



2025:DHC:6890-DB



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

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Judgment reserved on: 06.08.2025

Judgment pronounced on: 18.08.2025

+ **MAT.APP.(F.C.) 224/2025 & CM APPL. 36339/2025**

BABITA

.....Appellant

Through: Mr Lal Singh Thakur, Mr.
Sudhir Tewatia, Mr. Anurag
Sharma and Mr. Ankush,
Advocates.

versus

COL. DINESH KUMAR

.....Respondent

Through: Mr. Manjit Singh Chauhan,
Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

ANIL KSHETARPAL, J.

1. The Appellant assails the correctness of the Order dated 17.04.2025 [hereinafter referred to as 'Impugned Order'] passed by the learned Family Court, Delhi, whereby her right to summon and produce certain records of the Court of Enquiry conducted by the Indian Army, as well as to examine the concerned witness, was closed, and her evidence was treated as concluded, on the ground of alleged non-compliance with the earlier directions of the Court.

FACTUAL MATRIX:

2. The brief facts leading to the present Appeal, as pleaded, are



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that the marriage between the parties was solemnized on 19.11.1995 in accordance with Hindu rites and ceremonies at Majra, District Jhajjar, Haryana. Out of the said wedlock, two male children were born in 1996 and 2003, respectively. The Respondent-husband serves as a Colonel in the Indian Army, while the Appellant-wife is a homemaker. The parties are stated to have resided together at various places of posting of the Respondent until certain matrimonial differences arose between them.

3. It is the case of the Appellant that the Respondent subjected her to mental and physical harassment and cruelty, as a result of which she was constrained to leave the matrimonial home in the year 2016. She claims that she made several complaints to the concerned authorities, including the Indian Army, regarding the Respondent's conduct.

4. The Respondent thereafter filed HMA Petition No. 850/2018 before the Family Court, Delhi, seeking dissolution of marriage under Section 13(1)(ia) of the Hindu Marriage Act, 1955, on the ground of cruelty allegedly committed by the Appellant. In her written statement, the appellant denied the allegations and asserted that it was, in fact, the respondent who had subjected her to acts of cruelty. During the stage of recording evidence, the Appellant moved an application seeking issuance of summons to the Indian Army for production of records pertaining to certain complaints, inquiries, and departmental proceedings allegedly involving the Respondent. She contended that such records were relevant and material for



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substantiating her defence and for demonstrating the alleged acts of cruelty by the Respondent.

5. *Vide* order dated 03.03.2025, the Family Court allowed the summoning of the aforesaid records but specifically directed that the Appellant herself would be responsible for serving the summons upon the concerned Army authority/witness and for ensuring production of the record. The Court categorically recorded that in the event of failure to do so, the Appellant's right to examine the said witness and produce the record would stand forfeited. While passing the said order, the Family Court also noted the Respondent's objection regarding the alleged irrelevance of the record but did not adjudicate upon, or return any finding upon its relevance.

6. Pursuant to this order, summons were issued at the instance of the Appellant; however, the same were returned unserved with the report that the address of the concerned authority/witness was incomplete. No further steps for substituted service or clarification of the address were recorded as having been undertaken before the next date of hearing.

7. On 17.04.2025, when the matter was taken up, learned counsel for the Appellant sought further time to take the requisite steps. The Family Court, referring to the earlier opportunity and warning contained in the order dated 03.03.2025, held that no further indulgence could be granted and, without adjudicating on the relevance of the record sought to be summoned, proceeded to forfeit the Appellant's right to summon the witness and have the record



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produced. The Court accordingly treated her evidence as closed and posted the matter for final arguments.

8. Aggrieved thereby, the Appellant has preferred the present Appeal seeking setting aside of the Impugned Order.

CONTENTIONS OF THE APPELLANT:

9. Learned counsel for the Appellant submits that the Appellant made *bona fide* and diligent efforts to obtain the relevant Army records, including by invoking the provisions of the Right to Information Act, 2005 (RTI), but the same could not be procured due to reasons beyond Appellant's control.

10. It is urged that the Family Court failed to appreciate that the Appellant being a housewife without ready access to the relevant Army authorities, was dependant on formal summons for production of the said records, and that there was no deliberate default or negligence on her part. It is contended that the request for a short adjournment ought to have been granted in the interest of justice, instead of foreclosing Appellant's right to lead evidence.

11. Learned counsel further submits that the records sought to be summoned, pertaining to the Court of Enquiry conducted by the Indian Army, are directly relevant to the matrimonial proceedings, as they bear upon the complaints and allegations forming part of the Appellant's defence. Although the Respondent objected to their relevance and asserted that he had been given a "clean chit" in the said proceedings, the Family Court, while closing the Appellant's right on



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17.04.2025, did not examine or determine the question of relevance. It is submitted that this omission has resulted in serious prejudice to the Appellant's case.

CONTENTIONS OF THE RESPONDENT:

12. *Per contra*, learned counsel for the Respondent supports the Impugned Order and submits that the Family Court acted well within its discretion in closing the Appellant's evidence, as she had been granted adequate opportunities and a clear warning *vide* order dated 03.03.2025.

13. It is contended that the records sought from the Indian Army are wholly irrelevant to the matrimonial proceedings under Section 13(1)(ia) of the Hindu Marriage Act, 1955. The Respondent asserts that the said Court of Enquiry pertained to official disciplinary proceedings in which he was fully exonerated, and that the Appellant is allegedly seeking to re-agitate settled issues merely to delay the adjudication of the proceedings.

14. It is further submitted that the Appellant's inability to serve summons was due to her own inaction in not providing the correct address of the concerned authority, despite being expressly entrusted with the responsibility. It is urged that the Family Court, after noting her failure, rightly refused further adjournment so as to prevent unnecessary prolongation of the proceedings.

ANALYSIS & FINDINGS:

15. This Court has considered the submissions advanced on behalf



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of the parties and perused the material on record. The issue for consideration is whether, in the facts and circumstances of the case, the Family Court was justified in forfeiting the Appellant's right to summon and produce the records of the Court of Enquiry conducted by the Indian Army, without first determining the relevance of such records to the said proceedings.

16. A perusal of the order dated 03.03.2025 shows that while the Family Court placed the responsibility on the Appellant to ensure service of summons upon the concerned Army authority, it also recorded the Respondent's objection that the records sought were not relevant in view of his exoneration in the said enquiry. However, there is nothing in the Impugned Order dated 17.04.2025 to indicate that the Family Court examined or adjudicated upon this objection before closing the Appellant's evidence.

17. It is also pertinent to note that during the course of hearing, this Court specifically queried the Respondent, who appeared in person, regarding his objection as to the alleged irrelevance of the records sought from the Indian Army. The Respondent reiterated that the said records had no bearing on the matrimonial dispute and alleged that the Appellant's insistence on summoning them was merely a tactic to delay the proceedings. While this contention has been noted, the question of whether the records are in fact relevant is a matter for judicial determination, and cannot be concluded solely on the basis of the Respondent's assertion.

18. The relevance or otherwise of the records sought to be produced



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is a material aspect going to the root of the Appellant's request to lead such evidence. This issue ought to have been addressed and determined on merits before resorting to the extreme step of forfeiting her right to summon the witness. The absence of such determination renders the Impugned Order unsustainable.

19. It is also noteworthy that the Appellant had, by her own showing, made efforts to procure the records through RTI and other means. While there may have been lapses in ensuring service of summons, such omission cannot by itself outweigh the requirement of a fair opportunity to lead material evidence, particularly when the question of relevance remained undecided.

20. In these circumstances, this Court is of the view that the Family Court, while passing the Impugned Order dated 17.04.2025, erred in not undertaking any consideration on the question of relevance of the records sought to be summoned, despite the same having been specifically pressed by the Appellant. Given that such records may bear materially upon the adjudication of the dispute, the matter warrants reconsideration at the trial stage.

CONCLUSION

21. The Impugned Order is accordingly set aside, and the matter is remanded to the Family Court for fresh consideration on the limited question of relevance of the said records, after hearing both sides, and for taking an appropriate decision on summoning the same, in accordance with law.



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22. In the event the Family Court finds the records relevant, the Appellant shall be granted one final opportunity to take all necessary steps to ensure effective service of summons and production of the records/witness, within a time frame to be fixed by the Family Court.

23. The parties, along with their respective counsel, are directed to appear before the Family Court on 28.08.2025 i.e. the date already fixed.

24. The Appeal, along with the pending application, is disposed of in the above terms.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
AUGUST 18, 2025/jn/pl