



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 4th OF DECEMBER, 2024

WRIT PETITION No. 36223 of 2024

SMT YASHIKA SHAH AND OTHERS

Versus

THE REGISTRAR

Appearance:

Shri Abhinav Dhanodkar- Advocate for the petitioner.

ORDER

Heard.

2] This petition has been filed by the petitioners under Article 226 of the Constitution of India, seeking the following reliefs:-

“In view of the facts & grounds mentioned- above in Para 5 Para 6 respectively, the petitioners’ pray that this petition be allowed in the nature of mandamus or any direction may kindly be issued and following relief may be granted to the petitioner as under :

- i) That, this Hon’ble Court is requested to quash the order/office note dated 13.11.2024 passed by respondent. -
- ii) That, the other relief which is just and proper in the facts and circumstances of the case may also be, granted doing justice including cost.”

3] The grievance of the petitioners is that both of them have tried to file an application under Section 13-B of the Hindu Marriage Act,



1955, however the same has been refused to be accepted by the Naib Nazir of the Family Court, endorsing that they have not yet completed one year of marriage. Thus, counsel for the petitioners has submitted that the application filed by the petitioners was not even allowed to be placed before the concerned Judge of the Family Court for its proper disposal in accordance with law, which has resulted in miscarriage of justice.

4] Heard. On perusal of the documents filed on record, which also include the original application filed by the petitioners under Section 13-B of the Act of 1955, wherein, it is mentioned that they solemnized marriage on 09.07.2024, whereas, the application itself has been filed on 13.11.2024, *i.e.* only after four months of their marriage, on the ground that they are residing separately since 16.08.2024.

5] In the considered opinion of this Court, the aforesaid rejection of the petitioners' application at the threshold cannot be countenanced in the eyes of law. The maintainability of an application cannot be decided by the Naib Nazir for whatever be the reasons, thus apparently, the Naib Nazir clearly exceeded his jurisdiction to refuse to accept the application filed by the petitioners.

6] Accordingly, the endorsement made by the Naib Nazir is hereby directed to be struck off by the concerned Judge of the Family Court after accepting the petitioners' application, and decide the same in accordance with law.



7] The application which is filed in original is also directed to be returned to the counsel for the petitioners and be replaced with a photocopy of the same.

8] Resultantly, the petition stands ***allowed***, with a further direction to the Naib Nazir to refrain from making such endorsements on applications filed by the parties and leave it to the discretion of the Court only.

9] With the aforesaid, the petition stands ***allowed*** and ***disposed of***.

(SUBODH ABHYANKAR)
JUDGE

Bahar