

C.M.A.(MD)No.672 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2026

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MRS.JUSTICE M.D.SUMATHI**

C.M.A.(MD)No.672 of 2021

... Appellant / Respondent

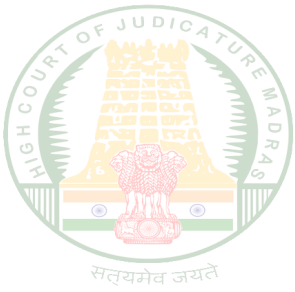
Vs.

... Respondent / Petitioner

Prayer : Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, to set aside the fair and decreetal order made in H.M.O.P.No.361 of 2017 dated 03.03.2021 on the file of the Family Court, Trichy.

For Appellant : Mr.P.R.Prithiviraj

For Respondent : Mr.S.Manojkumar



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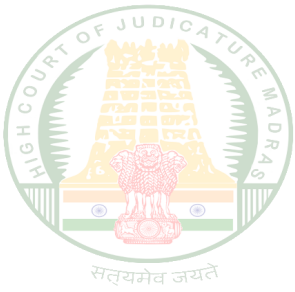
C.M.A.(MD)No.672 of 2021

JUDGMENT

(By G.R.Swaminathan, J.)

The respondent in H.M.O.P No.361 of 2017 on the file of the Family Court, Tiruchirappalli is the appellant before us.

2. The marriage between the appellant and the respondent was solemnized on 03.06.2001 at Ramanathapuram as per the Hindu rites and customs. Two children were born through the wedlock. Alleging that the appellant had committed cruelty and was also guilty of desertion, the respondent filed H.M.O.P No.361 of 2017. The appellant filed counter. Based on the rival pleadings, the Court below framed the necessary issues. The respondent herein examined herself as PW.1 and marked Exs.P1 to P5. The appellant examined himself as RW.1. After hearing both the parties and considering the evidence on record, the trial court allowed the HMOP filed by the respondent vide order dated 03.03.2021. Aggrieved by the same, this appeal has been filed.



C.M.A.(MD)No.672 of 2021

3.The learned counsel appearing for the appellant reiterated all the contentions set out in the grounds of appeal and called upon this Court to set aside the impugned order and dismiss the HMOP.

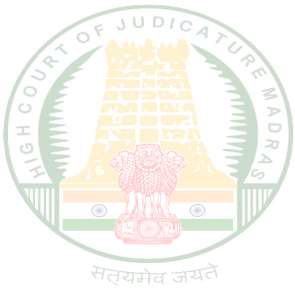
4.Per contra, the learned counsel for the respondent submitted that the impugned order is well reasoned and that it does not call for any interference. It was further submitted that since the respondent herein had remarried in the meanwhile, the appeal itself has become infructuous.

5.We carefully considered the rival contentions and went through the evidence on record.

6.The points that arise for determination are twofold.

(i) Whether the Court below was justified in granting the relief of divorce to the respondent herein on the ground of cruelty?

(ii) Whether this appeal has become infructuous on the ground of remarriage by the respondent herein?



C.M.A.(MD)No.672 of 2021

7.It is seen that the respondent herein is none other than the appellant's maternal uncle's daughter. There is an age gap of 11 years between them. When their marriage took place, the respondent was in her college first year. A girl child was born on 13.01.2004. A male child was born on 08.05.2006. In the intervening period, the respondent herein was pursuing post graduation studies(MCA). While the appellant herein became a Group IV employee, the respondent herein acquired M.Tech(IT) qualification and joined as Assistant Professor in a private engineering college. In Paragraph No. 14(d) of the counter, the appellant had alleged that the respondent herein used to speak to someone on phone continuously and that he made enquiries with their daughter about the person to whom the respondent herein was talking.

8.The court below after a careful consideration of the testimony adduced on either side, noted that the appellant had doubted the character and conduct of the respondent herein. The appellant herein had made enquiries about the respondent herein



C.M.A.(MD)No.672 of 2021

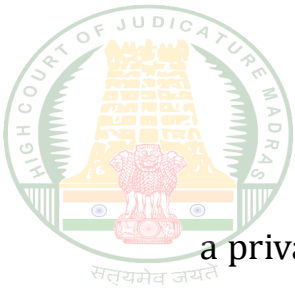
with the security guard of their residential quarters. By his own

admission, the appellant had posed certain queries to the daughter.

When the respondent herein had left for Chennai on 13.08.2015, the appellant herein quarreled with the respondent's parents and also made enquiries in the college.

9.Doubting one's character would constitute cruelty within the meaning of Section 13(1)(i-a) of the Hindu Marriage Act, 1955. This can be explicit or by insinuation. The averments set out in the appellant's counter indicate the suspicion lingering in his mind about the conduct of the respondent. It is this seed of suspicion that soon takes a firm root and in due course makes conjugal company incompatible. No self-respecting spouse can put up with such a conduct.

10.Admittedly, the respondent herein left the matrimonial home on 15.08.2015 along with the children. The HMOP was instituted on 10.10.2017. No doubt, the respondent was employed in



C.M.A.(MD)No.672 of 2021

a private college. But having fathered two children, the appellant was bound to maintain them. A bald averment has been made that the respondent's parents did not allow the children to meet him. In support of such a claim, no evidence has been adduced. The appellant did not send any communication or issue any legal notice to the respondent herein calling upon her to rejoin. The appellant had not taken any step for reunion or reconciliation. The respondent cannot be blamed for having left the matrimonial home. As already mentioned, the appellant was elder to her by 11 years. When the appellant doubted the chastity of the respondent, it was bound to cause her mental anguish. From the indifference shown by the appellant, one can conclude that he was not interested in sustaining the marriage. Indifference coupled with failure to maintain the children can certainly constitute willful neglect thereby amounting to desertion. The appellant was guilty of constructive desertion. That is why, the respondent herein filed petition not only under Section 13(1)(i-a) but also under Section 13(1)(i-b) of the Hindu Marriage Act, 1955. The Court below had correctly appreciated the evidence

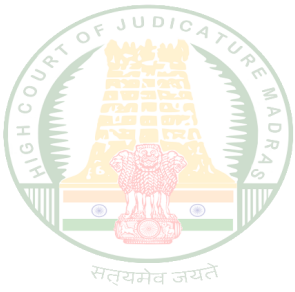


C.M.A.(MD)No.672 of 2021

on record and rightly granted the relief of dissolution of marriage vide order dated 03.03.2021. This point is answered accordingly.

11.The learned counsel for the respondent submitted that the respondent herein married one _____ as per the Hindu rites and customs on 27.08.2021. It was also duly registered with the Registrar of Marriage, Peenya, Bangalore on 02.09.2021. A copy of the marriage certificate has been enclosed.

12.The question that calls for consideration is whether this would render the appeal proceedings infructuous. The appeal was filed in time. It was listed on 09.08.2021. But there was no representation on the said date. On 11.08.2021, notice was ordered. On 15.10.2025, the matter was taken up again and adjourned on 22.10.2025. The appeal was dismissed for non-prosecution on 05.11.2025. It was restored to file on 30.03.2026.



C.M.A.(MD)No.672 of 2021

13. Admittedly, there was no interim stay of the operation of the impugned order throughout. Section 15 of the Hindu Marriage Act states that a divorced person may marry again under certain circumstances. The said provision is as follows:-

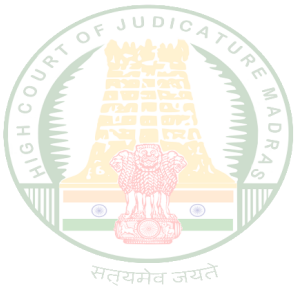
“Divorced persons when may marry again.

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.”

The said provision had the following proviso:-

“Provided that it shall not be lawful for the respective parties to marry again unless at the date of such marriage at least one year has elapsed from the date of the decree in the court of the first instance.”

The proviso was deleted vide Act 68 of 1976. The divorced spouse can remarry in the following three circumstances :

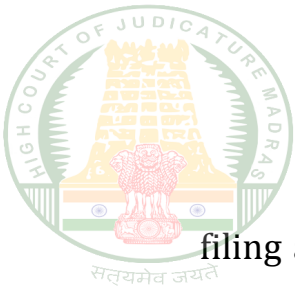


C.M.A.(MD)No.672 of 2021

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- a) There is no right of appeal against the divorce decree
- b) time for appealing has expired without an appeal having been presented
- c) appeal has been presented but has been dismissed.

In ***N.Rajendran v. S.Valli (2025) 3 SCC 801***, it was clarified that presenting the appeal does not mean mere presentation even without certified copy. It also does not mean that the unsuccessful party must ensure that the appeal comes on the judicial side within the appealing time. If the appeal is filed in time, ie., within the limitation period, then, Section 15 will come into play. In ***Rajendran's*** case, it was held that the period spent in applying and obtaining a certified copy must be excluded to find out if the appeal is filed within time. In ***Latha Kamath v. Vilas (1989) 2 SCC 613***, it was held that Section 15 would apply even to those cases wherein the marriage had been declared as void. The rigour of Section 15 has been somewhat mitigated by the decision reported in ***(2020) 11 SCC 253 (Krishnaveni Rai v. Pangaj Rai)***. It was held therein that the bar under Section 15 applies only if there is an appeal filed within the period of limitation, and not afterwards upon condonation of delay in



C.M.A.(MD)No.672 of 2021

WEB COPY

filing an appeal, unless the decree of divorce is stayed or there is an interim order restraining the parties or any of them from remarrying during the pendency of the appeal. The Hon'ble Supreme Court observed that it could never have been the legislative intent that a marriage validly contracted after the divorce and after expiry of the period of limitation to file an appeal should be rendered void on the filing of a belated appeal. The observation made in ***Lila Gupta v. Laxmi Narain (1978) 3 SCC 258*** that the effect of the prohibition against one of the parties from contracting a second marriage for a certain period is not to nullify the divorce and continue the dissolved marriage as if the same were subsisting.

14.Marriages can be classified into three types a) valid marriage, b) void marriage and c) voidable marriage. If a marriage is solemnized by fulfilling the conditions set out in Section 5 of the HMA Act is a valid marriage. If any one of the conditions set out in clauses (i), (iv) and (v) of Section 5 is not fulfilled, it is a void marriage as per Section 11. Section 12 of the Act catalogues the



C.M.A.(MD)No.672 of 2021

grounds on which a marriage can be rendered voidable. Section 15

of the Act employs the expression “lawful” to describe the remarriage

of the divorced spouse taking place under the circumstances

mentioned therein. Section 15 does not stipulate that if the

marriage is solemnized in breach of what has been set out therein,

the marriage is unlawful. Are we to infer that the marriage in such

circumstances is unlawful?. We have our own doubts. In view of

Lila Gupta, the divorce decree is live and kicking. Take the case on

hand. Though the appeal was filed within time, interim stay was not

granted. The order granting divorce was fully in force. The status of

the respondent herein was that of a divorced woman. She was,

therefore, technically entitled to marry. The second marriage took

place on 27.08.2021. The Hon'ble Supreme Court in the decision

reported in **(1978) 3 SCC 258 (Lila Gupta Vs. Laxmi Narain)** had

held that the marriage performed in breach of Section 15 of the

Hindu Marriage Act is not void or voidable. If something is not void

or voidable, it can only be valid. But then, we will be rewriting the

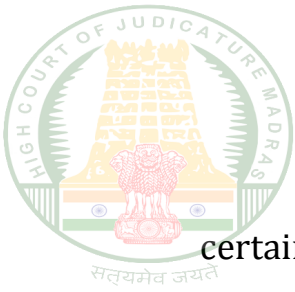
statutory provision. It would amount to adding a clause “an appeal



C.M.A.(MD)No.672 of 2021

has been presented but interim stay was not obtained". The appellate court will not be justified in doing so. At the same time, the consequence is that a marriage that is valid is made to abide by the uncertain outcome of an appeal proceeding. It does not appear to be equitable. More so, when the appeals take years together to get disposed of.

15. We found an interesting article "Post Divorce Marriages Pending Appeal" published in **45 JILI (2003) 456 by Shri C.S.Raghuraman**. After noticing the judgments rendered in *Chandra Mohini Srivastava v. Avinash Prasad Srivastava (AIR 1967 SC 581)*, *Lila Gupta v. Laxshmi Narain (1978) 3 SCC 258*, *Tejinder Kaur v. Gurmil Singh (1988) 2 SCC 90*, *Prakash Chandra Sharma v. Vimlesh (1995 Supp (4) SCC 642)*, *Ashok Hurra v. Bipin Chandra Zaveri (1997) 4 SCC 226*, *Savitri Pandey v. Prem Kumar Pundey (2002) 2 SCC 73* and *Praveen Mehta v. Inderjil Mehta (2002) 5 SCC 706*, the learned author opines that most of the Judges have taken the view that a post divorce marriage pending appeal is not valid. He had suggested



C.M.A.(MD)No.672 of 2021

certain amendments to the provision also. A quarter of a century has elapsed since then and we must take note of the changing social mores. We would respectfully suggest that Section 15 of the Hindu Marriage Act deserves an amendment. It should not be enough if the appeal is presented within time. The appellant must also obtain an interim stay of the decree of divorce within two months thereafter.

16.As already mentioned, the appellant was not at all serious about prosecuting the appeal. He was not present when it was listed for admission. He allowed it to be dismissed for default. It was restored without noticing that the respondent had remarried. Right to marry is a human right. Of course, subject to conditions. Since Section 15 places restriction on this right, it has to be construed strictly. Deriving inspiration from **Krishnaveni Rai**, we would hold that once an appeal has been dismissed for default, Section 15 loses its sting. Section 15 talks about dismissal. This expression would include within its ambit “dismissed for default or non-prosecution” also. When the application for restoration is taken up and it is



C.M.A.(MD)No.672 of 2021

reported that the respondent has remarried, the appeal has to be dismissed as infructuous. It is irrelevant when the remarriage took place.

17.With the aforesaid observations, this appeal is dismissed.

(G.R.S. J.) & (M.D.S. J.)
13.08.2026

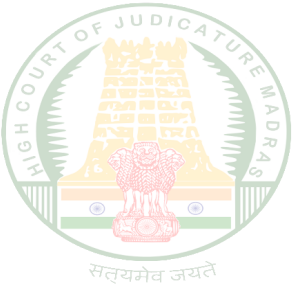
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To:

The Judge, Family Court, Trichy.

Copy to:

The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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C.M.A.(MD)No.672 of 2021

G.R.SWAMINATHAN, J.
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C.M.A.(MD)No.672 of 2021

13.08.2026