2026:AHC:68880-DB

# HIGH COURT OF JUDICATURE AT ALLAHABAD

**FIRST APPEAL No. - 178 of 2026**

Hafij

.....Appellant(s)

Versus

Smt. Parveen Khatoon

.....Respondent(s)

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| Counsel for Appellant(s) | : | Moeez Uddin |
| Counsel for Respondent(s) | : | Kameshwar Singh, Sudhanshu Kumar Singh |

**Court No. - 2**

**HON'BLE ATUL SREEDHARAN, J.**
**HON'BLE VIVEK SARAN, J.**

1. Translated copies of the judgment, is taken on record.

2. Present appeal has been filed by the appellant, who is challenging the order dated 28.01.2026 passed by the learned Principal Judge, Family Court, Banda, by which the respondent-wife was granted divorce under the relevant provisions of the Dissolution of Muslim Marriages Act, 1939.

3. The main objection that has been taken by the learned counsel for the appellant is a glaring discrepancy on the part of the learned Trial Court in entertaining the plaint filed by the respondent-wife. Undisputedly, in this case, the plaint was filed under the provisions of the Muslim Women Marriage Dissolution Act, 1986, in Hindi it is given as "अन्तर्गत धारा - मुस्लिम स्त्री विवाह विच्छेद अधिनियम, 1986 ", such a law does not exist. The plaint was filed apparently, (looking at the year of the Act, which is 1986), under the Muslim Women (Protection of Rights on Divorce) Act, 1986, which is a law that was brought out for the protection of Muslim Women with regard to their assets and rights, who have already been divorced . However, the respondent had filed the said case for the dissolution of her marriage, which necessarily ought to have been under the Dissolution of Muslim Marriages Act, 1939, which in Hindi reads as " मुस्लिम विवाह विघटन अधिनियम, 1939".

4. It is trite law that merely because a wrong provision or a wrong act has been mentioned in a plaint, that by itself would not render a final

judgment invalid. As long as the Trial Court had the authority under an existing law and that existing law is correctly mentioned in the judgment. Merely because the wrong act or the wrong provision of law was mentioned in the plaint, would not invalidate the final order.

5. However, in the present case, after giving the cause title, the learned Trial Court records that the decision has been passed under the Muslim Women Marriage Dissolution Act, 1986. Such a law does not exist in any statute. What perhaps the learned Trial Court intended was to refer to the Dissolution of Muslim Marriages Act, 1939. Thereafter, the entire judgment has referred to the pleadings and evidence that were recorded during the course of the trial, but wherever the law had to be referred to, the learned Trial Court has repeatedly made the error of referring to the same as "मुस्लिम स्त्री विवाह विच्छेद अधिनियम, 1986", which is already stated hereinabove, does not exist. In paragraphs 8.4, 9 and in other places of the judgment wherever the law had to be referred to, the same non-existing law has been referred to, time and again. The most unfortunate part is that in paragraph 10 of the judgment, the learned Trial Court has recorded " अतः उपरोक्त समस्त तथ्यों एवं परिस्तिथियों तथा साक्ष्यों की सम्यक विवेचना के उपरान्त वादिया द्वारा वाद अन्तर्गत धारा - मुस्लिम स्त्री विवाह विच्छेद अधिनियम, 1986 अंशतः स्वीकार किये जाने योग्य है ". Therefore, the learned Trial Court has held that the case of the respondent-wife is liable to be allowed in part as per the relevant provisions of the Muslim Women Marriage Dissolution Act, 1986.

6. This leads us to record the fact that the learned Trial Court, presided over by a Judge of the rank of Senior District Judge has been rather casual while writing the judgment. It is for the Court to ensure that the statute referred to by it actually exists, merely an error in the plaint or the proceedings does not justify the learned Trial Court repeating the same error in the final judgment. Had the error been typographical error in an innocuous place of the order, the same could have been ignored by this Court. However, repeatedly referring to a statute that does not exist and that by holding the respondent-wife eligible to partial relief under a non-existing law, renders the judgment bad in law and facts.

7. Under the circumstances, the impugned order dated 28.01.2026 passed

by the learned Principal Judge, Family Court, Banda, is set aside and the matter is remanded to the learned Family Court to pass judgment afresh, giving the correct provisions of law. It is made clear that the Court is not directing a *de novo* trial and that while passing the final judgment, the Court may rely upon the material and evidence already available on record, unless it is of the firm opinion that additional evidence requires to be adduced. The learned Family Court is further requested to pass the final order, expeditiously, if possible, within a period of three months from the date of communication of this order.

8. With the above, the appeal stands **allowed** and the case is remanded with the aforesaid direction to the learned Family Court.

**(Vivek Saran,J.)** **(Atul Sreedharan,J.)**

**April 1, 2026**
Noman