

The Hon'ble Supreme Court has recently passed a judgment titled *Anurag Mittal v. Shaily Mishra Mittal* in Civil Appeal No.18312 of 2017 wherein two questions of law have been decided. The questions of law are as follows: (i) Whether the dismissal of an appeal relates back to the date of filing of the application for withdrawal, (ii) Whether the marriage between the parties during the pendency of the appeal against decree of divorce is void.

Summarily, the facts of the case are that the Appellant (before the Hon'ble Supreme Court) challenged the order passed by the Family Court whereby the Petition filed by Appellant's first wife under Section 13(1) (i-a) of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act") seeking divorce on the ground of cruelty was allowed and Petition filed by the Appellant under Section 9 of the Act for restitution of conjugal rights was dismissed. The judgment was passed by the Family Court on 31.08.2009, which was assailed by the Appellant before the Hon'ble High Court. In the Appeal filed by the Appellant before the Hon'ble High Court, stay was granted to the operation of the order dated 31.08.2009 passed by the Family Court.

During the pendency of the Appeal before the Hon'ble High Court, the Appellant and his first wife arrived at a settlement on 15.10.2011 wherein it was agreed that the Appellant would withdraw his Appeal within 30 days from the date of settlement. Accordingly, the Appellant filed an application before the Hon'ble High Court on 28.11.2011 seeking withdrawal of the Appeal. The said application was allowed and Appeal was dismissed as withdrawn on 20.12.2011.

The bone of contention in the present case was that the Appellant solemnised his second marriage with the Respondent (before the Hon'ble Supreme Court) on 06.12.2011, i.e., after filing of the application seeking withdrawal of the appeal but, before the actual withdrawal.

After occurrence of marital discord between the parties, the Respondent in the present case filed a Petition for declaration of marriage as void in view of violation of the terms of Section 5(i) read with Section 11 of the Act. Section 5(i) of the Act provides that a marriage can be solemnised between two Hindus when neither party has a spouse living at the time of marriage. On the other hand, Section 11 of the Act provides for marriages which are void for being in contravention of the provisions of Section 5(i) of the Act.

The Petition filed by the Respondent for declaration of the marriage as null and void was dismissed by the Family Court. The reasoning afforded by the Family Court was that the Appellant was granted divorce from his first wife on 31.08.2009 and that the said order was neither reversed, nor set aside by a superior court. Accordingly, the marriage of the Appellant with his first wife stood dissolved on 31.08.2009. In so far as grant of stay order by the Hon'ble High Court was concerned, it was observed that the effect of stay was only that the decree of divorce was kept in abeyance; but, the same did not become non-existent.

The observation and finding of the Family Court was not accepted by the Hon'ble High Court and it was held that any marriage solemnised by a party during the pendency of

an Appeal wherein operation of decree of divorce was stayed, would be in contravention of Section 5(i) of the Act.

The matter reached the Hon'ble Supreme Court wherein the Hon'ble Supreme Court dealt with Sections 5(i), 11 and 15 of the Act. Section 15 of the Act initially carried a proviso which stated that it shall not be lawful for a party to marry again unless at the stage of such marriage, at least one year has lapsed from the date of decree of divorce. However, the said proviso was repealed w.e.f. 27.05.1976, meaning thereby that marriage in contravention of Section 15 of the Act would not be void. The provision of the Act is couched with prohibitory and negative language; however, the same does not make a marriage a nullity if there is a contravention of the said provision. To support the said stance, the Hon'ble Supreme Court placed reliance on its judgment titled *Lila Gupta v. Laxmi Narain* reported in (1978)3SCC258. It was clarified by the Hon'ble Supreme Court that the purpose of Section 15 of the Act was to provide protection to the party who is contesting the decree of divorce.

The Hon'ble Supreme Court also categorically pointed out that there was no contravention of Section 5(i) of the Act in as much as the Appellant had already filed an application for withdrawal of his Appeal before solemnising his second marriage. Thus, giving a purposive construction of the provisions of the Act, it was held that the marriage solemnised between the Appellant and Respondent on 06.12.2011 is lawful as the same was solemnised after filing of the application seeking withdrawal of the Appeal before the Hon'ble High Court. The Hon'ble Supreme Court also referred to the provisions of the Code of Civil Procedure, 1908 to state that every applicant has a right to unconditionally withdraw his application/ petition and his unilateral act in that behalf is sufficient and no order of a Court is necessary permitting the withdrawal of such application.