

## REMARRIAGE AFTER A DECREE OF NULLITY

A VERY important question, on which there seems to be conflict of judicial opinion, has been occupying the attention of Indian courts for some time. The question concerns the period within which parties whose marriage has been nullified by a decree of the court under the Hindu Marriage Act 1955 can remarry. There is a difference of opinion amongst the High Courts on the subject. One shade of opinion takes the view that after a decree of nullity is passed, there is no restriction as to remarriage. Another shade of view is to the effect that the parties cannot remarry while proceedings to set aside the original decree are pending. To the first group belong rulings of the Madhya Pradesh and Punjab and Haryana High Courts.<sup>1</sup> A recent Bombay ruling to be noticed presently also falls in this category. To the second group belongs a Madras decision.<sup>2</sup>

The difficulty has arisen because the Act does not contain any specific provision prohibiting remarriage after a decree of nullity. Its section 15, which is applicable to divorce, no doubt prohibits remarriage during the period allowed for appeal against the decree of divorce. It provides that it shall be lawful for either party to marry again (*after divorce*) in the following circumstances : *first*, where there is no right of appeal against the decree of divorce; *second*, if there is a right of appeal, then the time for filing the appeal has expired without any appeal having been presented; and *third*, if there is a right of appeal and an appeal has been presented, then, on dismissal of the appeal. Clearly enough, section 15 does not create any express bar as such to the contracting of the marriage afresh after the decree of divorce is passed, but any such marriage would not be lawful, unless it took place after one of the circumstances mentioned above. The Supreme Court, in *Lila Gupta v. Laxmi Narain*,<sup>3</sup> has held that the marriage contracted in contravention of, or violation of, the provisions of the section is not void. It does not apply to a decree of nullity of marriage.

In *Lata v. Vilas Bhalchandra Udhoji*,<sup>4</sup> the Bombay High Court has taken the view that there is no bar to remarriage after a decree of nullity. The position is highly anomalous. If a decree of nullity of marriage is challenged, and either party has remarried during the pendency of the appeal, the appeal will become infructuous, as it will be argued that the setting aside of the decree will be of no consequence, one party having

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1. *Mohanmurari v. Kusumkumari*, A.I.R. 1965 M.P. 194; *Pramod Sharma v. Radha*, A.I.R. 1976 P. & H. 355.

2. *Vathsalu v. Manoharan*, A.I.R. 1969 Mad. 405.

3. A.I.R. 1978 S.C. 1351.

4. (1987) 6 Ind. Jud. Rep. (Bom.) 225.

already remarried. It is suggested that the provisions of section 15 should be made applicable to a decree of nullity of marriage also—at least to a decree annulling a voidable marriage.

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