IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 5760 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI ***Sd/-***

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Approved for Reporting	Yes	No
	Yes	

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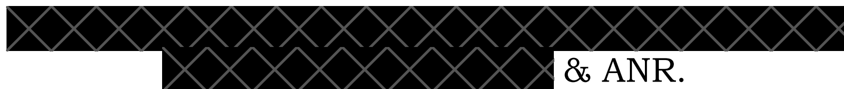

& ANR.

Versus

NA

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Appearance:

SHRIKAR H. BHATT(2573) for the Petitioner(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 23/04/2026

JUDGMENT

1. Being aggrieved by the orders passed below Exhibits-15 & 16 in HMP No.1472 of 2025 filed under Section 13B of the Hindu Marriage Act, 1955 (hereinafter referred to as, 'the Act') for divorce by mutual consent, the petitioners have preferred this petition under Article 227 of the Constitution of India.

2. The brief facts of the case are as under:-

2.1 Petitioners married each other on 23.02.2024 at

Ahmedabad, Gujarat in accordance with the Hindu rites, customs and rituals in presence of their family members, relatives and friends, and the marriage was registered with the Registrar of Marriage, Ahmedabad. However, due to differences, discords and influence as well as incompatibility, both the petitioners are living separately from each other since 12.03.2024 and the marital relationship is snapped since thereon.

2.2 Since the petitioners found that there is no possibility of reunion, they decided to part away from each other's life, and therefore, jointly filed an application under Section 13B of 'the Act' before the Family Court, Ahmedabad seeking divorce by mutual consent. On 05.05.2025, it came to be registered as Family Suit No.1472 of 2025.

2.3 Both the petitioners have filed their affidavits in support of relief of mutual divorce claimed in the petition, thereby they have moved first motion. The petitioner No.2, namely [redacted], since lived in Australia, sworn his affidavit at the place of his residence and submitted it to the learned Family Court in order to record the consent of both the petitioners being the second motion. In the Family Suit. The petitioner No.2, with the consent of petitioner No.1 preferred an application to examine him through video conferencing at Exhibit-14. However, the learned Family Court disposed of that application permitting him to file the application in the appropriate format, as per the Schedule II of the Gujarat High Court Rules for Video Conferencing for Courts (High Court and Subordinate Courts), 2021 (hereinafter referred to as 'the Rules').

2.4 The petitioner No.2, again with the consent of the petitioner No.1 following the direction issued by the Family Court, filed an application as per the Schedule II under the Exhibit-15 and prayed for permission to conduct video conference through portable device to record his consent and to complete the second motion. The learned Family Court passed the order below Exhibit-15 with rider of directions. In all, 15 directions were issued permitting the petitioner to record his consent through video conference. However, the 15 directions issued by the learned Family Court found to be inroads by the petitioner No.2, hence, he challenged the said order by this petition.

2.5 Another application was moved at Exhibit-16 requesting the Court to forward the order below Exhibit-15 to the Indian Consulate Office at Australia for fixing the date and time for video conference. That application was rejected by the Family Court observing that party can produce the certified copy of the order before the Indian Consulate and can obtain the date and time period from the Indian Consulate to join the Court with video conferencing.

2.6 Being aggrieved, both the petitioners have filed this joint petition.

3. Heard learned advocate Mr. Shrikar H. Bhatt appearing for the petitioners.

4. In a petition filed under Section 13B of 'the Act' for mutual divorce, no party is contesting, and therefore, no one has

been arraigned as a respondent. It is in this background, the Court is examining the legality and veracity of the order below Exhibits-15 and 16.

5. Let me first visit the larger Bench judgment in case of ***Santhini v. Vijaya Venketesh***, reported in ***(2018) 1 SCC 1***, whereby the larger Bench overruled the judgment of ***Krishna Veni Nagam v. Harish Nagam***, reported in ***(2017) 4 SCC 150,*** whereby the Supreme Court recognized the use of video conferencing in the matter if both the parties jointly give the request to come out from the language of Section 11 of the Family Court Act, 1984 (hereinafter referred to as the 'Family Court Act') and held that video conferencing is possible mode. Paragraphs 46 & 47 thereof reads as under:-

> *"46. We, as advised at present, constrict our analysis to the provisions of the 1984 Act. First, as we notice, the expression of desire by the wife or the husband is whittled down and smothered if the Court directs that the proceedings shall be conducted through the use of videoconferencing. As is demonstrable from the analysis of paragraph 14 of the decision, the Court observed that wherever one or both the parties make a request for the use of videoconferencing, the proceedings may be conducted by way of videoconferencing obviating the need of the parties to appear in person. The cases where videoconferencing has been directed by this Court are distinguishable. They are either in criminal cases or where the Court found it necessary that the witness should be examined through videoconferencing. In a case where the wife does not give consent for videoconferencing, it would be contrary to Section 11 of the 1984 Act. To say that if one party makes the request, the proceedings may be conducted by videoconferencing mode or system would be contrary to the language employed under Section 11 of the 1984 Act. The said provision, as is evincible to us, is in consonance with the constitutional provision which confer affirmative rights*

on women that cannot be negatived by the Court. The Family Court also has the jurisdiction to direct that the proceedings shall be held in camera if it so desires and, needless to say, the desire has to be expressed keeping in view the provisions of the 1984 Act.

47. The language employed in Section 11 of the 1984 Act is absolutely clear. It provides that if one of the parties desires that the proceedings should be held in camera, the Family Court has no option but to so direct. This Court, in exercise of its jurisdiction, cannot take away such a sanctified right that law recognizes either for the wife or the husband. That apart, the Family Court has the duty to make efforts for settlement. Section 23(2) of the 1955 Act mandates for reconciliation. The language used under Section 23(2) makes it an obligatory duty on the part of the court at the first instance in every case where it is possible, to make every endeavour to bring about reconciliation between the parties where it is possible to do so consistent with the nature and circumstances of the case. There are certain exceptions as has been enumerated in the proviso which pertain to incurably of unsound mind or suffering from a virulent and incurable form of leprosy or suffering from venereal disease in a communicable form or has renounced the world by entering any religious order or has not been heard of as being alive for a period of seven years, etc. These are the exceptions carved out by the legislature. The Court has to play a diligent and effective role in this regard."

6. Recently, the coordinate Bench in case of ***Palakben Ravi Luni D/O Dhamasibhai Gobarbhai Rabari & Anr. v. None*** in ***Neutral Citation No.2026:GUJHC:17292***, relying upon the judgment of ***Santhini (Supra)*** also held that the mode of video conferencing is available to Family Court in mutual conciliation proceedings. The observation of the coordinate Bench in paragraph 5 reads as under:-

"5. The learned Trial Court, while passing the impugned

order, relied upon the judgment rendered by the Apex Court in the case of Santhini v. Vijaya Venkatesh reported in (2018) 1 SCC 1, and rejected the application on the ground that participation through video conferencing in conciliation proceedings would not amount to effective participation. This Court has referred to the judgment rendered in the case of Santhini (supra), wherein the matter before the Apex Court pertained to a challenge to the orders passed by different High Courts in relation to transfer petitions concerning proceedings pending before various Family Courts. The Apex Court, in the case of Krishnaveni Nagam v. Harish Nagam reported in (2017) 4 SCC 150, had held that permitting the husband to participate in proceedings instituted under the Hindu Marriage Act, 1955 through video conferencing would meet the ends of justice in cases where transfer petitions are filed and the husband is residing at a distant place. The Apex Court thereafter referred the said issue to a larger Bench to determine whether the ratio laid down in Krishnaveni Nagam (supra) continued to hold the field. Ultimately, the larger Bench of the Apex Court in Santhini (supra) overruled the judgment in Krishnaveni Nagam (supra) and held as under:-

> *"Therefore, we are disposed to think that once a settlement fails and if both the parties give consent that a witness can be examined in video conferencing, that can be allowed. That apart, when they give consent that it is necessary in a specific factual matrix having regard to the convenience of the parties, the Family Court may allow the prayer for videoconferencing. That much of discretion, we are inclined to think can be conferred on the Family Court. Such a limited discretion will not run counter to the legislative intention that permeates the 1984 Act. However, we would like to add a safeguard. A joint application should be filed before the Family Court Judge, who shall take a decision. However, we make it clear that in a transfer petition, no direction can be issued for video conferencing. We reiterate that the discretion has to rest with the Family Court to be exercised after the court arrives at a definite conclusion that the settlement is not possible and both parties file a joint application or each party filing his/her consent memorandum seeking hearing by videoconferencing.*

57 Be it noted, sometimes, transfer petitions are filed seeking transfer of cases instituted under the Protection of Women from Domestic Violence Act, 2005 and cases registered under the IPC. As the cases under the said Act and the IPC have not been adverted to in Krishna Veni Nagam (supra) or in the order of reference in these cases, we do intend to advert to the same.

58 In view of the aforesaid analysis, we sum up our conclusion as follows :-

58.1 In view of the scheme of the 1984 Act and in particular Section 11, the hearing of matrimonial disputes may have to be conducted in camera.

58.2 After the settlement fails and when a joint application is filed or both the parties file their respective consent memorandum for hearing of the case through videoconferencing before the concerned Family Court, it may exercise the discretion to allow the said prayer.

58.3 After the settlement fails, if the Family Court feels it appropriate having regard to the facts and circumstances of the case that videoconferencing will sub-serve the cause of justice, it may so direct.

58.4 In a transfer petition, video conferencing cannot be directed.

58.5 Our directions shall apply prospectively.

58.6 The decision in Krishna Veni Nagam (supra) is overruled to the aforesaid extent

59. We place on record our appreciation for the assistance rendered by Mr. Ajit Kumar Sinha, learned senior counsel.

60. The matters be placed before the appropriate Bench for consideration of the transfer petitions on their own merits.”

7. It is in this background that I appreciate the legality and veracity of the impugned order passed below Exhibits-15 and 16. Perusal of the impugned order indicates that perhaps the learned Family Court failed to understand applicability of 'the Rules' notified by the High Court of Gujarat dated 2nd June, 2021, more particularly, its object and reasons. Firstly, the learned Family Court discarded the application Exhibit-14 on the ground that one has to file the application as per the Schedule II of 'the Rules'. The approach of the learned Family Court, therefore, appears to be hyper-technical.

8. Moreover, the learned Family Court, without examining whether 'the Rules' are applicable in a video conferencing to be carried in a matrimonial proceedings, whereby joint request has been made by the petitioners to examine one of the spouse living outside India passed impugned orders. Nonetheless, the petitioners preferred application at Exhibit-15 following the command in order below Exhibit-14. The joint request was moved. The application, though, was allowed, the learned Family Court issued in all 15 directions to be followed by the applicant to verify his own consent through video conferencing on the affidavit sworn in at Australia and tendered before the Court.

9. In its range of direction, the learned Family Court firstly reminded the petitioner to disclose the name of Coordinator at remote point by the concerned Embassy, without examining that whether concerned Embassy or Consulate at Australia has appointed any person as Coordinator or whether the Rule 9 of 'the Rules' would apply in such a case. Further, it

directed that the official email ID, name of the Coordinator along with phone number shall have to be disclosed. Further, the petitioner was directed to obtain the time slot for proposed video conference from the Coordinator of the remote point and same was to be informed to the Court. Court Commissioner is appointed to verify content of affidavit during video conferencing.

10. The petitioner was further directed to deposit Rs.10,000/- towards the expenditure and remuneration of the Court Commissioner, whereby Rs.8,000/- was to be paid to the Commissioner and Coordinator at the remote point was to be paid Rs.2,000/-. The expenses for Coordinator at remote point was to be expended by the petitioner. Petitioner was also directed to disclose the nearest remote point, particulars of Coordinators and obtain time slot for remote point, etc. One Mr.Jatin Tathagar was appointed as a Court Commissioner to ascertain the truthfulness of the affidavit filed by one of the petitioners – the husband and was also appointed to inquire about the consent given by him. The petitioner – husband's identity was also ordered to be verified. Secured video conference and end-to-end encryption was also expected to protect the data and privacy, as approved by the Government and there are several other directions also, which were issued.

11. Before I analyze the legality of these directions and also visit the order passed below Exhibit-15. Let me scrutinize the order passed in the application below Exhibit-16, whereby the petitioner prayed that the Court may forward the order passed in Exhibit-15 to the Indian Consulate at Melbourne, email ID of which has been given in the petition or may permit

the portable video conferencing in view of Rule 38 of 'the Rules'. The application was rejected on the ground that the Court is not obliged to inform the Coordinator at the remote point by forwarding the order below Exhibit-15. The learned Family Court, while taking an overly technical approach, failed to notice the rudimentary facts. 'The Rules' are meant to examine the formal witnesses, where the Court or Court monitered video conferencing point and remote video conferencing point are well within the domain of the Court.

12. In the case on hand, where the spouse wants a video conferencing to give his assent in a second motion in a petition for mutual consent, Family Court ordered to follow multiple eventuality in form of directions, which virtually negate the request of video conferencing, I fail to understand that how Family Court can pass such kind of the orders, which instead of smoothening the process, smothered it. The two petitioners, i.e. husband and wife, willingly want a divorce and one of them wants to connect the Court through video conference as he lives in Australia. However, the nit-picking approach of the learned Family Court frustrated their valid desire and request. The learned Family Court has unnecessarily made the issue overcomplicated and fastidious. This Court does not subscribe to such approach of the learned Family Court.

13. What strange found from the impugned order besides the aforesaid ultra-technical approach that the learned Family Court, instead of verifying the assent of spouse – husband in a second motion, appointed the Commissioner to do so. The subjective satisfaction was required to be recorded by the

learned Family Judge and not by any Court Commissioner. The learned Family Court, while appointing the Commissioner, to record the assent of one of the petitioners - spouse – husband, did not record any reasons, but speculatively passed the order. Therefore, such order deserves no consideration.

14. Owing to Section 14 of the 'Family Court Act', the Family Court is entitled to set its own procedure regardless of relevancy or admissibility of evidence defined in the Indian Evidence Act, 1872, but in view of Sections 15 and 16 of the 'Family Court Act', Judge is required to record the oral evidence in his presence and may permit to file an affidavit, but recording the assent of one of the spouse i.e. husband, living outside India by appointing the Court Commissioner is unknown procedure.

15. Let me say that technology should serve as handmaiden to justice, and not a hurdle in the path. It must remain simple, reliable and accessible to litigant. If technology or its adoption becomes complex, it risks delaying justice rather than delivering it. Court, therefore, must adopt technology with litigant friendly approach, with focus on fairness, efficiency and human sensitivity. In essence, technology should advance the cause of justice and not chaos. Technology should ensure that timely justice becomes a reality with care.

16. In the background of aforesaid reasons, without hesitation, this Court holds that the learned Family Court, by passing the orders below Exhibits-15 and 16, instead of helping the litigant in advancing their cause in getting justice, instead created hurdles in the path. Thus, the impugned orders deserve to be set aside.

17. In the aforesaid circumstances and reason, the petition succeeds. The impugned orders passed below Exhibits-15 and 16 in HMP No.1472 of 2025 are hereby quashed and set aside.

17.1 The petitioner - Mr. [redacted], living in Australia, is permitted to appear through video conferencing from his portable device from his own place; however, that video conference shall take place during the working of the family Court hours.

17.2 The learned Family Court is directed to issue order setting up the date and time for the video conferencing to record the assent of Mr. [redacted]. The time shall be as per the Indian Standard Time during the family Court hours.

17.3 Further, the learned Family Court shall forward the video conferencing link of the platform authorized by the High Court and used by the Family Court to the email ID of the petitioner; shall also inform it through the learned advocate for the petitioner for onward transmission.

17.4 If the doubt on the identity of the petitioner arise or raised by the other petitioner – Ms. [redacted], Mr. [redacted] shall forward his identity card recognized by the Government of India through electronic mode.

17.5 During the video conferencing, from his own portable device, Mr. [redacted] shall ensure

that he remains visible and audible throughout the entire video conferencing session and while joining the video conferencing, he shall mention his full name.

18. In the aforesaid terms, the petition is allowed.

Registry to circulate copy of this order to all Family Courts in the State of Gujarat.

Sd/-
(J.C. DOSHI, J.)

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