

**(2003) 05 DEL CK 0132**  
**In the Delhi High Court**  
**Case No : CW 3737 of 2003**

|                            |    |            |
|----------------------------|----|------------|
| Ms. Osnat Alis and Another |    | APPELLANT  |
|                            | Vs |            |
| Union of India (UOI)       |    | RESPONDENT |

**Date of Decision :** 30-05-2003

**Acts Referred:**

Special Marriage Act, 1954 — Section 1(2), 17, 4, 5

**Citation :** (2003) 05 DEL CK 0132

**Hon'ble Judges :** Badar Durrez Ahmed, J

**Bench :** Single Bench

**Advocate :** Sarvendera Singh, for the Appellant; D.K. Singh, for R-1 and Rachna Katyal, for Govt. of NCT, for the Respondent

## **Judgement**

Badar Durrez Ahmed, J.—Rule. With the consent of the parties, the writ petition is taken up for final hearing.

2. The petitioners are seek registration of their marriage under the Special Marriage Act, 1954. The registration of their marriage is not being done by the respondent No.2 allegedly on account of the fact that the petitioner No.2 hails from Jammu and Kashmir and that the Special Marriage Act, 1954 does not extend to the state of Jammu and Kashmir.

3. The petitioner No.1 is a national of Israel and is a jew by religion. The petitioner No.2 is a citizen of India and hails from Jammu and Kashmir and is a Muslim by religion. The petitioner No.2 has been residing in Delhi admittedly for over ten months and according to the petitioner for almost three years.

4. Section 1(2) of The Special Marriage Act, 1954 provides that the Act extends to the whole of India except the State of Jammu and Kashmir and also applies to citizens of India domiciled in territories to which the Act extends who are in the State of Jammu and Kashmir. From this provision, it is clear that the application of the Act has reference to territory and not to the persons insofar as the territory is out side the state of Jammu and Kashmir. 5. There is no dispute and

there can be none that the Act applies in Delhi. There is no provision which has been pointed out in the Act which bars persons hailing from Jammu and Kashmir from seeking registration of the marriage under the Act in a territory to which the Act extends, i.e. in the present case, Delhi. Learned counsel appearing on behalf of respondent No.2 points out the provisions of Section 4(e) of the said Act to support his contention that this marriage cannot be registered. Section 4 deals with the conditions relating to solemnization of especial marriages. Clause (a) to (e) stipulate the conditions which must be fulfilled before a marriage may be solemnized under the Act. Section 4(e) of the Act reads as under:

"4(e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends."

6. This provision is clearly not applicable to the facts of the present case. It deals with marriages that are solemnized in the State of Jammu and Kashmir. This is not the case here. The marriage is to be solemnized in Delhi and is sought to be registered in Delhi. As such, this provision has no application. The only requirement of residence of the party is provided in Section 5 of the Act, which reads as under:

"5. Notice of intended marriage - When a marriage is intended to be solemnized under this Act, the parties of the marriage shall give notice thereof in writing in the Form specified in the Second Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given."

From the aforesaid provisions of Section 5, it is clear that only one of the parties seeking registration of their marriage and solemnization of the marriage needs to have resided in the place where they intend to get married for a period not less than thirty days immediately preceding the date of the notice of such intention is given. In the present case, the notice has already been issued and as stated above, the petitioner No.2 has been residing in Delhi admittedly for over ten months.

7. Learned counsel for the respondent further submits that the petitioner has the alternative remedy of filing an appeal u/s 17 of the Act and Therefore this writ petition itself is not maintainable. This argument is untenable on two counts. Firstly, the Supreme Court in the case of Harbanslal Sahnia & Anr. v. Indian Oil Corporation, Ltd. And Others, 2002 (9) SCALE 724 (at page 727) has held that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. It has further observed that in an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction. Secondly, the provision of appeal u/s 17 would only be available if there is an order by the Marriage Officer refusing to register a marriage. In the present case, there is no such order of refusal. It is only that the marriage is not being registered. As such, Section 17 does not

come into play at all.

8. Accordingly, the petitioners are entitled to the relief claimed in the writ petition. The respondent No.2 is directed to register the marriage of the petitioners by 3rd of June, 2003.

9. The writ petition is allowed to this extent with no order as to costs.

The copy of the order be given to the parties duly under the signature of the Court Master.