SMT. LATA KAMAT

v.

VILAS

MARCH 29, 1989

[G.L. OZA, AND S. RATNAVEL PANDIAN, JJ.]

Hindu Marriage Act 1956: Sections 11, 12, 13 and 28—Decree of nullity and decree of divorce—Distinction between—Marriage declared nullity—Wife filing appeal—Husband marrying after trial Court decree but before the filing of the appeal—Appeal whether rendered infructuous

Indian Limitation Act 1963: Sections 4, 24 and 29—Applicability of provisions of Act to an appeal under section 28 Hindu Marriage Act 1956—Time required for obtaining copies of judgment to be excluded.

A decree in favour of the respondent-husband was granted by the Trial Court declaring his marriage with the appellant to be a nullity under section 12(1)(d) of the Hindu Marriage Act, 1956 on the ground that the wife at the time of marriage was pregnant by some one other than the respondent. In the appeal filed by the appellant, the respondent raised a preliminary objection contending that the appeal was not tenable and had been rendered infructuous because he had re-married before the filing of the appeal. The Appellate Court allowed the preliminary objection and dismissed the appeal, and the High Court dismissed the second appeal.

Before this Court it was contended on behalf of the appellant that (i) the word 'divorce' has been used in section 15 in a broader sense and, in view of the language used in that section, it is not possible to distinguish between a decree of nullity under section 11 or 12 and decree of divorce under section 13; (ii) the interpretation put by the lower courts, on the basis of judgments of some of the High Courts, that section 15 will not apply to a decree under section 12 but would only apply when there is a decree under section 13, does not appear to be correct as the scope and language of section 15 coupled with the language of section 28, had not been considered by any one of these courts; and (iii) even if it is held that section 15 applies to a decree under section 12, the respondent had re-married after the period of limitation had expired, as the provisions of the Limitation Act will not apply in view of the section 29(3) of that Act, and therefore the period

A for obtaining copies of the judgment excluded under section 12 clause (2), will not be available to the appellant.

Allowing the appeal, it was,

HELD: (1) It is no doubt true that section 12 and section 13 have
B different phraseology. In section 12 it is said that the "marriage may be annulled by a decree of nullity" whereas in section 13, the phraseology used is "dissolved by a decree of divorce". Though in substance the meaning of the two may be different under the circumstances and on the facts of each case, but the legal meaning or the effect, is that by intervention of the court the relationship between two spouses has been
C severed either in accordance with the provisions of section 12 or in accordance with the provisions of section 13. Probably it is because of this reason that the phrase 'decree of nullity' and 'decree of divorce' have not been defined. [143A-B]

(2) Under the provisions of section 28 all decrees made by the
D Court in any proceeding under this Act are appealable. In order to provide an appeal against all decrees section 28 has used a very wide terminology which includes decrees under sections 11, 12 and 13, and so far as this is concerned it could hardly be contested as the language of section 28 itself is so clear. [143G-H]

E (3) If it is accepted that section 15 will not apply to cases when a decree is passed under section 11 or 12, it will mean that as soon as a decree is passed the party aggrieved may appeal but the other party by remarriage would make the appeal infructuous and therefore the right of appeal of one of the parties to the decree under section 28 will be subject to the act of the other party in cases where decree is passed
F under section 11 or 12. But if it were so, the Legislature would have provided a separate provision for appeal when there is a decree under section 13 and a different provision for appeal when there is a decree under section 11 or 12 as the right of appeal against a decree under section 11 or 12 could only be a limited right subject to the desire of the other party. [144H; 145A-B]

G (4) The Legislature in its wisdom had enacted section 28 conferring a right of appeal which is unqualified, unrestrictive and not depending on the mercy or desire of a party against all decrees in any proceeding under the Act. Hence, the only interpretation which could be put on the language of section 15 should be that which will be consis-
H tent with section 28. Therefore, the phrase 'marriage has been dissolved

by a decree of divorce' in section 15 will only mean where the relationship of marriage has been brought to an end by the process of court by a decree, which will include a decree under section 11, 12 or 13. The view taken by the courts below is accordingly not sustainable. [145C-D; 147F]

Chandra Mohini Srivastava **v.** *Avinash Prasad Srivastava & Anr.*, **[1967] 1 SCR 864;** *Tejinder Kaur* **v.** *Gurmit Singh,* **AIR [1988] SC 839;** *Vathsala* **v.** *N. Manoharan,* **AIR (1969) Madras 405, referred to.**

Mohanmurari **v.** *Smt. Kusumkumari,* **AIR (1965) M.P. 194;** *Jamboo Prasad Jain* **v.** *Smt. Malti Prabha,* **AIR 1979 Allahabad 260;** *Pramod Sharma* **v.** *Smt. Radha,* **AIR (1976) Punjab 355, overruled.**

(5) So far as clause (3) of Section 29 of the Limitation Act is concerned, the impact of it will be that the provisions of the Limitation Act will not apply so far as a suit or an original proceeding under the Hindu Marriage Act is concerned, but clause (3) will not govern an appeal. [149E]

(6) To an appeal under section 28 of the Hindu Marriage Act, provisions contained in section 12 clause (2) of the Limitation Act will be applicable, and therefore, the time required for obtaining copies of the judgment will have to be excluded for computing the period of limitation for appeal. [149G-H]

Chander Dev Chadha **v.** *Smt. Rani Bala,* **AIR (1979) Delhi 22;** *Smt. Sipra Dey* **v.** *Ajit Kumar Dey,* **AIR (1988) Cal 28 and** *Kantibai* **v.** *Kamal Singh Thakur,* **AIR (1978) M.P. 245, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 708 of 1988.

From the Judgment and Order dated 20.2.1987 of the Bombay High Court in S.A. No. 282 of 1985.

Mrs. Shyamla Pappu, K.K. Rai and Mrs. Indira Sawhney for the Appellant.

G.L. Sanghi and A.K. Sanghi for the Respondent.

The Judgment of the Court was delivered by

OZA, J. This appeal after leave has been filed by the appellant

A wife arising out of a decree under Section 12(1)(d) of the Hindu Marriage Act (hereinafter referred to as the 'Act'), a decree declaring the marriage a nullity.

The respondent husband instituted a petition on 7th March, 1984 for a declaration that the marriage of the respondent with the appel-
B lant wife was a nullity under sub-section (1) sub-clause (d) of section 12 of the Act on the ground that appellant, the wife at the time of marriage with the respondent was pregnant by some one other than the respondent. The appellant wife contested the allegations and ultimately the IIIrd Joint Civil Judge, Senior Division Nagpur granted a decree in favour of the respondent by his judgment dated 3rd May,
C 1985 declaring the marriage to be a nullity.

The appellant wife filed a regular civil appeal No. 436 of 1985 on 19.7.1985 before the IInd Additional District Judge, Nagpur. Before this appeal could be filed, the respondent husband married one Miss Sarita daughter of Laxmanrao Modak on 27.6.1985, and in the appeal
D filed by the appellant, the respondent raised a preliminary objection contending that after passing of the judgment and decree dated 3.5.1985 by the trial court he has married Sarita daughter of Laxmanrao Modak on 27.6.1985. It was further alleged in the application that this marriage was solemnised on 27.6.1985 when there was no impediment against the respondent husband which could come in his
E way for contracting this marriage as the parties were relegated to the position as if they were not married and therefore this marriage performed on 27.6.1985 of respondent with Sarita was legal and valid and the consequence of this is that the appeal filed by the appellant was not tenable having been rendered infructuous. The IInd Additional District Judge, Nagpur vide his order dated 17.8.1985 allowed
F the objection of the respondent and dismissed the appeal as infructuous with a direction to the parties to bear their own respective costs.

Against this the appellant preferred a second appeal before the High Court. The High Court by its judgment dated 20.2.1987 dismissed the appeal holding that as the appeal was filed by the appellant
G after the re-marriage of the respondent it has become infructuous. The learned Judge also dismissed the application for maintenance pendent elite and aggrieved by this judgment of the High Court after obtaining leave this appeal is filed in this Court.

It was contended by learned counsel for the appellant that the
H language of Sec. 15 clearly goes to show that it refers to a marriage

which has been dissolved and it also talks of right of appeal against the decree. In view of this language used in Sec. 15 it is not possible to distinguish between a decree of nullity under Section 11 or 12 and decree of divorce under Section 13. It was contended that the word 'divorce' has been used in this provision in a broader sense indicating that where the marriage is dissolved or the relationship is brought to an end by decree of court whether it is by declaring the marriage invalid or dissolving it by a decree but result is the same and it was contended that it is because of this that in this Act there is neither any specific definition provided for the term 'divorce' or a decree of divorce. It was also contended that when language of Section 15 refers to a right of appeal will have to look to the provision providing for an appeal and Sec. 28 of the Act which provides for appeals against all decrees made by the court in proceedings under this Act. It was therefore contended that the interpretation put by the lower court on the basis of judgments of some of the High Courts that Sec. 15 will not apply to a decree under Sec. 12 but would only apply when there is a decree under Sec. 13 does not appear to be the correct view and on this basis it was contended by learned counsel for the appellant that the courts below were wrong in coming to the conclusion that the appeal had become infructuous because the respondent has married a second time.

Learned counsel also referred to meaning of the word 'divorce' in Webster's Third New International Dictionary and Shorter Oxford English Dictionary. Learned counsel in support of her contentions referred to the two decisions of this Court in *Chandra Mohini Srivastava* v. *Avinash Prasad Srivastava & another,* [1967] 1 SCR 864 and *Tejinder Kaur* v. *Gurmit Singh,* AIR 1988 SC 839 Although on the basis of these decisions what was contended was that the provisions of the Act have to be interpreted broadly. Learned counsel also placed reliance on the decision in *Vathsala* v. *N. Manoharan,* AIR 1969 Madras 405. Learned counsel however, conceded that there are decisions in *Mohanmurari* v. *Smt. Kusumkumari,* AIR 1965 M.P. 194; *Jamboo Prasad Jain* v. *Smt. Malti Prabha and Anr.,* AIR 1979 Allahabad 260 and *Pramod Sharma* v. *Smt. Radha,* AIR 1976 Punjab 355 where the question of Section 15 in relation to a decree under Sec. 12 has been specifically considered and decided against the appellant, but learned counsel contended that the scope and language of Sec. 15 coupled with the language of Sec. 28 has not been considered by any one of these courts. Learned counsel for the respondent on the other hand contended that the language of Sec. 15 refers to "marriage dissolved by decree for divorce" whereas in the present case, the mar-

riage was not dissolved by decree of divorce. The marriage was declared as nullity under Sections 11 and 12 of the Act. Sections 11 and 12 of the Act, according to the learned counsel, talk of annulment of marriage "by decree of nullity" and it was contended that it is because of this that the various High Courts have taken a view that Sec. 15 will not apply to cases where a marriage is annulled by a decree of nullity in accordance with Sections 11 or 12 of the Act. Learned counsel however frankly conceded that so far as Sec. 28 is concerned, the language is so wide that an appeal will lie even against a decree under Section 11 or 12 and if an appeal lies under Sec. 28 even against the order or a decree passed under Sections 11 or 12, the phrase 'if there is such a right of appeal, the time for filing has expired without an appeal having been presented' are to be given its meaning, it would be clear that Sec. 15 also will apply to decrees by which the marriage is either dissolved or annulled i.e. decrees which are passed under Sec. 12 or under Sec. 13. Learned counsel in face of this raised another contention pertaining to the application of the Limitation Act which we will examine later.

In order to understand the meaning of Sec. 15 of the Act it would be better if we first notice that the words 'decree for divorce' or 'decree for nullity' has not been defined in any one of the provisions of this Act. Sec. 12 clause (1) of the Act reads:

> "Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds namely,—
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> xx xx xx
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> xx xx xx

Similarly Sec. 13 clause (1) of the Act reads:

> (1) Any marriage solemnized, whether before or after the commencement of this Act may, on a petition presented by either the husband or wife, be dissolved by a decree of divorce on the ground that the other party,—
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> xx xx xx
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> xx xx xx

It is no doubt true that these two sections have different phraseology. In section 12 it is said that the marriage be annulled by a decree of nullity whereas in Section 13, the phraseology used is "dissolved by decree of divorce" but in substance the meaning of the two may be different under the circumstances and on the facts of each case but the legal meaning or the effect is that by intervention of the court the relationship between two spouses has been severed either in accordance with the provisions of Section 12 or in accordance with the provisions of Section 13. Probably it is because of this reason that the phrase 'decree of nullity' and 'decree of divorce' have not been defined. Sec. 28 of the Act reads:

> "28. Appeal from decrees and orders (1) All decrees made by the court in any proceeding under this Act shall, subject to the provisions of sub-section (3), be applicable as decrees of the court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the Court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction.
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> (2) Orders made by the Court in any proceeding under this Act, under Section 25 or Section 26 shall, subject to the provisions of sub-section (3), be appealable if they are not interim orders, and every such appeal shall lie to the court to which appeals ordinarily lie from the decision of the Court given in exercise of its original civil jurisdiction;
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> (3) There shall be no appeal under this section on the subject of costs only.
>
> (4) Every appeal under this section shall be preferred within a period of thirty days from the date of the decree or order."

Under this provision all decrees made by the Court in any proceeding under this Act are appealable. Apparently any proceeding under this Act will refer to a proceeding instituted under Section 13 or a proceeding instituted under Sections 11 or 12 as Sections 11 or 12 talks of 'decree for nullity' and Section 13 talks of 'decree for divorce' but in order to provide an appeal against all decrees Section 28 has used a very wide terminology which include decrees under Sections 11, 12 and 13 and so far as this is concerned it could hardly be contested as the language of Section 28 itself is so clear. It is in this context that we

A analyse the language of Section 15. It reads:

> "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
B 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."

Before we examine the phraseology 'dissolved by decree of divorce' it would be worthwhile to examine the remaining part of this provision,
C especially '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'. If we give narrow meaning to the term 'dissolved by decree of divorce' as contended by the learned counsel for the respondent, it will mean that if it is a decree under Sec. 13 then either party to the proceeding have to wait till the period of
D appeal has expired or if the appeal is filed within limitation till the appeal is disposed of and before that it will not be lawful for either party to the marriage to marry again. The phrase 'either party to the marriage' if is co-related with the first part of the Section, marriage which has been dissolved by decree of divorce will indicate that what was provided in this Section was that when a relationship of marriage
E is dissolved by decree of court and either no appeal is filed or if filed, is dismissed then either party to the marriage which has been dissolved by the process of law by a decree are free to marry again. The only words on the basis of which the narrow meaning has been given to this Section by some of the High Courts is on the basis of the words 'decree of divorce', it could not be doubted that where the marriage is dis-
F solved under Sections 11, 12 or 13 by grant of a decree of nullity or divorce, the relationship is dissolved or in any way is brought to an end and it would be significant that if the language of Section 15 is interpreted in the light of Section 28 which provides for appeal and confers a right of appeal on either party to proceedings which culminate into a decree bringing an end to the relationship of marriage then
G we will have to infer that the Legislature so far as decrees under Section 13 are concerned wanted the right of appeal to survive but in decrees under Section 11 or 12 the Legislature wanted the right of appeal to be subject to the will of the other party. As it is apparent that if what is contended by the learned counsel for the respondent and held by some of the High Courts is accepted that Sec. 15 will not apply
H to cases when a decree is passed under Sec. 11 or 12 it will mean that as

soon as a decree is passed the party aggrieved may appeal but the other party by remarriage would make the appeal infructuous and therefore the right of appeal of one of the parties to the decree under Sec. 28 will be subject to the act of the other party in cases where decree is passed under Sections 11 or 12 but if it were so, the Legislature would have provided a separate provision for appeal when there is a decree under Section 13 and a different provision for appeal when there is a decree under Sections 11 or 12 as the right of appeal against a decree under Sec. 11 or 12 could only be a limited right subject to the desire of the other party. The Legislature in its wisdom has enacted Sec. 28 conferring a right of appeal which is unqualified, unrestrictive and not depending on the mercy or desire of a party against all decrees in any proceeding under this Act which will include a decree under Sections 11, 12 or 13 and therefore the only interpretation which could be put on the language of Sec. 15 should be which will be consistent with Section 28. This phrase 'marriage has been dissolved by decree of divorce' will only mean where the relationship of marriage has been brought to an end by the process of court by a decree.

It is plain that the word 'divorce' or 'decree of divorce' have not been defined in this Act. The meaning of the word 'divorce' indicated in Shorter Oxford English Dictionary reads:

> "Divorce—1. *Legal dissolution of marriage by a court or other competent body, or according to forms locally recognized.* 2. Complete separation; disunion of things closely united ME. 3. That which causes divorce 1607."

Similarly the meaning of the word 'divorce' as indicated in Webster's Third New International Dictionary reads:

> "Divorce—1: *a legal dissolution in whole or in part of a marriage relation by a court or other body having competent authority.*

In *Vathsala's* case the Court had occasion to consider the effect of an application for setting aside an exparte decree which was granted under Sec. 12 and it was contended that while the application by the husband for setting aside the exparte decree was pending the wife contracted remarriage. Will not remarriage have the effect of making the application to set aside exparte decree infructuous? More or less a similar question is in the present case where it has been held that by marrying the second time the respondent made the appeal filed by the

A appellant infructuous, and the learned Judge placing reliance on the observations made in *Chandra Mohini's* case held:

> "That is the principle of *Smt. Chandra Mohini* v. *Avinash Prasad,* AIR 1967 SC 581. The principle laid down in that decision has general application. The Supreme Court pointed out that on dissolution of marriage, a spouse can lawfully marry only when there is no right of appeal against the decree dissolving the marriage or if there is a right of appeal, the time for filing of an appeal has expired or the appeal presented has been dismissed."

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C The question about an appeal to the Supreme Court has also been considered in a recent decision of this Court in *Tejinder Kaur's* case wherein the observations made in *Chandra Mohini's* case have been quoted and it is held that:

> "In view of this, it was incumbent on the respondent to have enquired about the fate of the appeal. At any rate, the High Court having dismissed the appeal on 16th July, 1986 the petitioner could have presented a special leave petition within ninety days therefrom under Art. 133(c) of the Limitation Act, 1963 i.e. till 14th September, 1986. Till that period was over, it was not lawful for either party to marry again as provided by S. 15. It was incumbent on the respondent, as observed in *Lila Gupta's* case (ILR 1969) 1 All. 92) to have apprised himself as to whether the appeal in the High Court was still pending; and if not, whether the period for filing a special leave petition to this Court had expired. We must accordingly overrule the views expressed in *Chandra Mohini's,* AIR 1967 SC 581 and *Lila Gupta,* cases (ILR 1969(1) All 92). We wish to add that in the subsequent decision in Lila Gupta the Court while dealing with the effect of deletion of the proviso observed:
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> The net result is that now since the amendment parties whose marriage is dissolved by a decree of divorce can contract marriage soon thereafter provided of course the period of appeal has expired.
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> The Court adverted to the word of caution administered by Wanchoo, J. in *Chandra Mohini's* case and reiterated:

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

It is no doubt true that in these two decisions, this Court was considering the impact of an appeal against a decree under Section 13 itself and not a decree under Section 11 or 12 but as indicated earlier if the impact of the phraseology 'right of appeal' occurring in Sec. 15 is to be examined in the light of language of Sec. 28 as discussed earlier there will be no difference in respect of the right of appeal whether the decree is under Sections 11, 12 or 13.

The decisions of the High Court on which reliance is placed by courts below and the learned counsel for the respondent are: i) *Mohanmurari* ii) *Jamboo Prasad Jain,* and *Pramod Sharma.* In none of these decisions the impact of the right of appeal occurring in Sec. 15 in view of the language of Section 28 where the right of appeal is conferred, has been considered. In our opinion, therefore the view taken by the High Court is not correct. What Section 15 means when it uses the phrase 'has been dissolved by decree of divorce'? It only means where the relationship of marriage has been brought to an end by intervention of court by a decree, this decree will include a decree under Sections 11, 12 or 13 and therefore the view taken by all the courts below is not sustainable. The contention of the learned counsel for the appellant has to be accepted so far as this question is concerned.

Learned counsel for the respondent contended that as Section 28 sub-clause (4) of the Act provides for the limitation for preferring an appeal in view of Sec. 29 clause (3). Provisions of Limitation Act will not apply and if they do not apply as the trial court disposed of the matter by a decree dated 3.5.1985 the period of limitation for appeal could only be upto 3.6.1985 as the period for obtaining copies as contemplated under Section 12 clause (2) of the Limitation Act will not be applicable and therefore even if it is held that under Sec. 15 the respondent had to wait till the period of limitation for appeal expires

A as he entered into a marriage on 27.6.1985 it was clearly after the period of limitation has expired and therefore this marriage apparently made the appeal filed by the appellant infructuous. It is not in dispute that if the period for obtaining copy of the judgment and decree is computed as contemplated in Section 12 clause (2) of the Limitation Act, the appeal filed by the appellant before the first appellate court B was within the time and if Section 12 clause 2 is held applicable then this marriage which the respondent performed on 27.6.1985 could not be said to be a marriage which he was entitled to perform in view of language of Section 15 and therefore it could not be said that this marriage rendered the appeal filed by the appellant infructuous. Learned counsel for the respondent mainly placed reliance on the language of Sec. 29 clause 3 of the Limitation Act whereas learned C counsel appearing for the appellant contended that Sec. 29 clause 3 talks of suit or proceedings and therefore the phrase 'proceedings' used in clause 3 of Sec. 29 could only refer to suits or other original proceedings and it will not apply to appeals as is very clear from the definition of 'suit' as defined in Section 2(L) of the Limitation Act. It D was therefore contended that the provisions of the Limitation Act will be applicable to appeals under Sec. 28 of the Act. Learned counsel for the appellant placed reliance on the decisions in *Chander Dev Chadha* v. *Smt. Rani Bala,* AIR 1979 Delhi 22; *Smt. Sipra Dey* v. *Ajit Kumar Dey,* AIR 1988 Calcutta 28 and *Kanti-bai* v. *Kamal Singh Thakur,* AIR 1978 M.P. 245.

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Section 2(L) of the Limitation Act defines the 'suit'. It reads:

"suit" does not include an appeal or an application". It clearly enacts that suit does not include an appeal or an application. Sec. 29 of the Limitation Act reads:

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> "29. Savings (1) Nothing in this Act shall affect Section 25 of the Indian Contract Act, 1872.
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> (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from G the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply H only insofar as, and to the extent to which, they are not

expressly excluded by such special or local law. A

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

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(4) Sections 25 and 26 and the definition of 'easement' in Section 2 shall not apply to cases arising in the territories to which the Indian Easement Act, 1882, may for the time being extend."

Clause (2) of this Section provides that where the limitation provided C by the special or local law is different from the period prescribed by the Schedule, the provisions of Section 3 will apply. In the Hindu Marriage Act, the period of appeal is prescribed. In the schedule under the Limitation Act, there is no provision providing for an appeal under the Hindu Marriage Act. Thus the limitation prescribed under the Hindu Marriage Act is different and is not prescribed in the D Schedule. Thus the provisions of Section 3 shall apply and therefore it is clear that to an appeal or application the provisions contained in Sections 4 to 24 shall apply, so far and to the extent to which they are not expressly excluded by the special or local law and clause (3) of this Section provides that the provisions of this Act shall not apply to any suit or other proceedings under any marriage law. It is therefore clear E that so far as clause (3) is concerned, the impact of it will be that the provisions of the Limitation Act will not apply so far as a suit or an original proceeding under the Act is concerned but clause (3) will not govern an appeal.

The Schedule in the Limitation Act do not provide for an appeal, F under the Hindu Marriage Act but it is only provided in clause (4) of Sec. 28 of the Hindu Marriage Act. Thus the limitation provided in clause (4) of Sec. 28 is different from the Schedule of the Limitation Act. Accordingly to clause (2) of Sec. 29, provisions contained in Sections 4 to 24 will be applicable unless they are not expressly excluded. It is clear that the provisions of the Act do not exclude G operation of provisions of Sections 4 to 24 of the Limitation Act and therefore it could not be said that these provisions will not be applicable. It is therefore clear that to an appeal under Section 28 of the Hindu Marriage Act, provisions contained in Section 12 clause (2) will be applicable, therefore the time required for obtaining copies of the judgment will have to be excluded for computing the period of limita- H

tion for appeal. A Division Bench of Delhi High Court in *Chandra Dev Chadha's* case held as under:

> "The Hindu Marriage Act is a special law. That this "special law" prescribes" for an appeal a period of limitation is also evident. The period of limitation is 30 days. It is a period different from that prescribed in the First Schedule to the Limitation Act, 1963. But when we turn to the First Schedule we find there is no provision in the First Schedule for an appeal against the decree or order passed under the Hindu Marriage Act. Now it has been held that the test of a "prescription of a period of limitation different from the period prescribed by the First Schedule" as laid down in S. 29(2), Limitation Act, 1963 is satisfied even in a case where a difference between the special law and Limitation Act arose by omissions to provide for a limitation to a particular proceeding under the Limitation Act, see, *Canara Bank, Bombay* v. *Warden Insurance Co. Ltd. Bombay*, AIR 1953 Bom 35 (supra) approved by the Supreme Court in *Vidyacharan Shukla* v. *Khubchand,* AIR 1964 SC 1099 (1102).
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> Once the test is satisfied the provisions of Ss, 3, 4 to 24, Limitation Act, 1963 would at once apply to the special law. The result is that the court hearing the appeal from the decree or order passed under the Hindu Marriage Act would under S. 3 of the Limitation Act have power to dismiss the appeal if made after the period of limitation of 30 days prescribed thereof by the special law. Similarly under S. 5 for sufficient cause it will have the power to condone delay. Likewise under S. 12(2) the time spent in obtaining a certified copy of the decree or order appealed from will be excluded. If it is so, S. 12(2) of the Limitation Act is attracted, and the appellants in all the three appeals will be entitled to exclude the time taken by them for obtaining certified copy of the decree and order. The appeals are, therefore, within time."

Similar is the view taken by the Calcutta High Court in *Smt. Sipra Dey's* case and also the M.P. High Court in *Kantibai's* case. It is therefore clear that the contention advanced by the learned counsel for the respondent on the basis of the Limitation Act also is of no substance.

Consequently the appeal is allowed. The judgment passed by the High Court as well as by the first appellate court is set aside. We remand the matter back to the first appellate court as that court had disposed of the appeal treating it to have been rendered infructuous. We therefore direct that the learned IInd Additional District Judge, Nagpur before whom the appeal was filed, will hear the appeal on merits and dispose it of in accordance with law. A B

A suggestion was made by the counsel for the appellant about some tests and willingness of the appellant for getting those tests performed which could be used as additional evidence in respect of the paternity of the child born to the appellant which has been made a ground for declaration of marriage as nullity. Without expressing any opinion, it would be appropriate for the lower appellate court to consider the matter if parties approach about additional evidence. The appallant shall be entitled to costs of this appeal. Costs quantified at Rs.2500. C

R.S.S. Appeal allowed. D