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**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. -2024:AHC-LKO:45639-DB

Reserved on:23.05.2024

Delivered on:05.07.2024

Court No. - 2

Case :- FIRST APPEAL No. - 239 of 2023

Appellant :- Shruti Agnihotri

Respondent :- Anand Kumar Srivastava

Counsel for Appellant :- Ashish David Rao, Anurag Dixit, Shakti Kumar Verma, Sunieta Ojha

Counsel for Respondent :- Pradeep Kumar, Kapil Dev Chaubey, Seema Kashyap

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

1. Heard Ms. Sunieta Ojha, learned counsel for the appellant and Ms. Seema Kashyap, learned counsel for the respondent.
2. This is an appeal under Section 19(1) of the Family Courts Act, 1984 read with Section 28 of Hindu Marriage Act, 1955 challenging the judgment and order dated 29.08.2023 passed in Original Suit No. 1990 of 2009; Shruti Agnihotri Vs. Anand Srivastava.
3. The appellant herein had filed a Suit bearing No. 1990 of 2009 under Section 12 of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act, 1955') against the respondent i.e. the alleged husband, on 14.10.2009. The respondent on the other hand filed a Suit bearing No. 2168 of 2009 under Section 9 of the Act, 1955 on 11.11.2009 seeking

restitution of conjugal rights. Both the suits were clubbed together for the purposes of collecting and recording of evidence and for being decided by a common judgment. The evidence is therefore common. The suit of the appellant under Section 12 of the Act, 1955 has been dismissed, whereas, the suit of the respondent under Section 9 of the Act, 1955 has been decreed.

4. The facts of the case in brief are that the appellant and her family were residents of Kanpur. The appellant's 'mausi' used to reside at Lucknow. Through her 'mausi' the family members of the appellant, except her father, came in touch with the respondent herein, who, as alleged, was a religious Guru and used to hold religious discourses at his residence, at Lucknow. The appellant while she was a minor used to go with her mother, mausi and maternal uncle, to the residence of respondent for such religious discourses including on the occasion of Gurupurnima or other special occasions. The family members of the appellant, except her father, were deeply under the influence of the respondent and used to refer him as their Spiritual Guru. It is stated that during ceremonies at the place of the respondent certain 'prasad' including 'special prasad' used to be given and on taking the same the disciples used to feel elevated and used to loose normal consciousness.

5. It is said that on 05.07.2009 which was Gurupurnima the respondent called the mother of the appellant for signing certain papers on the pretext of enrolling them as members of his spiritual institution, accordingly, the appellant and her mother visited his place at Lucknow and signed certain papers. It is alleged that on 03.08.2009 when the appellant and her mother had gone to Lucknow to attend birthday of appellant's cousin, they were again called by the respondent at his place and made to sign certain papers on the pretext of being witnesses to a sale deed and they signed certain documents. It is pertinent to mention that on the relevant date i.e. 05.07.2009 the appellant had barely crossed

marriageable age of 18 years, say by 12 days, her date of birth being 21.06.1991, whereas, the respondent was at that time about 39 years of age.

6. On 05.08.2009 the respondent called the father of the appellant to inform him that he had married the appellant at Arya Samaj Mandir, Ganeshganj, Lucknow on 05.07.2009 and had got it registered with the Registrar of Marriages on 03.08.2009. This sent the entire family into a tizzy. They were all taken aback and felt cheated by the fraudulent act of the respondent, who, it appears, used the signed papers aforesaid to get a marriage registered, although, according to the appellant, she had never married the respondent and had never given her consent for the same. All efforts by family members of the appellant to contact the respondent failed, but, ultimately, they some how persuaded him to meet the family members and the appellant's father and mausa reached his residence on 04.09.2009. They called the Police and get the respondent arrested. An F.I.R. was lodged by the father of the appellant at Police Station - Gazipur, District- Lucknow under Sections 419, 420, 496 IPC.

7. It is against the aforesaid background, as the appellant had never married the respondent nor had she ever consented for the same of her own free will, a suit was filed by her under Section 12 of the Act, 1955. Thereafter, a Suit under Section 9 of the Act, 1955 was filed by the respondent.

8. Before the Family Court the appellant examined herself as PW-1. Her maternal uncle Harsh Shukla was examined as PW-2 and her mother was examined as PW-3. On the other hand the respondent examined himself as DW-1. One Shri Anil Kumar Khare was examined in chief by way of an affidavit dated 01.07.2023 as DW-2, however, he did not enter the witness box for cross examination, therefore, his testimony has not

been taken into consideration by the trial Court, rightly so. One Shri Ram Pratap Giri was examined as DW-3 on behalf of the respondent.

9. Apart from it, documentary evidence was also led by both the parties which would be considered hereinafter.

10. The trial Court framed the following issues in Suit No. 1990 of 2009 on 21.05.2017:-

"1. क्या वादी द्वारा प्रतिवादिनी से छल कपट करके विवाह किया गया है जैसा कि वादपत्र में उल्लिखित है ?

2. क्या वादिनी प्रतिवादी के विरुद्ध विवाह दिनांक 05.7.2009 को शून्य करा पाने की अधिकारिणी है ?

3. क्या वादिनी किसी अन्य अनुतोष को प्राप्त करने का अधिकारी है ?"

11. On the same date i.e. 21.05.2017 the following issues were framed in Suit No. 2168 of 2009:-

" 1. क्या वादी वाद पत्र में किये गये अभिकथनों के आधार पर प्रतिवादिनी के विरुद्ध वैवाहिक सम्बन्धों के पुर्नस्थापना की डिक्री प्राप्त करने की अधिकारी है जैसा कि वादपत्र में कहा गया है?"

2. क्या वादी अन्य किसी अनुतोष को प्राप्त करने का अधिकारी है ?"

12. On a consideration of the facts pleaded and evidence led in the light of the issues framed, the trial Court has recorded a finding that Gurupurnima did not fall on 05.07.2009 instead it fell on 07.07.2009. Further, from the marriage certificate issued by Arya Samaj Mandir and the Registrar of Marriages as also the photos affixed thereon which has been accepted by the appellant as hers and no evidence has been led to rebut the said documentary evidence, therefore, they were reliable. Based on the aforesaid, the Court below has recorded that the presence of the appellant at the Arya Samaj Mandir and Registrar's Office has been

proved. The Court below has recorded that certificate issued by the Arya Samaj Mandir, Ganeshgaj, Lucknow and the Registrar bore the signature of the appellant's mother Prama Agnihotri. PW- 2 Harsh Kumar Shukla, her maternal uncle, on being confronted with the aforesaid documents stated that these were all fabricated documents and that the appellant had herself stated that she was deceived in signing certain papers after taking some 'prasad' etc. The Court below found that even PW-2 has accepted the signatures of the appellant on the aforesaid documents. The Court below has found contradictions and inconsistencies in the testimony of PW-3 and PW-1 i.e. the appellant. While PW-3 has stated that he has no knowledge of any such marriage between the appellant and the respondent and that it was a fraudulent act, the appellant herself has stated in last paragraph of her examination-in-chief that marriage between the appellant and respondent had taken place on 05.07.2009 fraudulently and that the same be declared null and void. Thus, the appellant on the one hand denies the marriage and on the other hand has sought a declaration that the marriage be declared as null and void, whereas, even in the first information report lodged by the father of the appellant there is a mention about she being taken to the Arya Samaj Mandir and the Registrar's Office and the father has also stated therein about marriage being solemnized in the temple. The Court below found that the case set-up by the appellant/plaintiff that at the time of marriage and registration of the same she was hypnotized and was not in her senses, but, this was not believable, as, the Arya Samaj Mandir and Registrar's Office are not secluded place. These are public place where several persons are present. The trial Court has opined that the appellant has also not given any reason as to why no medical examination was got done and action taken when she fell slightly different on taking 'prasad' given by respondent. Though, the appellant had denied her writing on some of the documents viz C-50/1, C-50/2, C-50/3 and 50/4, she had not adduced any evidence of a hand writing expert to prove that some of the

said documents had been written by the respondent. The Court below did not find any document on record establishing that the respondent had been convicted of the offence alleged in the F.I.R. lodged against him by father of the appellant. The Court below found that on 03.07.2009 appellant was a major and had completed her intermediate and her mother possessed the educational qualification of M.A., B.A. and was a Teacher, therefore, it was not believable that they would be present at the Arya Samaj Mandir and at the Registrar's Office for registration of marriage unknowingly or under some influence and would also sign the documents relating to such marriage. The appellant and her family members did not take any action if they were of the opinion that the respondent was using 'tantra mantra' on them. The Family Court has found that, although, there is a difference of 20 years in the age of the appellant and respondent, but, the presence of the appellant at the Arya Samaj Mandir and the Registrar's Office is proved and the appellant had failed to prove that the marriage was solemnized by fraud or deceit by the respondent. The Court below has also taken into consideration the testimony of respondent- herein that the appellant had given her consent to marriage and was agreeable to the same till she was beaten up by her maternal uncle and it is under pressure of her family members that all these proceedings have been initiated. Accordingly, the trial Court has dismissed the suit of the appellant.

13. With regard the Suit No. 2168 of 2009 under Section 9 of the Act, 1955 filed by the respondent there is no discussion by the trial Court in the light of the ingredients/ parameters mentioned in the said provision, satisfaction of which is a prerequisite for decreeing such a suit for restitution of conjugal rights. The trial Court has simply mentioned the willingness of the respondent to take his wife i.e. the appellant, with him, and accordingly, the Suit has been decreed.

14. The contention of the appellant' counsel is that in fact no marriage took place between the appellant and the respondent. The alleged marriage and registration of marriage is a fraudulent act by the respondent referable to Section 12(1)(c) of the Act, 1955. On the other hand the respondent's counsel submitted that there is sufficient proof on record to prove that marriage had taken place between the appellant and the respondent and she being a major and she as also her mother being educated ladies it is unbelievable that they would go to the Arya Samaj Mandir to get the marriage solemnized and then to the Registrar of marriages to get it registered without their consent and free will. The turn around in their stand is on account of pressure of the family, nothing else. There is no reasonable excuse for the appellant to withdraw from the society of the respondent, therefore, no interference is called for by this Court with the judgment of the trial Court.

15. It is not in dispute that both the appellant and the respondent are Hindus. It is case of the respondent as is evident from the pleadings that his marriage with the appellant was solemnized as per Hindu rites and customs. Thus, there is no dispute that both the parties are Hindus and the marriage being claimed by the respondent is not under the Special Marriage Act, 1954 but as per Hindu rites and customs, therefore, necessarily it has to be in terms of the Hindu Marriage Act, 1955. The respondent claims that marriage had taken place at the Arya Samaj Mandir, Ganeshganj, Lucknow, thereafter, it was got registered in the Office of Registrar of the marriages, which is referable to Section 8 of the Act, 1955 and the Rules made thereunder by the State Government. The Hindu Marriage Act, 1955 applies not only to Hindus but also to followers of Brahmo, Prarthana or Arya Samaj and other religious communities.

16. The points which fall for determination in this appeal are as under:-

(1) Whether any marriage was solemnized between the appellant and the respondent as per Hindu rites and customs and in terms of Section 7 of the Act, 1955 or not ?

(2) Whether such marriage was solemnized with the consent and free will of the appellant or fraudulently. If not, the consequences and relief to which the appellant may be entitled under Section 12 of the Act, 1955 ?

(3) If the answer to the aforesaid questions, is also in the affirmative, then, the other point for determination would be as to whether the appellant has/had any reasonable cause to withdraw from the Society of the respondent. If not, then, the relief to which the respondent would be entitled in his Suit under Section 9 of the Act, 1955 ?

Point No. 1 is implicit in Point no. 2.

17. Having heard learned counsel for the parties and having perused the records including the records of the trial Court, we find that the appellant herein had attained marriageable age of 18 years on 21.06.2009. She had, thus, barely crossed 12 days from the marriageable age when the alleged marriage is said to have taken place. The family members including the appellant revered the respondent as their spiritual guru, however, the father, as has come in the testimony of the appellant herself, did not approve of such activities nor did he ever visit the respondent at Lucknow nor was he present at the time of the alleged marriage at Arya Samaj Mandir, Ganeshganj, Lucknow nor in the office of Registrar of Marriages at Lucknow. Even the respondent has not deposed about his presence at any time at his place or during alleged marriage at the Arya Samaj Mandir or at the time of its registration at Lucknow. No doubt, 05.07.2009 was not a Gurupurnima, instead, it was on 07.07.2009 and it appears that the cousin's birthday was also not on 03.08.2009, facts which have weighed with the trial Court in disbelieving

the case of the appellant. In our opinion the trial Court has missed the woods for the trees. The appellant has nowhere admitted marriage with the respondent as claimed by the latter. The allegation of fraud in respect of the marriage being claimed by the respondent is on account of certain papers having been got signed by the respondent and, as apprehended, the same being used for preparation of relevant certificates etc. to show that some marriage had taken place between the appellant and the respondent, but, such pleadings on behalf of the appellant can not constitute admission of any relationship of husband and wife with the respondent nor of any marriage having taken place between them. She has nowhere admitted that any such marriage had taken place in accordance with Hindu rites and customs nor has she admitted performance of any such ceremonies which were necessary for a valid Hindu marriage. In fact, it has been stated in paragraph 10 and 11 of her plaint that on 05.08.2009 the respondent telephoned her father to inform him that he had married the appellant on 05.07.2009 and had got it registered on 03.08.2009. On receiving such information the appellant-plaintiff and her family members underwent great mental stress and pain because the appellant and her family members reposed trust in the respondent as their Spiritual Guru but had been deceived and without consent of the appellant a fabricated marriage was being claimed on the basis of cheating and deceit. The background of these pleadings is the assertion in Paragraph 7 about getting some papers signed by the appellant and her mother on the false pretext of sale of property or getting them enrolled as members of spiritual marination. It is in this context that these allegations have been made. These can not be construed as an admission of any marriage as per law with the respondent.

18. In para 14 of her plaint the appellant-plaintiff has clearly stated that she had never given such consent for marriage. She has stated that it is the result of cheating, fraud and deceit. The marriage has been referred

as a fabricated marriage. This can never be construed as admission of any such marriage of the appellant with the respondent. She has categorically stated in Para 15 that not only the marriage was a fabricated one she had never lived as husband and wife prior to or after such alleged marriage. No relationship of husband and wife had been formed prior to or subsequent to such fabricated marriage.

19. In this regard we may also examine the testimony of the appellant/plaintiff i.e. PW-1. Therein, also we do not find any admission of such marriage or the ceremonies which are necessary for solemnization of such marriage as per Hindu rites and customs so as to constitute a valid marriage as per law. In her cross examination she has categorically stated - 'मेरी आनन्द से कभी कोई शादी हुयी ही नहीं'. If there was any doubt in this regard the same stood clarified by this statement in her cross examination by the respondent-defendant. She has denied the certificate of marriage issued by the Arya Samaj Mandir and the Registrar of marriages. When she was shown the photographs affixed on the certificate of marriage issued by the Registrar's Office she has stated that, though, the photo appears to be hers but she has never got such marriage registered. She has reiterated that the respondent/defendant got some papers signed by her and her mother on the pretext of purchasing some property and enrolling them as members of his spiritual organization and, believing him, as, they had a relationship of trust and faith, he being their being Spiritual Guru, they signed the papers. She has reiterated that she has never solemnized any marriage with the respondent/defendant in her senses, which can not be treated as an admission of any such marriage. She has denied any pressure of her family members in filing the Suit etc. She has denied having ever lived with the respondent/defendant. She has denied that any marriage was solemnized between the the appellant and the respondent/defendant with her consent.

20. In view of the above, as it is the respondent who claims marriage with the appellant-plaintiff the burden to prove such marriage as per Hindu rites and customs was upon him.

21. Now, in this context, when we peruse the the pleadings of the respondent/defendant we find that in Para 4 of the written statement filed in Suit No. 1990 of 2009 he has admitted that people used to call him for spiritual discourses at their home and several other persons would also take part in the said discourses. Although, he has denied the relationship of Guru and Disciple with the appellant but the aforesaid fact has been accepted by him that he used to hold spiritual discourses. In his written statement he has nowhere stated that marriage between him and the appellant was solemnized in accordance with the Hindu rites and customs. He has simply stated that marriage had taken place on 05.07.2009 which was got registered on 03.08.2009 and that the appellant and her mother had signed requisite papers in this regard. In the plaint filed by him under Section 9 of the Act, 1955, in para 2 he has stated that he and the appellant herein are Hindus and that they have married each other at Arya Samaj Mandir, Ganeshganj, Lucknow on 05.07.2009 in the presence of their family members i.e. the appellant's and respondent's family members as per rites and customs of Hindu religion. As, he has claimed marriage with the appellant, therefore, the burden of proving the same was upon him, especially as, the appellant has nowhere admitted such marriage as per Hindu rites and customs. In fact, in her written statement she has categorically denied the averments made by the respondent in Para 2 of his plaint under Section 9 of the Act, 1955. She has stated that in fact the respondent claims himself as an incarnation of God and used to call himself 'Anand Prabhu' and used to give spiritual discourses and 'Satsang'. She has reiterated her stand in the written statement in the Suit under Section 9 of the Act, 1955 as in her plaint under Section 12 of the Act, 1955.

22. Now, against this when we see evidence led by the respondent/defendant we find firstly that there is a copy of the F.I.R. lodged by the appellant's father. The appellant has clearly testified in her testimony that her father never visited the residence or place of the respondent/defendant to attend spiritual discourses or to meet him, in fact, he used to discourage such activities and did not believe in them. There is no evidence led by the respondent/defendant that the father of the appellant was present at the time of marriage at the Arya Samaj Mandir or at the time of its registration. The F.I.R. has been lodged under Sections 419, 420, 496 IPC not by the appellant but by the father who obviously would have 'presumed' certain things as he had not seen the alleged marriage. Any recital in the F.I.R. lodged by the appellant's father would not bind the appellant nor can it be used as proof that she has admitted her marriage to the respondent/defendant. In view of the above, the trial Court has erred in relying upon the recitals in the F.I.R.

23. As regards, the marriage certificate issued by the Arya Samaj Mandir, Ganeshganj, Lucknow i.e. the certificate paper C-47 does not bear the signature of the appellant or her family members. The said document has been denied by the appellant/plaintiff. A photocopy of another document (C-55/8) purporting to be a certificate of marriage issued by Arya Samaj Mandir attested by its alleged 'care taker' Pandit Satish Tiwari on 22.05.2023 has been filed. This document has also been denied by the appellant and her mother. In any case such certificate by itself does not prove a valid marriage as per Hindu rites and customs. Issuance of such certificates by the Arya Samaj Mandir have been considered by Courts in several cases and it has been held that such certificates have no meaning unless and until prerequisites for a valid Hindu marriage are completed/satisfied and proved. The respondent/defendant has not produced any witness from the Arya Samaj Mandir, Ganeshganj, Lucknow to prove that any such ceremonies, which are necessary for a valid Hindu marriage, were performed on 05.07.2009

at the Arya Samaj Mandir, Ganeshganj, Lucknow. We may in this very context refer to the provisions of Section 7 of the Act, 1955 which read as under:-

"7. Ceremonies for a Hindu marriage.- (1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the Saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken."

24. Neither in the pleadings contained in the plaint filed by the respondent under Section 9 of the Act, 1955 nor in the pleadings contained in his written statement filed in the suit of the appellant under Section 12 has he pleaded about any such customary rites and ceremonies which are required to be performed at a Hindu marriage as having been performed on 05.07.2009 at the Arya Samaj Mandir, Ganeshganj, Lucknow so as to constitute a valid Hindu marriage between the appellant and the respondent. It has also not been pleaded that it was not the custom to perform such necessary rites and ceremonies including 'Saptapadi' etc.

25. As already stated the priest who may have performed those ceremonies has not been produced in Court. No other person who may have participated in such marriage ceremony and may have witnessed the customary rites and ceremonies being performed regarding the marriage of the appellant with the respondent has been produced before the Court in support of his case.

26. We may in this very context refer to a recent decision of Hon'ble the Supreme Court dated 19.04.2024 rendered in ***Transfer Petition (C) No. 2043 of 2023; Dolly Rani Vs. Manish Kumar Chanchal***. Although,

in the said case the parties arrived at an agreement to dissolve their marriage but in this very context they stated that in fact no marriage was solemnized and they had merely got their marriage registered and certificate of marriage had been issued by an organization known as Vadik Jankalayan Samiti under the U.P. Registration Rules, 2017 and a certificate of marriage was also issued by the Registrar of Marriages. Hon'ble the Supreme Court held that when there was no Hindu marriage which took place between them, the issuance of the said certificate was of no consequence. In fact, it considered at length the provisions of Sections 7 and 8 of the Act, 1955 the prerequisite of a valid Hindu marriage. As the ratio of the said judgment is relevant to the facts of the case, therefore, we fruitfully quote relevant extracts thereof which are as under:-

"But before granting the reliefs sought for by the parties we wish to make certain observations.

Section 7 of the Act reads as under:

"7. Ceremonies for a Hindu marriage.—(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto. (2) Where such rites and ceremonies include the Saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken."

Section 7 of the Act speaks about ceremonies of a Hindu marriage. Sub-section (1) uses the word "solemnised". The word "solemnised" means to perform the marriage with ceremonies in proper form. Unless and until the marriage is performed with appropriate ceremonies and in due form, it cannot be said to be

“solemnised”. Further, sub-section (2) of Section 7 states that where such rites and ceremonies include the saptapadi, i.e., the taking of seven steps by the bridegroom and the bride jointly before the sacred fire, the marriage becomes complete and binding when the seventh step is taken. Therefore, requisite ceremonies for the solemnisation of the Hindu marriage must be in accordance with the applicable customs or usage and where saptapadi has been adopted, the marriage becomes complete and binding when the seventh step is taken. Where a Hindu marriage is not performed in accordance with the applicable rites or ceremonies such as saptapadi when included, the marriage will not be construed as a Hindu marriage. In other words, for a valid marriage under the Act, the requisite ceremonies have to be performed and there must be proof of performance of the said ceremony when an issue/controversy arise. Unless the parties have undergone such ceremony, there would be no Hindu marriage according to Section 7 of the Act and a mere issuance of a certificate by an entity in the absence of the requisite ceremonies having been performed, would neither confirm any marital status to the parties nor establish a marriage under Hindu law.

A perusal of the marriage certificate produced in the instant case along with the application filed under Article 142 of the Constitution of India states that the ‘marriage’ between the parties has been solemnised according to Hindu Vedic rites and customs. The certificate issued by Vadik Jankalyan Samiti (Regd.) in the absence of any indication as to the rites and customs that were performed and as to whether the requirements under Section 7 of the Act was complied with would not be a certificate evidencing a Hindu marriage in accordance with Section 7 of the Act.

In the absence of any ceremony being performed such a certificate could not have been issued. It is on the basis of the said certificate that the Marriage Registration Officer has issued under the Uttar Pradesh Marriage Registration Rule, 2017 a certificate stating that the parties had presented before the office on 07.07.2021 and had declared that their marriage was solemnised on the said date at Vadik Jankalyan Samiti (Regd.), Ghaziabad and on the basis of the said certificate issued by the said entity, the Marriage Registration Officer registered the marriage which is under Section 8 of the Act.

Section 8 of the Act reads as under:

“8. Registration of Hindu marriages.—(1) For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such cases as may be specified, and where any such direction has been issued, any person contravening any rule made in this behalf shall be punishable with fine which may extend to twenty-five rupees.

(3) All rules made under this section shall be laid before the State Legislature, as soon as may be, after they are made.

(4) The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee.

(5) Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry.”

Under Section 8 of the Act, it is open for two Hindus married under the provisions of the Act to have their marriage registered provided they fulfil the conditions laid down therein regarding performance of requisite ceremonies. It is only when the marriage is solemnised in accordance with Section 7, there can be a marriage registered under Section 8. The State Governments have the power to make rules relating to the registration of marriages between two Hindus solemnised by way of requisite ceremonies. The advantage of registration is that it facilitates proof of factum of marriage in a disputed case. But if there has been no marriage in accordance with Section 7, the registration would not confer legitimacy to the marriage. We find that the registration of Hindu marriages under the said provision is only to facilitate the proof of a Hindu marriage but for that, there has to be a Hindu marriage in accordance with Section 7 of the Act inasmuch as there must be a marriage ceremony which has taken place between the parties in accordance with the said

provision. Although the parties may have complied with the requisite conditions for a valid Hindu marriage as per Section 5 of the Act in the absence of there being a “Hindu marriage” in accordance with Section 7 of the Act, i.e., solemnization of such a marriage, there would be no Hindu marriage in the eye of law. In the absence of there being a valid Hindu marriage, the Marriage Registration Officer cannot register such a marriage under the provisions of Section 8 of the Act. Therefore, if a certificate is issued stating that the couple had undergone marriage and if the marriage ceremony had not been performed in accordance with Section 7 of the Act, then the registration of such marriage under Section 8 would not confer any legitimacy to such a marriage. The registration of a marriage under Section 8 of the Act is only to confirm that the parties have undergone a valid marriage ceremony in accordance with Section 7 of the Act. In other words, a certificate of marriage is a proof of validity of Hindu marriage only when such a marriage has taken place and not in a case where there is no marriage ceremony performed at all.

We further observe that a Hindu marriage is a sacrament and has a sacred character. In the context of saptapadi in a Hindu marriage, according to Rig Veda, after completing the seventh step (saptapadi) the bridegroom says to his bride, “With seven steps we have become friends (sakha). May I attain to friendship with thee; may I not be separated from thy friendship”. A wife is considered to be half of oneself (ardhangini) but to be accepted with an identity of her own and to be a co-equal partner in the marriage. There is nothing like a “better-half” in a marriage but the spouses are equal halves in a marriage. In Hindu Law, as already noted, marriage is a

sacrament or a samskara. It is the foundation for a new family.

With the passage of centuries and the enactment of the Act, monogamy is the only legally approved form of relationship between a husband and a wife. The Act has categorically discarded polyandry and polygamy and all other such types of relationships. The intent of the Parliament is also that there should be only one form of marriage having varied rites and customs and rituals. Thus, when the Act came into force on 18.05.1955, it has amended and codified the law relating to marriage among Hindus. The Act encompasses not only Hindus as such but Lingayats, Brahmos, Aryasamajists, Buddhists, Jains and Sikhs also who can enter into a valid Hindu marriage coming within the expansive connotation of the word Hindu.....

.....In the absence of there being any such marriage in accordance with Section 7 of the Act, a certificate issued in that regard by any entity is of no legal consequence. Further, any registration of a marriage which has not at all taken place under Section 8 of the Act and as per the rules made by the State Government would not be evidence of a Hindu marriage and also does not confer the status of a husband and a wife to a couple.

27. It has been categorically held in the said judgment that in absence of there being any such marriage in accordance with Section 7 of the Act, a certificate issued in that regard by any entity is of no legal consequence. Further, any registration of a marriage, which has not at all taken place, under Section 8 of the Act and as per the rules made by the State Government would not be evidence of a Hindu marriage and also does

not confer the status of a husband and a wife to a couple. It accordingly declared the certificate issued by the Vadik Jankalyan Smiti dated 07.07.2021 and the certificate issued under the U.P. Registration Rules, 2017 as null and void and also declared that the petitioner and the respondent were not married in accordance with the provisions of the Act, 1955 and therefore, they have never acquired the status of husband and wife. The law on the subject has been succinctly and lucidly explained in the aforesaid extracts from the judgment of the Supreme Court. It has been categorically held with reference to Section 7 of the Act, 1955 that unless and until the marriage is performed with appropriate ceremonies and in due form, it cannot be said to be “solemnised”. Requisite ceremonies for solemnisation of a Hindu marriage must be in accordance with the applicable customs or usage and where Saptapadi has been adopted, the marriage becomes complete and binding when the seventh step is taken. Where a Hindu marriage is not performed in accordance with the applicable rites or ceremonies such as Saptapadi when included, the marriage will not be construed as a Hindu marriage. In other words, for a valid marriage under the Act, the requisite ceremonies have to be performed and there must be proof of performance of the said ceremony when an issue/controversy arise. Unless the parties have undergone such ceremony, there would be no Hindu marriage according to Section 7 of the Act and a mere issuance of a certificate by an entity in the absence of the requisite ceremonies having been performed, would neither confirm any marital status to the parties nor establish a marriage under Hindu law.

28. It also noticed that the Certificate issued by the Vadik Jankalyan Samiti did not indicate as to the rites and customs that were performed and as to whether the requirements under Section 7 of the Act, 1955 was complied with, therefore, it would not be a certificate evidencing a Hindu marriage in accordance with Section 7 of the Act, 1955. It also noticed that on the basis of the said certificate the marriage was got registered by

the Registrar Officer and a certificate was issued by the latter on 07.07.2021 under the Registration Rules, 2017 mentioning that their marriage had been solemnized at Vadik Jankalayan Samiti (Regd.) Ghaziabad and based on the certificate issued by the said entity the marriage the Registration Officer registered the marriage which is under Section 8 of the Act, 1955. Hon'ble the Supreme Court then considered Section 8 of the Act, 1955 and observed that it is only when the marriage is solemnised in accordance with Section 7, there can be a marriage registered under Section 8.

29. It has observed that the advantage of registration is that it facilitates proof of factum of marriage in a disputed case, but if there has been no marriage in accordance with Section 7, the registration would not confer legitimacy to the marriage. The registration of Hindu marriages under Section 8 is only to facilitate the proof of a Hindu marriage but for that, there has to be a Hindu marriage in accordance with Section 7 of the Act inasmuch as there must be a marriage ceremony which has taken place between the parties in accordance with the said provision.

30. It has also observed that in the absence of there being a valid Hindu marriage, the Marriage Registration Officer cannot register such a marriage under the provisions of Section 8 of the Act. Therefore, if a certificate is issued stating that the couple had undergone marriage and if the marriage ceremony had not been performed in accordance with Section 7 of the Act, then the registration of such marriage under Section 8 would not confer any legitimacy to such a marriage. The certificate of marriage is a proof of validity of Hindu marriage only when such a marriage has taken place and not in a case where there is no marriage ceremony performed at all. Hindu marriage is a sacrament and has a sacred character.

31. On performance of Saptapadi in a Hindu marriage, according to 'Rig Veda', after completing the seventh step (Saptapadi) the bridegroom

says to his bride, "with seven steps we have become friends (sakha). *May I attain to friendship with thee; may I not be separated from thy friendship.*" Therefore, this ceremony is necessary unless of course it is proved that it is not the custom in a particular area.

32. We may in this context also refer to a Division Bench judgment of this Court rendered in *First Appeal No. 830 of 2022; Ashish Morya Vs. Anamika Dhiman* wherein it was held that marriage certificate of Arya Samaj by itself is not proof of valid marriage.

33. Thus, the Certificate issued by the Arya Samaj Mandir, Ganeshganj, Lucknow does not by itself prove marriage between the appellant/plaintiff and the respondent/defendant. None of the certificates mention about the ceremonies which were performed. Merely mentioning that marriage was performed as per vaidik rites itself does not prove marriage between the appellant/plaintiff and respondent/defendant, especially as, document C-47 does not bear signature of the appellant or her mother. Document C-55/8 is a photocopy albeit attested by some Administrator of Arya Samaj Mandir, but, it also does not prove marriage for the reasons already given hereinabove.

34. The marriage certificate allegedly issued by the Registrar of Hindu Marriages on 03.08.2009 also by itself does not prove the said marriage, as, it does not mention any customary rites and ceremonies having been performed which are prerequisites for a valid Hindu marriage. It merely mentions that marriage was solemnized on 05.07.2009 at Arya Samaj Mandir, Ganeshganj, Lucknow, in the same way, as was mentioned in the case before the Supreme Court in *Dolly Rani* (supra) and which was disapproved. Such marriage certificates do not have any evidentiary value in the absence of any proof of marriage having been performed as per Section 7 of the Act, 1955 and in fact in view of the aforesaid decision in the case of *Dolly Rani* (supra) such a certificate should not have been issued under the Registration of Marriage Rules, 1973 which

have been framed by the State Government under the Act, 1955. This document (C-47/7), though, it contains photograph of the appellant it does not bear her signature nor has it been admitted by her. In any case as already stated this is no proof by itself of any valid marriage having taken place in view of the legal position enunciated hereinabove.

35. In this very context we may refer to the oral evidence led on behalf of the respondent/defendant. In his testimony as DW-1, he has nowhere delineated the customary rites and ceremonies which may have been performed during the alleged marriage of the appellant with him. Merely saying that it was performed in accordance with Hindu rites and customs is not sufficient, as, it is his word against that of the appellant who has denied such marriage. In his testimony respondent/defendant changed his stand as accepted in his pleadings that he used to give discourses albeit on being invited by persons at their home and that they used to organize bhajans instead he has stated that he is a creative person, a musician etc. DW-2 as already stated, though, he has examined himself in chief by way of an affidavit he did not enter the witness box to be cross examined, therefore, his testimony has no significance in law. DW-3 in his cross examination could not tell the date of alleged marriage of the appellant and respondent. He had no knowledge as to where the alleged marriage had taken place. He has no knowledge as to whether the said marriage has been registered in the office of the Registrar. In view of this, his testimony is of no help to the respondent/defendant and does not prove marriage between the parties.

36. No other evidence was adduced by the respondent/defendant which could prove a valid Hindu Marriage between the appellant and the respondent. It is not his case that marriage was solemnized under the Special Marriage Act, 1954 . Photocopies of certain affidavits were filed by the respondent/defendant which have been denied by the appellant, therefore, the burden was upon to him to prove the veracity of the said

documents which has not been done. Nobody has been examined from the Arya Samaj Mandir, Ganeshganj, Lucknow where the said affidavits are said to have been filed. They are photocopies. These could not have formed the basis for any finding of a valid marriage between them. In fact, in this very context the allegation was by the appellant about respondent having got certain papers signed by her on a false pretext which may have been misused and based thereon marriage was being claimed fraudulently.

37. We may also in this regard refer to Section 8 of the Act, 1955. No such extract of any register which is required to be maintained by the Registrar of Marriages was adduced during evidence nor anybody was examined from the office of Registrar to prove such registration or filing of affidavits voluntarily. Even if, he had, unless it was proved that the registration was preceded by a valid Hindu marriage including performance of customary rites and ceremonies, it would be inconsequential, as already held by Hon'ble the Supreme Court in the case of *Dolly Rani* (supra).

38. The respondent has not produced any evidence to prove his assertion/ claim that the appellant lived with him as husband and wife for about one month after marriage. No documentary or oral evidence has been adduced in support of this assertion. Further, there is no pleading about any celebration or festivities having been held after marriage which may have been attended by relatives, friends or neighbours of either parties, nor any such evidence has been led by the respondent.

39. As already stated, the respondent was claiming marriage with the appellant. He filed a Suit for restitution of conjugal rights, albeit, after the suit of the appellant under Section 12 of the Act, 1955. The appellant, as already discussed, has nowhere admitted to the marriage, therefore, the burden of proving marriage was upon the respondent who claimed

marriage with the appellant and he failed to discharge this burden but the trial Court has failed to consider/ appreciate this aspect of the matter. The Court below has erred in proceeding on the premise that marriage had taken place between the parties and the only question to be decided was as to whether it was with the consent of the appellant or not. It has readily believed documentary proof adduced by the respondent/defendant. Even after taking into consideration the provisions of Section 14 of the Family Courts Act, 1984 we do not approve of the manner in which the trial Court has considered the facts and issues, evidence, its admissibility and relevance, nor do we approve the findings recorded by it on its basis, in the facts of the present case. The ingredients of a valid Hindu marriage in terms of Section 7 of the Act, 1955 had to be proved by the respondent herein but the trial Court omitted to consider these material aspects and has thereby misdirected itself. It did not consider the issue as to whether the marriage itself had taken place in the first place as per law, as discussed hereinabove. Its judgment is erroneous.

40. In view of the above discussion, we are of the considered opinion that marriage between the appellant and the respondent as per Hindu rites and customs in terms of Section 7 of the Act, 1955 itself is not proved and the trial Court has gravely erred in not considering this aspect of the matter which was implicit in the issues framed by it. In the absence of a valid Hindu marriage there was no way that the suit of the respondent/defendant under Section 9 of the Act, 1955 could have been decreed, especially, in the manner in which it has been done, without discussing any of the prerequisites which are required to be satisfied under the said provision. For the same reason, the trial Court has erred in dismissing the suit of the appellant/plaintiff under Section 12 of the Act, 1955.

41. We, accordingly, hold that no marriage has taken place between the appellant and respondent as per law and the marriage as alleged by the

respondent/defendant based on the certificate issued by the Arya Samaj Mandir, Ganeshganj, Lucknow and the Certificate of registration issued by the Registrar of marriages, Lucknow etc., is a nullity, as, prerequisites of a valid marriage in the form of customary rites and ceremonies required for a Hindu marriage were never performed and the said certificates have no significance in the eyes of law and do not by themselves prove such marriage. The alleged marriage, based on the aforesaid documents has rightly been claimed by the appellant to be a fraudulent exercise. Point no. 1 is determined accordingly in the negative. Points no. 2 and 3 are also determined in terms of the above in favour of the appellant and against the respondent.

42. In view of the above discussions, we set aside the judgment and decree passed on 29.08.2023 in Original Suit No. 1990 of 2009; Shruti Agnihotri Vs. Anand Srivastava. The Original Suit No. 1990 of 2009 is allowed. The Suit bearing No. 2168 of 2009 under Section 9 of the Act, 1955 is dismissed.

43. The first appeal is **allowed** in the aforesaid terms.

(Om Prakash Shukla,J.) (Rajan Roy,J.)

Order Date :-05.07.2024

R.K.P.