



HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No. 207 of 2026

02 July, 2026

Shakir Mohammad Ali

--Appellant

Versus

Malika Saheen

--Respondent

Presence:-

Mr. T.A. Khan, learned Senior Advocate assisted by Mr. Mohd. Shafy, learned counsel for the appellant.

Coram :Hon'ble Manoj Kumar Tiwari, J.
Hon'ble Pankaj Purohit, J.

Hon'ble Pankaj Purohit, J. (Oral)

This Appeal Against Order has been preferred under Section 19 of the Family Courts Act, 1984 assailing the order dated 14.05.2026 passed by the learned Additional Principal Judge, Family Court, Vikasnagar, Dehradun in Original Suit No. 296 of 2025, whereby the application (Paper No. 12C/2) filed by the appellant under Order VII Rule 11 read with Sections 10 and 151 of the Code of Civil Procedure, 1908 seeking rejection of the plaint, or in the alternative, stay of the proceedings on the ground of pendency of an earlier suit between the parties before the Family Court, Saharanpur, has been rejected.

2. The facts in brief are that the appellant and the respondent are husband and wife. According to the appellant, an oral triple talaq had already taken place between the parties, pursuant to which he instituted Civil Suit No. 992 of 2015 before the Principal Judge,



Family Court, Saharanpur seeking a declaration that the marriage between the parties stood dissolved by way of the said talaq. The said suit is stated to be pending adjudication. Subsequently, the respondent instituted Original Suit No. 296 of 2025 before the learned Additional Principal Judge, Family Court, Vikasnagar, Dehradun under the provisions of the Uniform Civil Code, Uttarakhand, 2024 (hereinafter referred as UCC) seeking dissolution of marriage. During the pendency of the said proceedings, the appellant filed an application under Order VII Rule 11 read with Sections 10 and 151 of the Code of Civil Procedure, 1908 contending that in view of the pendency of the earlier suit before the Family Court, Saharanpur, the proceedings of subsequent suit were liable to be rejected, or in the alternative, stayed. The learned Family Court, by the impugned order dated 14.05.2026, rejected the said application. Aggrieved thereby, the appellant has preferred the present appeal.

3. Learned counsel for the appellant submits that the impugned order is contrary to law and the material available on record. It is contended that the appellant had instituted Civil Suit No. 992 of 2015 before the Principal Judge, Family Court, Saharanpur seeking a declaration that the marriage between the parties had already stood dissolved by way of a valid oral talaq. The said suit is still pending adjudication. It is submitted that the respondent, after entering appearance in the said proceedings, was fully aware of the pendency thereof, yet instituted Original Suit No. 296 of 2025 before the Family Court, Vikasnagar, Dehradun under the provisions of the UCC seeking dissolution of the same marriage. According to the appellant, the subsequent proceedings involve



substantially the same issue and are, therefore, hit by the principle of *res sub judice* embodied under Section 10 of the Code of Civil Procedure.

4. It is further contended by the learned counsel for the appellant that the learned Family Court failed to appreciate that once an earlier suit concerning the marital status of the parties was already pending before a competent court, the subsequent proceedings ought not to have been permitted to continue simultaneously. Reliance has also been placed on Section 390(2) of the UCC to contend that proceedings pending prior to the enforcement of the UCC are required to continue under the law applicable thereto and, therefore, the respondent could not have maintained a fresh suit under the UCC in respect of the same matrimonial dispute.

5. Learned counsel also submits that the impugned order suffers from manifest illegality and jurisdictional error and is liable to be set aside. It is thus argued that the application preferred by the appellant under Order VII Rule 11 read with Sections 10 and 151 CPC ought to have been allowed. He referred upon following two judgments to buttress his argument:-

(i) Maj. Baldev Chaman (Retd.) vs. Sheila Chaman; reported in 2014 SCC OnLine Del 6590.

(ii) Civil Writ Petition No.1001 of 2004 (M/S), Sri Manoj Agrawal & another vs. Smt. Sushma Agrawal & another decided on 17.11.2004.

6. Having heard learned counsel for the appellant and upon perusal of the record, this Court finds no



infirmary in the impugned order warranting interference in exercise of appellate jurisdiction. The principal contention of the appellant is that in view of the pendency of Civil Suit No. 992 of 2015 before the Family Court, Saharanpur, the subsequent proceedings instituted by the respondent under the provisions of the UCC are liable to be stayed in terms of Section 10 of the Code of Civil Procedure. At the very outset even without going on to the merits and essentials required to be established under Section 10 of CPC, the contention of the appellant's counsel does not merit acceptance as the very foundation of the appellant's earlier suit rests upon the plea that the marriage stood dissolved by pronouncement of triple talaq. The Constitution Bench of the Hon'ble Supreme Court in **Shayara Bano v. Union of India and Others, (2017) 9 SCC 1**, declared the practice of talaq-e-biddat (instant triple talaq) to be manifestly arbitrary and violative of Article 14 of the Constitution, rendering the said form of divorce legally unenforceable. It is a settled principle of law that the judgments are of retrospective in nature. In view of the said authoritative pronouncement, the appellant cannot maintain the earlier Civil Suit No.992 of 2015 on the basis of which he is pleading *res sub judice*. The Original Suit No.296 of 2025 filed by respondent under provision of UCC need not to be interfered with. Judgments relied upon by the appellant are of no help to him in view of the factual matrix of this case

7. Accordingly, the appeal, being devoid of merit, is dismissed.



8. Pending application, if any, stands disposed of accordingly.

(Pankaj Purohit, J.)

(Manoj Kumar Tiwari, J.)

02.07.2026

AK

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