

GAHC010154142026



2026:GAU-AS:13032

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4163/2026



VERSUS

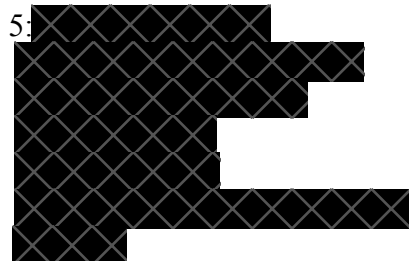
THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF REVENUE REGISTRATION, DISPUR, GUWAHATI-6

2:THE INSPECTOR GENERAL OF REGISTRATION

OFFICE OF THE DIRECTORATE OF LAND RECORDS AND SURVEY ETC.
ASSAM
RAJBHAWAN
RUPNAGAR GUWAHATI-32

3:THE REGISTRAR-CUM-DISTRICT COMMISSIONER
BARPETA
DIST-BARPETA
ASSAM PIN-781301.

4:THE SUB REGISTRAR-CUM-MARRIAGE AND DIVORCE REGISTRAR
BARPETA
DIST AND P.S.- BARPETA
ASSAM PIN-781301.



Advocate for the Petitioner : MR. R ISLAM, MR SAIFUL ISLAM

Advocate for the Respondent : GA, ASSAM, SC, REVENUE

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

08.09.2026

1. Heard Mr. S. Islam, the learned counsel for the petitioner. Also heard Mr. J. Handique, learned Standing Counsel for the Revenue and Disaster Management Department, Assam.
2. The petitioner, by way of instituting the present proceeding has prayed for grant of the following reliefs:-

“(i) To direct the respondent No. 4 to act upon the application dated 01.06.2026 (Annexure-4) filed by the petitioner and dispose of the same in accordance with the provisions of law more particularly under Section 12 of the Assam Compulsory Registration of Muslim Marriages and Divorces Act, 2024.

(ii) To grant any other relief or reliefs that the petitioner is entitled under the law of equity and on perusal of records, causes shown if any and upon hearing the parties be further pleased to make Rule absolute and/ or pass any other order/ orders or direction as our Lordship may deem fit and proper so as to grant adequate relief to the petitioner in the interest of justice.”
3. The case of the petitioner as projected in the writ petition is to the effect that he had solemnized his marriage with the respondent No. 5 on 20.11.2016. It is projected that on account of differences arising between the petitioner and the respondent No. 5, the respondent No. 5, in the year 2018, had left his

house and proceeded to her parental house. Thereafter, the respondent No. 5 had instituted cases against the petitioner. It is projected that after leaving his house in the year 2018, she had not come back although efforts were made by the petitioner to bring back the respondent No. 5 to his house and to lead a peaceful life with her. The petitioner having being subjected to cruelty by the respondent No. 5 and their marriage having irrevocably broken down, the petitioner proceeded to pronounce Talaq in the form of Talaq-E-Hassan upon the respondent No. 5 on 22.03.2026, 26.04.2026 and 27.05.2026 in presence of witnesses.

The Talaqnama, in case of each of the Talaq pronounced was forwarded to the respondent No. 5. After pronouncement of the 2nd Talaq on 26.04.2026, there being no reconciliation, the petitioner proceeded to finally pronounce the 3rd Talaq on 27.05.2026; and, accordingly, he submits that with the pronouncement of the 3rd Talaq, the marriage had broken and there was no further scope for reconciliation. It is the contention of the petitioner that after the pronouncement of the 3rd Talaq, he had submitted an application dated 02.06.2026 under Section 12 of the Assam Compulsory Registration of Muslim Marriages and Divorces Act, 2024 before the respondent No. 4, the Sub-Registrar-Cum-Marriage and Divorce Registrar, Barpeta.

4. Being aggrieved, the petitioner has approached this Court by way of instituting the present writ petition.
5. The learned counsel for the petitioner has submitted that the Talaq-E-Hasan being not prohibited, the petitioner having pronounced the Talaq, strictly, in accordance with the requisites for pronouncing the Talaq-E-Hasan, the respondent No. 4 could not have refused to register the same in accordance with the provisions of Assam Compulsory Registration of Muslim

Marriages and Divorces, Act 2024 (In short, Act of 2024). He further submits that the default on the part of the respondent No. 4, in registering the said divorce, ought to be permitted to act to the prejudice of the petitioner herein.

6. The learned Standing Counsel, Revenue & Disaster Management Department, submits that since the Act of 1935 has been being repealed and the respondent no. 4, herein, appointed as a Registrar of Muslim Marriage & Divorce, under the provisions of the said Act of 1935, the post of Registrar of Muslim Marriages & Divorce, created under the said Act, also stood abolished and it would not be permissible for the respondent No. 3 to now register the divorce pronounced by the petitioner. He submits that the petitioner can approach the jurisdictional Marriage & Divorce Registrar in terms of the provisions of the new Act of 2024 for registration of the Talaqnama pertaining to the Talaq pronounced by him against the respondent no. 4 herein.

7. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

8. From the materials available on record, it is seen that the petitioner had pronounced Talaq in the form of Talaq-E-Hassan. The requisites for pronouncement of Talaq in the form of Talaq-E-Hassan can be noticed from the decision of the Hon'ble Supreme Court in the case of **Shayara Bano Vs Union of India & Ors.**, reported in **(2017) 9 SCC 1**. The observations made by the Hon'ble Supreme Court in this connection, is extracted herein below:

“116. Since the issue under consideration is the dissolution of marriage by "talaq", under the Islamic Law of divorce, it is imperative, to understand the concept of "talaq". In this behalf, it is relevant to mention, that under the Islamic Law, divorce is classified into three categories. Talaq understood simply, is a means of divorce, at the instance of the husband. "Khula", is another mode of divorce, this divorce is at the instance of the

wife. The third category of divorce is "mubaraat"-divorce by mutual consent.

117. "Talaq", namely, divorce at the instance of the husband, is also of three kinds-"talaq-e-ahsan", "talaq-e-hasan" and "Talaq-e-Biddat". The petitioner's contention before this Court is that "talaq-e-ahsan" and "talaq-e-hasan" are both approved by the Quran and "hadith". "Talaq-e-ahsan", is considered as the "most reasonable" form of divorce, whereas, "talaq-e-hasan" is also considered as "reasonable". It was submitted, that "Talaq-e-Biddat" is neither recognised by the Quran nor by "hadith", and as such considered as sacrosanct to Muslim religion. The controversy which has been under consideration before this Court is with reference to "Talaq-e-Biddat".

118. It is necessary for the determination of the present controversy, to understand the parameters, and the nature of the different kinds of "talaq". "Talaq-e-ahsan" is a single pronouncement of "talaq" by the husband, followed by a period of abstinence. The period of abstinence is described as "iddat". The duration of the "iddat" is ninety days or three menstrual cycles (in case, where the wife is menstruating). Alternatively, the period of "iddat" is of three lunar months (in case, the wife is not menstruating). If the couple resumes cohabitation or intimacy, within the period of "iddat", the pronouncement of divorce is treated as having been revoked. Therefore, "talaq-e-ahsan" is revocable. Conversely, if there is no resumption of cohabitation or intimacy, during the period of "iddat", then the divorce becomes final and irrevocable, after the expiry of the "iddat" period. It is considered irrevocable because, the couple is forbidden to resume marital relationship thereafter, unless they contract a fresh "nikah" (marriage), with a fresh "mahr". "Mahr" is a mandatory payment, in the form of money or possessions, paid or promised to be paid, by the groom or by the groom's father, to the bride, at the time of marriage, which legally becomes her property. However, on the third pronouncement of

such a "talaq", the couple cannot remarry, unless the wife first marries someone else, and only after her marriage with other person has been dissolved (either through "talaq"-divorce or death), can the couple remarry. Amongst Muslims, "talaq-e-ahsan" is regarded as "the most proper form of divorce.

119. "Talaq-e-hasan" is pronounced in the same manner, as "talaq-e-ahsan". Herein, in place of a single pronouncement, there are three successive pronouncements. After the first pronouncement of divorce, if there is resumption of cohabitation within a period of one month, the pronouncement of divorce is treated as having been revoked. The same procedure is mandated to be followed, after the expiry of the first month (during which marital ties have not been resumed). "Talaq" is pronounced as pronouncement of "talaq", if there is resumption of cohabitation month, the pronouncement of divorce is treated as having been to note, that the first and the second pronouncements may be revoked by the husband. If he does so, either expressly or by resuming conjugal relations, "talaq" pronounced by the husband becomes ineffective, as if no "talaq" had ever been expressed. If the third "talaq" is pronounced, it becomes irrevocable. Therefore, if no revocation is made after the first and the second declaration, and the husband makes the third pronouncement, in the third "tuhr" (period of purity), as soon as the third declaration is made, the "talaq" becomes irrevocable, and the marriage stands dissolved, whereafter, the wife has to observe the required "iddat" (the period after divorce, during which a woman cannot remarry. Its purpose is to ensure, that the male parent of any offspring is clearly identified). And after the third "iddat", the husband and wife cannot remarry, unless the wife first marries someone else, and only after her marriage with another person has been dissolved (either through divorce or death), can the couple remarry.

120. The distinction between "talaq-e-ahsan" and "talaq-e-hasan" is, that in the former there is a single pronouncement of "talaq" followed by abstinence during the period of "iddat", whereas, in the latter there are three pronouncements of "talaq", Interspersed with abstinence. As against "talaq-e-ahsan", which is regarded as "the most proper" form of divorce, Muslims regard "talaq-e-hasan" only as "the proper form of divorce".

9. From the decision of the Hon'ble Supreme Court in the case of **Shayara Bano** (supra) as extracted herein above, it is clear that in Talaq-E-Hassan, there are three successive pronouncements. After the 1st pronouncement of Talaq, if there is resumption of cohabitation within a period of one month, the pronouncement of divorce is treated as having been revoked. If there is no resumption of cohabitation, the 2nd Talaq is to be pronounced after expiry of one month from the first pronouncement, during the period when the wife is not menstruating. Similarly, after the pronouncement of the 2nd Talaq, if there is resumption of cohabitation within a period of one month, the pronouncement of divorce is treated to have been revoked. The pronouncement of the 1st and 2nd Talaq by the husband may be revoked by him. If after the pronouncement of the 2nd Talaq, there is no revocation made and the husband makes the 3rd pronouncement in the 3rd 'Tuhr' (period of purity), as soon as the 3rd pronouncement is made, the Talaq becomes irrevocable and the marriage stands dissolved, where after, the wife has to observe the required Iddat.
10. In the present case, it is seen that the petitioner had made the 1st pronouncement of Talaq-E-Hassan on 22.03.2026, followed by the 2nd pronouncement on 26.04.2026 and thereafter, the 3rd pronouncement on 27.05.2026. Normally, with the pronouncement of the 3rd Talaq, as per the requisites of Talaq-E-Hassan, the marriage between the petitioner and the respondent no. 5 stood dissolved. However, in view of the provisions of the

said Act of 1935, for such divorce to be enforceable, a registration of the Talaqnama involved was made mandatory. Accordingly, the petitioner contends to have approached the respondent no. 4, who was appointed as the Sub-Registrar cum Marriage and Divorce Registrar, Barpeta. The Talaqnama not being registered, the petitioner had instituted the present proceedings.

11. Under the provisions of the Act of 2024, more particularly, Section 12 thereof, the parties to a divorce are required to make an application to the jurisdictional Marriage & Divorce Registrar for registration of such divorce under the provisions of the Act within one month of such divorce being effected. Provisions of sub-section (2) of Section 12 mandates that on receipt of an application for registration of a divorce, the Marriage & Divorce Registrar is to satisfy himself whether or not such divorce was effected by the person or persons by whom the divorce is claimed to have been effected and also satisfy himself as to the identity of the person appearing before him and claiming that the divorce has been effected. In the event, he is satisfied on the said grounds; an entry of the divorce would be made in the divorce register. The applicants seeking such registration are required to be present and their signatures to be obtained before such entry being made. In the event, the Marriage & Divorce Registrar refuses to register a divorce, Section 17 of the said Act of 2024 provides for appeals being preferred against such decisions.
12. In the case on hand, the Act of 1935 having been repealed and along with such repeal, the post of Sadar Quazi and Registrar of Muslim Marriage and Divorce, Barpeta, created there under, also having been abolished, this Court is not in a position to direct the respondent no. 4 to register the Talaqnama pertaining to the Talaq-E-Hassan, pronounced by the petitioner. However, noticing that the Talaq-E-Hassan as pronounced by the petitioner herein is a valid form of Talaq and not prohibited as on date in the country, this Court

hereby requires the petitioner to approach the jurisdictional Marriage & Divorce Registrar, under the provisions of the said Act of 2024, for registration of the divorce.

13. On such approach being made, the jurisdictional Marriage & Divorce Registrar shall consider the application of the petitioner and satisfy himself with regard to the fact as to whether the divorce was effected by the petitioner, who claims to have pronounced the same and also after identifying the petitioner, to be the person pronouncing the divorce, proceed to decide as to whether the divorce would mandate a registration. In the event, it is found that the provisions of Section 12 of the Act of 2024 along with the proviso thereto is satisfied by the petitioner, the jurisdictional Marriage & Divorce Registrar shall make an entry of the divorce pronounced by the petitioner in the divorce register. In the event, the jurisdictional Marriage & Divorce Registrar refuses to register the Talaq-E-Hassan pronounced by the petitioner herein, the petitioner is at liberty to take recourse to the provisions of Section 17 of the said Act of 2024 for redressal of his grievance.
14. The respondent no. 5 not being present before this Court, while passing this order, although notices were duly served upon her, this Court provides that the respondent no. 5 would be at liberty to assail the Talaq-E-Hassan pronounced by the petitioner herein, before an appropriate forum, in accordance with law.
15. In the above observations and directions, the present writ petition stands disposed of.

JUDGE

Comparing Assistant