

BadrudIn Abdulla Hirji Vs. Registrar of Marriages

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Court : Mumbai

Decided On : Apr-25-1945

Reported in : AIR1946Bom129; (1945)47BOMLR938

Judge : Bhagwati, J.

Appeal No. : O.C.J. Miscellaneous No. 82 of 1945

Appellant : BadrudIn Abdulla Hirji

Respondent : Registrar of Marriages

Disposition : Appeal allowed

Judgement :

Bhagwati, J.

1. This is a petition filed by the petitioner Badrudin Abdulla Hirji against the respondent the Registrar of Marriages, Bombay, under Section 43 of the Indian Christian Marriage Act (XV of 1872) for an order that the respondent be directed to issue a certificate forthwith before the expiration of fourteen days required by Section 41 of the Act and that the respondent be ordered and directed to take such steps as may be necessary for the solemnisation of the intended marriage between the petitioner and one Miss Nancy Adala Ferguson. Miss Ferguson is a minor within the meaning of the Act, not having completed her age of twenty-one.

2. It appears that on March 20, 1945, Miss Ferguson gave notice of the intended - marriage to the Marriage Registrar at Bangalore. The petitioner had also given a notice of marriage to the respondent, he being a resident of Bombay. The Marriage Registrar at Bangalore did issue in accordance with the provisions of Section 41 of the Act a certificate which is called a 'Certificate of Receipt of Notice of Marriage on April 5, 1945, with reference to the notice of marriage given to him by Miss Ferguson. The respondent, however, took up the attitude that he would not issue any certificate with reference to the notice of marriage given by the petitioner to him on February 16, 1945, because Miss Ferguson was a minor, that her father and mother were dead, that there was no person resident in India authorised to give such consent to her marriage, and that therefore unless a guardian was appointed of Miss Ferguson for the express purpose of giving consent to such marriage, he would not issue a certificate. A communication to this effect made by the respondent was received by the petitioner on or about April 14, 1945, and the two months' period prescribed under Section 52 of the Act expired before the petitioner could take any further steps under Section 46 of the Act. In the result the petitioner gave a fresh notice of marriage to the respondent on April 16, 1945. He also filed the present petition before me under Section 43 of the Act for the necessary directions to be given to the Marriage Registrar at Bombay as I have already stated above.

3. It appears that Miss Ferguson was serving as a Sergeant in W.A.C.(I) Platoon No. 2 at Bangalore and was given leave of absence from Bangalore up to April 28, 1945, for the express purpose of the solemnisation of her marriage with the petitioner in Bombay. It also appears from the petition that after such leave was granted to her, she was transferred from Bangalore to Bombay where she is expected to join after the expiration of the leave on April 28, 1945. The parties' are, however, desirous of solemnising their marriage within the period of fourteen days after the entry of the notice of marriage by the petitioner on April 16, 1945, and have therefore approached me by this petition under Section 43 of the Act.

4. I required the presence of Miss Ferguson in my Chambers and I satisfied myself with regard to her desire to marry the petitioner. I am also satisfied that there is no person resident in India authorised to give the consent to her marriage within the

meaning of Section 19 of the Act, and even though she has a married sister who appears to have been opposed to this idea of her marriage with the petitioner, that is not, in my opinion, any impediment to her marrying the petitioner if she is desirous of doing so.

5. The only objection taken by the respondent to the issue of this certificate is, as I have already stated above, that the father and the mother of Miss Ferguson are dead and that there is no person resident in India authorised to give such consent to her marriage with the petitioner. From the words of Sections 19 and 42(c) of the Act it is argued on behalf of the respondent that if the parents are dead and there is no person resident in India authorised to give such consent, a guardian of the minor for the purpose of giving such consent should be appointed, which guardian would exercise his mind in the matter of the desirability or otherwise of the marriage of the minor and would be in a position to enter a protest with him within the meaning of Section 44 of the Act; for it is only with that purpose and end in view that such guardian of the minor could be appointed, the only function of the guardian being to enter up protest against the issue of the marriage certificate, which protest being entered, the word 'forbidden' would be entered opposite to the notice of such intended marriage in the Marriage Notice book and further consequences would follow on the entry of such protest as laid down in the Act. The acceptance of this argument would mean the importing into the Act of the provisions analogous to the appointment of Court Officers as guardians of the interests of minors in immoveable properties where sanction of the Court is sought to be obtained in its inherent jurisdiction for sales of the interests of the minors in such immoveable properties. The latter provisions certainly are capable of being worked in a reasonable manner because the petitioner is normally expected to and does give the Court Officer appointed in that behalf all necessary materials to enable him to consider the desirability or otherwise of the sale of the minor's interests in those properties. The importing of such a provision in the Indian Christian Marriage Act would, however, create a class of guardians who presumably would know nothing about the status, the position and the desirability or otherwise of the marriage of the minor and who would in the absence of any independent or material information would not have any data for the purpose of arriving at any conclusion as to the desirability or otherwise of the marriage of the

minor, I am not therefore inclined to read such provisions in the Act. On a proper construction of the provisions of Section 19 and Section 42(c) of the Act, I have come to the conclusion that where the father of the minor is dead or where the guardian of the person of such minor either testamentary or otherwise appointed by the father or by any competent authority is not in existence or where in the absence of any such guardian the mother of the minor also is dead, it cannot be stated that there is any person authorised to give the consent to such marriage of the minor. It is only when any person answering any of the three categories above mentioned is in existence and happens to be 'not resident' in India that the latter part of Section 19 of the Act comes into operation and the consent of such guardian is dispensed with. It does not, therefore, follow as is contended by the respondent that if any of the persons answering any of the three categories above mentioned is not in existence, a guardian has to be appointed for the purpose of giving such consent to the marriage of the minor. There is no provision in the Act for the appointment of such guardian and no such case has ever come to the Courts where such appointment was ever asked for or was made by the Court.

6. I am, therefore, of opinion that the only ground on which the respondent has refused to grant the certificate or would refuse to grant such certificate is not tenable in law. Under the circumstances, I direct that the respondent do issue his certificate forthwith before the expiration of fourteen days required under Section 41 of the Act and that he do take such steps as may be necessary for the immediate solemnisation of the intended marriage between the petitioner and Miss Nancy Adela Ferguson.

7. This was a novel point which has not been adjudicated upon by any Court so far. The respondent was under the circumstances entitled to bring this matter before the Court and therefore I do order that each party will bear and pay their own costs of this petition.

8. The Prothonotary to issue a certificate of this order and the respondent to act on the same.