



**NC: 2026:KHC-D:9731**  
**WP No. 107250 of 2025**

**DATED THIS THE 15<sup>TH</sup> DAY OF JULY, 2026**

**THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM**

**WRIT PETITION NO. 107250 OF 2025 (GM-CPC)**

**BETWEEN:**

[illegible]

... PETITIONER

(BY SRI CHINMAY G. BHAT, ADVOCATE)

**AND:**

1. [REDACTED]

\_\_\_\_\_

\_\_\_\_\_

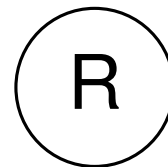
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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| Response                           | Percentage |
|------------------------------------|------------|
| Current government is responsible  | 45%        |
| Previous government is responsible | 35%        |
| Economy is the problem             | 15%        |
| Crisis is due to external factors  | 5%         |

\_\_\_\_\_

\_\_\_\_\_

[REDACTED]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
[Redacted Signature]

\_\_\_\_\_

| Age Group | Should Take Action (%) | Should Not Take Action (%) |
|-----------|------------------------|----------------------------|
| 18-29     | 85                     | 15                         |
| 30-49     | 85                     | 15                         |
| 50-69     | 85                     | 15                         |
| 70+       | 85                     | 15                         |
| Total     | 85                     | 15                         |

[REDACTED]

[REDACTED]  
[REDACTED]  
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[REDACTED]  
[REDACTED]

[illegible]

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[REDACTED]  
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THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER PASSED ON I.A. NO. 50 IN O.S. NO. 246/2012 PASSED BY THE LEARNED PRINCIPAL SENIOR CIVIL JUDGE, BALLARI DATED 18.08.2025 VIDE ANNEXURE-E TO THE WRIT PETITION AND CONSEQUENTIALLY ALLOW I.A. NO. 50 IN SO FAR IT PERTAINS TO THE PETITIONER. VIDE ANNEXURE-B1.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

**ORAL ORDER**

(PER: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM)

The Captioned petition is filed calling in question the order dated 18.08.2025 passed on I.A. No.50 in O.S. No.246/2012, whereby the Trial Court has partly allowed the application by permitting only proposed defendant No.2(f), namely the daughter of deceased defendant No.2, to come on record while rejecting the prayer insofar as the petitioner is concerned.

2. The facts leading to the present petition are that O.S. No.246/2012 is a suit instituted by the brother of defendant No.2 seeking partition and separate possession of the suit schedule properties. During the pendency of the suit, defendant No.2 died on 14.03.2024.



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3. The petitioner claims that she is the wife of deceased defendant No.2 and that proposed defendant No.2(f) is the daughter born through their wedlock. According to the petitioner, her marriage with deceased defendant No.2 was solemnized on 24.04.2008 under the provisions of the Special Marriage Act, 1954 (for short 'the Act').

4. It is the specific grievance of the petitioner that upon the death of defendant No.2, she was neither informed about the pendency of the proceedings nor was she brought on record as one of the legal representatives. Instead, defendant Nos.2(a) to 2(d), claiming to be the legal representatives of the deceased, were impleaded.

5. On coming to know of the pendency of the proceedings, the petitioner filed I.A. Nos.49 and 50 seeking to implead herself and her daughter as the legal representatives of deceased defendant No.2. The said applications were initially allowed by order dated 11.09.2024.

6. The aforesaid order was challenged before this Court in W.P. No.105700/2024. This Court set aside the order and



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remitted the matter to the Trial Court with a direction to hold an enquiry regarding the status of the applicants before deciding the impleading applications.

7. Pursuant to the remand, the Trial Court conducted an enquiry and, by the impugned order, came to the conclusion that the marriage of the petitioner with deceased defendant No.2 was void ab initio as the first marriage of defendant No.2 with defendant No.2(a) was subsisting on the date of the alleged marriage. Consequently, the Trial Court rejected the application insofar as the petitioner was concerned but permitted the daughter born from the said relationship to be brought on record.

8. Aggrieved by the rejection of her impleading application, the present writ petition is filed.

9. Learned counsel appearing for the petitioner contended that the petitioner had contracted marriage with deceased defendant No.2 under the Act and, therefore, she is entitled to represent his estate and contest the proceedings. It is argued that the Trial Court has erroneously adjudicated upon



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the validity of the marriage at the stage of impleadment and has illegally denied her an opportunity to participate in the proceedings.

10. Per contra, learned counsel appearing for the contesting respondents supported the impugned order and contended that the petitioner herself admits that she is the second wife of deceased defendant No.2. Since the first marriage admittedly subsisted, the alleged marriage performed under the Act is void in view of Section 4 of the Act. It is therefore submitted that no legal status as wife accrues to the petitioner and consequently she cannot claim to be a legal representative entitled to prosecute or defend the proceedings.

11. The only question that arises for consideration is:

*"Whether the Trial Court committed any jurisdictional error in rejecting the petitioner's application seeking impleadment as the legal representative of deceased defendant No.2 while permitting the daughter born from the said relationship to be brought on record?"*



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WP No. 107250 of 2025****Findings on point for consideration:**

12. Before advertizing to the rival submissions, it is necessary to examine Section 4(a) of the Act, which reads thus:

*"Section 4. Conditions relating to solemnization of special marriages.—Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:*

*(a) neither party has a spouse living;"*

*(emphasis supplied)*

13. The statutory mandate is clear and unambiguous. One of the essential conditions for a valid marriage under the Act is that neither party should have a spouse living on the date of the marriage. The requirement is mandatory and admits of no exception.



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14. In the present case, the petitioner herself has produced an affidavit in support of the impleading application. A relevant portion of the affidavit reads thus:

*"2. I further submit that the Plaintiff has not made us the parties to the suit, as we being the wife and daughter of deceased Defendant No.2 Late. Mohammed Rafiq, my husband died on 14.03.2024, I was married to my husband on 24.04.2008 at Belagum under Special Marriage Act bearing Special Marriage No.6/2008-09 in this connection the certificate of marriage has been issued by the concerned departments, I further submit that I have enclosed the Birth Certificate of my daughter, Aadhar Cards for your kind perusal, I being the 2<sup>nd</sup> wife of the deceased Defendant No.2, the first wife by name Fiza Begum has managed the City Corporation, Ballari, not to enter my name in the column of wife in the Death Certificate of my husband."*

*(emphasis supplied)*

15. The above averment is a clear and unequivocal admission by the petitioner that she is the second wife of deceased defendant No.2. The affidavit further acknowledges the existence of the first wife, namely defendant No.2(a). Thus, the subsistence of the first marriage is not merely established



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through the evidence adduced before the Trial Court but is also admitted by the petitioner herself.

16. Once these foundational facts stand admitted, the inevitable consequence is that the alleged marriage dated 24.04.2008, though stated to have been solemnized under the Act, was in direct violation of Section 4(a) of the Act.

17. The legal consequence of such violation is no longer *res integra*. A marriage performed under the Act during the subsistence of an earlier marriage is void and does not confer the legal status of husband and wife upon the parties. The Jharkhand High Court in **MD Akhil Alam v. Tumpa Chakravarti, AIR 2026 JAR 12**, while considering an identical issue, observed as follows:

*"The applicant cannot take refuge behind the fallacious contention that he had contracted the second marriage with a Muslim woman by virtue of the exceptions enshrined in Mohammedan Law. Mohammedan Law does not claim precedence over Special Marriage Act, 1954 keeping in view that the applicant solemnized his first marriage under Mohammedan law and he contracted his second*



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*marriage under Special Marriage Act. There being no saving clause for the applicant to purge him of the charges under Section 494, I.P.C., I feel that the applicant is liable to be punished under Section 494, I.P.C."*

18. The above principle squarely applies to the facts of the present case. Once parties voluntarily choose to solemnize their marriage under the Act, they are governed by the mandatory conditions prescribed therein. The statutory requirement that neither party should have a spouse living cannot be diluted by resorting to personal law or any equitable considerations.

19. Therefore the mere fact that deceased defendant No.2 professed the Mohammedan faith does not, by itself, alter the legal position obtaining under the Act. It is true that Mohammedan personal law, subject to the conditions and limitations recognised therein, permits a Muslim male to contract more than one marriage. Such permissibility, however, operates only within the domain of personal law governing marriages solemnized thereunder. The legal position undergoes a fundamental change when a party voluntarily elects to



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solemnize a marriage under the provisions of the Act. The Act is a secular and self-contained code governing the conditions, solemnization and consequences of marriages contracted under its provisions. Once parties consciously invoke the provisions of the Act instead of their personal law, they subject themselves to the mandatory statutory regime enacted by Parliament. The rights and obligations flowing from such marriage are therefore determined not by personal law but exclusively by the provisions of the Act.

20. Section 4 of the Act prescribes the foundational conditions for a valid marriage, one of which unequivocally mandates that neither party should have a spouse living at the time of the marriage. This requirement is neither directory nor procedural; it constitutes the very foundation of the statutory validity of a marriage under the Act. Any marriage solemnized in derogation of this mandatory condition is rendered void ab initio, not because the personal law prohibits it, but because the parties have voluntarily elected to be governed by a statutory code which insists upon monogamy as an indispensable pre-condition for a valid marriage. To hold

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otherwise would permit parties to selectively invoke the benefits of a special statute while simultaneously claiming exemptions founded upon personal law, a course wholly inconsistent with the scheme, object and legislative intent underlying the Act. Acceptance of such a contention would defeat the uniform statutory discipline contemplated by the Act and render the mandatory conditions contained in Section 4 otiose. Therefore, where a marriage is admittedly solemnized under the Act during the subsistence of an earlier valid marriage, its validity has necessarily to be tested exclusively on the touchstone of the provisions of the Act, and if the statutory conditions are found to be violated, the marriage is void from its inception and does not confer the legal status of husband or wife upon the parties thereto.

21. The Trial Court, while conducting the enquiry as directed by this Court in the earlier writ proceedings, has meticulously examined the pleadings, documentary evidence and admissions made by the petitioner. Upon appreciation of the material on record, the Trial Court has arrived at the

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conclusion that the petitioner cannot claim the status of a legally wedded wife.

22. This Court finds no perversity or jurisdictional error in the said finding. On the contrary, the conclusion reached by the Trial Court is fully supported by the petitioner's own admission and the statutory provisions governing the field. Learned counsel for the petitioner attempted to contend that irrespective of the validity of the marriage, the petitioner ought to have been impleaded so as to contest the proceedings. This submission cannot be accepted. A person seeking impleadment as the legal representative of a deceased litigant must demonstrate a legally recognisable right to represent the estate. In the absence of a valid marital status, the petitioner cannot claim the status of widow of deceased defendant No.2. Consequently, she cannot insist upon being brought on record merely on the basis of an admittedly void marriage.

23. The Trial Court has, however, rightly distinguished the status of the petitioner from that of the child born from the said relationship. Children born from a void marriage are entitled to statutory protection and are competent to represent



their legal rights in appropriate proceedings. Bearing this settled legal position in mind, the Trial Court has permitted proposed defendant No.2(f), namely the daughter, to come on record.

24. The said exercise of discretion is both judicious and in consonance with the settled principles governing succession and representation of estates.

25. This Court, while exercising supervisory jurisdiction under Article 227 of the Constitution, does not sit as a Court of appeal over findings recorded by the Trial Court. Unless the findings suffer from patent perversity, jurisdictional error or manifest illegality, interference is unwarranted.

26. In the case on hand, the Trial Court has considered the entire factual matrix in its proper perspective. The conclusion that the petitioner, admittedly being the second wife whose marriage under the Act was void for non-compliance with Section 4(a), is neither a necessary party nor a proper party to the suit cannot be faulted. This Court is therefore of the considered view that the impugned order does not suffer



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from any infirmity warranting interference under Articles 226 or 227 of the Constitution of India. Accordingly, the point for consideration is answered in the '**negative**'.

27. For the foregoing reasons, this Court proceeds to pass the following;

**ORDER**

- (i) The writ petition is ***dismissed***.
- (ii) The order dated 18.08.2025 passed on I.A. No.50 in O.S. No.246/2012 is affirmed.
- (iii) It is made clear that the impleadment of proposed defendant No.2(f), as ordered by the Trial Court, shall remain undisturbed and the Trial Court shall proceed with the suit in accordance with law.
- (iv) Pending interlocutory applications, if any, stand disposed of.

No order as to costs.

Sd/-  
(SACHIN SHANKAR MAGADUM)  
JUDGE

ALB/CT:GSM  
List No.: 1 Sl No.: 138