

(2001) 06 BOM CK 0086

In the Bombay High Court

Case No : Letters Patent Appeal No. 86 of 1994 in Writ Petition No. 5884 of 1991 alongwith Letters Patent Appeal No. 87 of 1994 in First Appeal No. 336 of 1990, alongwith Civil Application No. 5565 of 1997, alongwith Letters Patent Appeal No. 87 of 1994 in Writ Pet

Smt. Reeta Bharat Arora

APPELLANT

Vs

Bharat Yasodanandan Arora @ Dhingra and Others

RESPONDENT

Date of Decision : 13-06-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Constitution of India, 1950 — Article 126, 133(1), 227
Contempt of Courts Act, 1971 — Section 10, 12, 2
Divorce Act, 1869 — Section 57
Hindu Adoptions and Maintenance Act, 1956 — Section 18, 20
Hindu Marriage Act, 1955 — Section 11, 12, 13, 15, 21
Limitation Act, 1963 — Article 123, 12(2), 5
Marriage Laws (Amendment) Act, 1976 — Section 9

Citation : (2001) 4 BomCR 1 : (2001) 3 BOMLR 636 : (2002) 1 DMC 136 : (2002) 1 MhLj 7

Hon'ble Judges : T.K. Chandrashekhara Das, J;Pratibha Upasani, J

Bench : Division Bench

Advocate : Mr. Anand Grover and Mr. Prakash Mahadik, instructed by M/s Haresh Mehta and Co., Mr. S.G. Deshpande and Mr. M.D. Angal, for the Appellant;

Judgement

Dr. Pratibha Upasani, J.—The story revealed in these legal proceedings is the story of a husband, wife and the "other woman" in the husband's life, as usual. The unusual angle of this usual story is the legal angle which gives food for thought as to what status this "other woman" exactly has in a monogamous society, if it turns out that the "other woman" also is a legally wedded wife, and has the same status? What then happens to the other wife? What if relationship goes sour with both the wives at one time or the other, the couple is divorced and reunited, and the second wife is now isolated and asks for maintenance? All this material is quite spicy and hot enough to churn out a Hindi Masala Movie,

displaying sentiments like love, lust, selfishness, materialism and urge for survival. But, Reeta Bharat Arora, Indu Bharat Arora and Bharat Yasodanandan Arora are not the imaginary characters playing roles on the screen in the reel life. They are the real persons, in flesh and blood, being singed by harsh circumstances. The wives are the puppets in the hands of destiny. And why blame only destiny? Their husband Bharat also has been selfish all throughout, and has spoiled the lives of these two women; and hold your breath, the Law has added to the woes of the wives. But first, the few admitted facts :

2. On or about 26th January, 1981, Bharat Arora married one Indu Kapoor at Delhi. Indu and her parents were hailing from Indore. Bharat and Indu resided together and cohabited as husband and wife at Bombay. On or about 17th August, 1981, Indu left for Indore. On 25th February, 1982, a son namely. Sunny was born to Indu from the said wedlock. Unfortunately, disputes had already started between Bharat and Indu. Earlier also she had left for her parents' place, but there was some sort of compromise between husband and wife. Thereafter, when she went to Indore in the year 1981, prior to Sunny's birth in 1982, she did not come back. Bharat then filed M. J. Petition No. 56 of 1984 in the Bombay City Civil Court for divorce on the ground of cruelty and desertion. In the said Petition, Bharat had made several allegations against Indu and had even expressed doubt about paternity of the son. Indu was contesting this matrimonial petition, refuting the allegations, and written statement also was filed by her. Hearing of the matter was adjourned from time to time. During all these years, by and large, Indu used to reside with her parents at Indore. During the pendency of the above referred Petition, sometime in the year 1988. Bharat developed illicit relationship with one Reeta Dhawan nee Reeta Sunil Grover. Incidentally, Reeta's divorce proceedings with her husband Sunil Grover also were pending in the City Civil Court till November, 1987 and decree of divorce was granted by City Civil Court in Sunil Grover's favour, dissolving his marriage with Reeta, only on 30th November, 1987. On 28th May, 1989, a daughter by name Shikha was born to Reeta from the illicit relationship with Bharat. The relationship continued, though Reeta very much knew that Bharat was a married person, and his marriage with Indu was subsisting. The stalemate in respect of marriage of Bharat with Indu continued. But on 12th September, 1989, City Civil Court Judge (Ms. R. S. Dalvi) passed ex parte decree of divorce in M. J. Petition No. 56 of 1984, after recording evidence of Bharat, in brief, when the matter was in fact appearing on the Board under the caption of "Framing of Issues". Neither Indu, nor her Advocate was present at the hearing of this Petition on 12th September, 1989. No issues were framed, nor was any finding given in respect of the alleged matrimonial offence of desertion and cruelty, but the Judge recorded undertaking of the Petitioner Bharat to the effect that "the Petitioner shall not remarry for a period of thirty days from the date of the said decree". Thus, the undertaking was restricted to a period of only thirty days. On 5th November, 1989, Bharat got married with Reeta in accordance with Hindu Vedic Rites. On 5th November, 1989, declaration that Reeta and Bharat were married was made.

The said marriage was thereafter registered on 5th February, 1990. Indu Arora, allegedly, came to know of the ex parte decree passed against her, dissolving her marriage with Bharat on 9th November, 1989. By that time, Family Courts were constituted in Bombay in October, 1989. Indu Arora therefore took out Miscellaneous Application No. 2 of 1990 for setting aside the ex parte decree, in the Family Court, accompanied by application for condonation of delay. On 15th December, 1989, Indu also filed First Appeal No. 336 of 1990 in the High Court of Bombay, challenging the ex parte decree passed against her by City Civil Court Judge, dissolving her marriage with Bharat. In Family Court, in reply to the Application made by Indu Arora, for setting aside the ex parte decree, Bharat did not mention that he had remarried. On 7th August, 1991, Family Court Judge (Mr. S. D. Pandit) passed order in Miscellaneous Civil Application No. 2 of 1990, setting aside the ex parte decree. The said order of the Family Court was challenged by Bharat Arora in the High Court by filing Writ Petition No. 5884 of 1991. In the meantime, there was reconciliation between Bharat and Indu. In fact, on 2nd June, 1992, Bharat and Indu applied for withdrawal of the proceedings in the Family Court. On 3rd June, 1992, Reeta filed Civil Application No. 2846 of 1992 in Writ Petition No. 5884 of 1991 filed by Bharat in High Court for being impleaded as a party-respondent. Reeta also filed M. J. Petition No. B-52 of 1992 in the Family Court at Bandra for a declaration that her marriage with Bharat was legally valid and subsisting. She also moved Interim Application No. 441 of 1992 and the Family Court passed order, restraining Bharat from throwing Reeta out of the flat at Grand Paradi Apartments, August Kranti Marg, Bombay, where Reeta was staying along with her daughter Shikha. Reeta also got injunction order by way of ad interim relief restraining Bharat from disposing of the said flat in Grand Paradi Apartments, so also restraining Bharat from entering her bedroom. Reeta also moved various applications for interim reliefs in the Family Court, on which, orders came to be passed against Bharat and Bharat challenged all those orders in the High Court by filing various Writ Petitions, including Writ Petition No. 2889 of 1993. In Writ Petition No. 2889 of 1993, Bharat had challenged the interlocutory order passed by Family Court granting maintenance of Rs. 4,000/- per month to Reeta and Rs. 1,500/- per month to daughter Shikha. In addition, the Family Court also ordered Bharat to deposit Rs. 5,000/- towards maintenance of Reeta.

Indu also filed M. J. Petition No. B-64 of 1992 in the Family Court at Bandra, inter alia, praying for a declaration that Bharat and Reeta's marriage was not valid. On 22nd September, 1993, Bharat had made application in High Court to withdraw the Writ Petition No. 5884 of 1991. Mr. V. P. Tipnis, J. however, declined to pass order permitting Bharat to withdraw the said Petition, observing that complex questions of facts and law were involved in the said Petition, and therefore, it was to be decided on merits only. On 29th April, 1993, Family Court again passed order being interlocutory order directing Bharat to pay Rs. 5,500/- per month to Reeta and Shikha as maintenance. This order, when challenged by Bharat, in the High Court, was upheld, and in fact, undertaking was filed by

Bharat in the High Court for payment of maintenance to Reeta and daughter Shikha.

Thus, there is no dispute between the parties with respect to the dates, the chronology of events, and the pending litigation between them.

3. This Court (Mr. D. R. Dhanuka, J.) by its common Judgment and Order dated 1st March, 1994 disposed of First Appeal No. 336 of 1990 which was filed by Indu, so also. Writ Petition No. 5884 of 1991 and Writ Petition No. 2289 of 1993 filed by Bharat. The matter was argued at length by the respective Advocates, and this Court, by giving exhaustive reasons, allowed the First Appeal filed by Indu, and the ex parte decree dated 12th September, 1989 was set aside and M. J. Petition No. 56 of 1984 filed by Bharat was dismissed as withdrawn. Objection of Reeta for permitting Bharat to withdraw the said M. J. Petition, was rejected.

Both the Writ Petitions filed by Bharat came to be dismissed by this Court by its common Judgment and Order dated 1st March, 1994, and direction was given to the Family Court to dispose of the pending Petitions filed by Reeta as well as Indu being M. J. Petition No. B-52 of 1992 filed by Reeta and M. J. Petition No. B-64 of 1992 filed by Indu, as expeditiously as possible.

While disposing of these Writ Petitions and First Appeal by common Judgment and Order, this Court made certain observations with respect to the conduct of Reeta. The learned Judge observed that the conduct of Reeta in having illicit relationship with a married person like Bharat since the year 1988, was blameworthy. Reeta also felt aggrieved because the learned Judge confirmed the interlocutory order of the Family Court, and was not happy with the quantum of maintenance. She was also unhappy because the learned Judge allowed Bharat to withdraw his M. J. Petition being M. J. Petition No. 56 of 1984, and the order of allowing the First Appeal filed by Indu and setting aside ex parte decree dated 12th September, 1989 passed by the Judge of the City Civil Court, dissolving the marriage between Bharat and Indu. Being aggrieved, Reeta has filed Letters Patent Appeal No. 86 of 1994 (in Writ Petition No. 5884 of 1991), so also. Letters Patent Appeal No. 87 of 1994 (in First Appeal No. 336 of 1990). Reeta also has filed Family Court Appeal No. 3 of 2001, since the Family Court did not pass any order on arrears of maintenance payable to her and daughter Shikha, while disposing of finally heard M. J. Petition No. B-52 of 1992. Reeta was also aggrieved, as the Family Court did not express its opinion on validity of marriage of Indu with Bharat. Another ground for filing the Family Court Appeal No, 3 of 2001 by Reeta was that the Family Court Judge did not grant her prayer with respect to security deposit for future maintenance to be paid by Bharat to her. It has to be stated here that as per the directions given by Mr. D. R. Dhanuka, J. while disposing of First Appeal No. 336 of 1990. Writ Petition No. 5884 of 1991 and Writ Petition No. 2289 of 1993, the Family Court Judge recorded the evidence of parties and disposed of both the M. J. Petitions being M. J. Petition No. B-52 of 1992 filed by Reeta and M. J. Petition No. B-64 of 1992 filed by Indu by his common Judgment dated 31st December, 1999. By giving exhaustive

reasoning, the Principal Judge of the Family Court at Bandra dismissed Indu's M. J. Petition No. B-64 of 1992, and allowed Reeta's M. J. Petition being M. J. Petition No. B-52 of 1992. The learned Judge gave a declaration that Reeta's marriage with Bharat was valid. Bharat was restrained by an order of injunction from ousting Reeta from her matrimonial home i.e. 91-A. 9th floor, Grand Paradi Apartments, August Kranti Marg, Bombay-36.

Family Court also directed Bharat to pay Rs. 6,000/- per month to Reeta for her own maintenance u/s 18 of the Hindu Adoptions and Maintenance Act, 1956 as well as to pay her Rs. 3,500/- per month for the maintenance of their daughter Shikha u/s 20 of the Hindu Adoptions and Maintenance Act, 1956, from the date of the order i.e. 31st December, 1999. The learned Judge also granted Reeta permanent custody of daughter Shikha.

4. Being aggrieved by the Judgment and Order dated 31st December, 1999 passed by Family Court, Appeal No. 3 of 2001 came to be filed by Reeta.

5. Family Court Appeal No. 16 of 2000 also was filed by Bharat, being aggrieved by the said common Judgment and Order dated 31st December, 1999. Indu also filed Family Court Appeal No. 15 of 2000, aggrieved by dismissal of M. J. Petition B-64 of 1992 and giving a declaration that Reeta's marriage with Bharat was valid.

6. There is also Contempt Appeal No. 2 of 1999 filed by Bharat Arora, whereby he has challenged the order of the learned Single Judge of this Court (D. K. Deshmukh, J.) dated 28th January, 1999, holding Bharat guilty of contempt of Court, and sentencing him to undergo simple imprisonment for a period of three months. The said Contempt Petition being Contempt Petition No. 180 of 1995 was initiated by Reeta, alleging wilful breach of undertaking given by Bharat in Civil Application No. 4922 of 1993 in Writ Petition No. 2289 of 1993. Her grievance was that Bharat had not complied with the interim order granting maintenance to Reeta. The learned Single Judge of this Court held that Bharat had committed breach of the undertaking given to the Court, and was of the opinion that imposition of fine would not meet the ends of justice, as undertakings given in solemnity to the Court had to be scrupulously followed. Thus, considering the pros and cons of the matter, the learned Single Judge found Bharat guilty of contempt of Court and sentenced him to undergo simple imprisonment for three months. This order was stayed on the request of Bharat for approaching the Division Bench, which Bharat did. The Division Bench admitted the contempt appeal of Bharat and granted stay of the impugned order of the learned Single Judge dated 28th January, 1999.

7. Thus, there are six proceedings before this Court, which are being disposed of by this common Judgment and Order.

8. We have heard Mr. Anand Grover, the learned Counsel appearing for Reeta, so also. Mr. Angal, appearing for Indu Arora. We have also gone through the bulky record and proceedings of these matters. We have also carefully considered the

Judgment and ex parte order dated 12th September, 1989 of the City Civil Court passed in M. J. Petition No. 56 of 1984, Judgment and Order dated 7th August, 1991 passed by the Principal Judge, Family Court in Miscellaneous Application No. 2 of 1990, the Judgment of the learned Single Judge dated 1st March, 1994, the order of the learned Single Judge dated 28th January, 1999 passed in Contempt Petition No. 180 of 1995, the Judgment and Order of the Family Court dated 31st December, 1999, so also, various Judgments of this Court, other High Courts and Supreme Court cited by both the sides.

9. The observation of the learned Single Judge in his Judgment dated 1st March, 1994 about the conduct of Reeta being blameworthy, cannot be called erroneous on the background that during the pendency of Reeta's divorce proceedings with her earlier husband Sunil Grover, she carried on affair with the much married Bharat, whose divorce proceedings against Indu also were pending. Because of this illicit relationship, Reeta delivered a baby girl Shikha and when Bharat got married with Reeta on 5th November, 1989, this love-child Shikha was already six month's old.

10. It has to be mentioned at this stage that after carefully going through the entire record and proceedings, the picture that emerges of Bharat is that of a villain. He is the person who has played with the lives of two women, and has left them in the lurch. Firstly, he carried on illicit relationship with Reeta, when his marriage with Indu was still subsisting. He also fathered a child Shikha from her, who was born about six months earlier to Bharat's subsequent marriage to Reeta. Initially, when Bharat had filed divorce proceedings against his first wife Indu, he had made allegations against her and he went to the extent of saying that the son namely, Sunny, born to Indu was not his, but subsequently, with the very same Indu, Bharat reconciled to the chagrin of Reeta, who along with her child Shikha, fell from grace in the eyes of Bharat. When various applications for maintenance were filed by Reeta for herself and for the maintenance of the child Shikha, they were vehemently contested by Bharat, though, he lost in all of them at all stages. Various orders came to be passed by the Family Court, so also, by this Court, ordering Bharat to pay maintenance to Reeta and child Shikha. All these orders came to be flouted with impunity by Bharat. Initially, he was paying some maintenance to Reeta and the child, however, subsequently, there is a total failure on Bharat's part to pay the maintenance. In fact, it appears that he has completely stopped paying maintenance to Reeta and his child since August, 1994 and there is a huge amount by way of arrears. The Family Court, in fact, had passed an order dated 23rd July, 1992, ordering maintenance at the rate of Rs. 4,000/- per month to Reeta and Rs. 1,500/- to child Shikha. The Family Court had also ordered Bharat by its order dated 1st September, 1992 to deposit Rs. 5,000/-. All these orders were disobeyed by Bharat. In fact, on number of occasions, bailable warrants came to be issued against Bharat, as not only he did not pay the maintenance amount but also avoided to attend the Court, In fact, Contempt Petition being Contempt Petition No. 180 of 1995 came to be filed at the behest of Reeta, alleging willful breach of undertaking submitted by Bharat in

Civil Application No. 4922 of 1993 in Writ Petition No. 2289 of 1993. After hearing both the sides the learned Single Judge came to the conclusion that Bharat had committed breach of undertaking given to this Court. He was also of the opinion that imposition of fine would not meet the ends of justice, as undertaking given in solemnity to the Court has to be scrupulously followed and that, undertaking cannot be disregarded casually, as was done by Bharat in this case. Thus, considering the pros and cons of the matter and having found Bharat guilty of contempt of this Court, the learned Single Judge sentenced Bharat to undergo simple imprisonment for three months. This order was stayed for eight weeks on the request made by the learned Counsel appearing for Bharat. Thereafter, the Division Bench of this Court stayed the order while admitting Contempt Appeal No. 2 of 1999, and the stay is still in operation, during the pendency of all the proceedings.

11. After hearing Mr. Anand Grover, who is appearing for Reeta. and Mr. M. D. Angal, who is appearing for Indu (though he was not very much concerned, as far as the maintenance aspect (to be paid by Bharat to Reeta) is concerned), and after going through various orders passed by Family Court, as well as this Court, we are of the opinion that the learned Single Judge was right in holding Bharat guilty u/s 12 of the Contempt of Courts Act. The Roznama of all these proceedings is very revealing and telling. It fully exposes as to how, different Benches of this Court have issued bailable warrants against Bharat Arora on number of occasions, and how incorrigible he has proved to be. Even this Bench by its order dated 19th January, 2001, during the course of hearing, passed an order directing Bharat to bring with him a cash of Rs. 50,000/- or a demand draft of the said amount drawn in favour of Reeta on the next date of hearing. However, on the next date, neither Bharat was present, nor his Counsel was present. Taking serious view of the matter, this Court issued bailable warrant in the sum of Rs. 50,000/- against Bharat, to be executed through the Commissioner of Police. Bombay, returnable on 1st February, 2001. On 1st February, 2001, Bharat was produced before this Court, but he expressed his inability to pay any amount. We therefore struck-off the defence of Bharat and refused to hear Mr. S. G. Deshpande, learned Counsel, who was representing Bharat. Mr. Grover, the learned Counsel appearing for Reeta pointed out that a huge amount had accumulated as arrears of maintenance payable to Reeta and child Shikha by Bharat. He also pointed out that similar order of striking of defence of Bharat had been passed by Family Court also, and that, Bharat was simply not paying the arrears of maintenance either to Reeta or to minor child Shikha. He also pointed out the order passed by this Court (Coram : B. N. Srikrishna and S- S. Nijjar, JJ.) observing that unless maintenance amount was paid, Bharat was not to be heard. Thus, there is a clear admission that the amount of maintenance has not been paid by Bharat to Reeta for the maintenance of herself and for the maintenance of Shikha. This failure to pay the amount has been sought to be justified, stating that Bharat has financial problems, but the non-compliance of the order of the Court with respect to

maintenance, is very much admitted.

12. It is not that Advocate Mr. S. G. Deshpande appearing for Bharat was not heard at all. In fact, initially, when this Bench started hearing the matter, Mr. Deshpande also was heard for quite some time. It was during the course of arguments, that Mr. Grover, appearing for Reeta, pointed out the order of maintenance passed by Family Court, so also various orders passed by this Court with respect to maintenance payable by Bharat to Reeta and child Shikha, and the arrears which Bharat has to pay towards the maintenance amount. Thereafter, this Court ordered Bharat to pay Rs. 50,000/- to Reeta and bring the amount on the next date. Bharat not only failed to pay the amount and comply with the order passed by this Court, but also did not remain present. Thereafter, bailable warrant in the sum of Rs. 50,000/- came to be issued by this Court against Bharat, which secured Bharat's presence, but sans the amount. That is how the Court was constrained to pass an order of striking of the defence of Bharat for non-compliance of the order of maintenance. However, Mr. Angal, appearing for Indu, was heard at length, and during the course of hearing, it appeared as if he was appearing for Bharat also, and the Court had to remind him that he was representing only Indu and not Bharat. It therefore, cannot be said that the principles of natural justice have been violated. As such, Bharat has proved to be so incorrigible in not complying with any of the order, when it came to paying maintenance to his wife and the minor child, that striking of defence was only a natural corollary.

13. Mr. Grover also took us through the list of properties of Bharat, which is annexed to the proceedings. He also took us through the observations of the Family Court made in the Judgment and Order dated 31st December, 1999, while finally disposing of M. J, Petition No. B-52 of 1992 and M. J. Petition No. B-64 of 1992, so also, the observations made by the Single Judge in his Judgment and Order dated 1st March, 1994 while disposing of First Appeal No. 336 of 1990, Writ Petition No. 5884 of 1991 and Writ Petition No. 2289 of 1993. These observations are to the effect that Bharat is a wealthy businessman. In fact, while confirming the interlocutory order, whereby Family Court had ordered Bharat to pay Rs. 4,000/- per month to Reeta and Rs. 1,500/- per month to child Shikha by way of maintenance, there was a direction by this Court that the quantum of maintenance be re-examined deeply. Accordingly, the Family Court while disposing of M. J. Petitions, ordered Bharat to pay Rs. 6,000/- per month to Reeta for her own maintenance u/s 18 of the Hindu Adoptions and Maintenance Act. 1956, as well as to pay Rs. 3,500/- per month for the maintenance of their daughter Shikha u/s 20 of the Hindu Adoptions and Maintenance Act. 1956, from the date of the order i.e. 31st December, 1999. There is no compliance of this order also. No doubt, Family Court Appeal No. 16 of 2000 filed by Bharat and Family Court Appeal No. 3 of 2000 filed by Reeta, so also, Family Court Appeal No. 15 of 2000 filed by Indu, are pending before this Court, and were heard by this Bench, but there is no stay of the order dated 31st December, 1999, passed by the Family Court and Bharat ought to have complied with the said order,

whereby, he was ordered to pay maintenance of Rs. 6,000/- per month to Reeta and Rs. 3,500/- per month to Shikha. He has also not cleared the arrears of maintenance payable to them. This fact is admitted by Mr. S. G. Deshpande, learned Counsel appearing for Bharat. The sole contention canvassed for the total non-compliance of the orders of maintenance was that his financial position was bad, and therefore, he was unable to comply with the said orders. Having heard Mr. Deshpande and Mr. Grover, and having gone through the entire proceedings, we are unable to agree with the submissions made by Mr. Deshpande. We have therefore struck off Bharat's defence, as he has failed to pay maintenance to Reeta and Shikha as per the order passed by the Family Court. The Contempt Appeal No. 2 of 1999 also will have to be dismissed and the interim stay granted by the Division Bench of this Court at the time of admission will have to be vacated.

14. For the same reasons and in view of the discussion above. Family Court Appeal No. 16 of 2000 filed by Bharat against the Judgment and Order dated 31st December, 1999 also will have to be dismissed.

15. This leaves us to decide Family Court Appeal No. 3 of 2001 filed by Reeta, the two Letters Patent Appeal Nos. 86 of 1994 and 87 of 1994 again filed by Reeta, and Family Court Appeal No. 15 of 2000 filed by Indu.

16. By the impugned Judgment dated 31st December, 1999, Family Court had allowed Reeta's M. J. Petition No. B-52 of 1992 with costs. It gave a declaration which was sought by Reeta that Reeta's marriage with Bharat was valid. As prayed by Reeta, Bharat was also restrained from ousting Reeta from her matrimonial home i.e. 91 -A, Grand Paradi Apartments, 9th floor, August Kranti Marg, Bombay. Bharat was also directed to pay maintenance amount of Rs. 6,000/- per month to Reeta for herself and Rs. 3,500/- per month for the maintenance of Shikha. Reeta also was held to be entitled for permanent custody of daughter Shikha. It also dismissed, by the impugned common Judgment and Order, Indu's M. J. Petition No. B-64 of 1992, in which, Indu had sought a declaration that marriage of Bharat and Reeta be declared as illegal, bad-in-law, and void. Thus, though all these favourable orders were passed, granting Reeta's prayers, still Reeta has preferred Family Court Appeal No. 3 of 2001. She is obviously unhappy with the quantum of maintenance, which is granted to her and to her child Shikha. According to her, considering the affluent financial position of Bharat, she should have been granted more amount. She had asked for security deposit in her name to the tune of Rs. 75,000/- for future maintenance and a car for her use. These prayers were turned down by the Family Court. It is also her grievance that there was no order expressing opinion on the validity of marriage of Indu with Bharat. She is also aggrieved by the fact that there was no order of permanent injunction restraining Bharat, his family members, servants, agents, etc. from transferring, disposing, selling of or creating third party right in the matrimonial house at Grand Paradi or order with respect to arrears of maintenance payable to her. This has led to the filing of

Family Court Appeal No. 3 of 2001 by Reeta.

17. Indu is obviously aggrieved by the impugned Judgment and Order dated 31st December, 1999 because the Family Court dismissed her M. J. Petition No. B-64 of 1992 with costs. All the orders came to be passed in favour of Reeta and her Petition was allowed. Declaration, as sought by Reeta, was given that her marriage with Bharat was valid, and that, she was the lawful wife of Bharat. No finding was given by the Family Court on the issue whether Indu succeeded in proving that her marriage with Bharat solemnised on 26th January, 1981 was legally and validly subsisting. No such finding could be given by the Family Court, inasmuch as, Letters Patent Appeal on this very issue was pending before this Court.

18. Both the Letters Patent Appeals are filed by Reeta against the order passed by the learned Single Judge of this Court dated 1st March, 1994. The question involved in both these Letters Patent Appeals is with respect to legality of marriage of Reeta with Bharat, so also, marriage of Indu with Bharat.

19. Mr. Grover, appearing for Reeta forcefully submitted that as far as status of Reeta, as the wife of Bharat was concerned, the said declaration was rightly given by the Family Court, and that, it has to be upheld in view of the Supreme Court Judgment in Smt. Lila Gupta v. Laxmi Narain. Mr. Grover drew our attention to Section 15 of the Hindu Marriage Act, 1955 and submitted that Reeta's marriage with Bharat was a legal and valid marriage, inasmuch as, it was solemnised after ex parte decree dissolving marriage of Bharat with Indu was passed on 12th September, 1989, and after the prescribed appeal period for challenging the said exports decree was over. He also submitted that the proviso to Section 15 of the Act requiring the divorced parties to wait for one year from the date of decree dissolving the marriage, being deleted by the Marriage Amendment Act, 1976, there was no bar for Bharat to marry Reeta after the appeal period was over. He also submitted that the fact about the ex parte decree being passed by the City Civil Court Judge on 12th September, 1989, became known to Indu because Indu's Advocate applied for certified copy of the same on 29th September, 1989, though application for setting aside the ex-parte decree came to be filed in the Family Court much later. He argued that Bharat's marriage with Reeta was solemnised 54 days after the ex parte decree dissolving Bharat's marriage with Indu was passed. According to him, application for setting aside the ex-parte decree was beyond the prescribed period of time and that, it was also improper for Indu to also file First Appeal in this Court against the said ex parte decree passed against her. He also castigated Bharat's conduct in not revealing the fact of his remarriage with Reeta, while filing affidavit-in-reply to oppose Indu's application for setting aside the ex parte decree dissolving Bharat's marriage with Indu. He submitted that though his client had sort of accepted the fact that Bharat was no more with her, and that, he had reconciled and reunited with Indu, the amount of maintenance was a meagre amount, considering Bharat's financial position. Mr. Grover submitted that

though Reeta had accepted the harsh reality of Bharat no more loving her, she had to maintain herself and the minor child Shikha, whose responsibility Bharat could not abdicate.

20. We have heard Mr. Grover's submissions at length. Since Section 15 of the Hindu Marriage Act, 1955 has much relevance and bearing in deciding this matter, it will be convenient to reproduce the same.

"15. 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 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."

21. In Lila Gupta's case (supra), the effect of marriage contracted in contravention of proviso to Section 15 of the Hindu Marriage Act, 1955 came for consideration. The said proviso which was subsequently deleted by Section 9 of the Marriage Laws (Amendment) Act, 1976, read as follows :

"Provided that, it shall not be lawful for the respective parties to marry again unless at the date of such marriage, at least one year has elapsed from the date of the decree in the Court of the first instance."

22. Thus, the substantive para of Section 15 enables divorced persons to marry again and the proviso to Section 15 (which is now deleted) prescribed a time limit, within which such divorced persons could not contract marriage, and the time prescribed was a period of one year from the date of the decree in the Court of the first instance.

23. In Lila Gupta's case (supra), the facts were as follows : One Rajendra Kumar, whose widow appellant Lila Gupta claimed to be, had contracted marriage with one Sarla Gupta. Both Rajendra Kumar and Sarla Gupta filed suit against each other praying for a decree of divorce. These suits ended in a decree of divorce on April 8, 1963. Soon thereafter, on May 25, 1963, Rajendra Kumar contracted second marriage with appellant Lila Gupta. Unfortunately, Rajendra Kumar expired on May 7, 1965. Disputes then arose in consolidation proceedings between the appellant Lila Gupta, claiming as widow of deceased Rajendra Kumar and Respondents, who were brothers and brother's sons of Rajendra Kumar, about succession to the Bhumidhari rights in respect of certain plots of land enjoyed by Rajendra Kumar in his lifetime, the latter challenging the status of the appellant Lila Gupta to be the widow of Rajendra Kumar, on the ground that her marriage with Rajendra Kumar was void, as it was contracted in violation of the provisions contained in the proviso to Section 15 of the Hindu Marriage Act, 1955. The final authority i.e. Deputy Director of Consolidation upheld the claim of the appellant Lila Gupta. This decision was challenged by the respondents in six Petitions filed under Article 227 of the Constitution in the High Court of Allahabad. The learned Single Judge before whom these petitions came

up for hearing was of the opinion that the marriage of Rajendra Kumar with the appellant Lila Gupta on May 25, 1963, being in contravention of the proviso to Section 15 was null and void. He accordingly allowed the writ petitions and quashed the orders of the Settlement Officer (Consolidation and of the Deputy Director of Consolidations) and restored the order of the Consolidation Officer. The appellant Lila Gupta then preferred six different appeals under the Letters Patent. The Division Bench dismissed these appeals and confirmed the order of the learned Single Judge. The Division Bench also granted certificate under Article 133(1)(c) to the appellant Lila Gupta and that is how the matters landed in the Supreme Court.

24. The short and narrow question going to the root of the matter which was before the Supreme Court in Lila Gupta's case (*supra*) was, whether a marriage contracted in contravention of or violation of the proviso to Section 15 of the Hindu Marriage Act, 1955 was void or merely invalid not affecting the core of marriage and the parties are subject to a binding tie of wedlock flowing from the marriage ?

25. After discussing the Scheme of Hindu Marriage Act, 1955, and more particularly, Sections 5 and 11 of the said Act, this is what the Supreme Court observed :

"A comprehensive review of the relevant provisions of the Act unmistakably manifests the legislative thrust that every marriage solemnised in contravention of one or other condition prescribed for valid marriage is not void. Section 5 prescribes six conditions for valid marriage. Section 11 renders marriage solemnised in contravention of conditions (i), (iv) and (v) of Section 5 only, void. Two incontrovertible propositions emerge from a combined reading of Sections 5 and 11 and other provisions of the Act, that the Act specifies conditions for valid marriage and a marriage contracted in breach of some but not all of them renders the marriage void. The statute thus prescribes conditions for valid marriage and also does not leave it to inference that each one of such conditions is mandatory and a contravention, violation or breach of any one of them would be treated as a breach of a pre-requisite for a valid marriage rendering it void. The law while prescribing conditions for valid marriage simultaneously prescribes that breach of some of the conditions but not all would render the marriage void. Simultaneously, the Act is conspicuously silent on the effect on a marriage solemnised in contravention or breach of the time bound prohibition enacted in Section 15. A further aspect that stares into the face is that while a marriage solemnised in contravention of Clauses (iii), (iv), (v) and (vi) of Section 5 is made penal, a marriage in contravention of the prohibition prescribed by the proviso does not attract any penalty. The Act is suggestively silent on the question as to what is the effect on the marriage contracted by two persons one or both of whom were incapacitated from contracting marriage at the time when it was contracted in view of the fact that a period of one year had not elapsed since the dissolution of their earlier marriage by a decree of divorce granted by

the Court of first instance. Such a marriage is not expressly declared void nor made punishable though marriages in breach of conditions Nos. (1), (iv) and (v) are expressly declared void and marriages in breach of conditions Nos. (iii), (iv), (v) and (vi) of Section 5 are specifically made punishable by Section 18. These express provisions would show that Parliament was aware about treating any specific marriage void and only specific marriages punishable. This express provision prima facie would go a long way to negative any suggestion of a marriage such as in breach of proviso to Section 15 as being void by necessary implication- The net effect of it is that at any rate Parliament did not think fit to treat such marriage void or that it is so opposed to public policy as to make it punishable."

The Supreme Court also expressed doubt as to whether the framers of the law intended that marriage contracted in violation of the provision contained in the proviso to Section 15 to be void or not. It observed that :-

"In the Act under discussion there is a specific provision for treating certain marriages contracted in breach of certain conditions prescribed for valid marriage in the same Act as void and simultaneously no specific provision having been made for treating certain other marriages in breach of certain conditions as void. In this background even though the proviso is couched in prohibitory and negative language, in the absence of an express provision it is not possible to infer nullity in respect of a marriage contracted by a person under incapacity prescribed by the proviso."

Supreme Court therefore expressed doubt when it said that even though the proviso opened with a prohibition, whether it was an absolute prohibition, violation of which would render the Act a nullity. According to the Supreme Court, a person whose marriage was dissolved by a decree of divorce, suffered an incapacity for a period of one year for contracting second marriage, and for such a person, it was not lawful to contract a second marriage within a period of one year from the date of the decree of the Court of first instance. It further observed that a decree of divorce breaks the marriage tie. Incapacity for marriage of such persons whose marriage is dissolved by a decree of divorce for a period of one year was presumably enacted to allay apprehension that divorce was sought only for contracting another marriage or to avoid dispute about the parentage of children because at the time of the divorce the wife may be pregnant. Supreme Court, therefore, again expressed a doubt as to whether this was based on the principle of public policy, and whether such public policy was of paramount consideration as to render the marriage in breach of it void, inasmuch as, it appeared to be purely a regulatory measure for avoiding a possible confusion.

Supreme Court in Lila Gupta's case (supra), also took a note of the fact that by subsequent Marriage Laws (Amendment) Act, 1976, the said proviso to Section 15 of the Act came to be deleted. It therefore observed that if the proviso was so sacrosanct that its violation would render the marriage void, then it was not

possible to appreciate why the Parliament completely dropped it, and this position therefore reinforced the contention that such marriage was not void.

26. In *Chandra Mohini v. Avinash Prasad*, the decree of divorce was granted by the High Court reversing the dismissal of the Petition of the husband by the Trial Court. Soon thereafter, the husband contracted second marriage. Some time thereafter, the wife moved for obtaining special leave to appeal under Article 126 of the Constitution, which was granted. The husband thereafter moved for revoking the leave. While rejecting the petition for revocation of special leave granted to the wife, the Supreme Court observed that :-

"even though it may not have been unlawful for the husband to have married immediately after the High Court's decree or 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 SLP 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."

27. Thus, according to the Supreme Court, as observed in *Lila Gupta's* case (*supra*), the fact that neither spouse after decree of divorce, could remarry until the time for appealing had expired, in no way affects the full operation of the decree. It was a Judgment in rem and unless and until a Court of appeal reversed it, the marriage for all purposes was at an end.

28. The reason for arriving at such a conclusion is given by the Supreme Court in *Lila Gupta's* case (*supra*) as follows :

"..... A decree of divorce breaks the marital tie and the parties forfeit the status of husband and wife in relation to each other. Each one becomes competent to contract another marriage as provided by Section 15. Merely because each one of them is prohibited from contracting a second marriage for a certain period it could not be said that despite there being a decree of divorce for certain purposes the first marriage subsists or is presumed to subsist. Some incident of marriage does survive the decree of divorce; say, liability to pay permanent alimony but on that account it cannot be said that the marriage subsists beyond the date of decree of divorce The dissolution is complete once the decree is made, subject of course, to appeal No incident of such dissolved marriage can bridge and bind the parties whose marriage is dissolved by divorce at a time posterior to the date of decree. An incapacity for second marriage for a certain period does not have effect of treating the former marriage as subsisting. During the period of incapacity the parties cannot be said to be the spouses within the meaning of Clause (i), sub-section (1) of Section 5...."

The Supreme Court also examined Section 57 of the Indian Divorce Act, 1869 which provides for divorce professing Christian religion, which has identical

provision and which has been consistently interpreted to mean that a marriage contracted during the period prescribed in the fifth paragraph of Section 57 after a decree dissolving the marriage would be void. While commenting on Section 57 of the Indian Divorce Act, 1869, the Supreme Court stated as follows :

"...,... But a mere glance at Section 15 of the Act (Hindu Marriage Act, 1955) and Section 57 of the Indian Divorce Act would clearly show that the provisions are not in part materia. Under the Indian Divorce Act a decree nisi has to be passed and unless confirmed by High Court it is not effective and in the proceedings for confirmation, the decree nisi can be questioned. No such requirement is to be found under the Act. Further, u/s 15 the period of one year is to be computed from the date of decree of the Court of first instance which means that a decree of divorce is made by the Court of first instance while u/s 57 of the Indian Divorce Act the period of six months is to be computed from the date of an order of the High Court confirming the decree for dissolution of a marriage made by a District Judge or when an appeal has been preferred in the appellant jurisdiction of the High Court when the appeal is dismissed and the parties even cannot marry if an appeal has been presented to the Supreme Court. u/s 15 if the decree of divorce is granted not by the Court of first instance but by the Appellate Court the proviso would not be attracted. There is thus a material difference in respect of the starting point of the period u/s 57."

29. Reference was also made by Supreme Court in Ma Gupta's case (supra) to similar provisions under the Mohammedan Law. It observed that under the Mohammedan Law, after the divorce, the traditional law did not permit a divorced wife to contract second marriage during the period of Iddat and in the past such marriage was considered void. The marriage was treated void interpreting a certain text of the Hanafi Law. Recent trend of decision quoted in Mulla's Principles of Mohammedan Law, 17th Edition, edited by M. Hidayatullah, former Chief Justice of India, clearly bears out the proposition that under the Mohammedan Law, a marriage of a woman undergoing Iddat is not void but merely irregular. Supreme Court quoted the said passage from Page No. 252, which is given below :

"A marriage with a woman before completion of her iddat is irregular, not void. The Lahore High Court at one time treated such marriages as void Jhandu it. Mst. Hasain Bibi, but in a later decision held that such a marriage is irregular and the children legitimate Muhammed Hayat v. Muhammed Nawaz.

30. As a conclusion, the Supreme Court observed in Lila Gupta's case (supra) that examining the matter from all possible angles and keeping in view the fact that the scheme of the Act provides for treating certain marriages void and simultaneously some marriages which are made punishable yet not void and no consequences having been provided for in respect of the marriage in contravention of the proviso to Section 15, it cannot be said that such marriage would be void. Reaching this conclusion, Supreme Court then held that Lila Gupta was denied the status of the wife of Rajendra Kumar and, therefore, his

widow, and an heir to him on his death on the only ground that her marriage with Rajendra Kumar was void, being in contravention of the proviso to Section 15. It then concluded that, as her marriage, even though in contravention of the provisions of Section 15, was not void, she could not be denied the status of wife, and therefore, the widow of deceased Rajendra Kumar, and in that capacity, as an heir to him, all the appeals filed by Lila Gupta were thus allowed, and the decision of the High Court in Special Appeals was quashed and set aside.

31. In the concurring, but separate Judgment, R. S. Pathak, J. also observed in Lila Gupta's case (supra) that :-

"..... a marriage, although in violation of the statute, is not void because the Legislature has not expressly declared it to be so, and also because the Legislature has made no provision for legitimating the offspring of such a marriage, need to be viewed with caution. These are tests which could equally be invoked to construction of the main provision of Section 15."

32. Mr. Grover, learned Counsel representing Reeta, heavily relying upon Lila Gupta's case (supra), drew the analogy from the facts of that case and comparing them with the facts of the present case at hand, argued that the marriage of Reeta and Bharat took place 54 days after the appeal period was over, and that, during that period, there was no bar or impediment of any sort for Bharat and Reeta to get married. He submitted that the conclusion arrived at by the Family Court in the impugned Judgment dated 31st December, 1999, was therefore correct.

33. Mr. Angal, learned Counsel representing Indu, on the other hand, submitted that it was improper for the Family Court to rely upon the case of Lila Gupta (supra). His argument was that since the First Appeal No. 336 of 1990 challenging the ex parte decree dated 12th September, 1989 passed by City Civil Court Judge was allowed, and since Writ Petition No. 5884 of 1991 filed by Bharat, challenging the setting aside of the ex parte decree by Family Court in Miscellaneous Application No. 2 of 1990 was dismissed, and since M. J. Petition No. B-56 of 1984 filed by Bharat was dismissed as withdrawn, there was nothing before this Court to decide, more so, when Reeta was not a party or even an intervenor in the First Appeal.

34. This contention of Mr. Angal, however, was countered by Mr. Grover, submitting that Reeta was heard in First Appeal filed by Indu, and that, this was with the specific permission of the Court, and that, it was not that she was not allowed to intervene. He argued that this was rightly done in view of the principles of natural justice since Reeta was the affected party, and no order could be passed without hearing her.

35. We are in agreement with the submissions of Mr. Grover. After perusing the Roznama, it is revealed that Reeta's prayer for being heard was specifically granted by the Court. This was a question of status of a person, and judgment pronounced was a judgment in rem.

36. Mr. Angal also submitted that Indu, indeed had two concurrent remedies, one was to file application under Order IX Rule 13 of the CPC to set aside the ex parte decree, dissolving her marriage with Bharat, and that, she also had another concurrent remedy of approaching this Court by filing First Appeal, challenging the very same order of ex parte decree, dissolving her marriage with Bharat. Mr. Angal, relying upon *Arun Pawar v. Laxmi*, also submitted that not only provisions of Order IX Rule 13 of the CPC were applicable to the proceedings under the Hindu Marriage Act, but that, by virtue of Section 21 of the Hindu Marriage Act, Article 123 as well as Section 5 of the Limitation Act, 1963 was applicable to the suits and other proceedings under the Hindu Marriage Act, 1955. Mr. Angal, therefore, submitted that there was nothing wrong when the Family Court condoned the delay in making an application for setting aside the ex parte order dissolving Indu's marriage with Bharat, and entertaining the said application. He also relied upon *Lata v. Vilas*, to substantiate his argument that in an appeal u/s 28 of the Hindu Marriage Act. Section 12(2) of the Limitation Act is applicable and therefore, time required for obtaining copies of the judgment, will have to be excluded for computing the period of limitation for appeal.

37. There is no quarrel with these propositions put forth by Mr. Angal, who is appearing for Indu. This indeed is the legal position. We therefore hold that there was nothing wrong in Indu taking recourse to both the remedies-one by way of making an application under Order IX Rule 13 of the Civil Procedure Code, for setting aside the ex parte decree passed against her, and another remedy by way of filing First Appeal in the High Court against ex parte order passed by the City Civil Court, dissolving her marriage with Bharat.

38. Mr. Grover also made a reference to some other Judgments of the Supreme Court like *"Tejendra Kaur v. Gurmit Singh; Vathsala v. Manoharan*, etc., where the question of nullity of marriage u/s 12 was under consideration. We are not referring to them, as in the present case at hand, we are concerned with the provisions of Section 13, where the marriage is dissolved by a decree of divorce, and we are not concerned with the question of nullity of marriage.

39. Having heard both the Advocates at length and having gone through the entire proceedings and the various Judgments cited by both the sides, we are of the view that the Family Court was right in arriving at the finding that Reeta's marriage with Bharat was a valid marriage. The situation in the present case is more or less similar to the situation in *Lila Gupta's case (supra)*, with the exception that in *Lila Gupta's case (supra)*, the question involved was with respect to rights of inheritance and rights, as a whole of the heir of the deceased Rajendra Kumar. In the present case, however, the question is not with respect to inheritance, as all the parties are very much alive. Since under the Hindu Marriage Act, 1955, monogamy is the rule, it cannot be said that Indu and Reeta both, at the same time, are Bharat's legally wedded wives. It can only be said that keeping in view the provisions of the Hindu Marriage Act, and the peculiar facts and circumstances of the case that Bharat has reconciled with Indu, his first

wife, and the relationship between Bharat and Reeta has hit a rock-bottom, and in fact, Reeta herself had prayed for injunction restraining Bharat from entering her bedroom, which was granted, what is relevant and practical to consider is only the incidence of Bharat's marriage with Reeta, and the aspect of maintenance to be paid to the wife Reeta and their minor child Shikha. Since Bharat has another wife namely. Indu living, Reeta is entitled u/s 18 of the Hindu Adoptions and Maintenance Act, 1956 to live separately from Bharat, and claim maintenance, so also. Bharat is under obligation to maintain his child Shikha. He cannot escape from this liability. The proceedings reveal that he has flouted all the orders of the Court, which were passed from time to time, ordering him to pay maintenance to Reeta and Shikha. He has not complied with several such interlocutory orders, nor has he complied with the final order passed by the Family Court by its impugned Judgment and Order dated 31st December, 1999. The learned Single Judge was right in holding Bharat guilty of contempt and sentencing him to suffer simple imprisonment for three months. We have already given our reasons for vacating the interim stay granted by the Division Bench of this Court, at the time of admission of the said Contempt Petition, upholding the order of the Single Judge. In view of the aforesaid discussion, we pass following order :

Letters Patent Appeal No. 86 of 1994 and Letters Patent Appeal No. 87 of 1994 are hereby dismissed.

In view of the dismissal of Letters Patent Appeal No. 87 of 1994. Civil Application Nos. 5565 of 1997 and 5140 of 1998 in Letters Patent Appeal No. 87 of 1994 do not survive, and the same are accordingly disposed of.

Family Court Appeal No. 16 of 2000 and Family Court Appeal No. 15 of 2000 are hereby dismissed.

Civil Application No. 4277 of 2000 in Contempt Appeal No. 2 of 1999 is allowed in terms of prayer clauses (a) and (b).

Contempt Appeal No. 2 of 1999 is hereby dismissed. Stay granted by this Court stands vacated. Bharat to undergo imprisonment as per the order dated 28th January, 1999.

Family Court Appeal No. 3 of 2000 is allowed to the extent of the claim for maintenance made by Reeta from Bharat.

Bharat to pay the entire amount of arrears of maintenance payable to Reeta and Shikha within a period of six months from today. He will also continue to pay the maintenance amount of Rs. 6,000/- per month to Reeta and Rs. 3,500/- per month to Shikha, as directed by the Family Court, on or before 15th day of every calendar month.

After pronouncement of the Judgment, Mr. S. G. Deshpande, learned Counsel for Bharat Arora, sought stay of the Judgment for eight weeks. His application for stay is rejected.

Issuance of certified copy is expedited.