

Before M.M.S. Bedi & Gurvinder Singh Gill, JJ.

JOGINDER SINGH — *Petitioner*

versus

BALJINDER PAL KAUR—*Respondent*

FAO-M No. 276 of 2014

April 02, 2018

Hindu Marriage Act, 1955 — Ss. 5(i) and 11 — Nullity of marriage — Neither party should have a spouse living at the time of marriage — Earlier marriage of wife dissolved before Lok Adalat on March 31, 2003 in an appeal of 1999 — Same will be held to be null and void ab initio — Subsequently, registration of second marriage on April 1, 2003 mentioning date of marriage as February 23, 2003 — Presumption attached to marriage certificate, is a rebuttable presumption — Marriage certificate prepared solely with an objective of immigration to Canada — Silence of husband from 2003 to 2010 will create an estoppel against him for not having challenged the marriage dated 23.02.2003 a nullity — Husband admitted in cross-examination, marriage ceremony and reception on February 23, 2007 — No marriage had taken place on 23.02.2003 but had actually taken place on 23.02.2007 — Husband cannot be permitted to take advantage of the marriage certificate dated April 1, 2003 — Judgment in Manpreet Kaur's case distinguished.

Held, that though the marriage of respondent was declared a nullity on March 31, 2003, the same will be held to be null and void ab initio.

(Para 14)

Further held, that the appellant appears to have an understanding with the respondent that they would prepare the papers for going abroad for which the application was got signed from the respondent and the marriage certificate dated April 1, 2013 was obtained in which the date of marriage was mentioned as February 23, 2003. No doubt, a presumption is attached to a document of registration of marriage but the said presumption is a rebuttable presumption and the respondent has explained and proved the circumstances in which the marriage certificate dated April 1, 2003 was obtained. The date of marriage as mentioned in the marriage certificate is February 23, 2003

which is a date chosen by the parties for the purpose of getting a registration certificate of marriage with an objective to go abroad.

(Para 14)

Further held, that the above said circumstances clearly indicate that the appellant remained silent from 2002 till 2010 for a period of 7/8 years regarding the existence of matrimonial relationship of respondent with Naresh Kumar till March 31, 2003 when the matter was decided by the Lok Adalat of High Court. The appellant did not opt to approach any Court for a declaration for seeking the marriage with respondent a nullity. A person can tell lie but the circumstances will not. The silence of the appellant from the year 2003 till 2010 will certainly create an estoppel against the appellant for having not challenged the marriage dated February 23, 2003 a nullity. The reason for not challenging the marriage dated February 23, 2003 till the year 2010 is that no marriage actually had taken place on said date but the marriage had actually taken place on February 23, 2007 as admitted by the appellant in his cross-examination also.

(Para 17)

Further held, that we have considered the judgment of *Manpreet Kaur Vs. Balkar Singh, 2015(5) RCR (Civil) 510*. It does not lay down an absolute principle of law in para 19 of the judgment that in all cases whenever a spouse seeks declaration pertaining to be a marriage to be null and void for the reasons mentioned in Sections 11 and 12 of the Act, the principles of law of limitation or estoppel will not be applicable. We have carefully gone through the said judgment. No such absolute rule of law has been laid down or discussed in the said judgment. Any observations to that effect are pertaining to the facts of that particular case and are in the nature of obiter.

(Para 18)

K.S. Dadwal, Advocate, *for the petitioner.*

Arnav Sood, Advocate, for the respondent.

M.M.S. BEDI, J.

(1) Husband Joginder Singh has preferred this appeal against the judgment dated March 31, 2014 dismissing his petition under Section 11 of the Hindu Marriage Act, 1955, for short 'the Act' for a declaration that marriage of the appellant to the respondent was illegal, null and void. The claim of the appellant is that the date of marriage of the parties is February claim of the appellant is that the date of marriage

of the parties is February 23, 2003 whereas marriage of the respondent-wife with Naresh Kumar, the previous husband was declared null and void on March 31, 2003.

(2) On the other hand, the claim raised by the respondent wife is that the marriage had actually taken place on February 23, 2007 at Gurudwara Dhodhe Majra, Hoshiarpur and that the earlier marriage of the respondent was not subsisting on the date of her marriage with the respondent i.e. February 23, 2007 as such the marriage is not a nullity being violative of Section 5 (i) of the Act.

(3) Briefly stated the case of the appellant as pleaded in his petition under Section 11 of the Act is that the appellant had married the respondent on February 23, 2003 at Jalandhar as per Hindu religious rites and ceremonies. The marriage was registered with the Sub Registrar on April 1, 2003. The parties resided together at Jalandhar in the house of parents of the appellant but later on they, on account of temperamental differences and alleged attitude of the respondent, shifted to another residence i.e. 274, Guru Amar Dass Nagar, near Verka Milk Plant, Bye Pass, Jalandhar and thereafter to 327, Guru Amar Dass Nagar, near Verka Milk Plant, Bye Pass, Jalandhar. It is pleaded that on account of the inappropriate conduct of the respondent wife which was not bearable to the appellant, he shifted to B-I-1042, Street No.8 Kabir Nagar, Near DAV College, Jalandhar City. No child was born out of the wed-lock. The appellant has leveled allegations that the respondent wife resided in matrimonial home only for few months but thereafter on account of her attitude, conduct and short temperament she used to reside at her sister's house at Village Bains Taniwal, District Hoshiarpur, most of the times. In his pleadings he has leveled allegations against the respondent of having picked up quarrels and user of filthy language against the appellant and his family members.

(4) It is pertinent to observe here that the allegations regarding the conduct of the respondent are not relevant for the adjudication of the present appeal as the appellant has not claimed a decree of divorce on the ground of cruelty of the respondent or on the basis of her undesirable conduct but his petition is under Section 11 of the Act for seeking a decree of declaration that the marriage of the appellant as solemnized on February 23, 2003 is a nullity. The relevant pleadings in that context are to the effect that the respondent wife had applied for renewal of passport but the objection was raised by passport office that the name of the appellant could not be entered as a husband as she was

already married. When the appellant asked the respondent about the actual facts she did not reply properly and had put off the matter by giving excuses that someone was trying to malign her because of property dispute of her parents.

(5) The appellant claimed that he had taken the respondent abroad on December 24, 2009 to February 4, 2010 and that the trip was conducted on account of marriage of relative of respondent. The appellant had allegedly taken loan from HDFC Bank. Levelling allegations against the behavior of the respondent, the appellant has claimed in his petition that in the month of September 2010, he started residing at Kabir Nagar, Jalandhar, whereas the respondent was residing at House No. 327 mentioned hereinabove. It is averred in the petition that he came to now that respondent was earlier married to Naresh Kumar son of Hari Dev of Village Bhunga. Before her marriage with the appellant, she did not obtain any divorce from Naresh Kumar. Her marriage to Naresh Kumar was performed on June 5, 1995 and was also registered. The respondent had filed a case under Section 12 of the Act against said Naresh Kumar but it was dismissed by Sh.Gurnam Singh, Additional District Judge, Hoshiarpur vide order dated December 8, 1998. The first marriage was allegedly concealed by her family members. In the newspaper daily Jagbani dated April 8, 1996, the photograph of the respondent with Naresh Kumar was published as husband and wife. The respondent gave a false affidavit at the time of registration of marriage with the appellant showing herself to be unmarried. The appellant claimed that earlier he was asking the respondent to disclose the true facts about the earlier marriage but she was concealing the same for the reason best known to her. He came to know about the earlier marriage and litigation with the earlier respondent only after the marriage with respondent.

(6) The respondent wife raised preliminary objections regarding maintainability of the petition, malafide intention and the bar of estoppel on account of conduct of the appellant. It was averred in the written statement that the petition was a counter-blast to the proceedings initiated by her in civil suit as well as criminal complaint against the appellant and his family members. A criminal complaint regarding demand of dowry and cruelty had been filed against the appellant as such an FIR No. 13 dated February 25, 2011 was registered under Sections 498 A, 406 IPC at Police Station Hariane, District Hoshiarpur in which appellant was arrested. The respondent wife claimed that she also filed a suit for permanent injunction against

the appellant and his family members regarding matrimonial home bearing No. 126, Preet Nagar, Jalandhar to restrain them to dispossess her forcible which is pending in the Court of Civil Judge, (Junior Division), Jalandhar. The appellant has turned vindictive and filed present petition as such he is not entitled for any relief on account of his own wrongs.

(7) A specific claim which has been raised by respondent wife is that the date of marriage is not February 23, 2003 but it is February 23, 2007. She has explained that as a matter of fact the respondent had already litigation with her previous husband Naresh Kumar and this fact was very much in the knowledge of the appellant. The appellant and the respondent knew each other and during the pendency of litigation with Naresh Kumar, an oral understanding was arrived at between the appellant and the respondent that after the disposal of said litigation, marriage between them will take place. It was agreed that the parties would go abroad and settled there. A simple ceremony, however, was performed on April 1, 2003 involving only 4/5 persons from both sides and thereafter the appellant got the signatures of the respondent on certain papers on the pretext of registration of marriage on order to procure papers for applying their case with the Embassy. The entire registration process was conducted by the appellant and the respondent never appeared before any registering authority. She had trusted the appellant and signed all the papers without going through the same but no marriage had taken place on February 23, 2003. She has clarified that from the very beginning the intention of the appellant was to harass the respondent for immigration purpose as he wanted to go abroad and settled there as the respondent was having relatives settled abroad. They had even visited their relatives many a times on different occasions. The desire of the appellant to settle abroad increased after the visit also and in order to settle abroad increased after the visit also and in order to settle abroad the appellant even applied Visa whereas the parents of the respondent had sent the sponsorship for the same but the application was rejected by the Canadian Embassy in the month of September 2010. It was after rejection of the same, the appellant and his family members resorted to all sorts of harassment and even started beating the respondent and man-handling her many times. The appellant used to harass the respondent, demanded dowry and asked money from the respondent and used to take the salary of the respondent as she was a teacher. The said amount used to be misappropriated by the appellant because of the strained relations. The appellant and the respondent stayed in House No. 327, Guru Amar

Dass Nagar, Jalandhar only for a period of few months from July 2010 to September 2010. Thereafter the appellant shifted to House No. NB 126, Preet Nagar, Jalandhar along with all the material and goods lying therein. He has also taken the articles of the respondent. The respondent was forced to leave the house and shifted to her parental house in District Hoshiarpur. The respondent submitted that actually marriage between the appellant and respondent took place on February 23, 2007 according to sikh rites and ceremonies when Anand Karaj was performed at Gurudwara Dhodhe Majra, District Hoshiarpur. The Baraat was received at Victoria Resort, situated at Jalandhar Hoshiarpur Highway Village Mandiala, Hoshiarpur and complete function was performed on February 23, 2007. Thereafter the parents of the appellant arranged reception/get together on the same day at Balle Balle Farm House, situated at Pathankot Bye-pass, near Reru Chownk, Jalandhar at 7.00 p.m. The status of the respondent has been wrongly mentioned as Hindu married before marriage whereas the actual fact is that the respondent was "Hindu unmarried" because of the earlier marriage with Naresh Kumar having been annulled under Section 12 (1)(c) of the Act and the said petition was allowed by the Hon'ble High Court on March 31, 2003. The residence of respondent has been wrongly mentioned at the time of filing of the petition whereas actual fact is that respondent was residing at Village Jallowal, Post Office Bhunga, District Hoshiarpur. The allegations regarding conduct of the respondent have been denied and it has been submitted that the alleged CD is a concocted one and the preparation of the CD shows mentality of the appellant who only wanted to use the respondent for going abroad but was never serious in matrimony. It was denied that in order to please the respondent, the appellant took loan from HDFC Bank for going abroad, rather the said trip was arranged by the respondent and her family members. Respondent denied to have concealed the factum of marriage with Naresh Kumar from the appellant and stated that everything was very much in the knowledge of the appellant and he had concocted absolutely false story. There was no occasion for the appellant to ask the respondent regarding the true facts about the earlier marriage because he, right from the beginning had the knowledge regarding said Naresh Kumar and the proceedings going on between Naresh Kumar and the respondent upto the Hon'ble High Court. The respondent denied that she or his family members cheated the appellant or played fraud with him. She denied that if the marriage was illegal, null and void.

(8) On the pleadings of the parties, the following issues were framed:-

- “1. Whether the marriage between the parties is illegal, null and void? OPP
2. Whether petition is not maintainable and is filed with malafide intention? OPR
3. Whether the petitioner is barred, stopped and precluded from filing the present petition by his own acts, conducts, omission and commission? OPR.
4. Whether present petition is counter claim to the proceedings initiated by respondent against petitioner in civil suit as well as criminal complaint? OPR.
5. Whether petitioner has not come to Court with clean hands? OPR
6. Relief.”

(9) The lower Court had taken issue Nos. 1, 2, 3 and 5 together. The lower Court arrived at a conclusion that the marriage between the parties had been solemnized on February 23, 2007 according to Sikh rites and not on February 23, 2003. It was held that nothing had been concealed from the appellant by the respondent regarding her marriage with Naresh Kumar before solemnization of her marriage with the appellant. The appellant had the knowledge of marriage of respondent with Naresh Kumar. A conclusion was arrived at that the only intention of the appellant to marry the respondent was to settle abroad as her relatives were residing there and even her father had sent sponsorship for them from Canada for which reason the marriage certificated dated April 1, 2003 was procured and their names were entered as husband and wife in the relevant documents only for the purpose of getting the Visa, but the Visa was finally rejected in the year 2010 resulting in eruption of matrimonial dispute. Considering the date of marriage as February 23, 2007 it was held that the previous marriage of the respondent with Naresh Kumar having been annulled by the High Court vide order dated March 31, 2003 and no marriage having taken place between the parties on February 23, 2003. The petition of the appellant was held to be not maintainable having been filed with malafide intention. The appellant was held stopped from filing the petition. All the aforesaid issues were decided against the appellant and in favour of the respondent. Issue No. 4 was decided in favour of the

respondent holding that the proceeding for seeking annulment of the marriage under Section 11 of the Act was merely a counterblast to the proceedings initiated by respondent by filing suit for injunction to restrain the appellant from property bearing NB 126 situated in Preet Nagar, Sodal Road, Jalandhar which was pending in Civil Court at Jalandhar. In view of the findings on all the issues, the petition of the appellant was dismissed.

(10) Mr. Dadwal, learned counsel for the appellant has vehemently urged that the lower Court has acted illegally in dismissing the petition of the appellant. He urged that the finding of the lower Court on all the issues is not warranted by the evidence and the circumstances of the case. He has submitted that the appellant has been able to establish that the previous marriage of the respondent was subsisting till March 31, 2003 whereas he performed marriage was solemnized in the year 2003 at Jalandhar, in her suit for permanent injunction No. 340 of 2010. In the passport office the respondent had furnished an affidavit dated November 25, 2004 Ex.PX/3, wherein she had stated in para 3 that she was married and later on got marriage with Joginder Singh son of Piara Singh, resident of H.No. NB 126, Preet Nagar, Jalandhar, on February 23, 2003. She had also furnished an affidavit Ex.PW3/A in the suit for permanent injunction wherein she had admitted the fact that she was married in the year 2003. On March 6, 2003, father of the respondent had sent sponsorship Mark 'X' from Calgary wherein he has admitted Joginder Singh as husband of his daughter Baljinder Pal Kaur. He has drawn attention to an FIR in which year of marriage was mentioned as 2003. Certificate of registration dated March 1, 2003. The said certificate being a valid document was never challenged by the respondent. He referred to her cross-examination where she admitted that the marriage certificate with Joginder Singh was attached with VISA forms of UK in 2005 and France VISA in the year 2004. She had admitted that she had not got registered her marriage dated February 23, 2007, therefore, she has actually admitted that during the subsistence of her marriage with Naresh Kumar she had married Joginder Singh in the year 2003. He urged that the registration of marriage is a legal proof that she married in the year 2003 whereas the alleged marriage of February 23, 2007 is not established. He placed reliance on the judgments of *Ranjit Singh versus Surjan Singh*¹ and *Avtar Singh and others versus Gurdial*

¹ 2002 (3) RCR (Civil) 47

*Singh and others*² in support of his contention that admission is the best piece of evidence and is binding on the party making it unless it is shown that the admission was erroneously made. On the basis of the certificate of registration dated March 1, 2003 admission in suit for injunction and in cross-examination, on the basis of affidavit Ex.PX 3 dated November 25, 2004 and affidavit Ex.PX4 submitted before the passport office and affidavit dated April 21, 2005 and suit for injunction to restrain the appellant from interfering in her peaceful possession in House No. NB 126, Preet Nagar, Sodal Road, Jalandhar, the date of marriage has been admitted to be February 23, 2003 and not February 23, 2007.

(11) On the other hand, counsel for the respondent Mr. Arnav Sood has argued that the pleadings and the evidence of the respondent wife clearly establish that the appellant was known to the respondent since long, both being teacher. The factum of first marriage of respondent with Naresh Kumar on June 5, 1999 was known to him. He was eager to settle abroad for which admittedly the sponsorship had been sent by the father of the respondent from Canada. In order to secure the said sponsorship, marriage certificate dated April 1, 2003 was procured and the name of the parties was incorporated as husband and wife with sole objective to get Visa. It is admitted by the appellant that he had gone abroad with respondent from December 24, 2009 to February 4, 2010. He argued that the allegations of misconduct of the respondent are absolutely irrelevant especially when these have not been established and no ground has been sought to be established on the basis of said conduct for obtaining divorce on the ground of cruelty. Rather it is a case where it is sought to be established by the appellant that he had married respondent on February 23, 2003 whereas her marriage was dissolved by Lok Adalat of High Court on March 31, 2003.

(12) The provisions of Section 5(i) of the Act lay down that if one of the spouses have got a spouse living on the date of marriage, the marriage would be null and void. Section 11 of the Act defines void marriages as any marriage solemnized after the commencement of the Hindu Marriage Act shall be null and void which may on petition presented by either party against the other party, be so declared by a decree of nullity if it contravenes any of the conditions specified in clauses (i), (iv) and (v) of Section 5. Section 5 (i) of the Act lays down

² 2007 (10) PLR 435

that for a lawful marriage, the necessary condition is that neither party should have a spouse living at the time of the marriage. A marriage in contravention to the said condition, therefore, is null and void. In the light of the said legal provision, the appellant claims that marriage which was solemnized on February 23, 2003 was null and void but in order to rebut the date of marriage a specific stand has been taken by the respondent wife that the actual marriage between the parties had taken place on February 23, 2007 regarding which a social function was performed at Jalandhar. Marriage card and photographs have been placed on record. In case the date of marriage is considered as February 23, 2007, the appellant loses the ground for seeking the nullity of marriage under Section 11 of the Act, as the said date is much later than the date of annulment of marriage of the respondent with her previous husband Naresh Kumar i.e. March 31, 2003. In this context, the pleadings and the statement of respondent is required to be appreciated. In the pleadings, the respondent has stated that the respondent wife had initiated criminal proceedings by filing criminal complaint against appellant and his family members in the basis of which FIR No. 13 dated February 25, 2011 under Sections 406, 498 A IPC was registered at Police Station Hariana, District Hoshiarpur in which the appellant was arrested. Respondent has also filed a suit for permanent injunction to restrain the appellant from dispossessing her from House No. 126, Preet Nagar, Jalandhar and that as a counterblast with a vindictive mind the appellant opted to mention wrong date of marriage as February 23, 2003. She has specifically mentioned that the appellant had knowledge about her litigation with Naresh Kumar and there was an understanding arrived at between them that after disposal of the said litigation, marriage between them will be solemnized. It had been agreed that both the parties will go abroad and settled there. Therefore, a simple ceremony was performed on April 1, 2003 with 4/5 persons from both sides and the appellant had got signatures of the respondent on certain papers on the pretext of registration of marriage in order to procure papers for applying the case with Embassy. The entire registration process was conducted by the appellant whereas the respondent never appeared before any registering authority. She has trusted the appellant. No marriage had taken place on the date i.e. February 23, 2003. The respondent explained that they were residing together in House No. 126, Preet Nagar, Jalandhar but the appellant himself did not want to reside with his parents so he shifted outside the matrimonial house and took a house on rent at House No. 274, Guru Amar Dass Nagar, Jalandhar and after some time to 327, Guru Amar Dass Nagar, near

Verka Milk Plant, Bye-Pass Jalandhar. From the beginning the intention of the appellant was to use the respondent for immigration purposes as he wanted to go abroad and settle there as the respondent had relatives settled abroad. The said settle abroad increased after they had visited their relatives abroad. Sponsorship was sent by the parents of the respondent but the application was rejected by Canadian Embassy in the month of September 2010. Therefore, the appellant and his family members resorted to all types of moves to harass the respondent and to get rid of her by leveling false allegations.

(13) She herself appeared as RW1 to rebut the evidence produced by the appellant and to substantiate her pleas in the written statement. The appellant tried to establish by producing Harbans Singh, a Clerk as PW1 from Regional Passport Office, Jalandhar, PW2 Neelam Kumari, Assistant Record Room, Sessions Court, Hoshiarpur, Ahlmad of the Court of Civil Judge (JD) Sanjiv Kumar, as PW3, Ashok Kumar, as PW4, Reader to Tehsildar, Jalandhar I, PW5 Paramjit Kaur, Reader to Nail Tehsildar, Phagwara District Kapurthala and himself appeared as PW6 to prove that respondent was married on February 23, 2003 and the said marriage stood registered in the office of Sub Registrar, Jalandhar on April 1, 2003 as per registration certificate Ex.PW/A. He also proved that the respondent was registered too. Respondent had filed a petition under Section 12 of the Act, for nullifying the marriage with Naresh Kumar but her application had been dismissed vide Ex.P5 on December 8, 1998. In her appeal against the said judgment in High Court, the matter was settled before Lok Adalat in FAO No. 8-M of 1999. A sum of Rs. 50000/- was paid to Naresh Kumar and her marriage with Naresh Kumar was declared null and void on March 31, 2003.

(14) There is no dispute regarding the said facts but main argument of the counsel for the appellant is that before getting her marriage dissolved on March 31, 2003, she had solemnized marriage with the appellant on February 23, 2003 and the certificate of registration dated April 1, 2003 indicated that date of marriage was February 23, 2003. It is a fact established from Ex.P5 order dated December 8, 1998 that a petition under Section 12 of the Act filed by the respondent against Naresh Kumar was dismissed in 1998. The FAO No. 8-M was filed in the year 1999. It remained pending till March 31, 2003. Thus from the year 1998 till 2003 for a period of 5 years, the marriage of respondent with Naresh Kumar being a nullity remained sub-judice for 5/6 years. Intimacy of both the parties prior to 2003 is

not a disputed fact. It is also not disputed that the family members of the respondent are residing abroad. Though the marriage of respondent was declared a nullity on March 31, 2003, the same will be held to be null and void ab initio. The respondent was married with Naresh Kumar on June 5, 1995. The said marriage was registered on June 27, 1995. With the declaration of marriage a nullity on March 31, 2003, the marriage dated June 5, 1995 would be deemed to have been declared null and void and initio. Both the parties were working as teacher in different schools and had previous intimacy. It is established that the appellant was eager to go abroad by taking benefit of respondent being a member of family which was residing abroad. He had not denied that sponsorship had been sent by the family members of the respondent. He had got the marriage registered on April 1, 2003 vide Ex.RX/1 in which date of marriage was mentioned as February 23, 2003. It is an admitted fact that the earlier marriage of respondent was declared a nullity in proceedings before the Lok Adalat. A judicial notice is taken that Lok Adalats are held on specific dates and days. The appellant appears to have an understanding with the respondent that they would prepare the papers for going abroad for which the application was got signed from the respondent and the marriage certificate dated April 1, 2013 was obtained in which the date of marriage was mentioned as February 23, 2003. No doubt, a presumption is attached to a document of registration of marriage but the said presumption is a rebuttable presumption and the respondent has explained and proved the circumstances in which the marriage certificate dated April 1, 2003 was obtained. The said marriage certificate was obtained after the decision of Lok Adalat dated March 31, 2003. The date of marriage as mentioned in the marriage certificate is February 23, 2003 which is a date chosen by the parties for the purpose of getting a registration certificate of marriage with an objective to go abroad. It is natural that the respondent had a passport in which her husband's name was mentioned as Naresh Kumar. The respondent has been able to establish that the Visa applied for immigration of the appellant was rejected by Canadian Embassy in the month of September 2010. The marriage certificate dated April 1, 2003 was merely a paper transaction with an objective to go abroad whereas the social function of marriage was held on February 23, 2007. Marriage card and photographs of the function dated February 23, 2007 have been placed on record.

(15) The lower Court arrived at a conclusion that the actual marriage ceremonies had taken place on February 23, 2007 and the registration of marriage by itself is not a proof of valid marriage and is

not a determinative factor regarding the validity of marriage. The lower Court has rightly relief upon the judgment of *B. Surya Kanthan versus B.S. Vidhya Sagar & Raju*³, wherein it has been held that a valid marriage can take place only be performance of ceremonies that are prevalent in particular community to which they belong and the registration is not the proof of valid marriage. The lower Court has taken into consideration the admission of the appellant in the cross-examination wherein he has stated that he had met the respondent for the first time in the year 2002 as teachers and then their relationship had developed further. The appellant knew in the year 2002 that parents of the respondent are settled in Canada since 2000. He had also come to know in the year 2002 that father's sister of respondent is settled in England and he had applied for permanent immigration in Canada in 2003 showing respondent as his wife and the father of the respondent had sponsored their case by offering sponsorship of Surinder Kaur who is father's sister of the respondent. He also admitted that he had gone to England with respondent as husband and wife.

(16) The appellant when confronted with the fact that he had married respondent in Gurudwara Guru Singh Sabha, Village Dode Majra, Hoshiarpur on February 23, 2007, he admitted the photograph Ex.RX relating to the said marriage. He is seen signing the register maintained by Gurudwara Sahib. He also admitted that on the same evening, reception was held at Balle Balle Farm House, situated at Pathankot Bye-Pass, near Reru Chowk, Jalandhar. Taking of the marriage party to Victoria Resort, situated on Jalandhar- Hoshiarpur Road, Village Mandiala, Hoshiarpur, has also been admitted. He has also admitted that after 2007 he had again gone abroad i.e to England twice. The immigration was rejected in the year 2010. He admitted that prior to the refusal of Visa, no complaint had ever been made by him against the respondent.

(17) The above said circumstances clearly indicate that the appellant remained silent from 2002 till 2010 for a period of 7/8 years regarding the existence of matrimonial relationship of respondent with Naresh Kumar till March 31, 2003 when the matter was decided by the Lok Adalat of High Court. The appellant did not opt to approach any Court for a declaration for seeking the marriage with respondent a nullity. A person can tell lie but the circumstances will not. The silence of the appellant from the year 2003 till 2010 will certainly create an

³ 2013 (4) CCC 496

estoppel against the appellant for having not challenged the marriage dated February 23, 2003 a nullity. The reason for not challenging the marriage dated February 23, 2003 till the year 2010 is that no marriage actually had taken place on said date but the marriage had actually taken place on February 23, 2007 as admitted by the appellant in his cross-examination also. There was no reason for the appellant to take the marriage party to Gurudwara Singh Sabha in Village Dhodhe Majra, District Hoshiarpur on February 23, 2007 if he had already married on February 23, 2003. The appellant was required to explain under what circumstances the social function of marriage had taken place on February 23, 2007. The provisions of Sections 11 and 12 of the Act for seeking a declaration regarding nullity of the marriage on the circumstances mentioned therein were incorporated in the statute when Hindu Marriage Act was enacted prohibiting polygamy which was prevalent prior to the coming into force of the Hindu Marriage Act, 1955. The marriage certificate dated April 1, 2003 mentioning the date of marriage as February 23, 2003 was merely a paper transaction with an objective to seek immigration on marriage basis to Canada while the negotiations before Lok Adalat were pending for finally declaring the marriage a nullity. The Lok Adalat having taken place on the scheduled date i.e. April 1, 2003, the appellant cannot be permitted to take advantage of the marriage certificate dated April 1, 2003 which was prepared solely with an objective of immigration to Canada. The provisions of Sections 11 and 12 of the Act which have been incorporated with a moral objective to prohibit polygamy cannot be misused and an oblique motive to harass the spouse after inordinate when the spouse seeking nullity had a knowledge about the existence of the status of the other spouse being marriage earlier.

(18) We have considered the judgment of *Manpreet Kaur versus Balkar Singh*⁴. It does not lay down an absolute principle of law in para 19 of the judgment that in all cases whenever a spouse seeks declaration pertaining to be a marriage to be null and void for the reasons mentioned in Sections 11 and 12 of the Act, the principles of law of limitation of estoppel will not be applicable. We have carefully gone through the said judgment. Any observations to that effect are pertaining to the facts of that particular case and are in the nature of obiter.

⁴ 2015 (5) RCR (Civil) 510

(19) In view of the above circumstances, we do not find any infirmity in the judgment of the lower Court dismissing the petition of the appellant.

(20) The appeal is dismissed. However, it is made clear that anything said in this order will not prejudice the rights of the parties in seeking decree of divorce on the basis of the grounds available to them under the provisions of the Act.

V. Suri