

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/FIRST APPEAL NO. 2740 of 2024
With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2025
In R/FIRST APPEAL NO. 2740 of 2024

=====

RAJASHREEBEN W/O BHUPENDRAKUMAR PATEL
Versus
BHUPENDRAKUMAR AMBALAL PATEL

=====

Appearance:

MR VAIBHAV A VYAS(2896) for the PETITIONER(s) No. 1
MR MEHUL S SHAH, SENIOR ADVOCATE With JENIL M SHAH(7840) for
the RESPONDENT(s) No. 1

=====

CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 06/07/2026

IA ORDER
(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. Heard learned Advocate Mr.Vaibhav A. Vyas for the petitioner and learned Senior Advocate Mr. Mehul S. Shah with learned Advocate for the respondent.
2. By way of this civil application, the petitioner prays to stay challenged the judgment and order dated 15.05.2024 passed by the learned Judge, Family Court No. 6, Ahmedabad, in Family Suit No. 1866 of 2015.
3. By the impugned judgment and order, the learned Judge of the Family Court was pleased to allow the suit of the respondent herein, which was filed under Section 13(1)(ia)(ib) of the Hindu Marriage Act,

1955. Consequently, the marriage between the petitioner and the respondent herein was ordered to be dissolved from the date of the aforesaid order.

4. In continuation thereof, the Family Court further directed the respondent herein to pay and deposit a sum of Rs. 40,00,000/- (Rupees Forty Lakhs). Out of the said amount, Rs. 25,00,000/- (Rupees Twenty-Five Lakhs) is to be paid to the petitioner towards her permanent alimony. The remaining Rs. 15,00,000/- (Rupees Fifteen Lakhs) is directed towards the medical expenses that may be incurred in the treatment of the son of the parties herein, who is required to undergo regular dialysis on account of the ailment of kidneys.

5. Hence, the present civil application has been filed seeking to stay the execution, operation, and implementation of the judgment and order dated 15.05.2024 passed by the learned Judge of the Family Court in the aforesaid suit.

6. While pressing this civil application for a stay, learned Advocate for the petitioner submitted that the impugned judgment and order was passed on 15.05.2024. The petitioner applied for a certified copy on 20.05.2024, and the same was received on 24.05.2024. The appeal was notarized before the notary on 11.07.2024, and the same has been presented before this Court on 15.07.2024. Meanwhile, in compliance with the decree, the respondent deposited the entire directed amount. The learned Advocate for the petitioner placed heavy reliance on the ratio and propositions laid down in the case of *Lila Gupta v. Lakshmi Narayan, 1978 (3) SCC 258* and *order dated 04.12.2024 passed by the Co-ordinate Bench of this Court in First Appeal No.2152*, specifically in the context of the provision of Section 15 of the Hindu Marriage Act, 1955. It was

contended that the petitioner's statutory right to file an appeal cannot be frustrated by the respondent's actions by contracting a second marriage, during the pendency of the appeal, and the protection intended by the statute must be extended to prevent the appeal from being rendered infructuous.

7. The respondent appeared and filed a detailed affidavit-in-reply, strongly objecting to the grant of stay. The learned Senior Counsel appearing for the respondent submitted that the marriage between the parties stood legally dissolved by the impugned judgment and order dated 15.05.2024 passed by the Family Court, and the respondent in compliance of the order deposited the entire amount. It was contended that the respondent contracted a second marriage on 11.07.2024, which was duly registered on 15.07.2024 before the Registrar of Marriages. It was further submitted that though the present appeal has been presented before this Court on 15.07.2024, the respondent had already contracted the second marriage on 11.07.2024, on which date no appeal had been presented. The learned Senior Counsel placed strong reliance on the judgment of the Hon'ble Supreme Court in **Anurag Mittal v. Shaily Misra Mittal, 2018 (0) AIJEL-SC 62667** and vehemently opposed the reliance placed by the petitioner on the decision in Lila Gupta (supra). It was submitted that the proposition laid down in Lila Gupta (supra) arose in the context of the, now-deleted proviso to Section 15 of the Hindu Marriage Act, 1955, which imposed a prohibition on remarriage within stipulated period. In contrast, the present case is governed by the principles laid down in Anurag Mittal (supra), wherein it has been held that a marriage contracted during the period contemplated under Section 15 is not void and the provision has to be interpreted purposively. It was argued that the protection under Section 15 cannot be stretched to automatically stay the operation of the decree, particularly when the

respondent has already complied with the monetary directions by depositing the entire amount as directed by the Family Court. Hence, it is prayed that stay may not be granted and the present application(s) be dismissed.

8. We have carefully considered the submissions advanced by both sides and examined the record in its entirety. The timeline of events is heavily relied upon by the respondent, whose claim rests entirely on having contracted the second marriage on 11.07.2024 and registering the same on 15.07.2024.

9. Considering the sequence of dates without entering much into any such arena of the dispute at this stage, what clearly transpires is that the said second marriage seems to have been performed during and/or on the exact date of the filing of the appeal, the affidavit sworn in is of 11.07.2024. However, the relevancy and legality thereof are not required to be conclusively gone into at this stage. The rights of the parties are left open to agitate the same, which otherwise would be dealt with judicially at the time of the final hearing of the main appeal.

10. The aforesaid issue constrained us to examine the core object of the provision of Section 15 of the Hindu Marriage Act, 1955. The fundamental object of this provision is to provide protection to a person who has filed an appeal against a decree of dissolution of marriage, ensuring that the said appeal is not frustrated. The explicit purpose is to avoid the legal and factual complications that would inevitably arise due to a second marriage being contracted during the pendency of the appeal.

11. Section 15 of the Hindu Marriage Act, 1955 reads as under:

“15. Divorced persons when may marry again.—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. With reference to Section 15 of the Hindu Marriage Act, 1955, at this juncture it would be apt to refer the following observations made by the Division Bench of Calcutta High Court in the case of ***Smt. Kajal Chowdhury vs Dilip Chowdhury on 17 September, 2003, reported in AIR 2004 CAL 113:***

“2. At this stage this application for stay of operation of the judgment and order has been asked for. The learned counsel for the petitioner points out from the decision in Savitri Pandey v. Prem Chandra Pandey, AIR 2002 SC 591 : (2002 All LJ 355), Smt. Chandra Mohini Srivastava v. Shri Avinash Prasad Srivastava, AIR 1967 SC 581 and Tejinder Kaur v. Gurmit Singh, to contend that in view of Section 15 of the Hindu Marriage Act, the husband has a duty cast upon him to enquire before contracting second marriage whether an appeal has been preferred after the proviso is deleted. He has also relied on a decision in Prakash Chandra Sharma v. Vimlesh (Smt.), 1995 Supp (4) SCC 642. In this case the appeal was preferred three days after the expiry of the limitation. The husband had contracted marriage after the presentation of appeal though barred by limitation. In such situation, the Apex Court had held that the contracting of second marriage by the husband during the pendency of the appeal is hit by the provisions of Section 15 of the Hindu Marriage Act since the husband cannot take advantage of his own wrong. On this ground, he contends that in view of Section 15, the operation of the judgment and order appealed against should be stayed. Contracting of second marriage cannot be a justification to refuse grant of stay in this case.

4. After having heard the respective counsel for the parties, it appears that there are some substances in the submission of the petitioner as it appears from the decision cited by him. In Section 15 though the presentation of appeal follows the clause of expiry of the period of appeal but it cannot be

read to mean that such appeal was intended to mean or refers only to appeals presented within the period of limitation. The section, as it stands, does not seem to make any distinction in between an appeal preferred within time and beyond time. It simply says or an appeal has been presented but has been dismissed. This will include appeal presented even after expiry of period of limitation. In fact, the provision couched in a manner so as to include the mischief of Section 15 in respect of second marriage if made during the pendency of the appeal even if it is contracted after the expiry of limitation. Whether such appeal was filed along with an application under Section 5 of the Limitation Act or not, contracting of marriage during the pendency of an appeal would be hit by the mischief as has been held in the decision in Prakash Chandra Sharma supra. At the same time, as observed by the Supreme Court in the other three decisions in Tejinder Kaur (supra) Smt. Chandra Mohini Srivastava supra and Savitri Pandey (supra), the husband has a duty to enquire as to whether an appeal has been preferred or not. The embargo has been imposed on the person contracting second marriage. Therefore, it is the duty cast upon the petitioner. Inaction or infraction of any responsibility on the part of the petitioner will not enure to the benefit of the respondent contracting second marriage. The distinction sought to be made in the decision in Prakash Chandra Sharma (supra) by Mrs. Nandy does not appeal to us. The decision of the Apex Court whether reasoned or not is binding on the High Court in view of Article 141 of the Constitution of India.

5. In the circumstances, we grant ad interim stay of operation of the judgment and order till disposal of the suit.”

13. The Co-ordinate bench of this Court has also been pleased to rely on paragraph Nos. 7, 9 and 10 in the case of **Tejinder Kaur v. Gurmit Singh, 1988 (2) SCC 90**, which is as under:

“7. In Chandra Mohini Srivastava v. Avinash Prasad Srivastava [AIR 1967 SC 581 : (1967) 1 SCR 864] on somewhat similar facts it was held that though Section 15 in terms does not apply to a case of special leave to appeal to the Supreme Court, a spouse who has won in the High Court and got a decree of dissolution of marriage cannot by marrying immediately after the High Court's judgment take away the right of presenting an application for special leave to appeal from the other spouse. It was

further held that the successful party must wait for a reasonable time and make sure whether an application for special leave has been filed in this Court. Wanchoo, J. speaking for a two-Judge Bench said:

“It is true that Section 15 does not in terms apply to a case of an application for special leave to this Court. Even so, we are of opinion that the party who has won in the High Court and got a decree of dissolution of marriage cannot by marrying immediately after the High Court's decree take away from the losing party the chance of presenting an application for special leave. Even though Section 15 may not apply in terms and it may not have been unlawful for the first respondent to have married immediately after the High Court's decree, for no appeal as of right lies from the decree of the High Court to this Court in this matter, we still think that it was for the first respondent to make sure whether an application for special leave had been filed in this Court and he could not by marrying immediately after the High Court's decree deprive the petitioner of the chance to present a special leave petition to this Court. If a person does so, he takes a risk and cannot ask this Court to revoke the special leave on this ground.”

9. *In view of this, it was incumbent on the respondent to have enquired about the fate of the appeal. At any rate, the High Court having dismissed the appeal on July 16, 1986 the petitioner could have presented a special leave petition within ninety days therefrom under Article 133(c) of the Limitation Act, 1963 i.e. till September 14, 1986. Till that period was over, it was not lawful for either party to marry again as provided by Section 15. It was incumbent on the respondent, as observed in Lila Gupta case [(1978) 3 SCC 258 : AIR 1978 SC 1351 : (1978) 3 SCR 922] to have apprised himself as to whether the appeal in the High Court was still pending; and if not, whether the period for filing a special leave petition to this Court had expired. We must accordingly overrule the preliminary objection following the views expressed in Chandra Mohini [AIR 1967 SC 581 : (1967) 1 SCR 864] and Lila Gupta [(1978) 3 SCC 258 : AIR 1978 SC 1351 : (1978) 3 SCR 922] cases. We wish to add that in the subsequent decision in Lila Gupta [(1978) 3 SCC 258 : AIR 1978 SC 1351 : (1978) 3 SCR 922] the court while dealing with the effect of deletion of the proviso observed: (SCC p. 269, para 12)*

“The net result is that now since the amendment parties whose marriage is dissolved by a decree of divorce can contract marriage

soon thereafter provided of course the period of appeal has expired.”

The court adverted to the word of caution administered by Wanchoo, J. in Chandra Mohini case [AIR 1967 SC 581 : (1967) 1 SCR 864] and reiterated: (SCC p. 269, para 12)

“ . . . even though it may not have been unlawful for the husband to have married immediately after the High Court's decree for no appeal as of right lies from the decree of the High Court to this Court, still it was for the respondent to make sure whether an application for special leave had been filed in this Court and he could not, by marrying immediately after the High Court's decree, deprive the wife of the chance of presenting a special leave petition to this Court. If a person does so, he takes a risk and could not ask the Court to revoke the special leave on that ground.”

10. We must for this reason overrule the preliminary objection and direct the special leave petition to be placed for hearing. There shall be no order as to costs.”

14. Thus, in view of the aforesaid, the immediate action on the part of the respondent in contracting a second marriage immediately after the decree, i.e. on the date when the appeal was preferred, which can be termed to have been contracting a second marriage during the subsistence of the appeal as in view of the aforesaid decision, it is incumbent on the part of the respondent to make sure whether an appeal has been preferred or not. Therefore, the respondent, by marrying immediately, deprived the wife i.e. the petitioner herein, of her legitimate right to present her case, which otherwise may be dealt with on its own merits.

15. Thus, considering the object of the provision, and without entering much into any other such arena that may prejudice the right and contentions in substantial matter, this Court is inclined to grant the stay.

16. The sum and substance of the aforesaid factual matrix is that the balance of convenience heavily tilts in favor of the petitioner herein. The petitioner appears to have successfully established a prima facie case, as non-granting of the interim relief at this stage would amount to non-suiting the petitioner herein. Such an outcome would culminate in an irreparable loss to the petitioner, specifically regarding the loss of her status as the wife of the opponent due to the grant of the decree of divorce. This loss of status may seriously affect her legitimate claims against the opponent herein and could adversely impact the proceedings pending, if any, initiated to secure her status against the impugned judgment and order.

17. Considering the above, while confining on the issue on hand, we are of the considered view to stay the execution, operation, and implementation of the impugned judgment and order dated 15.05.2024 passed by the learned Judge, Family Court No. 6, Ahmedabad, in Family Suit No. 1866 of 2015, till the final disposal of the appeal, and the same is hereby stayed as above.

18. However, it is made expressly clear that the observations made hereinabove and the findings so recorded while granting the stay of execution of the impugned judgment and order are strictly prima facie in nature qua the present application and will not come in the way of the parties at the time of final adjudication.

19. The present order passed exclusively rests on the facts of the case on hand and shall not be treated as precedent.

20. The Civil Application (for stay) No.1 of 2024 stands disposed of accordingly.

21. In view of the above, the Civil Application (for direction) No.1 of 2025 also stands disposed of accordingly.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

MVP