dismissed, it shall be lawful for eith er party to the marriage to marry again." Before we examine the phraseology 'dissolved by decree of divorce' it would be worthwhile to examine the remaini ng part of this provision, especially 'if there is such a fig ht of appeal, the time for appealing has expired without an appeal having been presented or an appeal has been present ed but has been dismissed'. If we give narrow meaning to t he term 'dissolved by decree of divorce' as contended by t he learned counsel for the respondent, it will mean that if it is a decree under Sec. 13 then either party to the procee d-

ing have to wait till the period of appeal has expired or if the appeal is filed within limitation till the appeal is disposed of and before that it will not be lawful for eith er party to the marriage to marry again. The phrase 'eith er party to the marriage' if is co-related with the first pa rt of the Section, marriage which has been dissolved by decr ee of divorce will indicate that what was provided in th is Section was that when a relationship of marriage is di s-

solved by decree of court and either no appeal is filed or if filed, is dismissed then either party to the marria ge which has been dissolved by the process of law by a decr ee are free to marry again. The only words on the basis of which the narrow meaning has been given to this Section by some of the High Courts is on the basis of the Words 'decr ee of divorce', it could not be doubted that where the marria ge is dissolved under Sections 11, 12 or 13 by grant of a decree of nullity or divorce, the relationship is dissolv ed or in any way is brought to an end and it would be signif i-

cant that if the language of Section 15 is interpreted in the light of Section 28 which provides for appeal and co n-

fers a right of appeal on either party to proceedings whi ch culminate into a decree bringing an end to the relationsh ip of marriage then we will have to infer that the Legislatu re so far as decrees under Section 13 are concerned wanted t he right of appeal to survive but in decrees under Section or 12 the Legislature wanted the right of appeal to be subject to the will of the other party. As it is appare nt that if what is contended by the learned counsel for t he respondent and held by some of the High Courts is accept ed that Sec. 15 will not apply to cases when a decree is pass ed under Sec. 11 or 12 it will mean that as soon as a decree is passed the party aggrieved may appe al but the other. party by remarriage would make the appe al infructuous and therefore the right of appeal of one of t he parties to the decree under Sec. 28 will be subject to t he act of the other party in cases where decree is passed und er Sections 11 or 12 but if it were so, the Legislature wou ld have provided a separate provision for appeal when there is a decree under Section 13 and a different provision f or appeal when there is a decree under Sections 11 or 12 as t he right of appeal against a decree under Sec. 11 or 12 cou ld only be a limited right subject to the desire of the oth er party. The Legislature in its wisdom has enacted Sec.

conferring a right of appeal which is unqualified, unr e-

strictive and not depending on the mercy or desire of a party against all decrees in any proceeding under this A ct which will include a decree under Sections 11, 12 or 13 a nd therefore the only interpretation which could be put on t he language of Sec. 15 should be which will be consistent wi th Section 28. This phrase 'marriage has been dissolved by decree of divorce' will only mean where the relationship of marriage has been brought to an end by the process of cou rt by a decree.

It is plain that the word 'divorce' or 'decree of d i-

vorce' have not been defined in this Act. The meaning of t he word 'divorce' indicated in Shorter Oxford English Dictio n-

ary reads:

"Divorce--1. Legal dissolution of marriage by a court or other competent body, or according to forms locally reco g-

nized. 2. Complete separation; disunion of things close ly united ME. 3. That which causes divorce 1607." Similarly the meaning of the word 'divorce' as indicated in Webster's Third New International Dictionary reads: "Divorce--1: a legal dissolution in whole or in part of a marriage relation by a court or other body having compete nt authority.

In Vathsala's case the Court had occasion to consider t he effect of an application for setting aside an exparte decr ee which was granted under Sec. 12 and it was contended th at while the application by the husband for setting aside t he exparte decree was pending the wife contracted remarriag e.

Will not remarriage have the effect of making the applic a-

tion to set aside exparte decree infructuous? More or less a similar question is in the present case where it has be en held that by marrying the second time the respondent ma de the appeal filed by the appellant infructuous, and the learned Judge placing rel i-

ance on the observations made in Chandra Mohini's case hel d:

"That is the principle of Smt. Chandra Mohini v. Avina sh Prasad, AIR 1967 SC 581. The principle laid down in th at decision has general application. The Supreme Court point ed out that on dissolution of marriage, a spouse can lawful ly marry only when there is no right of appeal against t he decree dissolving the marriage or if there is a right of appeal, the time for filing of an appeal has expired or t he appeal presented has been dismissed." The question about an appeal to the Supreme Court has als o-

been considered in a recent decision of this Court in T e-

jinder Kaur's case wherein the observations made in Chand ra Mohini's case have been quoted and it is held that: "In view of this, it was incumbent on the respondent to ha ve enquired about the fate of

the appeal. At any rate, the Hi gh Court having dismissed the appeal on 16th July, 1986 t he petitioner could have presented a special leave petiti on within ninety days therefrom under Art. 133(c) of the Lim i-

tation Act, 1963 i.e. till 14th September, 1986. Till th at period was over, it was not lawful for either party to mar ry again as provided by S. 15. It was incumbent on the respon d-

ent, as observed in Lila Gupta's case (ILR 1969) 1 All. 9

2) to have apprised himself as to whether the appeal in t he High Court was still pending; and if not, whether the peri od for filing a special leave petition to this Court had e x-

pired. We must accordingly overrule the views expressed in Chandra Mohini's, AIR 1967 SC 581 and Lila Gupta, cases (I LR 1969(1) All 92). We wish to add that in the subseque nt decision in Lila Gupta the Court while dealing with t he effect of deletion of the proviso observed: The net result is that now since the amendme nt parties whose marriage is dissolved by a decree of divor ce can contract marriage soon thereafter provided of course t he period of appeal has expired. The Court adverted to the word of caution administered by Wanchoo, J. in Chandra Mohini's case and reiterated:

"Even though it may not have been unlawful for t he husband to have marriage immediately after the High Court 's decree for no appeal as of right lies from the decree of t he High Court to this Court, still it was for the respondent to make sure whether an application for special leave had be en filed in this Court and he could not, by marrying immediat e-

ly after the High Court's decree, deprive the wife of t he chance of presenting a special leave petition to this Cour t.

If a person does so, he takes a risk and could not ask t he Court to revoke the special leave on that ground," It is no doubt true that in these two decisions, this Cou rt was considering the impact of an appeal against a decr ee under Section 13 itself and not a decree under Section 11 or 12 but as indicated earlier if the impact of the phraseolo gy 'fight of appeal' occurring in Sec. 15 is to be examined in the light of language of Sec. 28 as discussed earlier the re will be no difference in respect of the fight of appe al whether the decree is under Sections 11, 12 or 13. The decisions of the High Court on which reliance is placed by courts below and the learned counsel for t he respondent are: i) Mohanmurari ii) Jam boo Prasad Jain, a nd Pramod Sharrna. In none of these decisions the impact of t he fight of appeal occurring in Sec. 15 in view of the langua ge of Section 28 where the right of appeal is conferred, h as been considered. In our opinion, therefore the view taken by the High Court is not correct. What Section 15 means when it uses the phrase 'has been dissolved by decree of divorce '?

It only means where the relationship of marriage has be en brought to an end by intervention of court by a decree, th is decree will include a decree under Sections 11, 12 or 13 a nd therefore the view taken by all the courts below is n ot sustainable. The contention of the learned counsel for t he

appellant has to be accepted so far as this question is concerned.

Learned counsel for the respondent contended that as Section 28 sub-clause (4) of the Act provides for the lim i-

tation for preferring an appeal in view of Sec. 29 clau se (3). Provisions of Limitation Act will not apply and if th ey do not apply as the trial court disposed of 'the matter by a decree dated 3.5.1985 the period of limitation for appe al could only be upto 3.6.1985 as the period for obtaini ng copies as contemplated under Section 12 clause (2) of t he Limitation Act will not be applicable and therefore even if it is held that under Sec. 15 the respondent had to wa it till the period of limitation for appeal expires as he entered into a marriage on 27.6.1985 it was clear ly after the period of limitation has expired and therefo re this marriage apparently made the appeal filed by the appe l-

lant infructuous. It is not in dispute that if the peri od for obtaining copy of the judgment and decree is computed as contemplated in Section 12 clause (2) of the Limitation Ac t, the appeal filed by the appellant before the first appella te court was within the time and if Section 12 clause 2 is he ld applicable then this marriage which the respondent perform ed on 27.6.1985 could not be said to be a marriage which he w as entitled to perform in view of language of Section 15 a nd therefore it could not be said that this marriage render ed the appeal filed by the appellant infructuous. Learn ed counsel for the respondent mainly placed reliance on t he language of Sec. 29 clause 3 of the Limitation Act where as learned counsel appearing for the appellant contended th at Sec. 29 clause 3 talks of suit or proceedings and therefo re the phrase 'proceedings' used in clause 3 of Sec. 29 cou ld only refer to suits or other original proceedings and it will not apply to appeals as is very clear from the defin i-

tion of 'suit' as defined in Section 2(L) of the Limitati on Act. It was therefore contended that the provisions of t he Limitation Act will be applicable to appeals under Sec.

of the Act. Learned counsel for the appellant placed rel i-

ance on the decisions in Chander Dev Chadha v. Smt. Ra ni Bala, AIR 1979 Delhi 22; Smt. Sipra Dey v. Ajit Kumar De y, AIR 1988 Calcutta 28 and Kanti-bai v. Karnal Singh Thaku r, AIR 1978 M.P. 245.

Section 2(L) of the Limitation Act defines the 'suit'. It reads:

"suit" does not include an appeal or an application". It clearly enacts that suit does not include an appeal or an application. Sec. 29 of the Limitation Act reads: "29. Savings (1) Nothing in this Act shall affect Section of the Indian Contract Act, 1872. (2) Where any special or local law prescribes for any sui t, appeal or application a period of limitation different fr om the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the peri od prescribed by the Schedule and for the purpose of determi n-

ing any period of limitation prescribed for any suit, appe al or application by any special or local law, the provisio ns contained in Sections 4 to 24 (inclusive) shall apply on ly insofar 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 bei ng in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding und er any such law.

(4) Sections 25 and 26 and the definition of 'easement' in Section 2 shall not apply to cases arising in the territ o-

ries to which the Indian Easement Act, 1882, may for t he time being extend."

Clause (2) of this Section provides that where the limit a-

tion provided by the special or local law is different fr om the period prescribed by the Schedule, the provisions of Section 3 will apply. In the Hindu Marriage Act, the peri od of appeal is prescribed. In the schedule under the Limit a-

tion Act, there is no provision providing for an appe al under the Hindu Marriage Act. Thus the limitation prescrib ed under the Hindu Marriage Act is different and is not pr e-

scribed in the Schedule. Thus the provisions of Section shall apply and therefore it is clear that to an appeal or application the provisions contained in Sections 4 to shall apply, so far and to the extent to which they are n ot expressly excluded by the special or local law and clau se (3) of this Section provides that the provisions of this A ct shall not apply to any suit or other proceedings under a ny marriage law. It is therefore clear that so far as clau se (3) is concerned, the impact of it will be that the prov i-

sions of the Limitation Act will not apply so far as a su it or an original proceeding under the Act is concerned b ut clause (3) will not govern an appeal. The Schedule in the Limitation Act do not provide for an appeal, under the Hindu Marriage Act but it is only provid ed in clause (4) of Sec. 28 of the Hindu Marriage Act. Thus t he limitation provided in clause (4) of Sec. 28 is differe nt from the Schedule of the Limitation Act. Accordingly to clause (2) of Sec. 29, provisions contained in Sections 4 to 24 will be applicable unless they are not expressly exclu d-

ed. It is clear that the provisions of the Act do not e x-

clude operation of provisions of Sections 4 to 24 of t he Limitation Act and therefore it could not be said that the se provisions will not be applicable. It is therefore cle ar that to an appeal under Section 28 of the Hindu Marria ge Act, provisions contained in Section 12 clause (2) will be applicable, therefore the time required for obtaining copi es of the judgment will have to be excluded for computing t he period of limita-

tion for appeal. A Division Bench of Delhi High Court in Chandra Dev Chadha's case held as under: "The Hindu Marriage Act is a special law. That this "speci al 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 Schedu le to the Limitation Act, 1963. But when we turn to the Fir st Schedule

we find there is no provision in the First Schedu le for an appeal against the decree or order passed under t he Hindu Marriage Act. Now it has been held that the test of a "prescription of a period of limitation different from t he period prescribed by the First Schedule" as laid down in S.

29(2), Limitation Act, 1963 is satisfied even in a ca se where a difference between the special law and Limitati on Act arose by omissions to provide for a limitation to a particular proceeding under the Limitation Act, see, Cana ra Bank, Bombay v. Warden Insurance Co. Ltd. Bombay, AIR 19 Bom 35 (supra) approved by the Supreme Court in Vidyachar an Shukla v. Khubchand, AIR 1964 SC 1099 (1102). Once the test is satisfied the provisions of Ss, 3, 4 to 24, Limitation Act, 1963 would at once apply to t he special law. The result is that the court hearing the appe al from the decree or order passed under the Hindu Marriage A ct would under S. 3 of the Limitation Act have power to dismi ss the appeal if made after the period of limitation of 30 da ys prescribed thereof by the special law. Similarly under S.

for sufficient cause it will have the power to condo ne delay. Likewise under S. 12(2) the time spent in obtaining a certified copy of the decree or order appealed from will be excluded. If it is so, S. 12(2) of the Limitation Act is attracted, and the appellants in all the three appeals wi ll be entitled to exclude the time taken by them for obtaini ng certified copy of the decree and order. The appeals ar e, therefore, within time." Similar is the view taken by the Calcutta High Court in Sm t.

Sipra Dey's case and also the M.P. High Court in Kantibai 's case. It is therefore clear that the contention advanced by the learned counsel for the respondent on the basis of t he Limitation Act also is of no substance.

Consequently the appeal is allowed. The judgment pass ed by the High Court as well as by the first appellate court is set aside. We remand the matter back to the first appella te court as that court had disposed of the appeal treating it to have been rendered infructuous. We therefore direct th at the learned lind Additional District Judge, Nagpur befo re whom the appeal was filed, will hear the appeal on meri ts and dispose it of in accordance with law. A suggestion was made by the counsel for the appella nt about some tests and willingness of the appellant for ge t-

ting those tests performed which could be used as addition al evidence in respect of the paternity of the child born to the appellant which has been made a ground for declarati on of marriage as nullity. Without expressing any opinion, it would be appropriate for the lower appellate court to co n-

sider the matter if parties approach about additional ev i-

dence. The appallant shall be entitled to costs of th is appeal. Costs quantified at Rs.2500. R.S.S. Appeal allowed.