2025:AHC-LKO:61102-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

CRIMINAL MISC. WRIT PETITION No. - 1314 of 2024

Ketan Rastogi And Others

.....Petitioner(s)

Versus

State Of U.P. Thru. Secy. Ministry Of Home Affairs Civil Secrt. Lko. And Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Mohd. Ghayasuddin Khan, Lav Singh, Mohd. Ghayasuddin Khan, Shyam Narain Mishra
Counsel for Respondent(s)	:	G.A., Manish Soni, Mohit Kumar Rawat, Saurabh Kr Shahi

A.F.R.

Court No. - 9

HON'BLE RAJESH SINGH CHAUHAN, J.
HON'BLE SYED QAMAR HASAN RIZVI, J.

(Per: Hon'ble Syed Qamar Hasan Rizvi, J.)

(Civil Misc. Application No. IA/5/2025-Application for Recall of order dated 09.01.2025)

1. Vakalatnama filed by Shri Saurabh Kumar Shahi & Shri Mohit Kumar Rawat, Advocates on behalf of writ petitioners is taken on record.

2. Heard, Shri Manish Soni, learned counsel for applicant/opposite party no. 4 in the writ petition, Shri Saurabh Kumar Shahi and Shri Mohit Kumar Rawat learned counsels for the petitioners.

3. By means of the instant application, Smt. Mohini Verma the applicant / opposite party no. 4, has prayed for the Recall of the Order dated 09.01.2025 passed by the co-ordinate Bench of this Court comprising of Hon'ble Mr. Vivek Chaudhary, J. and Hon'ble Mr. Om Prakash Shukla, J. and for the restoration of the case to its original number and to be heard and decided on merits afresh.

4. Record of the writ petition as available before us shows that the co-ordinate Bench of this Court vide Order dated 09.01.2025 decided the writ petition on the basis of a mutual agreement arrived between the litigating parties and allowed the same. The writ petitioner and the applicant herein / opposite party no.4 amicably settled their disputes in the presence of their parents and entered a compromise by executing a compromise deed dated 17.02.2024. The same is on record.

5. The contents of the aforesaid compromise dated 17.02.2024 are reproduced herein

below for ready reference:

> "हम उभयपक्षकार उपरोक्त सुलहनामा की निम्न शर्तों के अंर्तगत पाबंद होते है: -
>
> 1. यह कि प्रथमपक्ष एवं द्वितीयपक्ष का विवाह दिनांक 28.06.2020 को हिन्दू रीति रिवाज के अनुसार दोनो पक्षकारों की उपस्थिति एवं सहमति के अनुसार सम्पन्न सम्पन्न हुआ था।
>
> 2. यह कि विवाह के बाद द्वितीयपक्ष विदा होकर प्रथमपक्ष के निवास स्थान पर आयी और दोनो पक्षकारों द्वारा अपने-अपने पति-पत्नी के कर्तव्यों का निर्वाहन किया गया।
>
> 3. यह कि उभयपक्षकारों के मध्य कुछ समय पश्चात आचार-विचार न मिल पाने के कारण पक्षकारों के मध्य मनमुटाव व कटुता उत्पन्न होने लगी तथा पक्षकारों के मध्य मनमुटाव व कटुता इतनी अधिक उत्पन्न हो गयी कि पक्षकार दिनांक 27.07.2020 से अलग-अलग रहकर निवास करने लगे।
>
> 4. यह कि इस दौरान द्वितीयपक्ष ने थाना-ठाकुरगंज लखनऊ में प्रथमपक्ष व उसके परिवार वालो के विरूद्ध रिपोर्ट मुकदमा सूचना प्रथम संख्या-431/2020, अंर्तगत अपराध धारा-498ए, 323, 504, आई०पी०सी० व 3/4 डी०पी० एक्ट संबंधित थाना-ठाकुरगंज लखनऊ में दर्ज करायी जो न्यायालय श्रीमान ए०सी० जे०एम० (सी०बी०आई०) अयोध्या प्रकरण में अभी विचाराधीन है।
>
> 5. यह कि प्रथमपक्ष ने उपरोक्त विवाह को शून्यकरणीय घोषित किये जाने हेतु द्वितीयपक्ष के विरूद्ध एक वाद अंर्तगत धारा-11 हिन्दू विवाह अधिनियम-1955 दाखिल किया हुआ है जो वर्तमान में माननीय न्यायालय अपर प्रधान न्यायाधीश कक्ष संख्या-6 पारिवारिक न्यायालय लखनऊ में विचाराधीन है।
>
> 6. यह कि द्वितीयपक्ष ने उपरोक्त विवाह विच्छेदन की डिक्री प्राप्त करने हेतु प्रथमपक्ष के विरूद्ध एक वाद अंर्तगत धारा-13 हिन्दू विवाह अधिनियम का वाद दाखिल किया हुआ है जो वर्तमान में माननीय न्यायालय अपर प्रधान न्यायाधीश कक्ष संख्या-8 पारिवारिक न्यायालय लखनऊ में विचाराधीन है।
>
> 7. यह कि प्रथमपक्ष की माँ श्रीमती मंजू रस्तोगी द्वारा द्वितीयपक्ष व उसकी माँ मीना वर्मा के विरूद्ध एक परिवाद दाखिल किया हुआ है जो वर्तमान में माननीय न्यायालय अपर मुख्य न्यायिक मजिस्ट्रेट पंचम लखनऊ के समक्ष विचाराधीन है।
>
> 8. यह कि द्वितीयपक्ष ने थाना-ठाकुरगंज लखनऊ में प्रथमपक्ष व उसके परिवार वालो के विरूद्ध प्रथम सूचना रिपोर्ट अपराध संख्या-216/2021 अंर्तगत धारा-392, 354, 506, 504, 323 आई०पी०सी० संबंधित थाना-ठाकुरगंज लखनऊ में कदर्ज कराई है जिसके संबंध में आरोप पत्र न्यायालय में प्रस्तुत नहीं किया गया है।
>
> 9. यह कि उभयपक्षकारों एवं द्वितीयपक्ष के रिश्तेदारों एवं शुभचिन्तको तथा पारिवारिक सदस्यों व उभयपक्षकारों के अधिवक्ता महोदय ने मिल बैठकर एवं वार्तालाप करके विवाद को

निपटाने का प्रयास किया परन्तु उभयपक्षकार किसी भी दशा में पति-पत्नी के रूप में एक साथ रहकर वैवाहिक जीवन निर्वाहन करने को तैयार नही हुये है।

10. यह कि द्वितीयपक्ष, प्रथमपक्ष से भविष्य में कोई मांग नहीं करेगी एवं प्रथमपक्ष भी भविष्य में द्वितीयपक्ष से कोई मांग नहीं करेगा न ही भारत वर्ष के किसी भी न्यायालय में कोई भी पक्षकार वाद दायर करेगा, यदि ऐसा कोई भी पक्षकार करता है तो इस सुलहनामा के सापेक्ष में निरस्त व शून्य माना जायेगा।

11. यह कि विवाह में एक दूसरे पक्षकार द्वारा दिये गये सामान का आदान-प्रदान के संबंध में कोई भी लेन-देन शेष नहीं रह गया है।

12. यह कि उपरोक्त मुकदमा निस्तारित होने के पश्चात उभयपक्षकार अपना-अपना अन्यंत्र विवाह करने के लिये स्वतंत्र होगें जिस पचर किसी भी पक्षकार को आपत्ति करने का अधिकार नहीं होगा।

13. यह कि उभयपक्षकारों द्वारा एक दूसरे पर दाखिल किये गये वादों को बल न देते हुये सुलह समझौते के आधार पर समाप्त करा लेगें एवं समाप्त कराने में उभयपक्षकार एक दूसरे का सहयोग प्रदान करेंगे। तथा दाखिल वाद अंर्तगत धारा-1। हिन्दू विवाह अधिनियम-1955 जोकि वर्तमान में माननीय अपर प्रधान न्यायाधीश पारिवारिक न्यायालय कक्ष संख्या-6 पारिवारिक न्यायालय लखनऊ में विचाराधीन है को गुणदोष के आधार पर निर्णीत कराने में पूर्ण सहयोग प्रदान करेंगे।

14. यह कि उक्त मुकदमा निर्णीत होने के पश्चात पक्षकार स्वंय एक दूसरे के परिवार के विरूद्ध कोई भी दीवानी/फौजदारी का वाद किसी भी न्यायालय में दाखिल नहीं करेगें।

अत: आज दिनांक 17.02.2024 को बिना किसी जोर दबाव हम पक्षकारों द्वारा यह सुलहनामा समक्ष गवाहों की मौजूदगी में अपने-अपने हस्ताक्षर कर निष्पादित कर दिया ताकि सनद रहे और समय पर काम आवे। "

6. The aforesaid compromise dated 17.02.2024 was duly verified by the Senior Registrar of this Court on 13.12.2024 under the orders of this Court dated 23.02.2024 thereafter the Writ Petition was allowed vide Order dated 09.01.2025 pursuant to the said compromise. The extract of the Order dated 09.01.2025 passed by the co-ordinate Bench of this Court is reproduced here-in-below: -

"Supplementary Affidavit filed today is taken on record.

Heard learned counsel for the parties and perused the record.

In the supplementary affidavit filed today, the petitioners have specifically stated that the Suit No. 225 of 2022, under Section 340 Cr.P.C. filed before the family court was dismissed for want of prosecution on 09.08.2024. The plaintiff has not

filed any recall application to get the said order dated 09.08.2024 recalled nor the same would be recalled.

Learned counsel for the parties also state that the parties have settled their dispute amicably and submitted their deed of compromise which is on record as Annexure No. 2 to the writ petition. The report of the Senior Registrar of this Court dated 13.12.2024 is on record, according to which he has verified the compromise on 13.12.2024.

According to the terms of the compromise, parties have decided to withdraw all the cases filed by them against each other including First Information Report dated 09.04.2021 bearing Case Crime No.0216 of 2021, under Sections 323,504,506,392,354 I.P.C., Police Station Thakurganj, District Lucknow.

Intent is clear, the informant - Smt. Mohini Verma, who is a signatory to the compromise, does not want to press the FIR, therefore, no purpose would be served in allowing the proceedings even if charge sheet has been filed before the court below to go on considering the nature of the dispute.

Accordingly, the impugned FIR, which is the basis to serve consequential proceedings of investigation and thereafter filing of charge sheet, if any, is hereby quashed. Consequently, all proceedings taken consequent to the lodging of the FIR including charge sheet, if any, filed before the court below stand quashed.

The writ petition is, accordingly, allowed.

The Senior Registrar of this Court shall communicate this order to the court concerned for correcting its record, accordingly.
Learned AGA shall communicate this order to the investigating officer."

7. It has been brought to the notice of this Court by way of the instant Recall Application dated 27.05.2025 that the learned Family Court vide Order dated 06.05.2025 dismissed a pending case having Suit No. 2404 of 2020 filed by the petitioner under Section 11 of the Hindu Marriage Act, 1955 (Ketan Rastogi v. Smt. Mohini Verma). Photostat copy of the said judgement and order has been placed before us for perusal which goes to show that the learned Additional Principal Judge-VI, Family Court, Lucknow dismissed the case, taking into account the fact that the parties have settled their dispute before the High Court and further that the plaintiff, namely, Ketan Rastogi has failed to establish his claim as made in the plaint. The relevant portion of the said judgement and order 06.05.2025 is extracted herein below for convenience:

".....चूंकि उभय पक्षों के मध्य लेन देन से सम्बन्धित विवाद सुलहनामें द्वारा समाप्त कर लिया गया है। अतः उपरोक्त समस्त तथ्यों व परिस्थितियों को दृष्टिगत रखते हुए वादी द्वारा याचित उपरोक्त अनुतोष प्रदान किये जाने का कोई औचित्य नहीं है ।

प्रस्तुत प्रकरण में वादी अपने कथन को साबित नहीं कर पाया है। वाद बिन्दु संख्या-1 भी उसके विरूद्ध निर्णीत हुआ है। अतः उपरोक्त समस्त तथ्यों व परिस्थितियों को दृष्टिगत रखते हुए न्यायालय के मतानुसार वादी किसी अनुतोष को प्राप्त करने का अधिकारी नहीं है। तदनुसार वाद बिन्दु संख्या-2 वादी के विरूद्ध निर्णीत किया जाता है।

प्रस्तुत वाद में वाद बिन्दु संख्या-1 व 2 वादी के विरूद्ध निर्णीत हुआ है तथा वादी किसी अन्य अनुतोष को प्राप्त करने का अधिकारी नहीं पाया गया है अतः समस्त तथ्यों व परिस्थितियों व पत्रावली पर उपलब्ध अभिलेखां व दस्तावेजी साक्ष्य के अवलोकन के उपरान्त न्यायालय के मतानुसार प्रस्तुत वाद अन्तर्गत धारा-11 हिन्दू विवाह अधिनियम 1955 निरस्त किए जाने योग्य है।

आदेश

वादी केतन रस्तोगी द्वारा प्रतिवादिनी श्रीमती मोहिनी वर्मा उर्फ सना फातिमा के विरुद्धं प्रस्तुत वाद अन्तर्गत धारा-11 हिन्दू विवाह अधिनियम 1955 निरस्त किया जाता है ।

पत्रावली नियमानुसार दाखिल दफतर हो ।"

8. Since, the correctness and legality of the aforesaid Judgement and Order dated 06.05.2025 passed by the Learned Family Court under section 11 of the Hindu Marriage Act, 1955 is not under challenge before us, as such, there is no occasion for us to enter into the merits of the same, in the present proceeding.

9. Contention of the learned counsel for the opposite party no.4/Applicant herein, is that as per the terms of the aforesaid compromise, the opposite party no.4 bonafidely withdrew her petition filed under Section 13 of the Hindu Marriage Act, 1955 from the learned Family Court but after the passing of the Order dated 06.05.2025 whereby the petitioner's application under Section 11 of the Hindu Marriage Act, 1955 has been rejected, the marital-status of the Applicant / opposite party no. 4 has fallen in dilemma and the purpose of the aforesaid settlement and compromise dated 17.02.2024 has been frustrated.

10. The uncontroverted facts that emerged out of the submissions advanced by the learned counsels for the parties are that (i) the Applicant herein namely Smt. Mohni Verma entered into matrimonial relationship with one Dr. Zafar Sayeed through *Nikah* on 06.07.2013 after embracing Islam and opted Sana Fatima as her name (ii) the marriage of the petitioner namely Ketan Rastogi was solemnized as per the Hindu rites at *Ramjanki Dharmshala* at Lucknow with Smt. Mohini Verma on 28.06.2020 (iii) divorce petition seeking divorce from her earlier husband namely Dr. Zafar Sayeed

was filed in the month of August 2020 and the same was decreed on 19.01.2021 by the Court of Additional Principal Judge- X, Family Court, Lucknow.

11. None of the parties who are present-in-person before this Court could furnish a particular date as to when the Applicant / opposite party no.4 again came back in the fold of Hindu religion. On a pointed query as to how marriage could have taken place in accordance with the Hindu methodology, between the persons with different religion, neither the learned Counsels appearing on behalf of the parties nor the parties themselves could give any satisfactory reply.

12. Be that as it may, we at this stage do not find it appropriate to delve into factual matrix of the case to decide the disputed issues involved in the matter while holding the present roaster of Criminal Writs under Article 226 of the Constitution of India. However, it would not be out of place to mention the settled law on the subject as under:

Section 11 of the Hindu Marriage Act, 1955 deals with the void marriages. For a ready reference the same is quoted hereinbelow: -

> "**11. Void Marriages**- Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5."

Section 5*(i)* of the Hindu Marriage Act, 1955 provides that a marriage may be solemnized between two Hindus, if neither party has a spouse living at the time of marriage.

Thus, the necessary conditions for a lawful wedlock under this provision is that neither of the parties should have a spouse living at the time of marriage and mandatorily they are Hindus. The marriage in contravention of this condition is void *ipso jure* in terms of Section 11 read with Section 5 (i) of the Hindu Marriage Act, 1955 and non-existent in the eyes of law being void from its very inception. Further, a marriage which is *void ab initio* does not alter or affect the status of the parties, nor does it create between them any rights and obligations which must be normally arisen from a valid marriage, except such rights as are expressly recognized by the Act. The Hon'ble Supreme Court in the case of **Deoki Panjhiyara versus Shahshi Bhushan Narayan Azad & Another**, reported in **2013 (2) SCC 137**, held as follows:

> "Admittedly, both the appellant and the respondent are governed by the provisions of the Hindu Marriage Act, 1955. Section 11 of the Hindu Marriage Act makes it clear that a marriage solemnised after the commencement of the Act "shall be null and void and may, on a petition presented by either party thereto against

> the other party, be so declared by a decree of nullity if it contravenes any one of the conditions so specified in clauses (i), (iv) and (v) of Section 5."

13. While considering the provisions of Section 11 of the Hindu Marriage Act, 1955, the Hon'ble Apex Court in the case of **Yamunabai Anantrao Adhav versus Anantrao Shivram Adhav and another**; reported in **(1988) 1 Supreme Court Cases 530** has taken the view that a marriage covered by Section 11 is *void-ipso-jure*, that is, void from the very inception. Such a marriage has to be ignored as not existing in law at all. It was further held by this Court that a formal declaration of the nullity of such a marriage is not a mandatory requirement though such an option is available to either of the parties to a marriage. It must, however, be noticed that in the case of **Yamunabai** (*supra*) also there was no dispute between the parties either as regards the existence or the validity of the first marriage on the basis of which the second marriage was held to be *ipso jure* void. A similar view has been expressed by the Hon'ble Supreme Court in a later decision pronounced in the case of **M. M. Malhotra versus Union of India and others**; reported in **(2005) 8 Supreme Court Cases 351**, wherein the view expressed in **Yamunabai** (*supra*) was also noticed and reiterated. It is notable that the view expressed by Hon'ble The Apex Court in the case of **M.M. Malhotra** (*supra*) was rendered in the situation where the fact i.e. previous marriage was admitted by the lady and there was no dispute with regard to the factum of the earlier marriage of one of the spouses, leading to a declaration of the invalidity of the marriage between the parties. Paragraph 10 of the judgement passed in **M.M. Malhotra** (*supra*) is extracted here in below:

> "**10.** For appreciating the status of a Hindu woman marrying a Hindu male with a living spouse some of the provisions of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Marriage Act") have to be examined. Section 11 of the Marriage Act declares such a marriage as null and void in the following terms:
>
> > "11. Void marriages.-Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5."
>
> Clause (i) of Section 5 lays down, for a lawful marriage, the necessary condition that neither party should have a spouse living at the time of the marriage. A marriage in contravention of this condition, therefore, is null and void. By reason of the overriding effect of the Marriage Act as

mentioned in Section 4, no aid can be taken of the earlier Hindu law or any custom or usage as a part of that law Inconsistent with any provision of the Act. So far as Section 12 is concerned, it is confined to other categories of marriages and is not applicable to one solemnised in violation of Section 5(i) of the Act. Sub-section (2) of Section 12 puts further restrictions on such a right. The cases covered by this section are not void ab initio, and unless all the conditions mentioned therein are fulfilled and the aggrieved party exercises the right to avoid it, the same continues to be effective. The marriages covered by Section 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 for the purpose. The provisions of Section 16, which is quoted below, also throw light on this aspect:

> "16. Legitimacy of children of void and voidable marriages.-(1) Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws. (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.
>
> (2) Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.
> (3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and

> void or which is annulled by a decree of nullity under Section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents."
>
> (emphasis supplied)
>
> Sub-section (1), by using the words italicised above clearly implies that a void marriage can be held to be so without a prior formal declaration by a court in a proceeding. While dealing with cases covered by Section 12, sub-section (2) refers to a decree of nullity as an essential condition and sub-section (3) prominently brings out the basic difference in the character of void and voidable marriages as covered respectively by Sections 11 and 12. It is also to be seen that while the legislature has considered it advisable to uphold the legitimacy of the paternity of a child born out of a void marriage, it has not extended a similar protection in respect of the mother of the child. The marriage of the appellant must, therefore, be treated as null and void from its very inception."

14. The Hon'ble Supreme Court in the case of **A. Subash Babu versus State of Andhra Pradesh & Another**; reported in **(2011) 7 Supreme Court Cases 616**, while dealing with the question whether the wife of a second marriage contracted during the validity of the first marriage of the husband would be a "person aggrieved" under Section 198(1)(c) of the Code of Criminal Procedure to maintain a complaint alleging commission of offences under Section 494 and 495 IPC by the husband. The passage extracted below effectively illuminates the issue:

> "Though the law specifically does not cast obligation on either party to seek declaration of nullity of marriage and it may be open to the parties even without recourse to the Court to treat the marriage as a nullity, such a course is neither prudent nor intended and a declaration in terms of Section 11 of the Hindu Marriage Act will have to be asked for, for the purpose of precaution and/or record. Therefore, until the declaration contemplated by Section 11 of the Hindu Marriage Act is made by a competent Court, the woman with whom second marriage

> is solemnized continues to be the wife within the meaning of Section 494 IPC and would be entitled to maintain a complaint against her husband."
>
> (emphasis supplied by this Court)

15. It goes without saying that the declaration of the parties' marital-status, strikes at the very core of society. Declaration in the light of Section 11 of Hindu Marriage Act, 1955 can be made only by a competent court of law in an appropriate proceeding by and between the parties and in compliance with all other requirements of law. The courts are under obligation to render a complete and effective decision with regard to the marital status of the parties.

16. Be that as it may, as we have observed in the preceding paragraph that in the instant proceeding wherein only the above mentioned Application for Recall of the order dated 09.01.2025 is before us for consideration and in the absence of any material before this Court and more particularly when the same is not before us for adjudication, we refrain ourselves to record any finding on the merits and correctness of the Judgement and Order dated 06.05.2025, passed by the learned Family Court under Section 11 of the Hindu Marriage Act 1955 in Case No.2404 /2020, at this stage.

17. Taking into consideration the contentions raised by the Opposite Party No.4 / Applicant herein, seeking recall of the Order dated 09.01.2025 passed by the co-ordinate Bench of this Court comprising of Hon'ble Mr. Vivek Chaudhary, J. and Hon'ble Mr. Om Prakash Shukla, J. whereby the Writ Petition having **Criminal Misc. Writ Petition No.1314 of 2024** was allowed consequent to the amicable settlement of dispute between the parties through Compromise Deed dated 17.02.2024; we find no good ground warranting this Court to interfere with the said Order dated 09.01.2025, merely on the premise of some subsequent development, that too, a judicial pronouncement dated 06.05.2025 rendered by a competent Court of law.

18. Accordingly, the instant Application for Recall dated 27.05.2025, is **consigned to record as rejected**.

19. Needless to say that in any case if the litigating parties feel aggrieved by the aforesaid judgment and order dated 06.05.2025 passed by the learned Additional Principal Judge-VI, Family Court, Lucknow, it is open for them to avail appropriate legal recourse in respect of the same in the manner as prescribed under law.

(Syed Qamar Hasan Rizvi,J.) (Rajesh Singh Chauhan,J.)

September 24, 2025
Virendra/Abhishek Gupta