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

Reserved on: 29.04.2026

Pronounced on: 18.08.2026

CNR No.DLHC012681562018

+ **MAT.APP.(F.C.) 252/2018**

[REDACTED]

.....Appellant

Through: Mr. Girish Chander, Mr.
Vaibhav Gusain, Mr. Ashish
Kandpal, Advs.

versus

[REDACTED]

•Respondent

Through: Mr. Paritosh Singh Rajput,
Advs.

CORAM:

HON'BLE MR. JUSTICE VIVEK CHAUDHARY

HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

1. The present appeal has been filed under Section 19 of the Family Courts Act, 1984 assailing the Judgment and Decree dated 02.05.2018 passed by learned Principal Judge, Family Courts, East District, Karkardooma Courts, Delhi in HMA No. 117/2018 (earlier HMA No. 450/2016) titled as ***Sh. Yash Khanna v. Smt. Bhawna***, whereby, the divorce petition filed by the appellant herein under Section 13(1A) and 13(1)(ib) of Hindu Marriage Act, 1955 (hereinafter as "HMA") was dismissed.

2. The facts which are necessary for the decision of the appeal are that the marriage between the parties was solemnized on 20.02.2008 at Arya Samaj Mandir, Yamuna Bazar, Delhi, in accordance with Hindu



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rites and customs. No child was born from the said wedlock. Due to marital discord, on 10.06.2008, the respondent filed a complaint under Section 498A of the Indian Penal Code, 1860 (hereinafter as “IPC”) against the appellant and his family.

3. In the year 2008, the respondent herein had also filed a petition under Section 9 of the HMA being HMA No. 402/11/2008 seeking restitution of conjugal rights with the appellant and *vide* judgment dated 17.09.2013, the learned Additional District Judge, allowed the same and passed a decree in favour of the respondent.

4. Despite obtaining the aforesaid decree, the parties failed to resume cohabitation, and a period of two years elapsed without any resumption of conjugal rights between them. As a result thereof, on 22.04.2016, the appellant filed a petition under Section 13(1A) read with Section 13(1)(ib) of the HMA seeking dissolution of their marriage which was dismissed by the impugned order, under challenge before this court in the present appeal.

5. The primary contention raised by the learned counsel for the appellant is that there is no valid marriage between the parties. It is argued that despite the fact that the matrimonial ceremonies were conducted, the appellant was under the influence of a sedative substance at the time, thereby rendering the marriage voidable.

6. Furthermore, it is submitted that the respondent has been living separately from him since 17.09.2013 without any just cause and reason. It is submitted that the respondent who, despite obtaining a decree of restitution of conjugal rights in her favour, failed to make



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any effort to resume cohabitation with the appellant as she was vigorously prosecuting the criminal case filed by her under Section 498A of the IPC against him.

7. Learned counsel for the appellant further contended that under the provisions of Section 13(1A) of the HMA, either party may approach the Court to present a petition for dissolution of marriage on the ground that there has been no restitution of conjugal rights between the parties for a period of one year or more after passing of a decree under Section 9 HMA. It is submitted that the learned Family Court failed to acknowledge the complete inaction on part of the respondent to enforce the decree of restitution of conjugal rights and thus, the appellant was entitled to the relief of divorce under Section 13(1A) HMA.

8. It is also contended that the learned Family Court has, without any rhyme and reason, arrived at the finding that the appellant is taking advantage of his own wrongs for the purpose of seeking divorce under Section 13(1A) of the HMA. It is argued that the appellant is regularly complying with the order of maintenance by paying a monthly sum of Rs. 10,000/- to the respondent and thus, the appellant, cannot in any way, be said to have committed any wrong within the meaning of Section 23(1)(a) of the HMA. It is therefore submitted that the impugned judgment is unsustainable in law, in as much as mere reluctance on the part of the appellant to agree to offer a reunion, cannot be termed as a wrongful conduct on his part when the respondent herself is disinterested in the same. Reliance in this regard



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has been placed on the judgment passed by the Supreme Court in ***Smt. Saroj Rani v. Sudarshan Kumar Chadha*** (1984) 4 SCC 90. He also placed reliance on ***Ram Kali v. Gopal Dass***, 1971 SCC OnLine Del 6; ***T Srinivasan v. T. Varalakshmi***, (1998) 3 SCC 112; ***Hirachand Srinivas Managaonkar v. Sunanda***, (2001) 4SCC 125; ***Mita Gupta v. Prabir Kumar Gupta***, 1988 SCC OnLine Cal 144; ***Dharmendra Kumar v. Usha Kumar***, (1977) 4 SCC 12.

9. *Per Contra*, learned counsel for the respondent vehemently opposed the instant appeal by submitting to the effect that the respondent has always been willing to rejoin the company of the appellant. It is argued that the appellant deserted the respondent without any sufficient cause and reason, as a result of which, she was constrained to file a petition under Section 9 of HMA. It is also submitted that she could not pursue an execution petition of the decree passed in her favour in the Section 9 proceedings due to financial constraints and hence, it was dismissed as withdrawn. Learned counsel for the respondent therefore, submitted that the learned Family Court rightly arrived at its findings and accordingly, the present appeal is liable to be dismissed being devoid of any merit. Reliance in this regard has been placed on the judgment passed by the Supreme Court in ***Hirachand Srinivas Managaonkar*** (*Supra*).

10. We have heard the learned counsel for the parties and perused the relevant material available on record.

11. At the outset, we find it imperative to note that the learned counsel for the appellant has taken a plea of the marriage being void.



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It is his preliminary contention that although the marriage ceremonies were performed, the appellant was under the influence of a sedative substance at the said time, and thus, the marriage between the parties is void.

12. For examining the correctness of this submission of the learned counsel for the appellant, it is necessary to point out that Section 5 of the HMA provides for essential conditions for a valid Hindu Marriage, the contravention of which, results in a marriage being void, as per Section 11 of HMA. The case of the appellant does not relate to contravention of any conditions stipulated under Section 5 of HMA, so as to allege that the marriage is void.

13. The allegations of the appellant that the marriage was performed when he was under the influence of sedative substance, can at the most attract the provision of Section 12(1)(c) of HMA which declares the marriage being voidable if the consent was obtained by force or fraud, etc., for which a petition for annulment was to be presented in Court within one year of discovery of fraud.

14. Further, as is the admitted position, the dispute about the validity of marriage was challenged by the appellant in the petition filed under Section 9 of the HMA by the respondent which issue was decided against the appellant and has attained finality.

15. At this stage, for proper adjudication of the present appeal *qua* the dismissal of the appellant's divorce petition, it is necessary to refer to the relevant provisions of the HMA.

16. Section 9 which deals with the restitution of conjugal rights,



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reads as follows:

"9. Restitution of conjugal right.— When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly."

17. Furthermore, in 1964, Section 13 of the HMA was amended by the Act 44 of 1964 and section 13(1A) was inserted, which reads as under:

"13 (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 two years 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 two years or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties".

18. This section was further amended by Act No. 68 of 1976 whereby, the prescribed period of two years was reduced to one year.

19. Post the amendment acts, the aforesaid provision makes it crystal clear that after passing of a decree of judicial separation or



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restitution of conjugal rights, when the parties fail to resume cohabitation for a period of one year or more, a decree of divorce could be granted at the instance of either of the parties. The object of this amendment is to enlarge the scope of the aggrieved party's right to prefer a divorce petition on the ground of passage of time without resumption of cohabitation between the parties.

20. In addition to the aforesaid, Section 23(1)(a) of the HMA prescribes that even when a ground for relief is established, the Court must be satisfied that the petitioner is not, in any way, taking advantage of his or her own wrong. In other words, the Court is empowered to examine the conduct of the party seeking divorce and if it finds that the relief is being sought on the basis of the petitioner's own wrongdoing, the Court may refuse to grant such relief.

21. Section 23 of HMA provides as under:

“23. Decree in proceedings.—(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that
(a) any of the grounds for granting relief exists and the petitioner [except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5] is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and
(b) where the ground of the petition is the ground specified 3 * * * in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and



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[(bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and]

(c) [the petition (not being a petition presented under section 11)] is not presented or prosecuted in collusion with the respondent, and

(d) there has not been any unnecessary or improper delay in instituting the proceeding, and

(e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about reconciliation between the parties:

[Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.]

[(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.

(4) In every case where a marriage is dissolved by a decree of divorce, the court



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passing the decree shall give a copy thereof free of cost to each of the parties.] ”

(Emphasis Supplied)

22. It is therefore, the duty of the Court to bear in mind the aforesaid provision in deciding a divorce plea under Section 13(1A) HMA. A conjoint reading of Sections 13(1A) and 23(1)(a) HMA establishes that the petitioner does not have a vested right to obtain the relief of divorce and a Court has to examine whether or not the petitioner has approached it with clean hands.

23. The aforementioned law has been clarified by the Supreme Court in ***Hirachand Srinivas Managaonkar (Supra)***, wherein, it has been categorically held as follows:

“10. The question is: whether in a petition for divorce filed under sub-section (1-A) of Section 13, it is open to the court to refuse to pass a decree on any of the grounds specified in Section 23 of the Act, insofar as any one or more of them may be applicable.

11. The contention that the right conferred by sub-section (1-A) of Section 13 is absolute and unqualified and that this newly conferred right is not subject to the provisions of Section 23 is fallacious. This argument appears to be based on the erroneous notion that to introduce consideration arising under Section 23(1) into the determination of a petition filed under sub-section (1-A) of Section 13 is to render the amendments made by amending Act 44 of 1964 wholly meaningless. As noted earlier, prior to the amendment under clauses (viii) and (ix) of Section 13(1) the right to apply for divorce was restricted to the party which had obtained a decree for judicial separation or for restitution of conjugal rights. Such a right



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*was not available to the party against whom the decree was passed. Sub-section (1-A) of Section 13 which was introduced by the amendment confers such a right on either party to the marriage so that a petition for divorce can, after the amendment, be filed not only by the party which had obtained a decree for judicial separation or for restitution of conjugal rights but also by the party against whom such a decree was passed. This is the limited object and effect of the amendment introduced by Act 44 of 1964. The amendment was not introduced in order that the provisions contained in Section 23 should be abrogated and that is also not the effect of the amendment. **The object of sub-section (1-A) was merely to enlarge the right to apply for divorce and not to make it compulsive that a petition for divorce presented under sub-section (1-A) must be allowed on a mere proof that there was no cohabitation or restitution for the requisite period. The very language of Section 23 shows that it governs every proceeding under the Act and a duty is cast on the court to decree the relief sought only if the conditions mentioned in the sub-section are satisfied, and not otherwise. Therefore, the contention raised by the learned counsel for the appellant that the provisions of Section 23(1) are not relevant in deciding a petition filed under sub-section (1-A) of Section 13 of the Act, cannot be accepted.***

(Emphasis Supplied)

24. At this stage, the crucial question which arises for determination of the instant appeal is whether the appellant committed any wrong within the meaning of Section 23(1)(a) of HMA which disentitles him for obtaining the relief of dissolution of marriage under Section 13(1A) of HMA.



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25. The first and foremost claim of the appellant is that the respondent, even after passing of the decree of restitution of conjugal rights under Section 9 of the HMA, never tried to resume cohabitation nor tried to execute the decree passed in her favour under Section 9 HMA.

26. However, the record of the learned Family Court shows that it was the appellant who had made no efforts to reconcile the matter before filing the divorce petition or even after getting the decree of restitution of conjugal rights whereas, the respondent was always willing to join his company and to withdraw all the pending litigations between them.

27. In the cross-examination, the appellant admitted that before preferring the divorce petition, he made no efforts to reconcile the matter to bring his wife back after the judgment and decree being Ex. PW-1/A.

28. On the other hand, the respondent deposed that she was keen for reconciliation with the appellant as she made phone calls to him for the purpose of reconciliation, which were not picked up by the appellant and that she is willing to live with the appellant husband and if he had made any effort of reconciliation, then she would have joined his company by giving up all the pending litigations between the parties. The said relevant portion is reproduced hereinbelow:

“ 4. I say that the deponent is still ready to live with the petitioner/husband without any condition of any type at any place where he intends to keep and maintain her.



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5. *I say that the deponent is suffering great hardships due to living at her parental home and feels very undignified. I further say that the petitioner has created a canard to obtain a decree of divorce by filing the present petition without any cause and reason and if any effort of reconciliation could have been done by the petitioner, then the deponent would have joined the company of the petitioner. I further say that the deponent is still ready to give up all the litigations if the petitioner is still ready to keep and maintain her. I further say that the only motive of the petitioner is to ruin the deponent's matrimonial life."*

29. Further, the respondent had filed an execution petition being EX.P No. 223/2015 before the learned Family Court seeking execution of the decree passed under Section 9 of the HMA, wherein the appellant has categorically refused to join the company of the respondent whereafter, even warrant of attachment were issued by the executing court. The respondent has filed the copy of the orders of executing court. The appellant has not disputed passing of the said orders by the executing court before us.

30. In view of the above, it is sufficient to raise an adverse inference and to negate his averments that he was willing to resume marital relations with the respondent, but the respondent was not willing.

31. Even the learned Family Court in the impugned judgment has categorically given the findings against the appellant based on his conduct, and we find no ground to interfere in the same.

32. The Supreme Court in ***T. Srinivasan*** (*Supra*), held as below:



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*“1. The finding recorded by the courts below is that the husband obtained a decree for restitution of conjugal rights not to act in obedience thereof but, on the other hand, to keep the wife deprived of her right to perform her conjugal duties. **The wife made a demand of the husband to let her join him but he refused to allow her enter the house, rather he drove her away as also her relatives, whoever attempted to rehabilitate the wife. These acts of the husband were positive wrongs amounting to “misconduct”, uncondonable for the purposes of Section 23(1)(a) of the Hindu Marriage Act, 1955. Hence, he was rightly denied relief under Section 13(1-A) of the said Act. The appeals, therefore, fail and are hereby dismissed.”***

(Emphasis Supplied)

33. In the present case also, the respondent attempted to execute the decree which was frustrated on refusal of appellant to reside with the respondent and his admission that he never tried to bring back his wife and rather even denying his marriage with the respondent, despite the court decree passed against him, is squarely covered within the meaning of word “wrong” under Section 23(1A) of the HMA.

34. As held by the learned Family Court, after meticulous consideration of the evidence adduced by the parties, the respondent has constantly exhibited her willingness to join the company of the appellant as she also instituted execution proceedings in furtherance of the said decree passed on 17.09.2013, which was later dismissed as withdrawn owing to her financial constraints. It has also been noted that the conduct of the appellant in pursuing the petition under Section 13(1A) read with Section 13(1)(ib) HMA, without making any sincere



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effort towards resumption of cohabitation and even foreclosing the effort of the respondent to execute the decree, clearly establishes that his sole objective was to secure a decree of dissolution of marriage under Section 13(1A) and (ib) of the HMA and nothing beyond it.

35. This Court is in consonance with the findings of the learned Family Court. It is the settled position of law that the right to obtain a decree under Section 13(1A) HMA is subject to the conditions stipulated under Section 23(1)(a) of the HMA. In the present case, the appellant has pursued a course of inconsistent litigation by disputing the factum of his marriage rather than demonstrating any positive step towards the resumption of conjugal relation. On one hand, he disputed the validity of the marriage itself and on the other hand, he sought dissolution of the very same marriage under the garb of Sections 13(1)(ib) and 13(1A) of the HMA. A party cannot approbate and reprobate simultaneously, i.e., disputing the factum of marriage while simultaneously praying for its dissolution under the HMA. Therefore, the said conduct of the appellant evidently falls in the category of 'own wrong' and is sufficient to attract the provision of Section 23(1)(a) HMA. Whereas, no positive act has been committed by the respondent to create a situation so as to make it impossible for the appellant to resume cohabitation.

36. It is pertinent to note that the reliance placed by the learned counsel for the appellant on ***Smt. Saroj Rani v. Sudarshan Kumar Chadha*** (Supra), is wholly misplaced as the facts of the present case are distinguishable to the extent that in the said case, the entire



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proceedings were conducted within the undisputed framework of legal subsisting marriage which is missing in this case. The proceedings under Section 9 were instituted by the respondent which was duly contested by the appellant and after proper adjudication of merits, a decree was passed in her favour. The appellant, however, neither challenged the said decree nor made any *bona fide* efforts towards resumption of conjugal rights; rather, he continued to dispute the very validity of his marriage in multiple proceedings. The said conduct, in our considered opinion, constitutes a grave misconduct on part of the appellant which would make the restoration of married life, impossible for the respondent.

37. In view of the above observations, the plea of the appellant regarding desertion by the respondent-wife also falls to the ground and is not sustainable.

38. The plea urged by the learned counsel for the appellant, to the effect that the appellant cannot be said to have committed any wrong within the meaning of Section 23(1)(a) of HMA since he has been regularly paying maintenance of Rs. 10,000/- to the respondent, is also devoid of any merit. As rightly observed by the learned Family Court, the payment of maintenance by a husband is a statutory obligation owed towards the wife. Merely because the appellant is complying with the directions of the Court would not, by itself, entitle him to a decree of divorce.

39. During the course of arguments, the learned counsel for the appellant also asserted that the relationship between the parties has



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reached to such a stage where there is no possibility of reconciliation and it would be unreasonable to maintain a union which has utterly broken down. However, this argument also does not hold water as though this Court is cognizant of the passing of considerable time but a court of law cannot substitute sentiments for statutory compliance as the settled position of law states that irretrievable breakdown of the marriage is not a ground by itself to dissolve it and, further that the wife till date is ready and willing to live with the husband.

40. In view of the foregoing discussion and having perused the material available on record, this Court finds no perversity, illegality, or infirmity in the findings of the learned Family Court warranting interference in the present appeal. The impugned judgment has been passed upon due appreciation of the facts and settled principles of law.

41. Accordingly, the present appeal, being devoid of merit, stands dismissed. Pending applications, if any, also stand disposed of.

VIVEK CHAUDHARY, J.

RENU BHATNAGAR, J.

AUGUST 18, 2026/p/sm