

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 117 OF 2006

Mangala Bhivaji Lad
also known as Mangala Dhondiba Aher
Aged about 59 years,
Residing at 3/8, Municipal Quarters
78, S.V. Road, Khar (West)
Mumbai-400 052

.....Appellant/
Original Respondent

V E R S U S

Dhondiba Rambhau Aher
Aged about 59 years
Residing at 43/D-1, Niwara
Co-op Hsg.Society, 4 Bungalows
Andheri (West),
Mumbai

.....Respondent/
Original Petitioner

Mr. S.G. Gokhale, adv.for the appellant.

Mr. Chetan Akerkar, adv.for the respondent.

CORAM :- A.P. DESHPANDE, &

SMT. R.P. SONDURBALDOTA, JJ.

JUDGMENT RESERVED ON: 29th March, 2010.

JUDGMENT PRONOUNCED ON: 3rd May, 2010.

JUDGMENT (PER : SMT. R.P. SONDURBALDOTA, J) :

1. The vexed question of law that arises for consideration in this appeal relates to right to claim maintenance of a Hindu woman who is married after coming into force of the Hindu Marriage Act, 1955 to a Hindu male having a legally wedded wife.

2. The brief factual background against which the question is required to be considered is as follows :

. In June, 1983 the appellant married the respondent at which time he already had a lawfully wedded wife living. The appellant and the respondent stayed together for a period of 17 years before they separated on 21st December, 1999. Then, the respondent filed M.J. Petition No. B-42 of 2000 in the Family Court, Mumbai for a declaration that his marriage with the appellant is null and void and for an injunction to restrain the appellant from representing herself as his wife and from visiting his place of residence, as also his work place. The appellant resisted the petition claiming ignorance of the earlier marriage of the respondent. She contended that since the marriage ceremony was duly

performed with her and the marriage was registered with the Registrar of Marriage, she is the legally wedded wife. She also alleged that she was deceived into the marriage by the respondent who had declared himself as a divorcee at the time of registration of the marriage. Along with the written statement, the appellant filed counterclaim praying for provision of separate residence and permanent alimony. She also sought permanent injunction to restrain the respondent from disposing off certain properties and creating third party rights over the same.

3. The Family Court by its judgment and decree dated 3rd August, 2006 partly allowed the petition of the respondent and rejected the counterclaim of the appellant. The Family Court found that marriage of the appellant with the respondent had taken place during the subsistence of the respondent's first marriage and consequently is void. However, it refused the declaration as sought by the respondent that the marriage is void in view of Section 23(a) and (d) of the Hindu Marriage Act 1955, on the ground that by filing the petition for nullity of the marriage, the

respondent wanted to take advantage of his own wrong. Also there was unnecessary, unreasonable and improper delay in instituting the petition. The Family Court, however, restrained the appellant from visiting the respondent's place of residence and place of his work.

4. While considering the claim of the appellant for maintenance, though the application filed therefor was under Section 18 of the Hindu Adoption and Maintenance Act 1956, the question framed by the Family court for consideration was "Whether the second wife can legally claim any maintenance amount under Section 25 of the Hindu Marriage Act, 1955 or under Section 18 of the Hindu Adoption and Maintenance Act. " It then noted that the appellant was unable to cite any authority to justify the claim of second wife and answered the question without any further discussion stating that "the legal position is almost settled that since the second marriage during subsistence of first one is void, the second wife does not get any rights as regards the maintenance. As a result, I hold that the respondent being the second wife of the petitioner is not

entitled to any maintenance allowance.” Thereafter, Family Court considered the appellant’s claim on merit also and rejected the same holding that she has sufficient income for her own maintenance.

5. When the present appeal was admitted on 12th December 2006, its admission was limited to the claim of the appellant for maintenance and to the order restraining the appellant from visiting the respondent’s place of residence and work. The submissions on the appeal are further restricted to the claim of maintenance alone. No submissions have been advanced by either side on the order restraining the appellant from visiting the place of residence and work of the respondent.

6. Mr. Gokhale, the learned counsel for the appellant has made three-fold submissions in order to assail the impugned order. He has firstly contended that since the Family court declined to declare the marriage of the appellant and the respondent as null and void, the status of the appellant as wife of the respondent cannot be said to be affected. In that circumstance, according to him there can be no legal

impediment in the appellant claiming maintenance from the respondent. Secondly, he submits that the term “wife” not being defined anywhere, there cannot be a restrictive meaning attached thereto, thereby depriving the appellant of a right to claim maintenance, the provision for which is enacted essentially for social justice and to protect women and children. His third submission is based upon Section 23 of the Hindu Marriage Act. According to him, the narrow interpretation of the provision of maintenance under Section 25 read with Section 24 of the Act, may render Section 23 ineffective.

7. The first contention advanced by Mr. Gokhale as regards the status of the appellant need not detain us for long as it is inconceivable in view of clear and specific provisions of Section 5 and 11 of the Hindu Marriage Act. Section 5 of the Act prescribes conditions for a Hindu marriage. The first condition under clause (i) is that neither party should have a spouse living at the time of the marriage. Section 11 of the Hindu Marriage Act declares any marriage solemnized after the commencement of the Act as

null and void if it contravenes any one of the conditions specified in Clauses (i), (iv) and (v) of Section 5. Section 11 is seen to consist of two parts. The first part declares marriages contravening the conditions specified in Clauses (i), (iv) and (v) of Section 5 as null and void and the second part provides that declaration of nullity of such marriage may be given on a petition presented by either party to the marriage. Therefore, on plain reading of Section 11 read with Section 5 of the Act, it is abundantly clear that a marriage contravening any of the three conditions mentioned above becomes ipso jure null and void irrespective of declaration to that effect by Court of Law. In our view, we are supported by the decision of the Hon'ble Supreme Court in the case of Smt. Yamunabai Anantrao Adhav V/S. Anantrao Shivram Adhav and another reported in AIR 1988 S.C. page 644 wherein it is held :-

"The marriages covered by S.11 are void ipso jure, that is, void from the very inception, and have to be ignored as not existing in law at all if and when such a question arises. Although the section permits

a formal declaration to be made on the presentation of a petition, it is not essential to obtain in advance such a formal declaration from a court in a proceeding specifically commenced from the purpose."

In the circumstances, we find no substance in the submission of Mr. Gokhale that because the Family Court declined to grant declaration to the respondent that the marriage is null and void, the appellant by default holds the status of legally wedded wife.

8. The different provisions of law made to enable a woman to claim maintenance are Section 25 read with Section 24 of the Hindu Marriage Act, Section 18 of the Hindu Adoption and Maintenance Act and Section 125 Criminal Procedure Code. Unlike the earlier two provisions, the provision under the Criminal Procedure Code is wider and available to any women irrespective of her religion. The question of right of a woman whose marriage is null and void (hereinafter referred to as "the second wife" for the sake of convenience) to seek maintenance under Section 125 Criminal Procedure Code as also under Section 25 of Hindu Marriage Act has already been settled by

pronouncements of the Supreme Court which will be referred to presently. However, no direct decision of the Supreme Court on the right under Section 18 of Hindu Adoption and Maintenance Act was brought to our notice by either side.

9. **Section 125 Criminal Procedure Code.**

The two decisions of the Apex Court under this provision are :

1. ***Yamunabai's case*** (supra).
2. ***Savitaben Sonabhai Bhatia V/S. State of Gujarat & Ors. reported in (2005) 3 S.C.C. page 636.***

In *Yamunabai's case*, after holding that the marriages covered by Section 11 are void ipso jure, the Apex Court considered the meaning to be given to the expression "wife" used in Section 125 of Criminal Procedure Code. It held that the expression must be given the meaning in which it is understood in law applicable to the parties. It was then sought to be argued on behalf of the appellant before the Apex Court that the personal law of the parties to a proceeding under Section 125 of the Code should be completely excluded from consideration. While rejecting the argument, the Apex Court observed :

“The attempt to exclude altogether the personal law applicable to the parties from consideration also has to be repelled. The section has been enacted in the interest of a wife, and one who intends to take benefit under sub-section (1)(a) has to establish the necessary condition, namely, that she is the wife of the person concerned. This issue can be decided only by a reference to the law applicable to the parties. It is only where an applicant establishes her status or relationship with reference to the personal law that an application for maintenance can be maintained.”

With the above observations, the Apex Court rejected the appeal holding that the marriage of a woman in accordance with the Hindu rites with a man having a living spouse is a complete nullity in the eye of law and she is not entitled to the benefit of Section 125 of the Code.

10. In it's subsequent decision in *Savitaben's case* (supra) the Apex Court followed its decision in *Yamunabai's case* in every respect. It was additionally sought to be argued in that case that a rigid interpretation given to the word “wife” goes against the

legislative intent of protecting destitute and harassed women and also such interpretation operates harshly against the woman who unwittingly gets into relationship with a married man. The Apex Court dealt with the argument with following observations :

“This may be an inadequacy in law, which only the legislature can undo. But as the position in law stands presently there is no escape from the conclusion that the expression ‘wife’ as per Section 125 of the Code refers to only legally married wife.”

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“It may be noted at this juncture that the legislature considered it necessary to include within the scope of the provision an illegitimate child but it has not done so with respect to woman not lawfully married. However, desirable it may be, as contended by learned counsel for the appellant to take note of the plight of the unfortunate woman, the legislative intent being clearly reflected in Section 125 of the Code, there is no scope for enlarging its scope by introducing any artificial definition to include woman not lawfully married in the expression ‘wife’.

11. Section 25 read with Section 24 of Hindu Marriage Act :

The legal position as regards right of the second wife to claim maintenance under Section 25 of The Hindu Marriage Act, is crystallized in the decision of the Apex Court in **Rameshchandra Daga V/S. Rameshwari Daga reported in (2005) 2 S.C.C. page 33.** In that case, the second wife had filed proceedings for a decree of judicial separation and maintenance for herself and her daughter. The husband filed a counter petition seeking declaration of his marriage to the appellant as a nullity on the ground that on the date of the marriage with the appellant, her marriage with the previous husband had not been dissolved by any court in accordance with the provisions of the Act. The Family Court had allowed the petition of the wife and granted in her favour a decree of judicial separation and maintenance and dismissed the counter petition of the husband. The husband went in appeal to the High Court and the wife preferred a cross-objection. The High Court held that the first marriage of the wife with her previous husband having not been dissolved by any decree of the court, her second marriage was in contravention of Section 5(1) of the

Hindu Marriage Act and had to be declared as a nullity under Section 11 of the Act. On the above finding, the High Court granted decree of declaration of marriage as nullity in favour of the husband and set aside the decree of judicial separation, but, maintained the decree granting maintenance to the wife and her daughter. In the challenge to the order of maintenance before the Apex Court, it was contended that where a marriage is declared to be null and void by grant of decree, no order awarding permanent alimony or maintenance can be made in favour of the unsuccessful party under Section 25 of the Act. While considering the contention, the Apex Court held :

“We have critically examined the provisions of Section 25 in the light of conflicting decisions of the High Court cited before us. In our considered opinion, as has been held by this Court in Chand Dhawan’s case (supra), the expression used in the opening part of Section 25 enabling the Court exercising jurisdiction under the Act’ ‘at the time of passing any decree or at any time subsequent thereto’ to grant alimony or maintenance cannot be restricted only to, as contended, decree of judicial

separation under Section 10 or divorce under Section 13. When the legislature has used such wide expression as 'at the time of passing of any decree,' it encompasses within the expression all kinds of decrees such as restitution of conjugal rights under Section 9, judicial separation under Section 10, declaring marriage as null and void under Section 11, annulment of marriage as voidable under Section 12 and Divorce under Section 13."

12. It was then argued that extending the benefit of Section 25 to a second wife would defeat the object and purpose of Section 11 to ban and discourage bigamous marriages. The Apex Court rejected the argument observing :

"20. It is well known and recognized legal position that customary Hindu Law like Mohammedan Law permitted bigamous marriages which were prevalent in all Hindu families and more so in royal Hindu families. It is only after the Hindu Law was codified by enactments including the present Act that bar against bigamous marriages was created by Section 5(i) of the Act. Keeping into

consideration the present state of the statutory Hindu Law, a bigamous marriage may be declared illegal being in contravention of the provisions of the Act but it cannot be said to be immoral so as to deny even the right of alimony or maintenance to a spouse financially weak and economically dependant. It is with the purpose of not rendering a financially dependant spouse destitute that Section 25 enables the court to award maintenance at the time of passing any type of decree resulting in breach in a marriage relationship.”

“21. Section 25 is an enabling provision. It empowers the Court in a matrimonial case to consider facts and circumstances of the spouse applying and decide whether or not to grant permanent alimony or maintenance.”

On clarifying the position in law in above terms, the Apex Court confirmed the order of grant of maintenance to the second wife passed at the time of decree under Section 11 of the Hindu Marriage Act.

13. Since while deciding *Daga's case*, the Apex Court has extensively relied upon it's decision in *Chand Dhawan V/S.*

Jawaharlal Dhawan reported in (1993) S.C. page 406, we consider it appropriate to refer to that decision at this place so as to complete the discussion on the subject. *Chand Dhawan's case* arose of a petition filed by wife simplicitor for grant of maintenance under Section 25 of The Hindu Marriage Act. In the appeal arising out of the said proceedings, the question that fell for consideration of the Apex Court was whether payment of alimony is admissible without the relationship between the spouses being terminated. The Apex Court while interpreting Section 25 held that Section 25 refers to any decree provided for under Sections 9 to 14 of the Hindu Marriage Act affecting or disrupting the marital status but does not include any order dismissing the petition under any of those sections thereby sustaining marital status. Hence, in the case of dismissal of the petition under any of the provisions under Sections 9 to 14, no alimony can be granted to the wife petitioning under Section 25. It has further observed that, however, without affectation or disruption to the marital status, a wife can claim maintenance under Section 18(1) of the Hindu

Adoption and Maintenance Act or under Section 125 Criminal Procedure Code, whichever applicable.

14. Section 18 of The Hindu Adoption and Maintenance

Act :

The last provision available for maintenance is Section 18 of The Hindu Adoption and Maintenance Act. The relevant portion of Section 18 reads as follows :-

“18. Maintenance of wife

(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance -

(a) to (c).....

(d) If he has any other wife living ;

(e) If he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere.”

15. There are two diametrically opposite decisions of two different High Courts on the question of right of the second

wife to claim maintenance under this provision that are relied upon by the parties. Mr. Gokhale relies upon the decision of the Delhi High Court in the case of Smt. Narinder Pal Kaur Chawla V/S. Manjit Singh Chawla reported in AIR 2008 Delhi 7 whereas Mr. Akerkar, the learned counsel for the respondent relies upon the decision of Full Bench of Andhra Pradesh High Court in the case of Abbayolla M. Subba Reddy V/S. Padmamma, reported in AIR 1999 Andhra Pradesh 19. A glance at the decisions would show that in both the matters the arguments advanced on behalf of the “second wife” before the two courts are almost same. The same arguments have also been advanced before us. They can be enumerated as follows :

- (i). The Hindu Adoption and Maintenance Act does not define expression “Hindu wife”. As section 18 of the Act confers statutory right of maintenance on every wife, there is no valid reason to restrict the application of such a wife to a legally wedded wife.
- (ii). Section 18(2)(d) says that a “Hindu wife” shall be

entitled to live separately from her husband without forfeiting her claim for maintenance if he has any other wife living. The provision will be applicable to a Hindu wife whether married before or after the commencement of the Act, as long as the husband has another wife living.

(iii). The Maintenance Act is a piece of beneficial and social legislation intended for the benefit of women and children and must be construed liberally. Therefore, even if the marriage is void ab-initio the second wife is entitled for maintenance. .

(iv). Section 25 of the Hindu Marriage Act confers jurisdiction on the court to grant permanent alimony and maintenance to a wife or a husband at the time of passing any decree under the Act and that even a woman whose marriage is declared to be null and void under Section 11 of the Act is entitled to get alimony and maintenance. Therefore, it has to be inferred that the legislature intended to confer statutory right of maintenance even in cases where her marriage contravenes Section 5 of the Act and hence is null and void.

16. Full Bench of Andhra Pradesh High Court rejected all the above arguments to hold that the second wife is not entitled to maintenance under Section 18 of the Hindu Adoptions and Maintenance Act. Taking support from *Yamunabai's case* (supra) it held that marriage in contravention of Section 5(i) of the Hindu Marriage Act is void ab-initio. The personal obligation of a Hindu husband to maintain his wife and the right of a Hindu wife for maintenance are incidents of the status of matrimony. Therefore, unless the marriage is valid Hindu wife cannot claim maintenance under Section 18 of the Act. The expression "any other wife" in Clause (d) of Section 18(2) means any other legally wedded wife i.e. where both the marriages had taken place prior to the Hindu Marriage Act coming into operation.

17. As regards the contention of the Maintenance Act being a piece of beneficial legislation, Andhra Pradesh High Court was of the opinion that the legislation cannot be construed as conferring maintenance rights on a woman, whose marriage is void, under the Hindu Marriage Act.

While a legislative enactment may be liberally construed, the liberality cannot over-step the legislative limits of interpretation putting into the legislation something which is not there. If it is felt that a particular enactment causes hardship and inconvenience, it is for the legislature to redress it, but it is not for the court to ignore the legislative injunction. As far as Section 25 of Hindu Marriage Act is concerned, Andhra Pradesh High Court held that for a Hindu wife or husband to make claim for maintenance under the provision, there must be a matrimonial petition filed under the Hindu Marriage Act and then on such a petition a decree must be passed by the Court concerning the marital status of the wife or husband. Thus the whole exercise is within the gamut of a broken marriage. But where the question of nullity is in issue and is contentious, the court had to proceed on the assumption until the contrary is proved that the applicant is the wife. It is in that sense, Section 25 should be appreciated. Both the statutes i.e the Hindu Marriage Act and Hindu Adoption and Maintenance Act are codified laws on the respective subjects and by

liberality of interpretation, inter-changeability cannot be permitted so as to destroy the distinction on the subject of maintenance.

18. Division Bench of Delhi High Court has taken a different view on the question and granted maintenance to the second wife on an application filed under Section 18.

According to Delhi High Court, a Hindu husband is estopped from challenging validity of the second marriage in view of the wrong committed by him in not disclosing to the second wife the factum of his first marriage, otherwise it would amount to giving premium to the husband for defrauding the second wife. It was of the opinion that the legislature never intended that a woman who is in the position of a second wife, be not treated as the "wife" atleast for the purposes of Section 18 of the Act and be deprived of her right to seek maintenance. The Delhi High Court drew distinction between the claim of maintenance under Section 125 CrPC and Section 18 of the Act in order to distinguish the decision of the Apex Court in the case of *Savitaben*.

19. As regards Section 18(2)(d), the interpretation placed by

the Delhi High Court thereupon, was that in the absence of definition of expression "Hindu wife", the same must be interpreted in the spirit in which it appears in Section 18 of the Act without taking any external aid as Section 4 of the Act gives an overriding effect to it. It then observed as follows :

"This Act was brought into force in the year 1956. As on that date Hindu Marriage Act, 1955 was already in force, which contains provision like Section 5 regarding void marriages. If "second wife", though her marriage is void under the Hindu Marriage Act, was to be denied maintenance, then the legislature would not have included provision like clause (d) in sub-section (2) of Section 18 of the Act or would have clarified that this clause was added only to take care of those second marriages performed before the Hindu Marriage Act, 1955 was enacted when polygamy was permissible for male Hindus."

The Delhi High Court discussed use of expression "concubine" in Clause (e) of sub-section (2) of Section 18 of the Act to observe that the legislature has carved out a distinction between "second

wife” and “concubine” and that the expression “Hindu wife” and “wife” are definitely to be placed on a higher pedestal than “concubine”.

20. Finally the Delhi High Court felt that when Law’s terms are inadequate and lead to loose ends, the court can rely on it’s inherent powers to do justice. It observes at para-40 that :

“Strictly, the statutory entitlement of the Court may not apply but having the recognised right and necessity to enforce it, the Court can, in exercise of its inherent powers reach out justice by giving remedial and such salutary reliefs. Justice after all is another name of fairness. It cannot be blind to the facts in a given case and should reach out in its mercy those results which would be necessary to avoid ruinous consequences like economic or moral destitution. Ultimately, having based the relief on Sec. 151 of the C. P. C. with the aid of inherent powers and drawing upon the principles underlying Sec. 25 of the Hindu Marriage Act, it is implicit that before maintenance is granted, the need to grant such must exist as well as the grantee must fulfill the ordinary conditions like that of chastity, not being married to any other person and further of not

being in a position to maintain herself.”

(Emphasis supplied)

It is thus seen that after the extensive discussion on the statutory provisions, the Delhi High Court founded its order not on the provision of Section 18 of the Hindu Adoption and Maintenance Act, but, on the inherent powers of the Court under Section 151 CPC. With respect we do not agree with such a course of action because it is well established that the inherent powers are required to be exercised by the court only in the absence of statutory provisions and not to circumvent a statutory provision. Besides, inherent power of Section 151 CPC is only a source of power to the court to make such order as may be necessary for the ends of justice or to prevent abuse of the process of the court. It cannot be a source of right to claim maintenance. In the circumstance, in our opinion, the decision of the Delhi High Court does not really help the appellant in her contention that the second wife is entitled to claim maintenance under Section 18.

21. In any case, we are unable to persuade ourselves to agree with the discussion on the position in law on the question contained in the Delhi High Court decision though

one may want to agree with the sentiments expressed therein on the conduct of the husband in entering into the second marriage during the subsistence of the first marriage by keeping the second wife in dark about the first marriage. It must be clarified at this stage that in the case on hand, there is a finding of fact of the Family Court supported by the evidence on record that the appellant married the respondent with full knowledge that he was already married and that his first wife is living. In the circumstances, the appellant cannot lay any claim to sympathy on that count. The decision of the Andhra Pradesh High Court on the other hand, in our considered opinion, espouses the correct position in law on the subject.

22. We have already seen that it is well settled position in law that a marriage contravening Section 5(i) of the Hindu Marriage Act is void ipso jure and the woman entering into such a marriage is not "wife" within the meaning of either the Hindu Marriage Act or Section 125 Criminal Procedure Code. The expression "wife" used in both the statutes means only a legally wedded wife. The Hindu Adoption and

Maintenance Act cannot be treated differently for the meaning to the expression “wife” used therein. The expression must be given the meaning in which it is understood in the law applicable to the parties. Since the institution of marriage and the very relationship of husband and wife originates from the personal law applicable to the parties, there can be no escape from reference to the personal law while understanding the expressions “husband” and “wife” used in different statutes. As far as Hindus are concerned, the law relating to marriage amongst Hindus is codified by Hindu Marriage Act and therefore unless the marriage is valid under the provisions of the Hindu Marriage Act the parties entering into such a marriage cannot describe themselves as “husband” and “wife” for the purposes of application of different statutes or for deriving the benefits available under different statutes.

23. As regards the argument based on Section 18(2)(d) of Hindu Adoption and Maintenance Act is concerned, we are inclined to agree with the view expressed by the Andhra Pradesh High Court, which has held that the ground laid

down under the provision can obviously exist only in case of marriages solemnized before the Hindu Marriage Act came into operation. Had the Hindu Marriage Act not laid down monogamy as a rule of law and that Hindu husband cannot marry another wife after the commencement of that Act, the Clause (d) enabling a wife to be entitled for separate residence without forfeiting her claim to maintenance if her husband has any other wife living, could not have been included under Section 18. Further, a bigamous marriage contracted after coming into force of the Hindu Marriage Act being null and void, question of having another wife cannot arise after the Hindu Marriage Act came into operation. Therefore, it can be applicable only in cases where a husband has entered into two marriages prior to coming into operation of the Hindu Marriage Act.

24. Mr. Gokhale, then sought to argue that if the expression "wife" is to mean only legally wedded wife, it would render Section 23 of the Hindu Marriage Act ineffective. According to him, the interpretation would take away the discretion provided to the court under Section 23

to grant reliefs under the Hindu Marriage Act. We have already seen above that the application filed by the appellant herein before the Family Court was under Section 18 of Hindu Adoption and Maintenance Act and not under Section 25 of the Hindu Marriage Act. Further, the position as regards the meaning to be given to the expression "wife" has already been settled by the pronouncement of the decision of the Apex Court in *Daga's case*. In that circumstance, there is no question of this Court considering the impact of the meaning upon Section 23.

25. It has next been argued by Mr. Gokhale, that in view of Section 4 of the Hindu Adoption and Maintenance Act, 1956 giving an overriding effect to the Act, the provision of Section 5 read with Section 11 of the Hindu Marriage Act cannot have any bearing upon any matter for which provision is made under this Act. The argument probably would have been valid, had the Hindu Adoption and Maintenance Act, 1957 provided for a specific definition of the expression "Hindu wife" and which definition was in some way inconsistent with the provisions of the Hindu

Marriage Act. That being not the position, effect of Section 4 cannot be pressed in service.

26. Lastly, Mr. Gokhale refers to two decision of co-ordinate Benches of our court in the case of **Prabhubhai Ranchhodbhai Tailor V/S. Mrs. Bhartiben Prabhubhai Tailor reported in 2004 (3) Mh.L.J. page 487** and in the case of **Smt. Reeta Bharat Arora V/S. Bharat Yasodanandan Arora @ Dhingra & Ors. reported in I (2002) DMC 136 (DB)**, wherein this court granted application of second wife for maintenance. He submits that there being earlier judgments of co-ordinate Benches holding a particular view, that view will have a binding effect on the later Bench of co-ordinate jurisdiction and the Apex Court in its decision in the case of **State of Bihar V/S. Kalika Kuer @ Kalika Singh and Ors. reported in AIR 2003 S.C. 2443** has disapproved the later Bench ignoring the decision on the ground of it being per-incuriam. He submits that in such a situation, there are only two ways of resolving the matter, either to follow the earlier decision or refer the matter to larger Bench to examine the issue, in case, it is felt that

earlier decision is not correct on merits.

27. The first decision cited of *Prabhubhai Tailor's case* (supra) is completely different on facts. In that case, the application for maintenance filed under Section 25 of the Hindu Marriage Act was for consideration of the Court. Although on the date of the second marriage, the first marriage of the husband was subsisting, within two years thereafter, the first marriage had come to an end by way of divorce. In that circumstance, it was held that even though the second marriage of the husband during the subsistence of the first marriage was null and void, on dissolution of the first marriage, if the parties to the second marriage continued to live together as husband and wife, there was no impediment in conferring the status of "wife" to the second wife. This would mean that the second wife had assumed the status of legally wedded wife on the date she applied for maintenance. Similarly, in the second decision cited in *Reeta Arora's case* (supra) also, the Family Court had held that Reeta's marriage with her husband which was his second marriage, in the facts of that case, was a valid

marriage and as such Reeta was treated as “wife” meaning legally wedded wife for her application under Section 18 of the Hindu Adoption and Maintenance Act. Thus the orders granting maintenance in the two cases had been passed in the face of peculiar facts and circumstances of the respective cases. There is no ratio laid down in either of the cases that an application for maintenance filed by the second wife under Section 18 of the Hindu Adoption and Maintenance Act, is maintainable.

28. We therefore fully agree with the view expressed by the Andhra Pradesh High Court that the expression “Hindu wife” used in Section 18 of the Hindu Adoption and Maintenance Act, means legally wedded Hindu wife and no less. The appellant not being the legally wedded wife of the respondent cannot resort to Section 18 of the Hindu Adoption and Maintenance Act to claim maintenance. We may also mention here that it has been the observation of the Family Court in the impugned judgment and order that the appellant has sufficient source of livelihood consisting of service pension, the retirement dues as also her income from

playing roles in TV serials. In the above circumstances, we
dismiss the appeal with costs.

[SMT. R.P. SONDURBALDOTA, J]

[A.P. DESHPANDE, J]