



2025:DHC:10461-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 04.11.2025
Judgment pronounced on: 27.11.2025

+ **MAT.APP.(F.C.) 115/2024 & CM APPL. 21304/2024 (Stay)**

.....Appellant

Through: Mr. Prosenjeet Banerjee,
Ms. Shreya Singhal, Ms.
Mhasilenuo Kreditsu, Ms.
Kushagra, Ms. Anshika,
Ms. Vijayrajeshwari & Mr.
Sarthak, Advocates.

versus

.....Respondent

Through: Ms. Padma Priya, Ms.
Chitrangda Rastrauara, Mr.
Abhijeet Singh, Mr. Anirudh
Singh, Mr. Aishwaray Mishra,
Mr. Dhananjay Shekhawat,
Mr. Sakshi Aggarwal, Mr.
Yuvraj Singh, Ms. Pearl Pundir
and Ms. Bhumika, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Appeal, filed under Section 19 of the **Family Courts Act, 1984**¹ read with Section 28 of the **Hindu Marriage Act,**

¹ FC Act



1955², challenges the **Judgment dated 28.03.2024**³ passed by the learned **Family Court, Patiala House Courts, New Delhi**⁴, in case being HMA No. 93/2023 (*earlier numbered as Matrimonial Suit No. 410/2021*), titled “ v.

”, whereby the marriage held between the parties was dissolved on the grounds of cruelty.

2. The present appeal raises a significant question as to whether, in a petition originally instituted under Section 13(1)(ia) of the HMA seeking divorce on the ground of cruelty, a decree of divorce can be granted under the provisions of the **Special Marriage Act, 1954**⁵.

BRIEF FACTS:

3. The brief conspectus of the facts as garnered from the records is as follows:-

- (a) The marriage between the parties is undisputed, but the date and form of the marriage are disputed. As per the Respondent-Wife, the marriage between the parties was solemnized on 11.12.2011 according to Hindu rites and customs, whereas as per the Appellant-Husband marriage was performed on 26.09.2011 under the SMA before the Marriage Officer, Barasaat, District North 24 Pargana, West Bengal, and a social function was held on 11.12.2011 followed by a reception on 15.12.2011.
- (b) The factum of marriage between the parties is not in dispute. However, the actual date of marriage and the statutory provision under which it was solemnised or recognised were matters of dispute before the learned Family Court. As far as recognition

² HMA

³ Impugned Judgment

⁴ Family Court/ Family Court Judge

⁵ SMA



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of marriage is concerned, the Appellant-Husband has placed on record a Certificate of Marriage dated 26.09.2011 issued under Section 13 of the SMA. Nevertheless, the precise date of marriage is not material for the adjudication of the present Appeal, as it does not bear upon the issue under consideration.

- (c) It is the case of the Appellant-Husband that on 04.09.2018, the Respondent-Wife left her matrimonial home at Habra, District North 24 Parganas, West Bengal, stating she was going to her workplace. Later that evening, she sent an SMS expressing her intention to go to her parental home at Siliguri, District Darjeeling, West Bengal, and left their minor son behind. On 09.09.2018, the Respondent, along with her father and others, took away the minor child from the Appellant-Husband's paternal house at Habra without any order of a competent Court.
- (d) On the other hand, the Respondent-Wife claims that she was subjected to regular physical assault, verbal abuse, and mental harassment by the Appellant-Husband. She alleges that on the night of 03.09.2018, the Appellant-Husband accused her of having an extra-marital relationship and physically assaulted her despite her being four months pregnant. This compelled her to leave her matrimonial home on 04.09.2018, on the pretext of leaving for her workplace, for the safety of her unborn child. She further claims that on 09.09.2018, she returned to the matrimonial home with her father and relatives, accompanied by the police, to recover her minor son. She thereafter lodged an FIR against the Appellant-Husband and his family members under Sections 498A and 506 of the **Indian Penal Code, 1860**⁶,

⁶ IPC



and provisions of the **Protection of Women from Domestic Violence Act, 2005**⁷.

- (e) The Appellant-Husband thereafter approached the Calcutta High Court challenging such forcible removal of the child on 11.09.2018 and also filed a Guardianship Petition before the learned Additional District Judge, Darjeeling. On 21.02.2019, the Calcutta High Court, while considering Civil Revision (C.O. 4105 of 2018) on merits, directed transfer of the proceedings under the **Guardians and Wards Act, 1890**⁸, from Darjeeling to the Court at Barasat, noting that both parties were working in Kolkata, North 24 Parganas District, during the relevant period.
- (f) The Appellant-Husband alleges that the Respondent-Wife, as a *counterblast* to the Guardianship Proceedings initiated by him, lodged an FIR bearing no. 04/2019 dated 09.01.2019 under Section 498A and 506 IPC read with Section 3 and 4 of the Dowry Prohibition Act, 1961.
- (g) On 05.03.2019, Respondent-Wife instituted three cases against the Appellant-Husband at Siliguri, West Bengal, which are as follows:-
- i. Criminal Case being CIS No. 10911/2019 arising out of C.R. Case No. 202/2019 under Sections 406, 120B, and 34 IPC before the Judicial Magistrate, 1st Court;
 - ii. Criminal Miscellaneous Case No. 31/2019 under the DV Act before the Judicial Magistrate, 4th Court;

⁷ DV Act

⁸ GWA



- iii. Maintenance Case being M.R. 939/2019 under Section 125 of the Code of Criminal Procedure, 1973⁹, before the Judicial Magistrate, 2nd Court.
- (h) On 02.01.2020, the Respondent-Wife filed **Transfer Petition (Civil) Nos. 161-162 of 2020 and Transfer Petition (Criminal) Nos. 63-65 of 2020**¹⁰ before the Hon'ble Supreme Court seeking transfer of Guardianship Petition and connected criminal cases to the Family Courts, Jodhpur, Rajasthan.
- (i) On 24.06.2021, the Respondent-Wife filed I.A. No. 70784/2021 seeking amendment of the prayer in Transfer Petition (Civil) Nos. 161-162 of 2020 to request transfer to the Family Court, Patiala House, New Delhi.
- (j) On 25.06.2021, the Hon'ble Supreme Court disposed of Transfer Petitions of 2020 by a common order, directing transfer of the Guardianship Petition pending before the Ld. District Judge, Barasat, as well as the Maintenance Case bearing No. M.R. 939/2019 pending before the Judicial Magistrate, Siliguri, to the Family Courts, Patiala House, New Delhi.
- (k) On 08.10.2021, the Respondent-Wife filed a divorce petition, i.e., Matrimonial Suit No. 410/2021 under Section 13(1)(ia) the HMA, seeking dissolution of her marriage with the Appellant-Husband before the learned Court of the Additional District Judge (1st Court) Siliguri, District Darjeeling, West Bengal. The learned Family Court framed the issues on 16.12.2022, and the Respondent-Wife was partly cross-examined by the learned Counsel for Appellant-Husband.

⁹ CrPC

¹⁰ Transfer Petitions of 2020



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- (l) On 11.04.2022, the Appellant-Husband filed **Transfer Petition (Civil) Nos. 825-826 of 2022 and Transfer Petition (Criminal) Nos. 279-280 of 2022**¹¹ before the Hon'ble Supreme Court seeking transfer of the cases pending between the parties before the Family Court, Patiala House, New Delhi, to the Court at Siliguri, District Darjeeling, which is the hometown of the Respondent-Wife.
- (m) However, the Hon'ble Supreme Court, while disposing of Transfer Petitions of 2022 *vide* Order dated 07.12.2022, directed that Matrimonial Suit No. 410/2021 be transferred to the learned Family Court, Patiala House Courts, New Delhi, to expedite adjudication, as certain other proceedings *inter se* parties were being transferred to Delhi on the plea of the Respondent-Wife. It was further directed that the matters to be heard from the stage they were transferred.
- (n) During the pendency of the proceedings in India, the Respondent-Wife obtained employment as a Lecturer at the University of Hull, United Kingdom, and has been residing there since August 2023.
- (o) While hearing HMA No. 93/2023 (*earlier numbered as Matrimonial Suit No. 410/2021*), on 18.11.2023, the learned Family Court framed fresh issues for adjudication as well as directed Respondent-Wife to file an Evidence Affidavit. Further, an application filed by the Appellant-Husband under Order VII Rule 11 of the **Code of Civil Procedure, 1908**¹², on the ground that the marriage between the parties was

¹¹ Transfer Petitions of 2022

¹² CPC



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solemnised under the SMA, was also dismissed. The learned Family Court dismissed the application under Order VII Rule 11 CPC on the following grounds:

- i. That while considering an application under Order VII Rule 11 of the CPC, only the averments made in the petition are to be looked into.
 - ii. That the marriage between two Hindus, even if performed under the SMA, could also be dissolved under the HMA, and no prejudice was shown to have been caused to the Respondent [*Appellant herein*] if the petition was entertained under the HMA.
- (p) On 18.01.2024, the Appellant-Husband filed an Application for Judicial Notice, stating that C.M.(M) No. 2050/2023 had been filed challenging the Order dated 18.11.2023, which was allegedly contrary to the directions of the Hon'ble Supreme Court *vide* Order dated 07.12.2022. Pursuant to which, the learned Family Court deleted the fresh issues framed on 18.11.2023. The learned Family Court also closed the right of the Respondent-Wife to lead evidence as she failed to appear for her cross-examination.
- (q) On 27.02.2024, Appellant-Husband reserved his right to lead evidence, since the Respondent-Wife's right to lead evidence had been closed and no evidence had been adduced on her behalf. The learned Family Court closed Appellant-Husband's right with liberty to lead evidence, in the event the Respondent-Wife was permitted to lead evidence in the future.
- (r) On 28.03.2024, the learned Family Court passed the Impugned Judgment in HMA No. 93/2023.



(s) Aggrieved by the said judgment dated 28.03.2024 passed by the learned Family Court, the Appellant-Husband has preferred the present Appeal.

CONTENTIONS OF THE APPELLANT-HUSBAND:

4. Learned Counsel for the Appellant-Husband would contend that the Judgment impugned herein is not maintainable, for the reason that the original petition which came to be filed under the provisions of the HMA was not applicable since the marriage itself had been solemnized and registered under Section 13(2) of the SMA. He would, thus, contend that any adjudication of the petition under the provisions of the HMA was vitiated.

5. He would, thereafter, contend that, even assuming the provisions of the HMA were applicable, the conclusion of the learned Family Court with respect to there being the extension of the benefit of provisions of the SMA is not permissible.

6. The learned Counsel for the Appellant-Husband would contend that the learned Family Court, in paragraphs 57 and 58 of the Impugned Judgment, erroneously relied upon a proposed amendment which was never gazetted or notified to dissolve the marriage on the ground of irretrievable breakdown of marriage, a ground not available to the Courts in law. This fact has been confirmed through information furnished by the Rajya Sabha, Lok Sabha, and the Ministry of Law and Justice under the Right to Information Act, 2005.

7. The learned Counsel for the Appellant-Husband would further contend that the learned Family Court, in paragraph 58 of the Impugned Judgment, erroneously held that the wife could seek dissolution of marriage on the ground of irretrievable breakdown, on



the basis that the marriage was solemnised on 26.09.2011, prior to the proposed but unnotified amendment. The learned Family Court further referred to Section 28A of the SMA, which does not exist in the statute, to support this finding.

8. He would, thus, contend that there being a clear jurisdictional infirmity in the manner in which the Impugned Judgment has come to be passed on the basis of non-existent laws, the same cannot be sustained and deserves to be set aside.

CONTENTIONS OF THE RESPONDENT-WIFE:

9. *Per contra*, learned counsel for the Respondent-Wife would submit that the learned Judge merely took into account the practical reality of the parties' marital relationship having effectively ceased to exist and, in doing so, validly exercised the jurisdiction vested with the learned Family Court to grant a decree of dissolution of marriage.

10. She would, thus, defend the Judgment by stating that laws relating to matrimony should not be permitted to get embroiled in procedural red-tapism, and for that reason, the Judgment impugned herein would require to be sustained.

ANALYSIS:

11. We have heard the learned counsel for the parties at length and have meticulously perused the entire record, including the record as before the learned Family Court.

12. At the very outset, we deem it necessary to record our strong disapproval of the manner in which the learned Judge, Family Court, Patiala House Courts, has been adjudicating matrimonial matters. We have repeatedly found that he has conflated provisions of distinct and self-contained statutes, each with its own specific procedures and



purposes, thereby distorting the statutory framework governing matrimonial disputes.

13. On earlier occasions as well, this Court's interference has been necessitated, where the provisions of the FC Act have been invoked in a manner that effectively sidesteps or supplants the substantive requirements mandated under the HMA. Some recent examples are enumerated below:

- (i). ***Upinder Kaur Malhotra vs. Capt. Teghjeet Singh Malhotra & Anr., MAT.APP.(F.C.) 136/2025*** - Where the learned Judge *suo motu* granted a decree of divorce in separate petitions filed by the parties without examining whether the requirements under Section 13B of the HMA (*divorce by mutual consent*) were satisfied. He did so by relying upon the provisions of the FC Act, which provide procedural flexibilities to the Family Courts.
- (ii). ***Lovely Sharma vs. Manish Jaisani, MAT.APP.(F.C.) 166/2025*** - Where again the learned Judge granted a decree of divorce *suo motu* in separate petitions without assessing compliance with Section 13B of the HMA.
- (iii). ***Shweta Puri vs. Sanjay Puri & Anr., MAT.APP.(F.C.) 321/2024*** - The petition was listed before the learned Family Court Judge for the Wife's (*Respondent therein*) cross-examination. However, without recording any evidence on that date, the learned Judge disposed of the petition by granting a decree of divorce under Section 13B of the HMA.
- (iv). ***Smita Jina vs. Amit Kumar Jina, MAT.APP.(F.C.) 167/2025*** - In this matter as well, without the parties leading any evidence, the learned Judge granted a decree of divorce under Section



13B of the HMA, based on the separate petitions filed by the parties.

- (v). ***Shraddha Gupta vs. Sumit Jain, MAT.APP.(F.C.) 330/2023*** - the learned Judge followed the same line of practice and granted the decree of divorce.

14. While we are conscious that Family Courts are heavily burdened, owing to the increasing frequency with which parties separate, often on exceedingly trivial grounds, and the general erosion of the sanctity of marriage, this cannot be treated as a licence for any Court to indulge in what can only be described as statutory re-engineering. The statutory scheme must be followed, irrespective of caseload pressures.

15. In the present case, although the divorce petition was filed under Section 13(1)(ia) of the HMA seeking dissolution of marriage on the ground of cruelty, the learned Family Court Judge proceeded to apply provisions of the SMA, particularly an alleged Section 28A thereof, and extended this supposed provision on the ground that doing so would “*save precious judicial time and spare the parties another round of litigation*”. On this basis, the learned Judge granted a decree of divorce.

16. It bears reiteration that the SMA is a complete and self-contained secular code, intentionally crafted to govern marriages between parties who elect to solemnize their union outside the fold of personal laws. The said Act meticulously sets out a detailed statutory framework regulating every stage of the matrimonial process, from the prerequisites for marriage, to the manner of its solemnization, and ultimately its dissolution. Its scheme is deliberate and precise, and the Courts are bound to adhere to it in its statutory completeness.



17. A foundational point of distinction between the HMA and the SMA lies in the very concept and mode of solemnization. Section 7 of the HMA contemplates that a Hindu marriage is rooted in religious and customary rites. Where these rites include *Saptapadi*, the marriage attains legal validity and becomes irrevocably binding upon the parties once the seventh step is completed. Thus, the validity of the marriage is intrinsically tied to personal law traditions.

18. Under the SMA, however, the legal act of solemnization is entirely secular and formal. A marriage attains validity only upon its registration under the statute, and such registration can occur only after strict compliance with the procedural safeguards and statutory conditions laid down in Chapter II. Unlike the HMA, no religious rite or ceremony has any bearing on the recognition of the marriage. The SMA therefore operates on a wholly different conceptual foundation.

19. Apart from this fundamental divergence in solemnization, the HMA incorporates specific provisions governing what constitutes a valid Hindu marriage and the circumstances under which such a marriage may be dissolved. Section 13 of the HMA sets out, in exhaustive detail, the grounds on which a Hindu marriage may be dissolved. These include adultery, cruelty, desertion, conversion, mental disorder, venereal disease, renunciation, and presumption of death. The statute further delineates additional, wife-specific grounds for seeking dissolution. Each of these grounds, whether general or gender-specific, have been enacted with clear legislative intent. For the sake of reference, Section 13 of HMA is reproduced hereunder:

“13. Divorce. - (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party--



[(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

(ii) has ceased to be a Hindu by conversion to another religion; or

[(iii) 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.

Explanation.--In this clause,--

(a) the expression mental disorder means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression psychopathic disorder means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or]

* * * * *

(v) has * * * been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive; ***

* * * * *

[*Explanation.* In this sub-section, the expression desertion means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.]

[(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of 8[one year] or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of 8[one year] or



upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,--

(i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner:

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

(ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or 9[bestiality; or]

[(iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards;

(iv) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation. This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).]”

20. In contrast, Section 27 of the SMA, although containing certain analogous grounds for divorce, is distinct in both its structure and application. A side-by-side comparison of Section 13 of the HMA and Section 27 of the SMA makes these differences amply clear, which is as under:

Particulars	Hindu Marriage Act, 1955: Section 13	Special Marriage Act, 1954: Section 27
Nature of law	Personal law applicable to Hindus (as defined under Section 2 of the HMA)	Secular civil statute applicable to marriages solemnised under the SMA.
Applicability	Both parties must be Hindus for the HMA to apply.	No religion requirement; provided the marriage was solemnised under the SMA.



Grounds for divorce	Section 13(1): A marriage may be dissolved on petition by either spouse on any of the following grounds: (i) Adultery: voluntary sexual intercourse with a person other than the spouse. (ia) Cruelty: conduct such that the petitioner cannot reasonably be expected to live with the respondent. (ib) Desertion: desertion of the petitioner by the other party for a continuous period of not less than two years immediately preceding the presentation of the petition (ii) Cessation of being a Hindu: the other party has ceased to be a Hindu by conversion. (iii) Unsoundness of mind / mental disorder: of such a kind/extent that the petitioner cannot reasonably be expected to live with the respondent (v) Venereal disease in communicable form (vi) Renunciation of the world: by entering any religious order. (vii) Presumption of death: not heard of as alive for seven years or more.	Section 27(1): A petition for divorce may be presented by either spouse on the following grounds: (a) Adultery: voluntary sexual intercourse with a person other than the spouse. (b) Desertion: desertion of the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition (c) Imprisonment: respondent undergoing sentence of imprisonment for seven years or more. (d) Cruelty: conduct of such a nature that the petitioner cannot reasonably be expected to live with the respondent. (e) Unsoundness of mind / mental disorder: of such kind and extent that the petitioner cannot reasonably be expected to live with the respondent. (f) Venereal disease in communicable form (g) Suffering from leprosy, but not infected by petitioner (h) Presumption of death: not heard of as alive for seven years or more. Section 27(1A): Wife-specific grounds for
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	Section 13(1A): Additional grounds (i) no resumption of cohabitation or; (ii) no restitution of conjugal rights for a period of one year or more, after judicial separation Section 13(2): Wife-specific grounds for dissolution of marriage (i) where husband had another surviving wife at time of marriage (solemnized before the commencement of this Act), (ii) where husband guilty of rape, sodomy or bestiality, (iii) or certain maintenance orders followed by non-resumption of cohabitation for a year or more (iv) she was married before 15 years of age and refused to accept the marriage after attaining 15 or before 18.	dissolution of marriage (i) where husband guilty of rape, sodomy or bestiality, (ii) or certain maintenance orders followed by non-resumption of cohabitation for a year or more. Section 27(2): Additional grounds (i) no resumption of cohabitation or; (ii) no restitution of conjugal rights for a period of one year or more, after judicial separation
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21. We take serious exception to the manner in which the learned Family Court Judge, in this case, has attempted to conflate two entirely distinct and independent statutes. This approach is not merely



irregular; it is contrary to the law. A Judicial Officer cannot amalgamate statutory provisions from different enactments in a manner that neither reflects the text of the law nor permits such blending. By invoking procedural flexibility available to Family Courts under the FC Act, he has effectively disregarded the mandatory statutory requirements.

22. We were, in fact, taken aback to find that the learned Judge relied upon, in the Impugned Judgement, a provision, Section 28A of the SMA, that does not exist on the statute book, and on this basis granted a decree of divorce.

23. It is incomprehensible how a Judicial Officer of the rank of a Family Court Judge could rely upon a non-existent statutory provision to grant a decree of divorce. Not only did he erroneously import the SMA into a petition filed under the HMA, but he then relied upon an entirely non-existent section of the SMA dealing purportedly with the irretrievable breakdown of marriage.

24. His justification that this would save judicial time and spare the parties further litigation is wholly untenable. We are of the firm view that administrative convenience cannot override statutory mandates.

25. Further, we take specific note of the observations of the learned Family Court Judge in Para 56 of the Impugned Judgment. For the sake of reference, we reproduce the same, which reads as under:

“56. Under Hindu Law marriage is considered holy union and unbreakable for seven births but realizing the ordeal faced by parties to the marriage, legislature interfered with the concept of holy union years ago and introduced room for dissolving marriages on certain ground enumerated in Section 13 of the Hindu Marriage Act. Later on parties to the failed marriage were also given option to come together and get their marriages dissolved by mutual consent under Section 13B of the Hindu Marriage Act. Marriages under the Special Marriage Act, 1954 cannot be termed as holy union as it permits marriage between persons belonging to



different religion and personal law of some of the religion recognizes marriage civil contract and not holy union.”

26. We are compelled to express our strong disapproval of these observations. The conclusion drawn by the learned Judge, that marriages solemnised under the SMA “*cannot be regarded as a holy union*”, is an unwarranted extrapolation based on a misconceived and selective reading of various matrimonial statutes.

27. Whether a marriage is viewed as a sacrament or as a civil contract under different personal laws has no bearing whatsoever on the sanctity, legitimacy, or legal force of a marriage solemnised under the SMA. The SMA is a secular code intended to provide a neutral and uniform legal framework for couples who choose to marry under it, and it in no manner diminishes the dignity, solemnity, or seriousness of such marriages. To characterise marriages under the SMA as not being a “*holy union*” is, therefore, neither appropriate nor appreciable.

28. We also fail to understand how the legislative intent to provide for dissolution of a marriage would take away from a Hindu marriage the character of a “*holy union*”. It would appear that the learned Judge verily believes that a marriage, in order for it to be considered “*holy*” would have to be characterised as an unbreakable, immutable or indissoluble “*union*” between two spouses, importing therein, not only the commonplace understanding of the popular phrase, “*till death do us part*” but extend further to transcend temporal boundaries, acquiring thereof a metaphysical character regenerating itself across seven births.

29. The law as it stands today, recognises a Hindu marriage as a sacrament and as a “*Holy Union*”, not as a result of the alleged



permanence of the relationship over seven births or even of a single lifetime, but, as per the Hon'ble Supreme Court, because, it facilitates "*the performance of religious duties*" [***Swarjya Lakshmi v. Dr. G. G. Padma Rao***¹³], it transforms the wife "...in the household of her husband and takes a new birth", [***Anuradha Samir Vennangot v. Mohandas Samir Vennangot***¹⁴], "...by such union, the wife becomes part and parcel of the husband" [***Beni Bai Vs. Raghubir Prasad***], "...wife becomes a part and parcel of the body of the husband. She is therefore, called ardhangani" [***Raghubar Singh v. Gulab Singh***¹⁵], or due to the observance of Homam, i.e., oblation to fire and saptapadi [***Velamuri Venkata Sivaprasad v. Kothuri Venkateswarlu***¹⁶].

30. We also take note of the fact that the learned Family Court Judge, in addition to relying upon a non-existent statutory provision, has further proceeded to hold that the marriage stands dissolved on the ground of cruelty. For arriving at this conclusion, the learned Judge has placed reliance on the judgment of the Hon'ble Supreme Court in ***Rakesh Raman v. Kavita***¹⁷ and concluded as follows:

"45. Although petitioner could not be said to have proved any of her allegation against the respondent and her family about their alleged act of cruelty committed prior to 04.09.2018 yet in view of the above rulings it has got to be seen if marriage of the parties had reached such a stage where each parties could be said to be inflicting cruelty upon each other and continuation of such marriage would amount to sanctioning cruelty which parties are inflicting upon each other.

46. There is no dispute that various litigation began between the parties after 09.09.2018 with respondent filling Writ petition before the Hon'ble Calcutta High Court for over action of the police in accompanying the petitioner to his house on 09.09.2018 and forcibly - getting delivered the son of the parties. He also filed two

¹³ (1974) 1 SCC 58

¹⁴ (2015) 16 SCC 596

¹⁵ (1998) 6 SCC 314

¹⁶ (2000) 2 SCC 139

¹⁷ 2023 (17) SCC 433



petitions under Guardian and Wards Act before the court at Darjeeling, West Bengal. Petitioner filed FIR under Section 498A, 506 IPC against the respondent and his parents pursuant whereof they were prosecuted and acquitted by the Ld. Magistrate First were Class, Darjeeling. It was stated that appeal against said acquittal is pending

before the concerned court. Other three criminal cases filed by the petitioner i.e. bearing No. CR 202/2019 under Section 406/120B/34 of IPC and Misc. CrI. 31/19 under Domestic Violence Act are pending before Magistrate at Siliguri.

47. Two petitions under Guardian and Wards Act filed by the respondent and one petition under Section 125 CrPC filed by the petitioner were transferred to Family Court, Patiala House by the Hon'ble Supreme Court, are pending before this court. Two miscellaneous petition/application filed by the respondent under Section 340 CrPC are also pending before this Court wherein respondent herein has been seeking strict action against the petitioner herein for her alleged violation of court orders. Number of applications were filed by the respondent in Guardian & Wards petitions complaining against the petitioner herein about non-compliance of the order of the court permitting visitation/meetings of the respondent with the children. Bitter and acrimonious trading of charges are going on between the parties in the said guardian petitions including allegation of sexual molestation of the son by the respondent.

48. Petitioner herein had filed an application (in the petition filed by the respondent herein under Guardian & Wards Act pending before this court) seeking permission to move out of India along with the children of the parties for better future of the children and to enable herself to provide for sufficient income to meet the increasing requirement of the children as respondent had allegedly declared his inability to provide more than Rs. 10,000/- a month. Said application was dismissed by this Court and petition under Article 227 filed against the said order was also dismissed by the Hon'ble High Court holding that such petition was not maintainable. It is stated that first appeal against the order dismissing petitioner's application for permission to move abroad is pending before the Hon'ble High Court. Respondent placed on record of the said case a social media post of the petitioner (though denied by the petitioner) reflecting publication of her frustration with the law and legal system.

49. It has already come in the record of this case that parties were before the Mediation Centre of the Hon'ble Supreme Court yet parties could not arrive at settlement on any of the issues between the parties. This Court during hearing of the petition under Guardian & Wards Act filed not and by be the achieved. Petitioner did/does not want divorce. On for respondent herein did make attempt to make parties resolve their differences on all or any of the issues but same could was of the firm view that it was



impossible for her to live in conjugal relationship with respondent nothing less than divorce was acceptable whereas respondent did/does not want divorce.

50. On digging to know the reason as to why he was not ready for divorce mutually when petitioner was not ready to live with him and did not show any possibility of living together, he firmly maintained | that he continued to love her and would not think of divorcing her. On repeated reasoning he submitted that he would agree for divorce provided petitioner hand over permanent custody of the children to him.

51. Whether respondent still continues to love her or is just using it as an excuse to refuse divorce by mutual consent so as to keep the petitioner entangled in relationship so that she could not re-start her life if she wished? A person who loves someone would never like to hurt him/her by any means, even if that other has hurt him/her. He or she would never take any action to put his/her loved one into disgrace/punishment or face accusation rightly or wrongly. If at all respondent continued to love petitioner, respondent would never be making any sort of allegation against the petitioner except for denying allegation against himself.

52. Respondent not only made allegation against the petitioner but has also approached authorities (e.g. application u/s 340 CrPC) for punishing her for her alleged violation. Love and allegation (with intention to invite action) cannot go hand in hand. Grievances made in public and love are inversely proportional. As grievances increases love decreases and vice versa. It must be kept in mind that in matrimonial disputes unilateral legal remedy to a spouse against his/her spouse is not available without allegation against the other spouse. Respondent is perfectly right in availing his legal remedies but his submission that he continued to love petitioner lack conviction.

53. Thus, it is seen that that marriage between the two has broken irretrievably. No love and respect for each other is left. They are now joined only through various litigations where both are muscling to prove themselves right and other wrong. When petitioner did not get permission to shift abroad along with her children, she moved alone there leaving her children with parents in Bangalore. Respondent has been making effort to meet the children and making various complaint against the petitioner when his efforts to meet the children are not bearing any result. The second child of the parties was borne after separation and respondent did not get chance to see her for many years, though for these parties are blaming each other, nevertheless fact of the matter is that second child could not see her father for years and with occasional meetings with long interval in between she could hardly develop bonding with respondent.

54. Here in the present case this couple lived together for almost 7 years and has been in legal battle around 6 years and this period of litigation would continue for another years before Hon'ble High



Court and the Hon'ble Supreme Court given the parties energies with which they are approaching High Court against unfavourable order. Though parties have two children yet they are living in exclusive custody of the petitioner who is resisting custody or unsupervised visitation for her own reason and thus children are literally growing away from respondent. The matrimonial bond is completely broken - and is beyond repair. There is no doubt that this relationship must end as its continuation is causing cruelty on both sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1)(ia) of the 1955 Act. Thus, in the given case where the marital relationship has broken down irretrievably, where there is a long separation with no desire to live together and absence of cohabitation, with multiple Court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other. Though petitioner has not been successful in proving her allegations against the respondent and his family members yet record of the cases of the parties as unfolded before this court and as noted above itself speaks volume that each one is inflicting cruelty upon other and thus the marriage has got to be dissolved on the ground of cruelty which each is committing against other, pending adjudication of other issues in other proceedings. Although in the above discussed circumstance respondent is also entitled to dissolution of marriage on the ground of the cruelty of the petitioner, nevertheless he has not chosen to seek such remedy whereas petitioner does ask for the same, thus, issue No.3 stands decided in favour of the petitioner accordingly."

31. These conclusions have been rendered in the complete absence of any oral evidence being led by either party. No oral testimonies were recorded by the learned Judge. Despite this, the learned Judge proceeded to return findings on the issue of cruelty purely on the basis of pleadings and on assumptions and conjectures, without any evidentiary foundation whatsoever.

32. At this stage, we consider it necessary to set out the chronology of proceedings that transpired before the learned Family Court Judge after the divorce petition was transferred from the Court of the learned Additional District Judge, Siliguri, West Bengal, to the learned Family



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Court at Patiala House Courts, until the passing of the Impugned Judgment. A brief tabular chronology is set out below:

DATE	EVENT
07.12.2022	Vide Order dated 07.12.2022 passed in Transfer Petitions (Civil) 825-826/2022, the Hon'ble Supreme Court directed that the divorce petition be transferred from Siliguri, West Bengal, to Delhi.
24.01.2023	The divorce petition was listed before the learned Family Court Judge, Patiala House Courts. The matter was posted for further proceedings.
28.02.2023	Respondent therein-Husband filed an application under Order VII Rule 11 of the CPC seeking rejection of the Divorce Petition, whereupon directions were issued to file a reply, and the matter was posted for hearing thereupon.
07.07.2023	Further direction to file a reply to the Order VII Rule 11 application.
26.08.2023	The learned Judge was on leave.
18.11.2023	The application under Order VII Rule 11 of the CPC was dismissed. Matter listed for the Petitioner therein/ Wife's evidence.
18.01.2024	The Wife/Petitioner therein was absent for cross-examination. Without granting any further opportunity, her right to lead evidence was closed. Matter was then posted for the Respondent therein-Husband's evidence.



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02.02.2024	Respondent therein-Husband could not be present for his evidence. Matter adjourned.
13.02.2024	Respondent therein-Husband filed an application under Order VII Rule 14 of the CPC along with documents. Wife was directed to file a reply thereto. The matter was listed for hearing on that application and for the Respondent therein-Husband's evidence.
27.02.2024	Respondent therein-Husband stated that since the Wife's evidence stood closed, he does not wish to lead any evidence; however, should she be given an opportunity later, he be granted liberty to lead evidence as well. On this basis, his evidence was also closed. The Order VII Rule 14 application was disposed of as not pressed. The divorce petition got posted for final arguments.
02.03.2024	Final arguments heard; Judgment reserved.
28.03.2024	Impugned Judgment delivered.

33. It is pertinent to note that the learned Judge who has delivered the Impugned Judgment had closed the Petitioner therein/Wife's right to lead evidence on the very first date fixed for her evidence, i.e., on 18.01.2024. Although the matter appeared before the same learned Family Court Judge on earlier dates (24.01.2023, 28.02.2023, 07.07.2023, 26.08.2023 and 18.11.2023), those listings were for procedural and other purposes and not for the purpose of recording the Petitioner therein/Wife's evidence. Closing the Wife's right to adduce oral testimony at that first opportunity, without granting any further



effective chance, is, *ex facie*, unfair and unreasonable and runs counter to settled procedural norms and Principles of Natural Justice.

34. An examination of the online record of this Court shows that the Petitioner therein/Wife challenged the Order dated 18.01.2024 by filing Civil Miscellaneous Petition, CM(M) 1862/2024, before this Court. Before that Petition could be finally adjudicated, however, the Impugned Judgment granting divorce was pronounced. Consequently, the miscellaneous petition came to be disposed of by the learned Single Judge of this Court *vide* Order dated 03.07.2024, in the following terms:

“Learned counsel appearing on behalf of the petitioner prayed for leave to withdraw the instant petition with liberty to take all the submissions/arguments/contentions before the appropriate forum. Learned counsel appearing on behalf of the respondent has no objection to the same.
Leave granted..
The petition along with pending application(s) is dismissed as withdrawn with liberty as prayed for.”

35. It is thus evident that the Wife’s grievance regarding the wrongful closure of her evidence was never abandoned; rather, it remained alive and was left open by the learned Single Judge.

36. Matrimonial disputes, by their very nature, require adjudication on the basis of properly led evidence, particularly oral testimony. Determination of issues such as cruelty cannot be undertaken merely on documents, much less on bare pleadings. In this case, the closure of the Wife’s evidence without granting a fair and adequate opportunity is wholly unsustainable.

37. The learned Family Court appears to have acted in a tearing hurry which has resulted in the rendering of a Judgment without a proper appreciation of the various aspects and nuances of the matter. In a matter such as the present one, which also involves the future of



two offspring, the progression of the matter without any evidence having been led, and considering the Order dated 03.07.2024, passed by this Court granting liberty to the Wife to address the Court on the various issues that were raised in respect of the closure of evidence, we believe that a fair opportunity, as is necessary does not seem to have been accorded.

38. It is therefore evident that the learned Family Court Judge acted unreasonably in the present case, not only by deciding the matter without any evidence after hastily closing the Wife's right to lead evidence, but also by applying substantive provisions of the SMA in a petition admittedly filed under the HMA and, further, by relying upon a provision that does not exist in the statute book of the SMA. The justification offered, which appears to be, *namely*, the need to "*save judicial time*", cannot legitimize such fundamental errors in procedure or law.

39. The overall conduct of the learned Family Court Judge, in this case, demonstrates a troubling lack of understanding of basic legal principles, the proper applicability of statutory provisions, and the jurisdictional boundaries within which a court must operate. The manner in which the learned Family Court Judge has proceeded reveals a serious misapprehension of the limits of judicial authority and undermines the integrity of the adjudicatory process.

40. While making these observations, we remain conscious of the consistent caution advised by the Hon'ble Supreme Court that High Courts should ordinarily refrain from making personal remarks against Judicial Officers of the subordinate judiciary. However, the manner in which the learned Family Court Judge has repeatedly conducted



proceedings not only disturbs judicial conscience but also threatens the integrity of the administration of justice.

41. As noted earlier, the same learned Judge has, in several matters coming before this roster, repeatedly ignored clear statutory mandates. Although appellate courts exist to correct errors of subordinate courts, they cannot permit a situation where proceedings are conducted in disregard of the law or judgments are rendered on the basis of provisions that do not exist.

42. If courts begin to decide cases in the manner adopted herein, purportedly to ensure expeditious disposal, in complete disregard of the applicable statutory framework, it would lead to an inevitable collapse of the system of administration of justice. Courts cannot be permitted to cast aside the law in the name of convenience or expedition.

DECISION:

43. For the reasons recorded above, we are of the considered view that the Impugned Judgment is unsustainable in law. The matter warrants a complete and fresh re-examination, strictly in accordance with the prescribed procedure and upon a proper, holistic appreciation of the evidence.

44. We accordingly allow the present Appeal and set aside the Impugned Judgement. We remand the matter to the learned Family Court, with a direction to the learned Principal Judge, Family Court, Patiala House Courts, New Delhi, to undertake a *de novo* adjudication of the case.

45. Having regard to the peculiar circumstances of the present matter, wherein the parties were unable to lead evidence, the learned



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Family Court shall permit both sides to adduce such oral and documentary evidence as may be necessary for the just and proper determination of the issues in dispute, in accordance with the law.

46. It is clarified that we have not undertaken any determination regarding the maintainability of the divorce petition in the form in which it was filed. The question of maintainability is one of the issues that falls for adjudication before the learned Family Court, and we leave it to be considered and decided at the appropriate stage in accordance with the law.

47. We further direct that the concerned learned Family Court Judge, Sh. Harish Kumar, shall undergo an appropriate and comprehensive refresher training program in Matrimonial Laws, under the aegis of the Delhi Judicial Academy, post-haste, before he adjudicates any further matrimonial matters.

48. The registry is directed to take necessary steps in this regard and communicate this Judgement to the concerned authorities for taking the appropriate steps.

49. The parties are directed to appear before the learned Principal Judge, Family Court, Patiala House Courts, New Delhi, on **05.12.2025**.

50. The present Appeal, along with pending application(s), if any, stands disposed of in the aforesaid terms.

51. No Order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
NOVEMBER 27, 2025/tk/sm/rou