



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

% ***Reserved on: 09.04.2026***
Pronounced on: 29.05.2026

+ **MAT.APP.(F.C.) 162/2025 & CM APPL. 25766/2025**

RANJANA MITTALAppellant

Through: Mr. Ankit Gupta, Adv.

versus

MANISHRespondent

Through: Ms. Annu Sharma, Adv.
(through VC)

CORAM:

HON'BLE MR. JUSTICE VIVEK CHAUDHARY

HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

1. The present appeal filed under Section 19 of the Family Courts Act, 1984 (hereinafter 'Act'), is directed against the judgment and decree dated 18.03.2025 passed by the learned Judge, Family Court, Central District, Tis Hazari Courts, Delhi (hereinafter 'Family Court') in HMA No. 1568/2024, whereby the marriage between the parties has been dissolved.

2. The facts necessary for adjudication of the present appeal are as follows:

a. The marriage between the appellant-wife and the respondent-husband was solemnized on 26.01.2023 at Bahadurgarh, Haryana according to Hindu rites and ceremonies. No child was born from the wedlock. The parties started



residing separately from January, 2024.

b. The respondent instituted HMA No. 1568/2024 before the Family Court seeking dissolution of marriage under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (hereinafter 'HMA') on the ground of cruelty. The appellant entered appearance in the said proceedings and filed her written statement.

c. Along with the written statement, the appellant also filed a counter claim under Section 23A of the HMA seeking dissolution of marriage on the ground that the respondent had subjected her to cruelty.

d. On 18.03.2025, the Family Court took the written statement and counter-claim on record and, on the same date, proceeded to dissolve the marriage between the parties under Section 13B of the HMA.

e. Aggrieved thereby, the appellant has preferred the present appeal, contending that the Family Court could not have converted contested proceedings under Section 13(1)(ia) of the HMA into a decree of divorce by mutual consent.

3. Mr. Ankit Gupta, learned counsel appearing on behalf of the appellant submits that the Family Court acted wholly without jurisdiction in passing a decree under Section 13B of the HMA in proceedings which were admittedly instituted and contested under Section 13(1)(ia) of the HMA.

4. It is submitted that the essential preconditions for a decree under Section 13B of the HMA were absent. It is further submitted



that there was neither a first motion jointly presented before the Court nor any second motion after the statutory interregnum. It is submitted that the Family Court could not have presumed consent merely because both parties had, in separate pleadings, sought divorce on allegations against each other.

5. It is submitted that the reliance placed by the Family Court on its powers under Section 10(3) of the Act is misplaced. It is argued that while the Court may devise its own procedure, such power does not extend to bypassing or overriding substantive statutory requirements under the HMA.

6. It is submitted that the impugned judgment proceeds on generalized considerations such as bringing quietus to matrimonial disputes and avoiding further litigation, which cannot substitute compliance with statutory provisions.

7. It is submitted that no effort towards reconciliation was undertaken, nor were the parties afforded an opportunity to lead evidence or contest the allegations levelled against each other.

8. It is submitted that the impugned judgment has the effect of depriving the appellant of her statutory entitlements, including reliefs under Section 25 of the HMA, since the proceedings were concluded without any consideration of ancillary reliefs.

9. On the basis of the aforesaid grounds, it is prayed that the impugned judgment be set aside and the matter be remanded back to the Family Court for adjudication on merits.

10. *Per Contra*, Ms. Annu Sharma, learned counsel appearing on



behalf of the respondent, submitted that the present appeal is devoid of merits and the impugned judgment does not contain any infirmity which requires appellate interference by this Court.

11. It is submitted that the Family Court has recorded that both parties were living separately since January, 2024 and that there was no subsisting matrimonial relationship between them. It is submitted that in such circumstances, where both parties were seeking divorce and there was no possibility of reconciliation, the Family Court was justified in bringing quietus to the matrimonial dispute rather than prolonging the litigation.

12. Heard the learned counsel for the parties and perused the record.

13. The controversy in the present appeal lies in a narrow compass. The difficulty with the impugned order does not arise from the fact that both parties had sought dissolution of marriage. It arises from the manner in which such dissolution was granted.

14. The respondent had approached the Family Court under Section 13(1)(ia) of the HMA alleging cruelty, and the appellant, while contesting the said petition, had also preferred a counter-claim on the same ground. Thus, the pleadings disclosed rival allegations of matrimonial fault. They did not disclose a joint request for divorce by mutual consent under Section 13B of the HMA.

15. The legal question which arises for consideration is whether, in a contested proceeding is instituted under Section 13(1)(ia) of the HMA, where the opposite party has also filed a counter claim seeking



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divorce on the ground of cruelty, the Family Court could treat the rival contentions for dissolution of marriage as mutual consent and, without a joint petition or compliance with the statutory requirements of Section 13B, dissolve the marriage by a decree of divorce by mutual consent.

16. The answer to the aforesaid question must be located in the statutory scheme of the HMA, which gives us two distinct and independent routes for dissolution of marriage. Section 13 deals with fault-based divorce, where one spouse alleges a matrimonial wrong against the other, and the Court is required to adjudicate upon such allegations. Section 13B, on the other hand, deals with divorce by mutual consent, where the basis of the decree is not fault, but the agreement of both parties to bring the marriage to an end.

17. At this stage, it would be useful to extract Sections 13(1)(ia) and 13B of the HMA. The same are reproduced hereinbelow:

“13. Divorce.—(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

[(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or...

13B. Divorce by mutual consent.—(1) Subject to the provisions of this Act a petition for



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dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.]”

18. A reading of these provisions shows that they operate in different fields. Section 13 permits a petition by either spouse, whereas Section 13B requires a petition to be presented by both parties together. The use of expressions “*either the husband or the wife*” in Section 13 and “*by both the parties to a marriage together*” in Section 13B clearly indicates that the two provisions are not interchangeable.

19. A closer look at the Section 13B shows that both parties must come together with a common decision to dissolve the marriage, and second, that such consent must continue even at the stage when the



Court is called upon to pass the decree. The requirement of a joint petition and a subsequent motion is meant to ensure that the consent is real, voluntary, and continues till the end, when the second motion is passed between the parties.

20. The scheme of Section 13 and 13B of the HMA itself draws a clear distinction between a fault-based petition for divorce and a petition for divorce by mutual consent. A proceeding under Section 13 proceeds on allegations of matrimonial fault by one spouse against the other and requires adjudication by the Court. On the other hand, a petition under Section 13B is founded not on accusations, but on consensus. The jurisdiction of the Court under Section 13B arises only when both parties jointly approach the Court with a common and pre-existing decision that the marriage should be dissolved.

21. In that case, the parties settle all their other claims like maintenance, permanent alimony, custody of children, bifurcation of properties as a way to put quietus to pending litigation between the parties and the like and make binding promises regarding their uninterrupted separate future life, only thereafter with their thoughtful agreement comes to the Court under Section 13 B of the HMA to seek divorce but all this goes missing in the conversion of separate divorce petitions of the parties into mutual divorce petition by the Court.

22. Merely because both spouses separately seek dissolution of marriage does not, by itself, amount to mutual consent within the meaning of Section 13B. A spouse may seek divorce on the ground of cruelty while simultaneously disputing the allegations, conduct or



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entitlement asserted by the other spouse. Such rival claims continue to retain their adversarial character, even though the ultimate relief sought by both parties may be dissolution of marriage. Treating separate and independent assertions of matrimonial faults as a joint petition under Section 13B would fundamentally alter the nature of the proceedings contemplated by the statute.

23. The requirement under Section 13B that the petition be presented “*by both the parties to a marriage together*” and they have “*mutually agreed*” to dissolve the marriage is not an incidental formality. The provision requires clear meeting of minds before the jurisdiction under Section 13B can be invoked. The requirement of a joint petition at the initial stage, followed by a second motion after the statutory period, is intended to ensure that the consent is voluntary, informed and continues till the stage of decree.

24. The expressions “*together*” and “*mutually agreed*” cannot be ignored merely because the Court forms an opinion that continuation of the marriage would serve no practical purpose. Separate prayers for divorce may show that the parties no longer wish to continue the marriage, but that is not the same as a joint and mutual decision to seek divorce under Section 13B of the HMA.

25. The reliance placed on Section 10(3) of the Act is also misplaced. The said provision undoubtedly grants procedural flexibility to the Family Court and enables it to evolve its own procedure to facilitate settlement and ascertain the truth of the dispute. However, such procedural flexibility cannot override substantive



statutory requirements. Section 10 of the Act deals with procedure; it does not empower the Family Court to alter, dilute, or substitute the conditions prescribed under the HMA for grant of a decree of divorce by mutual consent.

26. In the present case, admittedly there was no joint petition under Section 13B of the HMA, no first motion jointly presented by the parties, no second motion after the statutory period and no satisfaction recorded by the Family Court regarding the continuance of mutual consent in the manner contemplated under Section 13B(2).

27. The proceedings before the Family Court arose out of a petition under Section 13(1)(ia) alleging cruelty, to which the appellant responded by filing a written statement and a counter-claim under Section 23A of the HMA on the same ground. The proceedings, therefore, remained adversarial in nature and could not have been converted into a decree of divorce by mutual consent merely because both parties were seeking dissolution of marriage.

28. It should be noted that the Supreme Court in **Anil Kumar Jain v. Maya Jain, (2009) 10 SCC 415** noted that the power to convert a proceeding under Section 13 into one under Section 13B, in order to do complete justice, is not available even to High Courts. Such power has been conferred exclusively upon the Supreme Court and is traceable to Article 142 of the Constitution. A Family Court, therefore, cannot assume such jurisdiction merely because it considers dissolution of marriage to be the most practical course. The relevant portion of the judgment is reproduced below:



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“30. The second proposition is that although the Supreme Court can, in exercise of its extraordinary powers under Article 142 of the Constitution, convert a proceeding under Section 13 of the Hindu Marriage Act, 1955, into one under Section 13-B and pass a decree for mutual divorce, without waiting for the statutory period of six months, none of the other courts can exercise such powers. The other courts are not competent to pass a decree for mutual divorce if one of the consenting parties withdraws his/her consent before the decree is passed. Under the existing laws, the consent given by the parties at the time of filing of the joint petition for divorce by mutual consent has to subsist till the second stage when the petition comes up for orders and a decree for divorce is finally passed and it is only the Supreme Court, which, in exercise of its extraordinary powers under Article 142 of the Constitution, can pass orders to do complete justice to the parties”.

29. The view which we have taken also stands reinforced by the decision of a Coordinate Bench of this Court in **Upinder Kaur Malhotra v. Teghjeet Singh Malhotra**, 2025 SCC OnLine Del 6165, where, in materially similar circumstances, it was held that separate and independent fault-based claims for divorce cannot be treated as a petition under Section 13B merely because both parties seek dissolution of marriage. The Court also held that the requirements of Section 13B are substantive in nature and cannot be diluted by invoking the procedural flexibility available to the Family Court under Section 10 of the Act. The Division Bench has observed as follows:-

“31. Each party is entitled to determine the terms and manner of separation. While the ultimate object may be the dissolution of marriage, the path toward such dissolution may differ in accordance with the personal expectations and priorities of the parties. Since marriage itself is not a mere ministerial act, its dissolution too cannot be



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reduced to the fulfillment of certain statutory ingredients without the presence of genuine and continuing mutual consent as envisaged under Section 13B of the HMA.

32. In the present case, the very fact that the parties have filed separate petitions for divorce demonstrates the absence of consensus on the manner and terms of dissolution. This in itself undermines the essential requirement of —mutual consent, which constitutes the foundational basis of Section 13B of the HMA. Mutual consent cannot be inferred from the mere filing of separate divorce petitions, nor can it be substituted by the independent desire of each party to end the marriage in their individual way. It is only when both parties consciously and jointly agree to dissolve the marriage that the jurisdiction of the court under Section 13B of the HMA is validly invoked.”

30. Tested on the aforesaid legal position, the impugned order cannot be sustained. The respondent’s petition was not one under Section 13B of the HMA, but under Section 13(1)(ia), alleging cruelty against the appellant. The appellant, while contesting the said petition, filed a written statement and a counter-claim also alleging cruelty against the respondent. Thus, the pleadings before the Family Court disclosed rival allegations of matrimonial fault, and not a joint decision to dissolve the marriage by mutual consent.

31. The reasoning of the Family Court, that continuing the proceedings would prolong acrimony and that dissolution of marriage would bring quietus to the dispute, may be well-intentioned. However, such considerations cannot override the clear mandate of the statute. Where the law prescribes a particular mode for dissolution of marriage by mutual consent, the Court cannot adopt an alternative route merely



because it appears to be more practical or expedient.

32. In view of the above, the impugned judgment and decree dated 18.03.2025 cannot be sustained and is accordingly set aside.

33. Consequently, the petition/counterclaim filed by the parties under Section 13(1)(ia) of the HMA, along with the written statement and rejoinder, if any, are restored to their original number for adjudication in accordance with law. The Family Court shall proceed to frame issues, permit the parties to lead evidence, and decide the matter on its own merits. The parties are directed to appear before the Family Court on 14.07.2026.

34. It is clarified that this Court has not expressed any opinion on the merits of the rival allegations made by the parties, and all contentions in that regard are left open to be adjudicated by the Family Court.

**VIVEK CHAUDHARY
(JUDGE)**

**RENU BHATNAGAR
(JUDGE)**

MAY 29, 2026/ka/kp