



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/FIRST APPEAL NO. 1900 of 2025
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/FIRST APPEAL NO. 1900 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.Y. KOGJE

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE

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Approved for Reporting	Yes	No
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Versus



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Appearance:

MR ASHISH M DAGLI(2203) for the Appellant(s) No. 1

BAILABLE WARRANT SERVED for the Defendant(s) No. 1

MR. PARTH .B. CHAUHAN(14307) for the Defendant(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 12/03/2026

JUDGMENT

(PER : HONOURABLE MS. JUSTICE NISHA M. THAKORE)

The captioned appeal is preferred under Section 19 of the Family Courts Act, 1984 (hereinafter to referred as "the Act of 1984") by the husband-appellant herein through the power of attorney holder, who is his father, seeks to challenge the judgment and order

dated 22.02.2024 (hereinafter to be referred as “the impugned judgment and order”) passed by the learned Principal Judge, Family Court, Nadiad in Family Suit No.252 of 2023. By the said impugned judgment and order, the learned Family Judge, has dismissed the application preferred by the plaintiff-husband under Section 7 of the Act of 1984, read with Section 34 of the Specific Relief Act, 1963 (hereinafter to be referred as the “the Act of 1963”), praying for declaration of divorce against the respondent- wife, on the ground that their marriage has been dissolved, in view of the mutual divorce deed executed freely and voluntarily on 20.06.2022, in the presence of two witnesses.

[2.] Before advertng to the merits of the case, it would be appropriate to record the relevant facts of the case for the purpose of the appreciation of the case;

[2.1] It was pleaded before the learned Family Judge that the Nikah (marriage) was performed between the parties on 19.03.2022, as per Muslim Shariat and the Rituals, in the presence of family friends and elders as well as the Kazi in the village Kanjari, Taluka- Nadiad, District Kheda. Subsequently, their Nikah (marriage) was also registered with the Registrar of Kanjari Nagarpalika vide registration

no. 150 M.R.20220000021 dated 23.03.2022, and therefore, they were legally wedded husband and wife. After the marriage, the husband had travelled abroad for education purposes to London, U.K., whereas the wife, having stayed back initially at the marital house, and had joined back her parental house.

[2.2] Initially, the parties have remained in contact with each other through telephone and mobile; however, realizing that there was lack of compatibility between the parties, they had mutually decided to part their ways. As per Muslim Shariat Laws, the parties had entered into a mutual divorce deed on 20.06.2022, in the presence of two witnesses. It was pleaded before the learned Family Judge that such document was entered in the register book maintained by the Notary Mr.Iqbal A. Vohra vide register serial no.9487 of 2022 in Book no.5 on 20.06.2022. It was, therefore, urged before the learned Family Judge that they ceased to be husband and wife, and had therefore, sought for declaration of dissolution of marriage. Reliance was placed on condition No. 8 of such mutual consent deed, wherein the parties have agreed to appear before the Court, in case of such declaration being sought for divorce from the competent court. The cause of action arose for the husband to seek such declaration from the competent court was that, in the passport of the plaintiff-husband,

the name of the respondent-wife appeared, and since the date of renewal of Visa was approaching near, it was necessary to seek deletion of her name from the legal documents, for which, a decree of dissolution of marriage from the competent court was required. Since the husband had continued his stay in the U.K., a petition seeking appropriate relief was moved through the power of attorney holder. The aforesaid petition was preferred under Section 34 of the Act of 1963 and Section 7 of the Act of 1984, which was presented before the Court of the learned Principal Judge, Family Court, Nadiad, on 08.12.2023 and was registered as Family Suit No. 252 of 2023.

[2.3] Considering the aforesaid pleadings, the learned Judge, Family Court, had issued notice upon the respondent-wife. The notice was permitted to be served by the plaintiff- husband directly upon the respondent wife. It was reported on behalf of the plaintiff- husband that the notice has been duly effected in person as well as through Registered Post A.D. and electronic mode. Despite service of notice upon the respondent wife, she has chosen not to appear before the learned Family Judge in the aforesaid proceedings. The matter had progressed in her absence. The plaintiff-husband had led evidence by placing on record his examination-in-chief as well as producing documentary evidences. The details of the oral as well as documentary



evidence led by the plaintiff-husband, are reproduced hereunder:

ORAL EVIDENCE:

Sr. No.	Particulars	Exh.
1.	The examination-in-chief affidavit of the plaintiff-Jamilbhai Firozbhai Vahora	20
2.	The affidavit of the witness examined on behalf of the plaintiff- Firozbhai Mohammadbhai Vahora	21

DOCUMENTARY EVIDENCE:

Sr. No.	Particulars	Exh.
1.	The original marriage certificate of the parties	24
2.	The original power of attorney given by the husband in favour of his father	25
3.	The original divorce and Talaqnama deed entered by the parties	26
4.	The colour xerox copy of the passport of the plaintiff	27
5.	The colour xerox copy of the Aadhaar Card of the plaintiff	28
6.	The xerox copy of the Aadhaar Card of the father of the plaintiff-Firozbhai Mohammadbhai Vahora	29
7.	The original marriage certificate of the parties	30
8.	The xerox copy of the certificate of second Nikah performed by the respondent-wife	34

The plaintiff had, thereafter, submitted his pursis declaring closure of his right to lead further evidence at Exh.31.

[2.4] The matter was, thereafter, proceeded finally, and upon hearing the learned advocate for the plaintiff, the learned Judge, Family Court, proceeded to decide the issues, which were framed at Exh. 14. The learned Judge, has formulated issues at Exh.14 in vernacular and the relevant issues with free english translation are reproduced hereinunder:

“(1.) Whether the applicant proves that the Nikah was performed with the respondent on 19.03.2022, as per Muslim Shariyat and their marriage has been registered with Kanjari Nagar Palika vide registration no.150 M.E.20220000021 dated 23.03.2022?

(2.) Whether the applicant proves that the respondent has failed to fulfill the marital rights and obligations towards the applicant?

(3.) Whether the applicant proves that the mutual consent deed / Talaqnama has been executed between the applicant and the opponent on 20.06.2022 before the notary public?

(4.) Whether the applicant proves that the relations of husband and wife ceased to exist between the parties?”

[2.5] Upon appreciation of the evidence on record and the arguments advanced by the learned advocate for the plaintiff-husband, the learned Family Judge, though believed the case of the

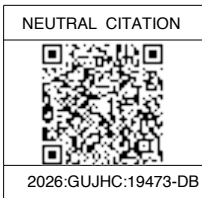
parties having entered into marriage and has answered issue no. 1 in favour of the husband; however, has rejected the case of the plaintiff on the other issues. The learned Family Judge has taken serious objection to the conduct of the plaintiff- husband, by noting that the petition was preferred through the power of attorney- father of the plaintiff-husband, whereas the examination-in-chief affidavit has been submitted under the signature of the plaintiff- husband himself at Exh.19 and Exh. 20, followed by the examination-in-chief affidavit of the father at Exh.21.

[2.6] The learned Judge, having noted the above aspect, observed that there is nothing on record to suggest that on which date the power of attorney was relieved from the authority to pursue the proceedings and, if so, there is no pleadings in the petition as to how this Court would have jurisdiction to conduct the proceedings. Though, the mutual divorce deed dated 25.03.2022 executed by the parties has been produced on record, the respondent-wife has failed to appear before the Court. The learned Family Judge has, therefore, held that the service of the notice is not proper; though the application at Exh.8 has been submitted to conduct the proceedings *ex parte*; however, till date, no order has been passed on such application. The learned Judge, though taken note of the report

submitted by the concerned police station about service of the notice being effected at Exh.18, has gone to the extent of recording that the husband has not engaged any lawyer; it is the power of attorney holder -father, and in the absence of any proof of cancellation of the power of attorney, the Court has refused to entertain the petition. The Court has also taken serious note of the fact that no photographs of the parties at the time of the marriage, have been produced on record, and therefore, it cannot be ascertained as to who is the wife of the plaintiff. The learned Judge has also observed that in the absence of the respondent, it is difficult to ascertain as to whether any child was born out of their wedlock.

[2.7] With such findings and reasons assigned, the learned Judge has refused to exercise jurisdiction under Section 7 of the Act of 1984, read with Section 34 of the Act of 1963. Despite the fact that Exh.34, indicating the second marriage of the respondent–wife, has been produced on record, the Court has refused to consider the same on the ground that it was placed for consideration at the fag end of the hearing.

[2.8] Hence, the present appeal at the instance of the plaintiff-husband, assailing the said judgment and order passed by the learned



Family Judge, dismissing his petition under Section 7 of the Act of 1984, read with Section 34 of the Act of 1963.

[3.] Considering the grounds raised in the appeal, the Co-ordinate Bench, vide order dated 20.06.2025, had issued notice for final disposal, whereby liberty was given to the appellant-husband to serve the respondent-wife by way of publication of such notice in the local vernacular newspaper. On submission of the learned advocate for the appellant, about the notice being duly published in the newspaper, this Court has accepted it as a valid service and, in the absence of the respondent-wife, had admitted the appeal vide order dated 18.07.2025. Subsequently, an affidavit was tendered on behalf of the appellant together with various documents, including the new passport of the respondent-wife, the divorce certificate issued by Darul Quza under the All India Muslim Personal Law Board situated at Ahmedabad and the Nikah Nama dated 01.01.2024, indicating the second Nikah of the respondent-wife. It was submitted that after her second marriage, her name in the passport has also been changed, wherein, instead of husband's name, the name of father is incorporated.

[3.1] Considering the above aspect, the Court, vide order dated 27.11.2025, had issued fresh notice at the newly provided address of

the respondent-wife. It was cautioned that, in case of failure of her appearance before the Court, the Court shall proceed for issuance of bailable warrant.

[3.2] On the next date of hearing, in the absence of the respondent- wife having entered the appearance, and the attempt being made to serve her at the new address, the Court, vide order dated 27.01.2026, had issued bailable warrant in the sum of Rs. 5,000/- which was permitted to be served through the concerned police station.

[3.3] On the next date of hearing, the respondent- wife had appeared in person. The learned advocates appearing for the respective parties have jointly submitted that their marriage stood dissolved, in view of the mutual consent divorce deed being executed on 20.06.2022. It was also confirmed that after the separation, the respondent-wife had entered into a second marriage on 01.01.2024. The request was, therefore, made to dispose of the captioned appeal, accordingly.

[3.4] Again, on 12.02.2026, the respondent-wife had placed on record a notarized affidavit dated 08.02.2026, which was permitted to

be taken upon record. The Court had ascertained the wish of the respondent-wife, who had clearly stated that, she had freely and voluntarily executed the mutual consent divorce deed dated 20.06.2022, and had accepted the same. The Court, therefore, recorded as under:

“Pursuant to the order dated 05.02.2026, respondent-Ms. Ilma Irfanbhai Vahora is personally present. Her affidavit is filed, inter alia, confirming that her nikah with the appellant was solemnized on 19.03.2022 as per Muslim Shariah and customs. Owing to the differences between them, within a period of four months, on 20.06.2022, divorce deed was executed, which is registered. She has confirmed that she accepts the divorce deed dated 20.06.2022. Besides, Divorce Certificate is issued by Darul Quza under the All India Muslim Personal Law Board, vide certificate dated 02.08.2022, formally declaring the dissolution of the marriage. It is stated that she has now entered into a second marriage (nikah) with Mr. Vohara Atikbhai Yarifbhai, residing at Sojitra. In paragraph 12, it is stated thus:

“I state that I have no objection if the judgment and order dated 22/02/2024 passed by the Learned Principal Judge, Family Court, Nadiad, in Family Suit No. 252 of 2023 is quashed and set aside, and the decree of divorce/declaration as prayed for by the Appellant is granted by this Hon’ble Court.

The affidavit, is directed to be taken on record.

List the matter on 25.02.2026.”

[4.] Today, when the matter is taken up for hearing, learned advocates appearing for the respective parties have jointly prayed for allowing the appeal mainly on the ground that the learned Family Judge committed a serious error in rejecting the petition preferred by the plaintiff-appellant herein, under Section 7 of the Act of 1984, read

with Section 34 of the Act of 1963, thereby refusing to grant declaration of dissolution of marriage between the parties. Our attention was invited to the findings and reasons assigned by the learned Family Judge, to point out that, merely considering the absence of the respondent-wife, who chose not to appear in the proceedings, despite being duly served with the court's notice, the Court though has believed the case of the husband of having proved the marriage being solemnized between the parties; however, it has taken a hyper-technical stand on the issue of continuity of the power of attorney and, the absence of the respondent-wife for grant of relief sought for.

[5.] Our attention was invited to the various documents produced on record, more particularly, the mutual consent deed dated 20.06.2022, which has been admitted by the respondent-wife, in view of her affidavit dated 08.02.2026 submitted on record before this Court. It was further pointed out that after the divorce deed being executed between the parties, the same was also presented before the Darul Quza under the All India Muslim Personal Law Board situated at Ahmedabad, whereby a divorce certificate was also issued on 02.08.2022, acknowledging the fact of the dissolution of marriage. Reference was also made about the change of name of the

respondent-wife after the dissolution of marriage, as evident from the extract of her passport produced on record as well as the fact of a second Nikah being performed by the respondent-wife, which was established through the extract of the certificate dated 01.01.2024 produced on record at Page No. 35. The averments made in the additional affidavit filed by the appellant- husband has also been relied upon.

[6.] Referring to the aforesaid documents, learned advocates have jointly prayed to allow the appeal. Reliance was placed on the recent decision of the Division Bench of this Court in the case of **Asif Daudbhai Karva & Anr. Versus None (Respondent)** reported in **2025 Supreme (Guj) 1304** as well as of the High Court of Judicature at Allahabad in the case of **Smt. Hasina Bano vs. Mohammad Ehsan** reported in **2024 Supreme (All) 1640**. Referring to the aforesaid decisions, learned advocates have jointly submitted that upon appreciation of the relevant provisions of the Family Courts Act as well as the Muslim Law, the Division Bench has held that a mutual consent divorce under "Mubarat" would not require a written agreement as per Shariat. The mutual consent itself is suffice to acknowledge the fact of the mutual consent entered upon. The Court has also touched the issue of the jurisdiction of the Family Court to

declare such marital status, in view of Section 7 of the Act of 1984, in light of Section 2 of the Act of 1984. The Court has, thus held that the Family Court erred in dismissing the suit as not maintainable, whereby the parties have approached Family Courts seeking declaration of dissolution of their marriage by Mubarat. Learned advocates have, therefore, submitted that, since the wife has not disputed the execution of the mutual consent divorce deed and considering the fact that the appellant-husband is required to meet the formalities to renew his Visa, instead of remanding the matter back to the concerned Family Court, this Court may consider to grant such declaration.

[7.] We have heard the learned advocates appearing for the respective parties and have also perused the averments in the respective affidavits as well as the documents placed on record for out consideration. We have examined the findings and reasons assigned by the learned Family Judge, in light of the submissions made by the learned advocates for the respective parties as well as the propositions of law settled by this Court on the issue.

[8.] In view of the decision of this Court in the case of **Asif Daudbhai Karva** (*supra*), it is no more *res integra* that, in view of

Section 2 read with Section 7 of the Act of 1984, the Family Courts are vested with the jurisdiction to declare the marital status of the parties, even in a case of mutual consent divorce in the form of Mubarat executed under the Muslim Law, even without a written agreement. In view of the affidavit filed by the respondent-wife before this Court as well as having ascertained her free will of having entered into the mutual consent divorce deed, the fact of the parties having entered into mutual consent divorce deed, has remained uncontroverted.

[9.] At the outset, we would like to note that the parties having solemnized the marriage has been answered in the affirmative by the learned Family Judge. The Division Bench of this Court in the case of **Asif Daudbhai Karva** (*supra*), in detail, has considered the dissolution of Muslim marriage by agreement. Having noted the procedure recognized for dissolution of Nikah by way of talaq, ila, zihar, lian, khula and mubaraat, the Court has noted the distinct features of the aforesaid different forms of dissolution of marriage. The Court has made reference of Text Book of Family Law, which suggests that the roots of the Mubarat can be traced into Holy Quran. The Court has also referred to the Text Book of Mohammedan Law and has compared the divorce at the request of wife as Khula as

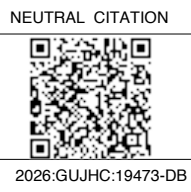
against the divorce by mutual agreement as Mubarat.

[10.] Having considered the process of divorce for Muslim woman as explained by the Hon'ble Supreme Court in the case of **Zohara Khatoon v/s. Mohd Ibrahim** reported in **1981 (2) SCC 509**, the Court has formed an opinion that the parties to the Muslim marriage can dissolve their Nikah mutually by entering into an agreement. It is also observed that the register maintained by the local body recognized by the religious institution merely acknowledges the declaration of such agreement entered upon between the parties and, as such registration is not essential to the personal law. Similarly, the Court has also observed and held that there is no process, by which, the written agreement is essential requirement for Mubarat.

[11.] Having held so, the Court has further considered Section 7 of the Act of 1984, particularly, Clause-b of the explanation to Section-7, which confers the jurisdiction upon the Family Court to declare a status of the litigation with regard to the marriage which pre-existed. Referring to the decision of the Karnataka High Court in case of **Shabnam Parveen Ahmad v/s. Mohammed Saliya Shaikh** passed in **Miscellaneous First Appeal No.4711 of 2022 (SMA) dated 26.03.2024**, has agreed with the view taken that, for a declaration as

to the dissolution of marriage based on agreement of Mubarat, the Family Court is competent and empowered to consider such application for divorce by mutual consent. Reference is also made to the guidelines issued by the Delhi High Court on the issue of Mubarat. Thus, this Court has quashed and set aside the judgment and order passed by the learned Family Judge, refusing to entertain the application seeking declaration, being preferred by the parties for declaration on the ground of mutual consent divorce.

[12.] Considering the aforesaid principles in the facts of the present case, we are inclined to accept the prayer sought for in the original proceedings. The impugned judgment and order dated 22.02.2024 passed by learned Principal Judge, Family Court, Nadiad in Family Suit No.252 of 2023, is hereby quashed and set aside. Consequently, the relief sought for in the nature of declaration of dissolution of marriage based on the mutual consent divorce deed dated 20.06.2022 executed between the parties, stands allowed. It is, therefore, declared that the marriage dated 19.03.2022 solemnized between the parties as per Muslim Shariyat and Rituals, hereby stands dissolved with effect from the date of execution of the mutual consent deed dated 20.06.2022.



[13.] For the foregoing reasons, the First Appeal is **allowed**. In view of the disposal of the captioned First Appeal, Civil Application (For Stay) would not survive and is disposed of accordingly. No order as to costs. Decree be drawn accordingly.

(A.Y. KOGJE, J)

(NISHA M. THAKORE, J)

SUYASH SRIVASTAVA