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

+ **MAT.APP.(F.C.) 338/2025**

MS NIVEDITA

.....Appellant

Through: Mr. Naman Gupta, Ms. Mansi Goyal and Ms. Nisha Thakur, Advocates.

versus

SH MAJOR MAHIPAL SINGH SINGHWALRespondent

Through: *Nemo.*

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

ORDER

% **18.09.2025**

CM APPL. 59219/2025 (For condonation of delay of 18 days in filing the Appeal)

1. The present Application has been filed under Section 12(2) read with Section 5 of the Limitation Act, 1963 [**“Limitation Act”**] seeking condonation of delay of 18 days in filing the present Appeal.
2. For the sufficient reasons stated in the application, the delay is condoned.
3. Accordingly, the present application stands disposed of.

CM APPL. 59218/2025 (For Exemption)

4. Allowed, subject to all just exceptions.
5. The application stands disposed of.

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6. By way of present Appeal, filed under Section 19 of the Family Courts Act, 1984, read with Section 28 of the Hindu Marriage Act,



1955 [“**HMA**”], the Appellant challenges the Order dated 25.07.2025 passed by the learned Family Court, Patiala House Court, New Delhi [“**Family Court**”] in case bearing No. HMA/17/2024.

7. *Vide* the said Impugned Order, the learned Family Court has dismissed the Application filed by the Appellant herein under Section 26 of the HMA, while observing that the Appellant is required to file an appropriate petition under the Guardians and Wards Act, 1980 [“**Guardians and Wards Act**”], in Amritsar, Punjab, for visitation rights and temporary custody of the child.

8. In this case, the marriage between the parties was dissolved by a Decree of Divorce granted on 04.09.2017 by the learned Civil Judge (Senior Division), Wardha, Maharashtra, in case bearing HMP No.512/2016.

9. The Appeal filed against the aforesaid Decree was dismissed, and thereafter, the parties agreed to dissolve their marriage before the Bombay High Court.

10. A separate petition under Section 12 of the Guardians and Wards Act was filed before the Court at Delhi, where the parties settled their disputes.

11. Subsequently, the Appellant filed an application under Section 26 of the HMA before the learned Family Court, Delhi, for the grant of visitation rights and temporary custody of the child, who is admittedly residing with his father at Amritsar, Punjab.

12. The learned Family Court found that such an application is not maintainable because no proceedings under the HMA were ever filed and decided by the Courts at Delhi. Further, as per Section 9 of the Guardians and Wards Act, the petition for visitation rights and temporary custody can only be filed at a place where the child



ordinarily resides.

13. Learned counsel for the Appellant submits that an Application under Section 26 of the HMA can be independently maintained and hence, the Application preferred by the Appellant herein has been wrongly dismissed.

14. Section 26 of the HMA is extracted as under:-

“26. Custody of children.—In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made:

Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.”

15. It is evident that, at the very outset, Section 26 of the HMA itself provides that such an application can be filed “*in any proceeding under this Act*”. Further, in the latter part, it has been observed that if a decree has been passed in which some arrangement has been made for the custody, maintenance and education of minor children, the same can be varied, modified, changed or invoked.

16. Moreover, by independently invoking Section 26 of the HMA, the Appellant cannot avoid the territorial jurisdiction as provided under Section 9 of the Guardians and Wards Act, which reads as under:-

“9. Court having jurisdiction to entertain application.—(1) If the application is with respect to the guardianship of the person of the



minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.”

17. In view of the aforesaid position, there is no ground to interfere with the Impugned Order dated 25.07.2025.

18. The present Appeal, along with the pending application(s), if any, is dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
SEPTEMBER 18, 2025/tk/va