
(1949) 08 BOM CK 0008
In the Bombay High Court
Case No : O.C.J. Suit No. 395 of 1949

Santosh Kumari Lalchand Mehra	Vs	APPELLANT
Chimanlal Munilal Kapur		RESPONDENT

Date of Decision : 04-08-1949

Acts Referred:

Special Marriage Act, 1954 — Section 17, 2, 2(3)

Citation : AIR 1950 Bom 307 : (1950) 52 BOMLR 394

Hon'ble Judges : Bhagwati, J

Bench : Single Bench

Advocate : M.V. Desai, K.T. Desai and G.C. Sanghvi, for the Appellant; J.C. Forbes, for the Respondent

Final Decision : Allowed

Judgement

Bhagwati, J.—This is a petition filed by the petitioner, a minor by her next friend her father, against the respondent for a declaration that the marriage under the Special Marriage Act III [3] of 1872 alleged to have been solemnized between the petitioner and the respondent on 17th September 1948, is null and void and of no legal effect whatever.

2. The petitioner and her father and the whole family came away from Amritsar to Bombay about a year and a half ago owing to the Hindu Muslim riots which took place there after the partition of India. They resided at Shivaji Park, Dadar, in a building by name Usha Nivas, and it was during this period that the incident which is complained about took place. The respondent was their neighbour at Amritsar. He had been employed in the shop of the petitioner's father and is alleged to have rendered them considerable aid in the evacuation of their property and persons from Amritsar when the riots took place. He appears to have renewed his acquaintance with the petitioner and her people here after he himself came down from Amritsar in Bombay. The petitioner's father was looking after his business at Vikhroli where he had a factory for textile printing, and attending to his shop also at Kalbadevi. The mother and the brothers and sisters

of the petitioner were no doubt at the house and owing to the familiarity which the respondent had with the petitioner whilst the parties were at Amritsar it appears that the respondent prevailed upon the petitioner or the petitioner being responsive enough to his advances the petitioner and the respondent conceived of the idea of solemnizing a marriage under the Special Marriage Act. With that end in view, they appear to have gone to the office of the Registrar of Marriages and signed a declaration there. The petitioner was known to be a minor and, in any event, a person under the age of 21 years, and that being so, it was necessary that the declaration to be made by the parties should, so far as the petitioner herself was concerned, be signed by her father or guardian. The father's consent was obviously not available and, therefore, a ruse was adopted of putting forward the uncle of the respondent, one Hariram Madanram Kapur, as the guardian of the petitioner. The parties who attended before the Registrar of Marriages were, as it appears from the marriage certificate, the petitioner, the respondent, the so-called guardian of the petitioner and three witnesses who also happened to be the friends of the respondent's uncle Hariram Madanram Kapur. In the office of the Registrar of Marriages was staged a performance which consisted of the signatures of the petitioner and the respondent in the marriage register, the consent given on behalf of the petitioner by Hariram Madanram Kapur who was put forward as her guardian and the signatures of the petitioner and the respondent there were attested by the three friends of Hariram Madanram Kapur who put them forward as the attesting witnesses to those signatures.

3. After the marriage was solemnized in this manner before the Registrar of Marriages, the petitioner continued to live as before with her father at Usha Nivas at Shivaji Park Dadar and even though the respondent in the witness box has stated that after the date of the alleged marriage the petitioner used to visit him at his house as also on the streets at Dadar, wherefrom he used to take her to various restaurants and cinemas and outings, there is no allegation before me that the petitioner ever went to reside at the house of the respondent or was received by the near relations of the respondent as his married wife in his house. The respondent also does not appear to have asserted or exercised his rights as a husband and taken away, as he should have normally done so, his wife the petitioner to his own house. Right up to the time that the petition was filed she continued in the house of her father and it was from there that this petition was filed by her through her next friend her father.

4. An allegation was made in the petition that the marriage between the petitioner and the respondent had not been consummated. That allegation having been made in the petition it was controverted by the respondent in the answer which he filed wherein he stated that the marriage had been duly consummated by him. On this state of the pleadings counsel for the respondent raised an issue whether the marriage was consummated. I have already dealt with this when dealing with the objection which was raised by counsel for the petitioner to a question which counsel for the respondent addressed to him in Ma

examination-in-chief, viz., whether the marriage was duly consummated. I need not repeat what I have stated while dealing with that objection, but I cannot help repeating that the allegation in that behalf was absolutely uncalled for and irrelevant. It was absolutely unnecessary to make that allegation in the petition and the incorporation of that allegation in the petition gave a handle to the respondent to make an assertion that he had duly consummated the marriage with the petitioner. I disallowed any inquiry on this point for the simple reason that the allegation was absolutely irrelevant for the purpose of this inquiry, and if the question was allowed, it would have resulted in damaging the prospects of the petitioner in the future. No doubt it has been stated in various quarters that the private life of either of the spouses before they enter into matrimony is their own concern and that if the other spouse is broad-minded enough, he or she would not have any the worse idea of the other spouse for having acted in any particular manner before the marriage was performed. All people, however, are not so broad-minded and it is highly probable that in the society to which the petitioner belongs, her prospects of matrimony would be considerably damaged if any such allegation was allowed to be made on the record of these proceedings. It was, therefore, that I disallowed this inquiry at the instance of counsel for the respondent. Whether the alleged marriage between the petitioner and the respondent was consummated or not made not the slightest difference to the position as it obtains in this petition. What I have got to consider is whether on a true construction of the provisions of the Special Marriage Act, 1872, the marriage which was solemnized before the Registrar of Marriages on 17th September 1948, was a valid marriage or not. If on the construction of the relevant provisions of that Act I came to the conclusion that the conditions of a valid marriage not having been fulfilled, this was a clear case for the declaration of a nullity of that marriage, it made not the slightest difference to the position whether the marriage was consummated or not as alleged by the respondent.

5. On the evidence which has been led before me, the facts which are established are that the petitioner was a person below 21 years of age at the date of the alleged marriage. The father of the petitioner gave evidence in the witness box deposing to her age as having been 16 years 2 months and a few days at the date when the alleged marriage was solemnized before the Registrar of Marriages, her birth date having been 25th June 1932, and the alleged marriage having been solemnized on 17th September 1948. It was clear, therefore, that the petitioner was below 21 years of age and that under Clause (3) of Section 2 of the Act it was necessary before a proper marriage between the petitioner and the respondent was solemnized under the Special Marriage Act that the consent of her father to the marriage ought to have been obtained. The father gave evidence before me saying that he did not give his consent to the marriage. The respondent also in his evidence admitted in answers to me that the petitioner had not obtained the consent of her father and that at her instance and with her close co-operation his uncle Hariram Madanram Kapur was put forward as her guardian for the purpose of giving such consent before the

Registrar of Marriages. The situation therefore is very clear that the consent of the father was not given to the marriage being solemnized and a third party, viz., the uncle of the respondent, Hariram Madanram Kapur, was put forward as the alleged guardian of the petitioner who purported to give his consent to the solemnization of the marriage. If at all it was a fraud practised on the provisions of Clause (3) of Section 2 of the Act, and the whole attempt of the respondent in the witness box was to absolve himself and his uncle Hariram Madanram Kapur from any responsibility for that fraud which was perpetrated on the Registrar of Marriages, I am not here concerned with all that. What I am concerned with is to consider by reason of the provisions of Section 2 (3) of the Act not having been complied with, what is the legal position in regard to the validity of that marriage which purported to be solemnized before the Registrar of Marriages on 17th September 1948.

6. On the facts I find that the petitioner was a person under 21 years of age and that her father had not given his consent to the marriage. If that was so, the relevant question to consider is what is the effect of the non-compliance of the provisions of Clause (3) of Section 2 of the Act. Counsel for the respondent has very strenuously urged upon me that these provisions of Section 2 of the Act are merely directory and not mandatory, that these provisions being merely directory, their non-compliance does not render the marriage void, but the parties being Hindus the doctrine of *factum valet* comes into operation curing all the defects in solemnization, with the result that it is not open to the petitioner now to file this or any petition for having the marriage declared null and void. He has cited before me a decision of the Special Bench of the Nagpur High Court in *Ganeshprasad v. Damayanti I. L. R. (1946) Nag. 1 : A. I. R 1946 Nag. 60*, where the learned Judges constituting the Special Bench came to the conclusion that Section 2, Special Marriage Act, did not lay down the conditions of validity but merely prescribed the forms which must be fulfilled to enable the Registrar to marry the parties, that the minority of one or other of the parties to the marriage under the Special Marriage Act did not in itself invalidate the marriage though a false declaration to that effect rendered the person making it liable to punishment u/s 199, Penal Code, and that if the minor was above the age of consent at the time of the marriage neither side could subsequently repudiate the marriage on the mere ground of minority. The doctrine of *factum valet* as also the particular provisions which are contained in Clause (2) of Section 2 of the Act, viz., that the man must have completed his age of 18 years, and the woman her age of 14 years, according to the Gregorian calendar, were construed by the learned Judges there in connection with this argument and the conclusions reached by the learned Judges were after due consideration of all the Indian and English authorities on the subject.

7. Counsel for the petitioner in reply urged upon me that the provisions of Section 2 of the Act laid down the conditions and the four clauses of Section 2 contained the conditions which ought to be fulfilled before a proper and valid marriage under the Special Marriage Act could be solemnized between the

parties. He urged that u/s 10 of the Act if either party had not completed the age of twenty one years, the declaration should also be signed by his or her father or guardian, and that provision also was couched in a mandatory form. He finally relied upon Section 17 of the Act which in specific terms laid down that the Divorce Act was to apply to all marriages contracted under the Act and any such marriage might be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that it contravened some one or more of the conditions prescribed in Clauses (1), (2), (3) or (4) of Section 2 of the Act. He contended that over and above the grounds which were prescribed in the relevant provisions of the Divorce Act, Section 17, Special Marriage Act, incorporated the four other grounds which were constituted by the non-compliance of one or more of the conditions prescribed in Clauses (1), (2), (3) or (4) of Section 2 of the Act, and it was competent to a petitioner to maintain a petition based on any of these grounds, viz., non compliance of some one or more of those conditions which were laid down in these clauses of Section 2 of the Act. He drew my attention to a decision of our Appeal Court in Pestonji Behramji v. Swarnalata Pestonji, O. C. J. Appeal NO 58 of 1943, D/-28-2-1946 by Stone C. J. and Kania J., in which the Appeal Court in a suit inter alia for the nullity of marriage solemnized under the provisions of the Special Marriage Act had gone into the preliminary issue whether at the date of the marriage the girl was shown to have been under the age of 21 years, and if so, whether the consent of the parent or guardian was obtained. The learned Judges of the Appeal Court came to the conclusion, on a discussion of the evidence before them and the trial Court, that the age of the girl was established to be under the age of 21 years at the date of the solemnization of the marriage and also came to the conclusion that the consent of the parent or guardian was not obtained for the solemnization of the marriage. In the result they held that there must be a decree in terms of prayer (a) of the petition holding that the marriage was null and void and should be declared as such by reason of the consent of the parent or guardian not having been obtained in the case of the girl who was found to be one under 21 years of age at the date of the solemnization of the marriage. No doubt in this decision there was no question of the applicability of the doctrine of *factum valet* as was alleged by counsel for the respondent before me because the appellant was a Zoroastrian by birth, Pestonji Behramji Billimoria and the only party who was a Hindu for the purpose of the attraction of the doctrine of *factum valet* was the respondent herself. In regard to this doctrine of *factum valet* he drew my attention to the distinction drawn in the commentary of Sir Dinshah Mulla u/s 414 of his work on Hindu Law, Edn. 10 at p. 523, while discussing the applicability of this doctrine of *quod fieri non debet factum valet*, i. e., a fact cannot be altered by 100 texts (that what ought not to be done is valid when done), a distinction between texts which are directory and tests which are mandatory. It is only in those cases where the texts of Hindu law are directory that the applicability of this doctrine is attracted. As their Lordships of the Privy Council put it in *Balusu Gurulingaswami v. Balusu Ramalakshamma* 26 I.A. 113 : 22 Mad. 398 , the *factum* or the external act would not be void in law

merely by reason of the directory text not having been complied with. It would be only when the mandatory texts are flouted or mandatory provisions not complied with that the act would be void in law and there would be no room for the application of the maxim. It would, therefore, be necessary to consider whether the provisions which are contained in Section 2, Special Marriage Act, are directory in their nature or mandatory. The learned Judges who constituted the Special Bench in Ganeshprasad's case ILR (1946) Nag. 1 : A. I. R 1946 Nag. 60 appear to have construed these provisions as merely directory and not mandatory, and that is what was urged upon me by counsel for the respondent here. He contended that on the application of the doctrine of *factum valet* I should hold that the petitioner has no right to maintain this petition for a declaration that this marriage which was solemnized between herself and the respondent was null and void.

8. On a consideration of the various arguments which have been urged before me by counsel for the petitioner as well as the respondent I have come to the conclusion that the provisions of Section 2, Special Marriage Act, are mandatory in their character. What Section 2 lays down are the conditions of a proper and valid solemnization of a marriage under the Special Marriage Act. Section 2 in so many terms lays down that marriages may be celebrated under the Act between Hindus upon the following conditions; and the words used are "following conditions" and not merely "provided that" or "in the event of" or any such expression which would go to show that the provisions are directory in their character and not mandatory. The Legislature has advisedly used the word "conditions," and if what are laid down in Clauses (1), (2), (3) or (4) of the Act are laid down as conditions for the solemnization of the marriage between Hindus under that Act, in my opinion, it is not capable of being argued that they are otherwise than conditions. That they are conditions is made clear when you go to Section 10 which lays down how a declaration has got to be made by the parties and there also it is laid down in the case of the parties who have not completed the age of 21 years that the declaration shall be signed by his or her father or guardian. That provision is also mandatory in its character and shows what the Legislature has really contemplated that in order to have a proper and valid solemnization of the marriage under the Act in the event of a person being under 21 years of age, his or her father or guardian has to sign the declaration in token of his or her consent to that marriage. The provision is mandatory in its character, the word used is "shall" and not "may". This position is made clearer still when one goes to the provisions of Section 17 of the Act, which enacts that the provisions of the Divorce Act shall apply to all marriages contracted under the Special Marriage Act. It was open to the Legislature if the conditions which have been laid down in Clauses (1), (2), (3) and (4) of Section 2 of the Act were merely directory to have stopped short with the provision which was enacted in the first part of Section 17. It could have stopped short by enacting merely the relevant provisions of the Divorce Act and prescribing that the grounds for the dissolution or nullity of the marriage which are enacted in the Divorce Act would

be the grounds on which a party marrying under the Special Marriage Act, 1872, could also have the relief by way of dissolution or nullity of marriage in proper cases. The Legislature, however, did not stop short there but went on to incorporate in the latter part of Section 17 of the Act farther grounds, viz.,

"or on the grounds that it contravened some one or more of the conditions prescribed in Clauses (1), (2), (3) or (4) of Section 2 of this Act."

It refers to these as conditions and it also refers to the contravention of one or more thereof as furnishing a ground to the party to a marriage for having the marriage declared a nullity or dissolved as the case may be. Thus Section 17 leaves not the slightest doubt in my mind that what the Legislature enacted in Section 2 were the conditions for a proper and valid solemnization of the marriage under the Act. Counsel for the respondent drew my attention to the provisions of Section 3, Parsi Marriage and Divorce Act (III [3] of 1936) which also enacted in similar terms the conditions for the proper and valid solemnization of marriages between the Parsis under the provisions of that Act. The words used there are very clear in terms and they lay down a condition or conditions for the valid solemnization of marriages between the Parsis governed by the Act. Similarly Sections 2 and 17, Special Marriage Act, 1872, which are clear and categorical in terms leave not the slightest doubt in my mind that what the Legislature intended was the enactment of conditions of a proper and valid solemnization of the marriage under the Act between the parties to whom the Act applied, which conditions if not fulfilled gave a right to them to have the marriage solemnized thereunder dissolved or declared null and void as the case may be. I am fortified in this conclusion of mine by the judgment of our appeal Court which I have above referred to, *Pestonji Behramji v. Swarnalata Pestonji*, (O. C. J. Appeal no. 58 of 1945 D/- 28-2-1946). In so far as the decision of the Special Bench in *Ganeshprasad's case* I. L. R. 1946 Nag. 1 : A. I. R. 1916 Nag. 60 goes counter to this conclusion of mine, I respectfully differ from the learned Judges who constituted that Special Bench, and I am of opinion that the provisions contained in Section 2, Special Marriage Act, 1872, are not directory in character but are mandatory and they prescribe the conditions for the proper and valid solemnization of marriage between the parties governed by the Act.

9. The more strenuous argument of counsel for the respondent however was based on what he considered to be the applicability of the doctrine of *factum valet*. With that end in view, he was very keen to inquire and elicit in the evidence of the respondent himself the fact that the marriage between the petitioner and the respondent was consummated. That according to him went to strengthen his argument on the question of the applicability of the doctrine of *factum valet*. He contended that if after the solemnization of the marriage under the Act on 17th September 1948, the parties had cohabited with each other and lived together as man and wife and had consummated the marriage, if a photograph of their blissful state as man and wife was also got taken by them and there were love letters exchanged between them after the solemnization of

the marriage it would really go to support his case of the applicability of the doctrine of factum valet. The fact of the marriage could not be then undone by mere non-compliance with what he considered to be the directory texts or the directory provisions of Section 2 of the Act. I need not add anything more to what I have already stated when recounting the argument of counsel for the respondent in this behalf. The judgment of their Lordships of the Privy Council lays down in no uncertain terms that the factum or external act would not be void in law merely by reason of the directory text not having been complied with. It would be only when mandatory texts are not complied with that the act would be void in law and there would be no question of the applicability of the maxim of factum valet. If as I have construed the sections of the Special Marriage Act, 1872, the provisions of Sections 2, 10 and 17 thereof lead to no other conclusion except that the conditions which are laid down in Section 2 of the Act are conditions and are mandatory provisions which have got to be complied with before a proper and a valid solemnization of a marriage can ever take place under the Act, the non-compliance with any of these conditions, e. g., condition No. 3, in the case before me, renders the marriage void in law and the factum of the marriage, viz., the external act, or the purported solemnization of the marriage before the Registrar of Marriages on 17th September 1948, accompanied as it was with the purported consent of the alleged guardian of the petitioner, viz. Hariram Madanram Kapur, not by any means whatever render valid a thing which was void in law ob initio. There is no room on my construction of the relevant sections of the Special Marriage Act, 1872, of the applicability of the doctrine of factum valet. When there are mandatory provisions contained in a statute, it is futile to urge that the doctrine of factum valet can ever apply. If the argument of counsel for the respondent was accepted, in the case of Hindus, once a marriage which was not performed in accordance with the provisions of the Special Marriage Act, 1872, was there, brought about howsoever and under whatever circumstances, the consummation of that marriage would be enough to run a coach and four through all the provisions of Section 2, Special Marriage Act. Hindus then could marry under the Special Marriage Act and could with impunity refuse to comply with the provisions contained in Section 2 of the Act. It is open to the Hindus if they so desire and if they think that the girl is one who can give her consent to a valid marriage according to the strict provisions of Hindu law to perform the marriage according to the Hindu rites. But if they want to have resort to the provisions of the Special Marriage Act, it is up to them to comply with all the conditions which are laid down therein and they cannot have resort to the provisions of their personal law in regard to the marriage, particularly when they are contrary to those which have been enacted in the Act. If they want to have the special privileges accorded to them under the Special Marriage Act, 1872, viz., of a severance of joint status between the members of the family, of being governed by the provisions of the Succession Act, etc., they must comply with the provisions of the Special Marriage Act, 1872, and cannot expect to be governed by the provisions of their personal law. Those who want to have the special advantage of the provisions of the Act must comply with the

conditions laid down in the Act. A decision of Rangnekar J. reported in *Vidyagavri v. Narandas* 30 Bom. L. R. 139 : A.I.R 1928 Bom. 74 was cited before me by counsel for the respondent where Rangnekar J. held that the declaration made under the Act did not amount to an abjuration by Hindus for all purposes of the personal law of the declarant but it was merely a statement for the purposes of the Act itself and therefore questions as to succession and rights to property must be determined by or under no law other than the personal law of the parties, the mere declaration under the Act not amounting to a renunciation of the personal law of the parties. It was a case which had arisen under the provisions of the Special Marriage Act, 1872, before it was amended by Act XXX [30] of 1923 which made the provisions of the Act applicable also to Hindus. In my opinion, that case does not throw any light on the question which has arisen for determination before me. There was no question of the construction of the provisions of Section 2 and 17 of the Act before Rangnekar J. and he was not called upon to decide whether the provisions of Section 2 of the Act were directory in character or mandatory. The personal law of the parties would no doubt apply in those cases which are not governed by the Special Marriage Act, 1872, but where as in the case before me and on the construction of the relevant sections which I have put upon them there are definite provisions enacted in the Act itself which govern the case, there is absolutely no scope whatever of the applicability of the personal law of the parties and of the doctrine of *factum valet* which is incorporated therein.

9. Having regard to my observations above, I have come to the conclusion that the marriage which was solemnized between the petitioner and the respondent in contravention of the conditions incorporated in Clauses (3) of Section 2 of the Act was null and void and the petitioner would be entitled to a declaration in that behalf.

10. Before I conclude, however, I would like to refer to one argument which was addressed before me by counsel for the respondent, and it was that the petitioner had filed this petition by her next friend her father, that the petitioner had not stepped into the witness box to tell the Court that she it was who desired this declaration as regards the nullity of the marriage with the respondent and that therefore I should refuse her the relief which she had prayed for in the petition. He urged before me that u/s 18, Divorce Act, which was made applicable to the parties u/s 17, Special Marriage Act, 1872, it was the wife or the husband who was entitled to maintain a petition for a decree of nullity. He, therefore, urged that the petitioner, and the petitioner only who was the wife, and not her father who was her next friend, could maintain this petition. I drew the attention of the learned counsel for the respondent to the provisions of Section 49, Divorce Act which he had himself resorted to in the first instance for urging before me that the petition was not maintainable having been filed before the next friend gave an undertaking to the Court for costs, that that section contemplated suits by minors. If that was so, the petitioner also who was a minor could sue for a declaration of nullity of marriage through her next friend

her father. Minors and persons of unsound mind are specially catered for by the CPC in Order 32 thereof and the provisions of the CPC have been made applicable in terms to the proceedings under the Divorce Act as also under the Special Marriage Act, 1872. Even so counsel for the respondent contended that the question of the volition of the petitioner to maintain this petition for declaration of nullity of marriage was a relevant consideration and the absence of any proof of that desire on the part of the petitioner to ask for such a declaration vitiated the whole proceedings before me and rendered the petition liable to be dismissed. I very much appreciate the desire of counsel for the respondent to have had the petitioner in the witness box so that in full discharge of his duty towards his client he could have cross examined the petitioner under instructions from the respondent to the fullest extent and tried to elicit from her the relevant facts and circumstances which according to him as he was advised rendered the applicability of the doctrine of *factum valet* attracted to the facts of this case. I am, however, not impressed by the argument which he advanced that in the case where minors are suing in Courts, whether in matrimonial jurisdiction or ordinary original civil jurisdiction, the question of the volition of the minors is in any manner relevant. If it was the case of the respondent that the minor's name was being bandied about or used with some ulterior motives or objects of the next friend himself and the proceedings taken by the next friend ostensibly in the name of the minor but really for some purpose of his own, it would have been open to the respondent to take out proceedings to have the next friend removed and on demonstrating before the Court in that behalf to have the proceedings brought to a standstill. The question of the volition of the minor is not a matter for consideration at all. A minor has no volition of his or her own and is a person specially protected under the Code. All proceedings on behalf of the minors have got to be taken by their next friends or have got to be defended by their guardians ad litem. It is only on attaining majority and on the discharge of his or her next friend or guardian ad litem that he or she would be called upon to adopt the proceedings which are till then conducted in his or her name by the next friend or guardian ad litem and carry them on to their normal conclusion. But except in that event it is not open to the Court to inquire and it is not legitimate also to inquire whether the minor has chosen to support the proceedings and has exercised his or her volition in that behalf. If that were so, the appointment of the next friend or guardian ad litem would merely, as counsel for the respondent urged before me, be a matter of form or for the purpose of safeguarding the costs of the opposite party. I am not inclined to accept that argument of counsel for the respondent. I really regret having deprived him of the opportunity of cross-examining the petitioner by not making it compulsory for the petitioner to enter the witness box, but the position in law as I conceive it to be is absolutely contrary to the argument of counsel for the respondent and I could not see my way to oblige him. The criticism which he levelled against the petitioner not having been called into the witness box was absolutely beside the mark and was of no validity or legal consequence. Counsel for the petitioner was in my opinion wise in not having put the petitioner in the witness box. He proved his case with

such material as was available to him and I have come to the conclusion that it was open to the petitioner to file this petition by her next friend and to prosecute it in the manner she did. If the argument of counsel for the respondent were accepted, it would mean that minors should come before the Court in all suits for dissolution or nullity of marriage, tell the Court that they desire that the particular relief should be granted to them, and if they are not in a position to express such volition of their own, be refused all reliefs which they would otherwise be entitled to on the facts established before the Court. This certainly is not my conception of the law and I refuse to accept that argument of counsel for the respondent.

11. The petitioner would be entitled to a declaration in terms of prayer (a). The respondent will, of course, pay the costs of this petition and interest on judgment at 4 percent, per annum till payment.