JUDGMENT

Though these appeals are listed for Admission, with the consent of learned counsel on both sides, they are heard finally.

2. M.F.A. No.6563 of 2018 has been filed by the husband while M.F.A. No.7501 of 2018 has been filed by the wife, both assailing the judgment and decree passed in M.C. No.3116 of 2011 dated 5-7-2018 by the IV Additional Principal Judge, Family Court, Bengaluru.

3. At this stage itself, it may be stated that the petition filed by the wife under Section 27(1)(e) and (d) read with Section 37 of the Special Marriage Act, 1954, (hereinafter referred to as 'the Special Marriage Act') as well the counter claim filed by the husband under Section 35 of the Special Marriage Act were both dismissed by the Family Court. Being aggrieved, the husband and wife are in appeal before this Court.

4. We also state that the reason for dismissal of the petition filed by the wife as well as the counter claim filed by the husband before the Family Court was on the premise that the Special Marriage Act did not apply to the parties. Therefore, an interesting question arises in these appeals, namely, as to the law that is applicable to the parties so as to seek divorce and permanent alimony.

5. Briefly stated the facts are, the parties herein got married under registration dated 19-10-2009 before the Registrar of Marriages, Mairie d'Oulgaret, Jawahar Nagar, Puducherry (Pondicherry)-605 010. It is also to be noted that, the parties thereafter registered their marriage–which was also solemnised at St. Andrew's Church, Reddiarpalayam at Puducherry which took place on 19-10-2009–before the Registrar of Marriages, Puducherry-605 010 on 21-10-2009. The said marriage was as per Christian rites and customs. It is stated that, the wife was living in Bengaluru since June 2003. She studied law at Bengaluru and enrolled as an Advocate in

Karnataka Bar Council, Bengaluru, on 3-4-2009. After marriage, the couple lived in Puducherry for a few months. There were certain differences between the parties and hence, the wife filed the petition under the provisions of the Special Marriage Act seeking divorce in M.C. No.3116 of 2011.

6. In response to the summons and Court notices issued by the Family Court, the husband appeared and filed statement of objections and denied the averments and allegations made by the wife, while at the same time making certain allegations against her. He also filed a counter claim seeking divorce under Section 35 of the Special Marriage Act. The wife filed rejoinder to the said counter claim before the Family Court.

7. Thus, on account of differences between them, the wife filed the petition and the husband filed the counter claim under the provisions of the Special Marriage Act making certain allegations against each other and seeking for a decree of divorce. The wife sought

permanent alimony of Rs.2.00 crore. Subsequently, she amended the petition to seek permanent alimony of Rs.10.00 crore.

8. The wife examined herself as P.W.1, her father as P.W.2 and got marked 63 documents as Ex.P.1 to Ex.P.63. The husband examined himself as R.W.1 and got marked 47 documents as Ex.R.1 to Ex.R.47. After hearing the arguments of respective counsel, the Family Court raised the following points for its consideration:

> *"i. Whether the provisions of Special Marriage Act are applicable to the parties to this petition?*
>
> *ii. Whether petitioner proves that the respondent treated her with cruelty?*
>
> *iii. Whether the petitioner proves that the respondent has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner*

cannot reasonably be expected to live with the respondent?

iv. *Whether the respondent proves that the petitioner treated him with cruelty, as averred in the counter claim?*

v. *Whether the respondent proves that the petitioner deserted him for a continuous period of 2 years or more, immediately preceding the presentation of the petition, as averred in the counterclaim?*

vi. *Whether the petitioner is entitled for permanent alimony?*

vii. *Whether the respondent is entitled for damages, as claimed in the counterclaim?*

viii. *What order?"*

9. The Family Court answered point Nos.1 to 3, 6 and 7 in the negative while point Nos.4 and 5 in the affirmative and ultimately, held that the petition filed by the wife as well as the counter claim filed by the husband under the provisions of the Special Marriage Act had to be

dismissed as the Special Marriage Act was not applicable to the parties. Hence, both husband and wife have preferred their respective appeals.

10. We have heard Sri A. Ram Mohan, learned counsel for the wife, as well as Sri Nandish Patil, learned counsel for the husband, and perused the material on record as well as the original record.

11. Sri A. Ram Mohan, learned counsel appearing for the wife, submitted that in view of the dismissal of the petition filed by the wife under the Special Marriage Act, an application was filed in this appeal seeking amendment of the petition invoking, *inter alia,* provisions of Article 242 of the French Civil Code. The said application was allowed by order dated 7-2-2020. Therefore, if this Court is also of the opinion that the provisions of the Special Marriage Act are not applicable to the case, then the matter could be considered under Article 242 or any other relevant Articles of the French Civil Code. He submitted that the parties are originally from Puducherry, they are descendants of

persons, who were governed by the French Civil Code and in that regard, it could be stated that they are *renouncants*, i.e. persons who renounced their personal law so as to embrace French Law. Therefore, the parties herein being descendants of *renouncants* are governed by the French Civil Code insofar as their marriage and divorce are concerned. Since the application for amendment filed by the wife has been allowed by this Court, the matter could be considered under the provisions of Article 242 or any other appropriate Article of the French Civil Code. In that regard, learned counsel for the wife drew our attention to Ex.P.35 which is the original Certificate of Marriage under the provisions of the French Civil Code. Learned counsel for the wife further submitted that this Court may consider the matter under the provisions of the French Civil Code and also grant divorce to the parties as well as permanent alimony to the wife by setting aside or modifying the judgment and decree of the Family Court.

12. *Per contra*, learned counsel for the husband, Sri. Nandish Patil submitted that, no doubt, as per Ex.P.35, the marriage between the parties has not taken place under the provisions of the Indian Christian Marriage Act, 1872, nor under the provisions of the Special Marriage Act. Since the parties are Christians by faith, application has been filed seeking consideration of the divorce petition under the provisions of Divorce Act, 1869. The said application has also been allowed. But, if this Court were to come to a conclusion that the French Civil Code would apply to the parties, then under the said Code, divorce could be granted under Article 245-1 which is in the nature of mutual consent divorce and the parties may not have any objection to the same as both the parties have sought for divorce in the instant case. He also submitted that appropriate divorce law applicable to the parties for seeking divorce may be applied in the instant case. The prayer sought by the wife seeking permanent alimony has been rejected and therefore, this Court may grant only divorce to the parties.

13. By way of reply, learned counsel for the wife submitted that if this Court is to ultimately grant the relief of divorce to the parties under the provisions of French Civil Code, the wife cannot be left without remedy of permanent alimony and therefore, suitable orders may be made for grant of permanent alimony either before this Court or remand the matter for that purpose, so that, the additional evidence could be let in by the parties and there could be determination of permanent alimony payable to the wife. In that regard, it is also brought to our notice that recently the Hon'ble Supreme Court in the case of ***Rajnesh vs. Neha and another,*** in ***Criminal Appeal No.730 of 2020*** *dated* ***4-11-2020*** *(Arising out of SLP (Crl.) No. 9503 of 2018)* has considered comprehensively the right of parties to seek permanent alimony and for the aid and assistance of the Court, the details of the Affidavit of Assets and Liabilities to be filed by the parties have been enunciated and therefore, the same may be applicable in this case also by way of analogy.

14. Learned counsel for the husband did not have any objection for the matter being remanded on the question of payment of permanent alimony to the wife. Learned counsel for the wife was quick to urge that, even prior to the determination of the quantum of permanent alimony to be made by the Family Court, in the event of matter being remanded, the husband may be directed to pay a sum of Rs.50.00 lakh as initial permanent alimony, subject to further determination by the Family Court. This submission was resisted by the learned counsel for the husband, but ultimately, on instructions from his client, he submitted that a sum of Rs.25.00 lakh shall be paid to the wife as an initial payment. This is subject to liberty being reserved to the wife to seek additional amount by way of permanent alimony and also right being reserved with the husband to resist the claim for permanent alimony to be made before the Family Court.

15. Submissions of learned counsel for the respective parties as recorded above are placed on record.

16. In the circumstances, the following points would arise for our consideration in these appeals:

> *"(i) Whether the Family Court was justified in dismissing the petition as well as the counter claim filed under the Special Marriage Act?*
>
> *(ii) If answer to point No.1 is in the affirmative, then, whether the parties are entitled to divorce under the French Civil Code?*
>
> *(iii) What orders to be made in these appeals?"*

17. It is not in dispute that the parties were married on 19-10-2009 before the Registrar of Marriages, Mairie d'Oulgaret, Jawahar Nagar, Puducherry (Pondicherry)-605 010. Ex.P.35 has been produced in that regard by the wife. On perusal of the same, it would prove that the Oulgaret Registrar issued the Marriage Certificate stating that Leo John (husband) and Eugenia Preethi (wife) were married before the Registrar of Oulgaret Municipality

on 19-10-2009. Parties have no children. On a reading of Ex.P.35, it would indicate that the said marriage is not one solemnised under the provisions of Special Marriage Act or under the Indian Christian Marriage Act, 1872. Although, on 19-10-2009, the parties were also married as per the Christian rites and customs at St. Andrew's Church, Reddiarpalayam, Puducherry, and the said marriage was registered on 21-10-2009, no such documentary evidence is produced in that regard except Ex.P.1, which is a wedding invitation card. In the circumstances, we consider Ex.P.35 as the document which proves that the parties were married on 19-10-2009. In support of Ex.P.35, learned counsel for the wife has produced a copy of the document titled "*DEMANDE DE PUBLICATION DE BAN*" which also shows that the date of marriage is 19-10-2009 at 12:00 noon before the Registrar of Marriages, Mairie d'Oulgaret, Jawahar Nagar, Puducherry. The said Certificate has been issued by the Registrar, Births and Deaths, Oulgaret Municipality, Pondicherry. The same is also signed by both the parties.

18. Another document is extract of Register of Marriage which has been issued by the Oulgaret Municipality which is in French and translation of which has also been provided, which states, on 19-10-2009 at 12:15 p.m., the parties appeared before the Registrar of Marriages wanting to be married and to be pronounced in law that they are united in marriage, in the presence of witnesses. The marriage was solemnised and a certified copy of the same has been issued. Thus, it has been established in this case that the parties were married under the French Civil Code.

19. The question that arises is, whether, the Special Marriage Act would apply to the parties or the French Civil Code would apply for the purpose of seeking divorce. As noted above, both the petition as well the counter claim filed under the provisions of the Special Marriage Act were rejected by the Family Court by holding that the Special Marriage Act does not apply to the parties.

20. In the above context, we heard learned counsel for the respective parties on the law applicable to the parties herein in order to seek the relief of divorce. During course of submission, a judgment of the Madras High Court in the case of ***M. Kadirvelu and others vs. G. Santhanalakshmi and others (A.S. No.40 of 2001)*** and ***C.M.P. No.4748 of 2001*** *decided on* ***15-4-2016,*** reported in ***(2016) 4 Mad.LJ 562*** was brought to our notice. The said judgment is authored by His Lordship, *V. Ramasubramanian J.,* now Judge of the Hon'ble Supreme Court, who has traced the history of laws applicable to the parties in that case and the question whether Hindu Succession Act, 1956, was applicable to the parties therein was considered. Relevant portions of the said judgment i.e. paragraph Nos.24 to 42 read as under:

> *"24. It appears that by Arrete of the Governor dated 06.4.1818, the French Government made it mandatory for the Courts to recognise established customs of the local people within the French Territory. Therefore, when the French Code Civil was made applicable by a*

resolution dated 16.01.1819 to the inhabitants of the French Settlement in Pondicherry, Karaikal, Mahe and Yanam, a saving clause was inserted to enable the Hindus, Muslims and Christians inhabitants of these settlements to be governed by the usages and customs of their respective races.

25. It appears that thereafter, a local ordinance was passed on 30.10.1827 by the local Government, constituting a Consultative Committee known as "Comite Consultatif De La Jurisprudence Indianne" with the localites to study the local customs. This Committee was to enlighten the Courts on the position of Hindu Law in customary matters. According to a scholarly article written by one Mr.Ramabathiran, a retired District Judge, this Committee comprised of 9 elderly Hindus drawn from various castes. 2 out of these 9 were Brahmins, 2 were Vellalars, 1 was a Kavarai, 1 was a Desaye, 1 Berger, 1 Komuti and 1 Chetty.

26. But, the French Regime always wanted the localite to be assimilated into the French way of life. Therefore, these French Settlements in

India were endowed with a Deputy to the French Chambre and a Senator to the French Senat towards the local reforms council known as "Consueilcolonaial" was established. Another Council known as "Conseilslocaux" was also established. Members of these 2 Councils were to be elected through Universal Manhood Franchise by two lists of voters, one comprising of native Indians and another comprising of the Europeans and their descendants.

27. The colonial council was replaced by a general council elected by universal adult franchise and invested with extended powers. (Decree of 25th January 1879). Ten communes were created by the decree of 12th March 1880. The establishment of Pondicherry numbered four of them and that of Karaikal three. The municipal councils were elected by universal franchise. However, as for the elections to the general council, the electors were registered on two lists, one for the Europeans and the descendants of the Europeans and the other for Indians. The decree of 24th June 1880 promulgated in the colony a number of provisions of the Civil Code. Though

exemptions were granted to Hindus and Muslims, there was considerable unrest in Pondicherry where the wind of revolt was beginning to blow. This was followed by the decree of 1881, by which, Indians could renounce their personal status.

28. With a view to enable the local population to renounce their personal laws and to adopt the French Code Civil, a Regulation was passed on 21.9.1881. By this Regulation, an option was given to the native Indians to renounce their personal status. Such a renunciation was to be effected by way of a declaration in the office of the Mayor of the locality. Incentives were also offered to people, who renounce their personal status. These incentives were in the form of political rights and the opportunities thrown up for an employment in the Government. According to Author Claude Markovits (A History of Modern India 1480-1950), people professing Christianity and people belonging to lower castes, were eager to make use of this opportunity. These persons were actually given a term namely "renouncants". These renouncants are

governed by the French Code Civil in matters relating to marriage, divorce and family affairs. The 3 major enactments, namely, The Hindu Succession Act, Hindu Marriages Act and the Hindu Adoption and Maintenance Act are not applicable to renouncants in Pondicherry.

29. The decree of 21 September 1881 enables the Indians, who so desired to renounce their personal status and to come under the purview of the French laws, with the objective of 'facilitating the progressive assimilation of natives' and of contributing to 'the uplift of the pariah by fraternity'. These measures, which aimed at ethnic (or cultural), not only political, assimilation marked the beginning of the process of absorption.

30. One of the important steps taken in this direction was to give French Indians the right of 'Universal Manhood Franchise' and towards that end, the French counters in India were endowed with a Deputy, a Senator, a General council, Local councils and Municipalities. In addition, native Indians were given the right to representation, association and organisation. Culturally, those Indians, who so desired, were

invited to renounce their personal status (hence become renouncants) and place themselves under the authority of the French Civil Code.

31. After India attained Independence, an agreement was signed in October 1954 between India and France for the defacto transfer of the French Territories, including Pondicherry in India. A Treaty of Cession was signed on 28.5.1956. The Treaty was ratified by the French Parliament in 1962. On 16.8.1962, both countries exchanged Instrument of Ratification. Consequently, de jure transfer got effected and Pondicherry, together with the enclaves of Karaikal, Mahe and Yanam became the Union Territory of Pondicherry from 01.7.1963. In the meantime, Pondicherry (Administration) Act, 1962, was passed by the Parliament, to provide for the administration of Pondicherry and matters connected therewith. Under Section 4(1) of the Pondicherry (Administration) Act, 1962, all laws in force immediately before the appointed date in the former French Establishments were directed to continue to be in force, until

amended or repealed by a competent legislature. 16th day of August, 1962 was made as the appointed date.

32. Under Section 4(2) of the Pondicherry (Administration) Act, the Central Government was empowered by order to make such adoptions and modifications, for the purpose of facilitating the application of any law in relation to the administration of Pondicherry and for the purpose of bringing the provisions of any such law into accord with the provisions of the Constitution. But, the Central Government was to pass such an order within three years from the appointed date. Section 8 of the Act empowers the Central Government to issue notifications extending any enactment which is in force in a State, to Pondicherry with such restrictions and modifications as it deems fit.

33. Thereafter, the Pondicherry (Laws) Regulation, 1963, was issued by the President in exercise of the powers conferred by Article 240 of the Constitution, with a view to extend certain laws to the Union Territory of Pondicherry. Section 3 of the said Regulation declared that the Acts as they are generally in

force in the territories to which they extend, shall also extend to and come into force in Pondicherry on the 1st day of October 1963, subject to the modifications specified in the First Schedule. The First Schedule to the Regulation contained a lot of enactments. The Hindu Succession Act, 1956 is one of the Parliamentary enactments included in the First Schedule to the Regulation of the year 1963. But, as seen from the First Schedule, the Hindu Succession Act, 1956 was extended to Pondicherry and it came into force in Pondicherry on the 1st day of October 1963, subject to one modification. The modification was that a separate Sub-Section, namely Sub-Section (2A) was inserted under Section 2 of the Hindu Succession Act, 1956. This new Sub-Section reads as follows:

> *"Section 2(2A): Notwithstanding anything contained in Sub-Section (1), nothing contained in this Act shall apply to the renouncants of the Union Territory of Pondicherry."*

34. Therefore, it is clear that as per Section 3 read with the First Schedule to the Pondicherry

(Laws) Regulation, 1963, the provisions of the Hindu Succession Act, 1956, were extended to the inhabitants of the Union Territory of Pondicherry, subject to one restriction namely that in so far as renouncants are concerned, the Hindu Succession Act would not have any application.

35. In the year 1968, a second exercise of a similar nature was undertaken by the Parliament and an Act known as the Pondicherry (Extension of Laws) Act, 1968 was passed. Under Section 3(1) of the said Act, the Parliament extended the provisions of the Acts specified in Parts I and II of the Schedule to the Union Territory of Pondicherry, subject to the modifications specified in the Schedule. Parts I and II of the Schedule to the 1968 Act covered those Acts, which are not covered by the Regulation of the year 1963. While the Special Marriage Act, 1954, the Hindu Marriage Act, 1955 and the Hindu Succession Act, 1956, were covered by the Regulation of the year 1963, the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoptions and Maintenance Act, 1956 were covered by the

1968 Act. Consequently, a provision, which is similar to Sub-Section (2A) that was inserted under Section 2 of the Hindu Succession Act, 1956 was also incorporated under Sections 3 and 2 respectively of the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoptions and Maintenance Act, 1956.

36. The resultant position is that by virtue of the Regulation of the year 1963 and the Act of the year 1968, the provisions of what we may call as the Hindu Code, namely the Hindu Marriage Act, the Hindu Succession Act, the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoptions and Maintenance Act, 1956, would generally apply to the inhabitants of Pondicherry, except those, who are renouncants of the Union Territory of Pondicherry.

37. But, unfortunately neither the 1963 Regulation nor the 1968 Act defined the expression "renouncants". Therefore, the question as to who a renouncant is, has often baffled Courts.

38. The normal English word "renounce" is defined by Merriam-Webster Dictionary to mean "to give up, refuse or resign or to refuse to follow, to refuse to obey, etc." While these meanings are given by the said dictionary to the word "renounce", when used as a transitive verb, a different set of meanings is assigned to the same word when used as intransitive verb. Since we are not concerned here with the meaning of the English word "renounce", we need not take note of other meanings.

39. But, what is important to note is that according to the Merriam-Webster Dictionary, the English word "renounce" originated from the Anglo-French word "renuncer" and from the Latin word "renuntiare".

40. As we have seen earlier, the French Code Civil was made applicable to the inhabitants of the French Settlements of Pondicherry, Karaikal, Mahe and Yanam by the resolution dated 6.1.1819. But, this resolution contained a saving clause. By a subsequent resolution dated 24.4.1880, provisions relating to registration of births and deaths and performance of marriages were regulated. Even

this resolution contained a saving clause, making it optional to the Indians to follow their own customs. It appears that a further option to the Indians to switch over to the French way of life was given under another resolution dated 21.9.1881. By this option, the inhabitants were allowed to renounce their Personal Law and espouse the French Law. People, who availed this opportunity and exercised the option to renounce their Personal Laws, emerging out of customary rights and practices, were called renouncants.

41. It is a linguistic paradox that the descendants of the renouncants inherited the consequence of renunciation by their forefathers. Mr. Ramabathiran cites in his article, 3 decisions, which recognised the consequence of such renunciation. One was a judgment dated 12.11.1870 by the then Court Appeal at Pondicherry, which held valid the recourse by Muslims to the freedom of guardianship as organised by the French Code Civil. The second was the case of a Hindu widow, who adopted a son to herself. The adoption was held valid by the Privy Council in

C.S. Nataraja Pillai v. C.S. Subbaraya Chettiar [AIR 1949 PC 24].

42. Therefore, persons, who exercised the option to renounce their customary laws and adopted the French Code Civil, are not governed by the provisions of Hindu Succession Act, 1956. But, it must be remembered that by its very nature, the saving clause applies only to persons, who are inhabitants at the time when the French Code Civil was extended. Persons, who are descendants of those inhabitants, are also entitled to the benefit. But, persons, who became inhabitants of Pondicherry after the application of the French Code Civil, are not entitled to claim that they are renouncants."

21. On reading of the same, the following points would emerge:

(a) That the French Government made applicable the French Civil Code by means of resolution dated 21/09/1819 to the inhabitants of French settlements including Pondicherry. Option was given to the native Indians to renounce their personal status and to accept the

French Civil Code. They were called *renouncants* and such persons were governed by the French Civil Code in matters relating to marriage, divorce and family affairs. The object of enforcement of the French Civil Code was to enforce the process of absorption and the *renouncants* came under the authority of the French Civil Code.

(b) With Independence of India from colonial rule, an agreement was signed between India and France for the de facto transfer of French territories including Pondicherry to India. A treaty of Cession and the instrument of ratification came into existence and the territories of Karaikal, Mahe and Yanam became the Union Territories of Pondicherry from 01/07/1963.

(c) In the interregnum, the Indian Parliament passed Pondicherry (Administration) Act, 1962. Under Section 4(1) of the said Act, all laws in force immediately before the appointed date i.e., 16/08/1962 in the former French establishments were directed to continue to be in force, until amended or repealed by a competent legislature.

(d) Under Section 4(2) of the said Act, the Central Government was empowered by an order to make such adoptions and modifications for the purpose of facilitating the application of any law in relation to the administration of Pondicherry and for the purpose of bringing the provisions of any such law in consonance with Constitution of India.

(e) Section 8 of the said Act, empowers the Central Government to issue notifications extending any enactment which was in force in the State of Pondicherry with such restrictions and modifications as it deems fit.

(f) Subsequently, Pondicherry (Laws) Regulation, 1963 was issued by the President in exercise of the powers conferred under Article 240 of the Constitution of India, with a view to extend certain laws to the Union Territory of Pondicherry.

(g) Section 3 of the said Regulation declared that the Acts as they are generally in force in the territories to

which they extend, shall also extend to and come into force in Pondicherry on 01/10/1963 subject to modification specified in the First Schedule.

(h) The Special Marriage Act, 1954 was made applicable to Pondicherry by Regulation 7 of 1963 (Section 3 and Schedule I)

(i) However, this did not make any difference with regard to the applicability of French Civil Code to *renouncants*.

(j) Subsequently, in the year 1968, the Parliament enacted Pondicherry (Extension of Laws) 1968 in which the provisions of certain Act specified in parts I and II of Schedule were extended to the Union Territory of Pondicherry.

(k) While the Special Marriage Act, 1954, Hindu Marriage Act, 1955 and the Hindu Succession Act, 1956 were covered by Regulation of 1963, Hindu Minority and Guardianship Act, 1956 and Hindu Adoption and

Maintenance Act, 1956 were covered by 1968 Act. Consequently, provisions was enacted as sub Section (2A) under Section 2 of the Hindu Succession Act, 1956 and Sections 3 and 2 respectively under Hindu Minority and Guardianship Act, 1956 and the Hindu Adoptions and Maintenance Act, 1956.

(l) In fact, the Indian Christian Marriage Act, 1872 was made applicable to the territory of Pondicherry, but the same did not apply to *renouncants* of Union Territory of Pondicherry and hence, by amendment a proviso was added to Section 1 of the Indian Christian Marriage Act, 1872 to the effect that the said Act would not apply to *renouncants* of Union territory of Pondicherry.

(m) Therefore, neither the Special Marriage Act, 1954 nor the Indian Christian Marriage Act, 1872 would apply to *renouncants*.

22. Thus, the sum and substance is that, those persons who are known as *renouncants* at their option

adopted the French Civil Code and are governed by the provisions of the French Civil Code. That is how, while considering the case of the parties in the aforesaid decision, whether the provisions of the Hindu Succession Act was applicable to them, the Madras High Court considering the fact that, Parliament had enacted the Pondicherry (Laws) Regulation, 1963, and the Pondicherry (Extension of Laws) Act, 1968. It is only when there is specific mention in the Schedule that the provisions of Hindu Succession Act or any other Personal Law is applicable, the same would be then applicable in the erstwhile French settlements including Pondicherry (Puducherry). But, on the contrary, by the said enactment, if any law such as the Hindu Succession Act (or any other personal Law) would not be made applicable, or is excluded from the Schedule to the said enactment, then a corresponding amendment has been made by way of State amendment to that particular enactment. This is evident on a reading of Section 2(2A) to the Hindu Succession Act, 1956. Similarly, Section 2(2A) has been

added to Hindu Minority and Guardianship Act, 1956, and Section 2(2A) has been added to the Hindu Marriages Act, 1955 by way of State amendments, which have been made under the provisions of Regulation 7 of 1963 and Section 2 of the Schedule thereto, which would clearly indicate that the Parliament enabled the State legislature to make the amendment to the respective Personal Laws, whether applicable to the Hindus or Mohammedans, by which, there is a categorical exclusion of the Personal Laws as applicable in the rest of India to the Union Territories of Pondicherry comprising, *inter alia,* of Karaikal, Mahe and Yanam. The resulted position is that, the French Civil Code would continue to apply to those persons who are known as *renouncants*, including the descendants of *renouncants* irrespective of where they presently reside and other Personal Laws are not applicable to them.

23. In view of the aforesaid discussion, it is held that neither the Indian Christian Marriage Act, 1872 nor the Special Marriage Act, 1954 would apply to the parties

in the instant case, as they were married under French Civil Code. Hence, the same would apply with regard to divorce also.

24. Therefore, in this case, we have to ascertain as to which provisions of the French Civil Code are applicable since we find that the marriage between the parties is neither solemnised under the provisions of the Special Marriage Act nor under the provisions of the Indian Christian Marriage Act, 1872. Although, the parties are Christians by faith, in view of the judgment of the Madras High Court and on a reading of enactments, referred to above, we find that Ex.P.35 is a proof of marriage between the parties under the French Civil Code. That being the position, they are entitled to claim divorce under the provisions of the French Civil Code.

25. In that regard, we have ascertained about the applicable provisions of the French Civil Code and we find that the relevant Articles applicable for divorce are as under:

"Article 242: *A petition for divorce may be presented by a spouse where facts which constitute a serious or renewed violation of the duties and obligations of marriage are ascribable to the other spouse and render unbearable the continuance of community life.*

x x x

Article 244: *(Act No.75-617 of 11 July 1975) A reconciliation of the spouses which occurred after the alleged facts prevents their being invoked as a ground for divorce. The judge shall then declare the petition inadmissible. A new petition may however be lodged by reason of facts occurred or discovered after the reconciliation, the former facts being then recallable in support of that new petition. Temporary continuance or renewal of community life must not be considered as a reconciliation where they result only from necessity or from an attempt at conciliation or from the needs of the education of the children.*

Article 245: *(Act No.75-617 of 11 July 1975) The faults of the spouse who initiated the divorce do not prevent from considering*

his or her application; they may, however, deprive the facts which the other spouse is reproached with of the seriousness that would make them aground for divorce. Those faults may be also invoked by the other spouse in support of a counter-petition in divorce. Where both applications are granted, divorce is decreed with the blame lying with both spouses. Even failing a counter-petition, divorce may be decreed with the blame lying with the two spouses where wrong ascribable to both appear in the hearings.

Article 245-1: *(Act No.75-617 of 11 July 1975; Act No.2004-439 of 26 May 2004) At the request of the spouses, the judge may restrict himself to establishing in the grounds of the judgment that there are facts constituting a cause for divorce, without having to state the wrongs and complaints of the parties.*

Article 246: *Where a petition on the ground of irretrievable impairing of the marriage tie and a petition on the ground of fault are presented concurrently, the judge shall rule*

first on the petition on the ground of fault. Where he dismisses the latter, the judge shall rule on the petition for divorce on the ground of irretrievable impairing of the marriage tie."

26. On a reading of the same, we find that Article 245-1 of the French Civil Code would apply in the instant case as we find that since both parties are seeking divorce, there are facts constituting a cause for divorce, without having to state the wrongs and complaints of the parties. This provision is akin to divorce by mutual consent as it obtains in other laws, such as Hindu Marriage Act, 1955 and Special Marriage Act, 1954. Therefore, invoking the provisions of Article 245-1 of the French Civil Code, we hold that marriage between the parties solemnised on 19-10-2009 before the Registrar of Marriages, Mairie d'Oulgaret, Jawahar Nagar, Puducherry, is liable to be dissolved and is dissolved.

27. Therefore, we hold that the Family Court was justified in dismissing the petition as well as the counter

claim filed under the Special Marriage Act. We answer point Nos.1 and 2 by holding that the French Civil Code would be applicable to the parties.

28. The marriage between the parties stands dissolved on the basis of Article 245-1 of the French Civil Code. Therefore, the Registry is directed to draw up a decree under the provisions of Article 245-1 of the French Civil Code dissolving the marriage between the parties which was solemnised on 19-10-2009 before the Registrar of Marriages, Mairie d'Oulgaret, Jawahar Nagar, Puducherry.

29. The matter does not end. This takes us to the next significant aspect, which is with regard to the claim of permanent alimony or maintenance by the wife. It is noted that the Family Court has rejected the claim for alimony. In that regard, we have already recorded the contentions of the respective parties. We have also referred to the recent judgment of the Hon'ble Supreme Court in the case of *Rajnesh v. Neha* (supra). Although,

the said judgment has been pronounced under Section 125 of the Code of Criminal Procedure, 1973 nevertheless, the Supreme Court has considered certain relevant laws under which claim for maintenance of permanent alimony could be made and has ultimately, formulated the manner in which permanent alimony of maintenance could be awarded to the parties by formulating Enclosure-I being Affidavit of Assets and Liabilities for Non-Agrarian Deponents and Enclosure-II containing Affidavit for Agrarian Deponents. The same could be applied in the instant case by way of analogy.

30. In this context, reliance is also placed on Articles 278, 279, 270, 271 and 272 of the French Civil Code, which are extracted below, while determining the permanent alimony in the form of compensatory benefits, as the divorce has been granted in the instant case by mutual consent:

"Article 278

In case of divorce by mutual consent, the spouses shall fix the amount and terms of the compensatory benefit in the agreement which they submit to the judge for approval. They may lay down that the payment of the benefit will come to an end from the occurrence of a specific event. The benefit may be in the form of an annuity granted for a limited period.

The judge, however, shall refuse to approve the agreement where it fixes unfairly the rights and obligations of the spouses.

Article 279

An approved agreement is enforceable at law as is a judicial decision.

It may be modified only by a new agreement between spouses, likewise submitted to approval.

Spouses have nevertheless the power to provide in their agreement that each of them may, in case of an important change

in the means or needs of either party, request the judge to revise the compensatory benefit. The provisions of Article 275, paragraphs 2 and 3, and of Articles 276-3 and 276-4 shall also apply, depending on whether the compensatory benefit takes the form of a capital or of a temporary or life annuity.

Save as otherwise provided in the agreement, Articles 280 to 280-2 shall apply.

Article 270

Divorce puts an end to the duty of support between spouses.

One of the spouses may be compelled to pay the other a benefit intended to compensate, as far as possible, for the disparity that the breakdown of the marriage creates in the respective ways of living. This benefit shall be in the nature of a lump sum. It shall take the form of a capital the amount of which must be fixed by the judge.

However, the judge may refuse to grant such a benefit where equity so demands, either taking into account the criteria set out in Article 271, or where the blame lies wholly upon the spouse who requests the advantage of this benefit, considering the particular circumstances of the breakdown.

Article 271

A compensatory benefit must be fixed according to the needs of the spouse to whom it is paid and to the means of the other, account being taken of the situation at the time of divorce and of its evolution in a foreseeable future.

For this purpose, the judge shall have regard in particular to:

- *the duration of the marriage;*
- *the ages and states of health of the spouses;*
- *their professional qualifications and occupations;*
- *the consequences of the professional choices made by one spouse during the community life for educating the children and the time which must still be devoted to this education, or for favouring*

his or her spouse's career to the detriment of his or her own;
- *the estimated or foreseeable assets of the spouses, both in capital and income, after liquidation of the matrimonial regime;*
- *their existing and foreseeable rights;*
- *their respective situations as to retirement pensions.*

Article 272 *In the context of the fixing of a compensatory benefit, by the judge or by the parties, or on the occasion of an application for revision, the parties shall provide the judge with declarations stating on their honour the accuracy of their means, incomes, assets and ways of living.*

(Act no 2005-102 of 11 Feb. 2005) When determining the needs and means, the judge may not have regard to the sums paid on the ground of compensation for industrial injuries and to the sums paid on the ground of the right to compensation of a disability."

31. Therefore, on the question of award of permanent alimony to the wife, we remand the matter to

the Family Court, reserving liberty to the parties to file their respective Affidavits on the basis of the judgment of the Hon'ble Supreme Court in the case of *Rajnesh v. Neha* (*supra*). If such Affidavits are filed, liberty is reserved for other party to file counter to the said Affidavit and the Family Court to arrive at the amount of permanent alimony to be awarded to the wife in the instant case.

32. Since we have already recorded the statement of learned counsel for the husband made on instructions that, initially, a sum of Rs.25.00 lakh shall be paid to the wife, without prejudice to his right to resist any further claim to be made by the wife, we direct Mr. Leo John (husband) to pay the said amount to Mrs. Eugenia Preethi's (wife's) Bank Account within a period of *one* month from the date of receipt of a certified copy of this judgment or, in the alternative, to pay the said amount before the concerned Family Court.

33. Since both parties are represented by their counsel, the parties are directed to appear before the

Family Court on 24-2-2021 without expecting any separate notice from the said Court.

34. It is needless to observe that the Family Court shall first ensure that the sum of Rs.25.00 lakh has been paid to the wife by the husband and shall decide further claim of permanent alimony to be made by the wife in accordance with law by taking into consideration the objections, if any, by the husband to the said claim.

35. Since, we have reserved liberty to the parties to file Affidavits, they could also let in oral and documentary evidence.

36. The parties are at liberty to rely upon any other Article of French Civil Code in the matter of grant of permanent alimony and maintenance in the form of compensatory benefits.

37. Since the matter is of the year 2011, the Family Court to dispose of the case as expeditiously as

possible. The parties to co-operate for speedy disposal of the case.

38. All contentions of both sides with regard to right of the wife to seek additional permanent alimony are kept open. Point No.3 is accordingly answered.

39. In the result, the judgment and decree dated 5-7-2018 passed in M.C. No.3116 of 2011 on the file of the IV Additional Principal Judge, Family Court, Bengaluru as well as on the counter-claim is set-aside.

40. The appeals are ***allowed-in-part*** and ***disposed*** in the aforesaid terms.

Parties to bear their respective costs.

Sd/-
JUDGE

Sd/-
JUDGE

kvk/ Bgn/-
CT:am