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

% ***Judgment reserved on: 18.08.2026***
Judgment pronounced on: 27.10.2026

\+ C.R.P. 320/2025

SMT PRADEEP KAUR .....Petitioner
Through: Petitioner in person.

versus

HARVINDER SINGH KHURANA .....Respondent
Through: Mr. Adrash Jaiswal, Advocate.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Civil Revision Petition, under Section 115 of **the Code of Civil Procedure, 1908**[1], read with Article 227 of the Constitution of India, has been filed seeking to assail the **Order dated 08.02.2019**[2] passed by the **learned Judge, Family Court (Central), Tis Hazari Courts, Delhi**[3], in HMA No. 61628/2016, titled *"H. S. Khurana @ Goldi v. Pradeep Kaur"*, whereby the Divorce Petition filed by the Respondent herein was allowed on the ground of cruelty and the marriage between the parties was dissolved. The present Petition also assails the **Order dated 11.07.2025**[4], whereby the

[1] CPC
[2] Impugned Order dated 08.02.2019
[3] Family Court
[4] Impugned Order 11.07.2025

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Application under Order IX Rule 13 of the CPC, preferred by the Petitioner herein, came to be dismissed.

FACTUAL BACKGROUND:

2. Shorn of unnecessary details, the facts germane to the institution of the present Petition are as under:

a. The marriage between the parties, namely, Sh. H.S. Khurana/Respondent herein and Smt. Pradeep Kaur/Petitioner herein, was solemnised on 19.07.1992 and out of the said wedlock two children were born.

b. On 15.04.2006, the Respondent instituted a Petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955, seeking dissolution of the marriage on the ground of cruelty. The parties filed their respective pleadings and the learned Family Court framed issues with respect to the alleged cruelty and the Respondent's entitlement to the relief sought.

c. In the said proceedings, the Respondent entered the witness box as PW-1 and his brother, Parvinder Singh Khurana, as PW-2. Upon conclusion of the Respondent and his brother's evidence on 11.09.2018, the matter was fixed for the Petitioner's evidence on 02.11.2018, in which she remained absent. However, no adverse order was passed against her. A last and final opportunity was granted to her, and the matter was again taken up for her evidence.

d. On 10.12.2018, the Petitioner again remained absent and, in the absence of the Petitioner and her witnesses, the learned Family Court closed her right to lead evidence and listed the matter for final arguments, while granting her liberty to address her

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arguments before passing the Judgment. The Petitioner thereafter also remained absent on 28.01.2019, when the matter was taken up for final arguments.

e. The learned Family Court, *vide* Judgment and Decree dated 08.02.2019, upon appreciation of the evidence and material on record, held the ground of cruelty to have been established and consequently dissolved the marriage between the parties under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

f. Thereafter, on 23.05.2019, the Petitioner instituted **Misc. Application No. 35/2019**[5] under Order IX Rule 13 read with Section 151 CPC, seeking recall of the *Ex-parte* Judgment and Decree dated 08.02.2019. On 13.02.2020, the Petitioner filed an accompanying Application under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 73 (Seventy-three) days in filing the said Application.

g. In the proceedings arising from the Recall Application, the learned Family Court, on the very same day i.e., on 13.02.2020, framed issues as to whether the Petitioner had been prevented by sufficient cause from appearing when the Divorce Petition was decreed *ex-parte* and whether the Judgment and Decree dated 08.02.2019 were liable to be set aside.

h. The learned Family Court, *vide* Judgment dated 11.07.2025, held the Application under Order IX Rule 13 CPC to be maintainable and, adopting a liberal approach, condoned the delay in filing the same. On consideration of the record of the original proceedings and the evidence led in the recall proceedings, the learned Family Court, however, held that the

[5] Recall Application

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Petitioner had failed to establish "sufficient cause" for her non-appearance on the relevant dates and consequently dismissed the Application preferred by the Petitioner herein.

i. Aggrieved by the Judgement and Orders dated 08.02.2019 and 11.07.2025, the Petitioner has preferred the present Petition.

j. This Court, *vide* Order dated 17.11.2025, had recorded its *prima facie* view wherein it was stated that the present Petition also involves the issue pertaining to maintainability as the Petitioner/ wife seeks to challenge the *ex-parte* decree of divorce dated 08.02.2019 passed by the learned Family Court as also contemporaneously seeks to challenge the impugned order dated 11.07.2025 whereby her application under Order IX rule 13 of the CPC had been dismissed, after a considerable gap of almost six and a half years. In view of the same, apart from the merits, the Petitioner herein would also have to satisfy the Court as to how the present Petition is maintainable.

SUBMISSIONS ON BEHALF OF PETITIONER:

3. The Petitioner, who appears in person, would submit that the Impugned Orders have resulted in denial of procedural justice and have failed to properly appreciate the circumstances which prevented her from continuing to appear before the learned Family Court.

4. The Petitioner would submit that she had actively contested the matrimonial proceedings for approximately thirteen years, having personally appeared in the matter and conducted the proceedings, including cross-examining the Respondent/husband. It would be submitted that her absence occurred only at the later stage of the proceedings and, therefore, could not have been viewed in isolation or

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as indicative of any intention to abandon the litigation. According to the Petitioner, circumstances beyond her control prevented her from continuing to participate in the proceedings in the manner in which she had previously been doing so.

5. It would further be submitted that, during the relevant period, the Petitioner was simultaneously prosecuting the criminal proceedings instituted by the elder brother of the Respondent/husband. The Petitioner would submit that she was herself conducting the said proceedings, including cross-examining the complainant, and that the simultaneous conduct of the criminal and matrimonial proceedings caused her considerable strain. She would further rely upon her medical condition during the relevant period, submitting that she was suffering from panic/anxiety attacks and related health issues, which materially affected her ability to participate in the proceedings. In support thereof, reliance would be placed upon the medical documents dated 18.03.2019 and the medical records stated to relate to the period from 2009 to 2020. It would be submitted that the criminal complaint was ultimately withdrawn by the elder brother of the Respondent/husband on 26.07.2019.

6. The Petitioner would accordingly submit that the aforesaid circumstances, considered cumulatively, constituted "sufficient cause" within the meaning of Order IX Rule 13 of the CPC. It would be contended that the learned Family Court ought to have adopted a liberal and justice-oriented approach while considering the explanation furnished by the Petitioner, particularly in view of her prolonged and active participation in the matrimonial proceedings. The Petitioner would submit that the circumstances leading to her absence ought not to have been viewed as deliberate default, but

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required consideration in their entirety and in the context of her previous conduct in diligently prosecuting the proceedings.

7. It would also be submitted that there was a procedural irregularity in the manner in which the proceedings culminated in the Impugned Order dated 08.02.2019. According to the Petitioner, after her last appearance, she was not served with an appropriate notice regarding the subsequent proceedings leading to the passing of the said Impugned Order. She would submit that, in the absence of proper notice of the hearing or of the proposed *ex-parte* proceedings, the learned Family Court was required to examine whether the circumstances pleaded by her constituted sufficient cause for her non-appearance. The Petitioner would therefore contend that failure to appropriately consider this aspect resulted in violation of the principles of natural justice.

8. The Petitioner would further submit that the Impugned Order dated 11.07.2025 suffers from perversity and failure to exercise jurisdiction vested in the learned Family Court. In particular, it would be contended that the learned Family Court failed to properly appreciate the material placed on record in support of the Petitioner's explanation for her absence, including the medical documents and the circumstances relating to the parallel criminal proceedings. According to the Petitioner, the failure to consider the aforesaid in their proper perspective materially affected the adjudication of her Application under Order IX Rule 13 of the CPC. It bears emphasis that, more or less, the grounds taken by the Petitioner while challenging both the Impugned Orders are identical and rely upon the contemporaneous litigations as also the medical exigency allegedly faced by her.

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9. On the question of maintainability, the Petitioner would submit that the present Petition is not merely an attempt to seek re-appreciation of facts, but raises issues concerning the exercise of jurisdiction by the learned Family Court. It would be contended that where the learned Family Court has failed to exercise jurisdiction vested in it or has acted with material irregularity, the revisional jurisdiction under Section 115 of the CPC can be invoked. The Petitioner would further submit that, in the peculiar facts and circumstances of the present case, this Court may also exercise its supervisory jurisdiction under Article 227 of the Constitution of India, particularly where the Impugned Order is alleged to be perverse and to have resulted in failure of justice.

10. The Petitioner would also contend that the challenge to the Impugned Order dated 08.02.2019 is not confined to her non-appearance, but also involves an allegation that the said Impugned Order was procured by fraud and suppression of material facts. It would be her submission that the Respondent/husband had allegedly suppressed material facts and had played fraud upon the Court during the course of the litigation. On this basis, the Petitioner would invoke the principle that fraud vitiates judicial proceedings and submit that a decree allegedly obtained by fraud cannot be permitted to stand merely on the ground that an alternative appellate remedy may be available. She would therefore contend that the allegations of fraud and the alleged jurisdictional errors warrant consideration in exercise of the revisional and supervisory jurisdiction of this Court.

11. To further buttress her submissions, the Petitioner would place reliance upon, *inter alia*, the Judgments of the Hon'ble Supreme Court

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of India in ***Bhanu Kumar Jain v. Archana Kumar***[6], ***S.P. Chengalvaraya Naidu v. Jagannath***[7], and ***A.V. Papayya Sastry v. Government of A.P.***[8].

ANALYSIS:

12. This Court has heard the Petitioner, who appears in person, and has perused the material placed on record, including the proceedings before the learned Family Court, the Judgment and Decree dated 08.02.2019, the Application preferred by the Petitioner under Order IX Rule 13 read with Section 151 of the CPC, the evidence led in the said proceedings, and the Judgment dated 11.07.2025 whereby the said Application came to be dismissed.

13. At this juncture, for the sake of clarity, convenience and completeness, this Court deems it appropriate to reproduce the relevant finding rendered by the learned Family Court in the Impugned Order dated 11.07.2025, whereby the learned Family Court has succinctly laid down the reasoning while considering the conduct of the Petitioner and proceeded to dismiss the Recall Application. The relevant paragraphs of the Impugned Order dated 11.07.2025 read as under:

> "13. Before proceeding further, it would be apposite to return a finding *vis-à-vis* maintainability of the application under Order IX Rule 13 read with section 151 CPC. I may note that the Order dt. 10.12.2018 passed in the divorce matter does not specifically mention that Ms. Pradeep Kaur has been proceeded *ex parte*. Order dt. 10.12.2018, *inter alia*, states, "*Since neither Respondent nor any witness is present today, right to lead Respondent's Evidence is therefore, closed.'* Perhaps, taking cue from this, non-applicant H. S. Khurana in his reply takes the stand that the divorce case was not decided *ex parte*, but on merits. Hereinabove, I have already taken note of paragraph no. 35 of the judgment in the divorce

[6] (2005) 1 SCC 787
[7] (1994) 1 SCC 1
[8] (2007) 4 SCC 221

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petition. It bears repetition to state that in paragraph no. 35 of the judgment in divorce petition, the Court observes, "*After conclusion of petitioner's evidence, respondent was granted opportunity to lead respondent's evidence but she stopped appearing and the court proceeded as per order XVII Rule 3 (b) of CPC.*" Thus, it is quite apparent that on 10.12.2018 the Family Court had taken recourse to XVII Rule 3 (b) of CPC in proceeding ahead with the divorce petition in view of Ms. Pradeep Kaur's absence. Now, Rules 2 and 3 of XVII of CPC read as under:

> 2. Procedure if parties fail to appear on day fixed - Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.
>
> *Explanation.*—Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion, proceed with the case as if such party were present.
>
> 3. Court may proceed notwithstanding either party fails to produce evidence, etc. - Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, —
>
> *(a)* if the parties are present, proceed to decide the suit forthwith; or
>
> *(b)* if the parties are, or anv of them is, absent, proceed under Rule 2.

14. It is clear from a reading of Rule 3 (b) of Order XVII of CPC that where a party fails to produce evidence or cause attendance of witnesses despite time being granted, Court may proceed under Order XVII Rule 2 of CPC. And, as per Order XVII Rule 2 of CPC, the Court may adopt the modes prescribed under Order IX of CPC in the event of failure of a party to appear. Thus, the net effect of this is that by observing in the judgment that it took recourse to Order XVII Rule 3 (b) of CPC in the divorce matter, the Court had in fact taken the route as prescribed under Order IX Rule 13 of CPC. Given this, it is my view that the instant application of Ms. Pradeep Kaur under Order IX Rule 13 read with section 151 of CPC is maintainable.

15. Next is the aspect of limitation. On 13.02.2020 Ms. Pradeep Kaur had moved an application under section 5 of Limitation Act for condonation of delay in moving the application for recall of the *ex parte* judgment/decree dt. 08.02.2019. In terms of Article 123 of the Schedule to the Limitation Act, the limitation period for moving an application for recall of *ex parte* decree is 30 days and

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the time from which the said period begins to run is the date of the decree. The application under Order IX Rule 13 read with section 151 CPC was filed on 23.05.2019. The judgment/ decree was passed on 08.02.2019. Thus, there has been a delay of 73 days in the moving the application for recall of judgment/ decree dt. 08.02.2019. Under section 5 of Limitation Act delay may be condoned on *'sufficient cause'* being shown. Now, the law is well settled that the phrase '*sufficient cause'* as occurring in section 5 of Limitation Act ought to be construed liberally so as to advance the cause of justice and not the cause of technicalities. In Collector, Land Acquisition, Anantnag Ors. v. Mst. Katiji & Ors., AIR 1987 SC 1353 it was observed:

> 3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "*merits"*. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice – that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that;
>
> > "*1. Ordinarily* a litigant does not stand to benefit by lodging an appeal late.
> >
> > *2.* Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
> >
> > *3.* "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
> >
> > *4.* When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
> >
> > *5.* There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala

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fides. A litigant does not stand to benefit bv resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciarv is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

16. Thus, adopting a liberal and justice oriented approach, this Court is inclined to condone the delay in moving the application for recall of decree/judgment dt. 08.02.2019. This Court is of the view that it would be fit and appropriate if the said application under Order IX Rule 13 read with section 151 of CPC is decided on merits. This Court is thus inclined to allow Ms. Pradeep Kaur's application under section 5 of Limitation Act. It is ordered accordingly.

17. Now to the merits of the application Order IX Rule 13 read with section 151 of CPC. On the basis of the material and the evidence presented in this matter, I am not convinced that Ms. Pradeep Kaur was prevented by *'sufficient cause'* from appearing when the divorce petition was called on for hearing on 10.12.2018 and on the subsequent dates thereafter. The reasons are as follows:

(I) Petitioner's Evidence (PE) was closed on 11.09.2018 and the matter was set for recording of Respondent's Evidence (RE) on 02.11.2018 and on which date no adverse order was passed against Ms. Pradeep Kaur notwithstanding her absence. Thereafter, on the next date of hearing (10.12.2018) the court proceeded to close her evidence. This was then followed by final arguments on 28.01.2019. These three dates i.e. 02.11.2018, 10.12.2018 and 28.01.2019 are important. While Ms. Pradeep Kaur did not appear before the Family Court in Tis Hazari on 02.11.2018, 10.12.2018 and 28.01.2019; during this period, she had been regularly appearing before the Court of Ld. Metropolitan Magistrate (MM) in Tis Hazari and this is evident from certified copies of the court orders that are on record. From certified copies, it is crystal clear that Ms. Pradeep Kaur had appeared before the court of Ld. MM-05 in Tis Hazari on 26.10.2018, 28.01.2019, 06.03.2019, 04.04.2019 and 09.05.2019. Ms. Pradeep Kaur claims that that due to heavy medication for depression and panic attacks, she was unable to properly track her divorce case or appear in the Family Court when required; that she was confused about the next hearing date after PE and, while still recovering from anxiety, managed to visit the Court on 15.04.2019 to inquire about the case status. In support of this, she relies on few hospital records. However, this ground is not at all cogent and convincing. If at all her depression and panic attacks were severe enough to prevent her from attending the divorce proceedings before the Family Court at Tis Hazari, it becomes

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difficult to understand how she was simultaneously able to pursue and regularly appear before another court in the very same court complex. This contradiction raises serious doubts about the extent to which her mental health issues actually impaired her ability to participate in the divorce matter, especially considering that both courts are located in the same premises and would require a similar level of engagement. It is equally difficult to accept the notion that Ms. Pradeep Kaur's struggles with depression, panic attacks, and anxiety were so conveniently selective that they affected her ability to appear only in connection with the divorce petition pending before the Family Court, and not in the other legal matter before the court of Ld. MM-05, Tis Hazari. The fact that during the relevant time she was able to regularly attend and actively pursue proceedings before another court within the same Tis Hazari Court complex casts serious doubt on the genuineness and consistency of her claims. Such a selective and seemingly convenient application of her medical condition appears disingenuous and cannot be condoned. This approach has to be rejected.

(II) It is important to highlight that on 28.01.2019, both the complaint case and the divorce case were scheduled to be heard before their respective courts within Tis Hazari Court complex. On that very day (28.01.2019), Ms. Pradeep Kaur made an appearance before the Court of learned MM-05, yet she failed to appear before the Family Court where her divorce matter was listed. This raises a significant concern and presents a glaring inconsistency. It is difficult to comprehend how she was able to attend one legal proceeding in the same court complex, seemingly without any hindrance, yet did not attend the equally divorce hearing on that very day. If her medical condition genuinely prevented her from participating in court matters, it is perplexing that it only affected her appearance before the Family Court and not the other. Such selective participation undermines the credibility of her claims and casts doubt on the sincerity of her stated reasons for absence.

(III) Next, Ms. Pradeep Kaur claims that in the divorce matter she was confused about the next hearing date after conclusion of PE and, while still recovering from anxiety she managed to visit the Court on 15.04.2019 to inquire about the status of divorce matter. This claim of hers is not credible for two reasons. On 28.0l.20l9 Ms. Pradeep Kaur was very much present in Tis Hazari Court complex. On that very day, 28.01.2019, Ms. Pradeep Kaur could have easily walked a short distance within the court complex to visit the Family Court and inquired about the status of her divorce case, nay, even attended the scheduled hearing. Her physical presence in the same court complex on 28.01.2019 before the Court of

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learned MM makes it difficult to believe that she was unable to make such a minimal effort. Furthermore, with the advancement of court technology, particularly the CIS (Case Information System) software, the next date of hearing is regularly updated and can be easily accessed through the e-Courts mobile application or the website. Even though orders of the Family Court are not be uploaded online, basic case status and upcoming hearing dates are still made available through these platforms. In today's digital age, where one can conveniently obtain case-related information from the comfort of their home, the explanation provided by Ms. Pradeep Kaur regarding her inability to stay informed about her divorce proceedings appears unconvincing and lacks credibility.

(IV) Ms. Pradeep Kaur (AW1) in her cross-examination states as follows:

> It is correct that on dates i.e. 09.07.2018, 14.08.2018, 26.10.2018, 28.01.2019, 06.03.2019, 04.04.2019, 09.05.2019 and 26.07.2019 I was physically appearing in the case filed against me by my brother-in-law.
>
> I was well aware about the pendency of the divorce petition on the aforesaid dates also.
>
> It is wrong to suggest that I deliberately not appeared in the divorce petition on the aforementioned dates.
>
> Q. Is it correct that you were well aware about the pendency of divorce petition while you were appearing physically before the court of M. M., Tis Hazari, Delhi in the above stated criminal matter?
>
> Ans. I was myself cross examining the petitioner in the divorce case before the Family Court. And as such, I was aware of the pendency of the divorce petition while the case before the Ld. M. M. was *sub judice.* Vol. Simultaneously I was dealing with both the above said cases.

Given her response in her cross-examination, it is difficult to comprehend as to why Ms. Pradeep Kaur did not appear before the Family Court on and after 02.11.2018. She admits in her cross-examination that on dates 09.07.2018, 14.08.2018, 26.10.2018, 28.01.2019, 06.03.2019, 04.04.2019, 09.05.2019 and 26.07.2019 she had regularly appeared before the court of learned MM and was very much aware about the pendency of the divorce matter. Given this, it is difficult to comprehend the reasons for her absence from the proceedings in the divorce matter, when she was very well aware about its pendency.

(V) The records reflect that Ms. Pradeep Kaur changed her advocates multiple times throughout the proceedings, alleging

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malafide conduct on the part of each of her advocates. Even in the present *lis* under Order IX Rule 13 of CPC, mid-way she engaged a legal aid counsel, Kapil Kumar Nayyar, only to abruptly disengage him as well at the last stage. Notably, despite her serious accusations against her previous advocates, claiming they acted in a contumacious manner, she never filed any formal complaint or took any action against them before any appropriate authority. This pattern raises questions about the credibility of her allegations and her overall approach to the litigation process.

(VI) In view of the findings hereinabove, the large number of medical records filed by applicant Ms. Pradeep Kaur do not persuade me to take a different view of the matter. I do not think that Ms. Pardeep Kaur was diligent and vigilant in the divorce matter on and after 02.11.2018. The material on record demonstrates that her conduct amounted to gross negligence, especially so on 28.01.2019, when she appeared before another court in Tis Hazari but failed to appear before the Family Court located in the same court complex.

18. For the reasons set out hereinabove, I am of the view that Ms. Pradeep Kaur has failed to establish that she was prevented by a 'sufficient cause' from appearing when the divorce petition was called on 10.12.2018 and on the subsequent dates thereafter. This issue is accordingly decided against Ms. Pradeep Kaur and in favour of Sh. H. S. Khurana."

(emphasis supplied)

14. The principal grievance of the Petitioner is that her absence from the matrimonial proceedings on the relevant dates was occasioned by circumstances beyond her control. In particular, reliance has been placed upon her medical condition during the relevant period and upon her simultaneous participation in criminal proceedings pending before the learned Metropolitan Magistrate. According to the Petitioner, these circumstances, when considered cumulatively and in the backdrop of her prolonged participation in the matrimonial proceedings, constituted sufficient cause for her non-appearance. It is, therefore, her contention that the learned Family Court ought to have recalled the Judgment and Decree dated 08.02.2019.

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15. Before examining the aforesaid contention, it is apposite to note the manner in which the learned Family Court has dealt with the Application under Order IX Rule 13 read with Section 151 CPC. The said Application was not dismissed at the threshold. The learned Family Court first examined the question of its maintainability and held the same to be maintainable. Thereafter, the question of limitation was considered and, adopting a liberal approach, the delay of 73 days in filing the Application was condoned. The learned Family Court thereafter proceeded to examine the Application on merits and considered the explanation furnished by the Petitioner for her absence on 02.11.2018, 10.12.2018 and 28.01.2019. Thus, the Petitioner was afforded an opportunity to establish the existence of sufficient cause for her non-appearance, and the said question has been adjudicated upon by the learned Family Court after consideration of the material and evidence available on record.

16. A perusal of the Judgment dated 11.07.2025 further demonstrates that the learned Family Court has not rejected the Petitioner's case merely on account of her absence from the matrimonial proceedings. The explanation furnished by her has been examined in the context of the contemporaneous circumstances emerging from the record. The learned Family Court, in particular, took note of the Petitioner's admitted presence before the learned Metropolitan Magistrate during the relevant period, including on 28.01.2019, when the criminal proceedings and the matrimonial proceedings were both listed before the respective Courts in the same Tis Hazari Court complex. The learned Family Court considered this circumstance while assessing the Petitioner's explanation that her

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medical condition had materially impaired her ability to participate in the matrimonial proceedings.

17. The learned Family Court also considered the medical material relied upon by the Petitioner and examined the same in conjunction with her conduct during the relevant period. The Court took note of her statement in cross-examination acknowledging that she was aware of the pendency of the divorce proceedings while simultaneously prosecuting the criminal proceedings. It further considered her repeated appearances before the learned Metropolitan Magistrate and her active participation in the said proceedings. Upon an overall consideration of the aforesaid circumstances, the learned Family Court concluded that the material placed on record did not satisfactorily establish that the Petitioner had been prevented by sufficient cause from appearing in the matrimonial proceedings. The said conclusion is founded upon an appreciation of the evidence and the conduct of the Petitioner as emerging from the record.

18. The question that consequently arises before this Court is whether the aforesaid findings suffer from any jurisdictional error, material irregularity or perversity so as to warrant interference in exercise of the jurisdiction invoked by the Petitioner. It is well settled that the revisional and supervisory jurisdiction of this Court is not intended to enable a re-appreciation of the evidence as if the Court were exercising appellate jurisdiction. The mere possibility of another view being taken on the material available on record would not, by itself, furnish a ground for interference, unless the conclusion arrived at by the Court below is shown to be perverse, manifestly erroneous, unsupported by the record or otherwise vitiated by a jurisdictional infirmity.

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19. In the present case, the learned Family Court has considered the explanation furnished by the Petitioner, examined the medical material relied upon by her, taken note of her admitted presence and participation in the proceedings before the learned Metropolitan Magistrate during the relevant period, and thereafter recorded reasons for concluding that sufficient cause for her non-appearance had not been established. The findings so returned cannot, on the material available on record, be said to suffer from such perversity, jurisdictional error or material irregularity as would warrant interference by this Court. This Court, therefore, finds no ground to interfere with the Judgment dated 11.07.2025.

20. Having arrived at the aforesaid conclusion, it is necessary to consider the further and distinct question arising in the present Petition, namely, whether the Petitioner can, at this stage, maintain a challenge to the original Judgment and Decree dated 08.02.2019. The said decree dissolved the marriage between the parties under Section 13(1)(ia) of the Hindu Marriage Act, 1955. The challenge to the said decree is sought to be maintained alongside the challenge to the subsequent Judgment dated 11.07.2025, notwithstanding that the Application specifically preferred by the Petitioner under Order IX Rule 13 CPC for recall of the said decree has itself been dismissed.

21. The aforesaid issue assumes significance having regard to the substantial lapse of time between the passing of the Judgment and Decree dated 08.02.2019 and the institution of the present proceedings. The Petitioner has not approached this Court solely against the Judgment dated 11.07.2025. She has also sought to assail the original Judgment and Decree dated 08.02.2019 on merits. The maintainability of such a challenge would, therefore, necessarily have

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to be examined independently, having regard to the nature of the decree sought to be assailed, the statutory remedies available against the same, and the lapse of time.

22. Before considering the question whether the original Judgment and Decree dated 08.02.2019 can be assailed in the present proceedings, it would be apposite to set out the statutory framework governing the remedy of appeal against a judgment or decree passed by a Family Court. The present proceedings arise out of a matrimonial petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955, which culminated in the Judgment and Decree dated 08.02.2019 dissolving the marriage between the parties. The statute, therefore, specifically provides for an appellate remedy against such adjudication. The relevant provision of the Family Courts Act, 1984 reads as under:

> **"19. Appeal**.—(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code or Criminal Procedure, 1973 (2 of 1974), or in any other law, an appeal shall lie from every judgement or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.
>
> (2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties [or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):
>
> Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991].
>
> (3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgement or order of a Family Court.
>
> [(4) The High Court may, of its own motion or otherwise, call for an examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or

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propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding.]

[(5)] Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

[(6)] An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges."

23. Section 19(1) of **the Family Courts Act, 1984**[9], specifically provides that, save as otherwise provided therein, an appeal shall lie to the High Court from every judgment or order, not being an interlocutory order, of a Family Court, both on facts and on law. Significantly, Section 19(3) prescribes that every such appeal shall be preferred within a period of thirty days from the date of the judgment or order of the Family Court. Section 19(5) further provides that, except as contemplated under Section 19 itself, no appeal or revision shall lie to any Court from any judgment, order or decree of a Family Court.

24. The statutory scheme is significant inasmuch as it provides a specific appellate remedy against an adjudication by a Family Court, while prescribing the period within which such remedy is to be invoked. The Petitioner, therefore, had a statutory remedy of appeal against the Judgment and Decree dated 08.02.2019, which would have enabled the High Court to examine the correctness of the decree both on facts and on law, subject to the procedural requirements governing the invocation of such remedy.

25. The position, therefore, is that the Petitioner had a specific statutory appellate remedy against the Judgment and Decree dated 08.02.2019. The said remedy was not merely a restricted revisional

[9] Family Courts Act

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remedy; Section 19(1) of the Family Courts Act expressly contemplated an appeal to the High Court both on facts and on law. Consequently, any challenge to the correctness of the decree on its merits was required to be brought before the appellate Court in accordance with the statutory scheme and within the period prescribed by law, subject to the power of the Court to condone delay upon sufficient cause being shown.

26. The aforesaid distinction assumes significance in the present case because the Petitioner did not pursue the statutory appellate remedy against the Judgment and Decree dated 08.02.2019. Instead, she invoked Order IX Rule 13 read with Section 151 of the CPC, seeking recall of the decree on the ground that her absence from the matrimonial proceedings was occasioned by sufficient cause. The said Application was held to be maintainable by the learned Family Court, the delay in its institution was condoned, and the Application was thereafter adjudicated on merits and dismissed by the Judgment dated 11.07.2025. The Petitioner has, thus, already pursued the remedy specifically directed towards the circumstances in which the decree came to be passed in her absence.

27. It is in this statutory backdrop that the invocation of Article 227 of the Constitution of India needs to be examined. While the High Court possesses constitutional power of superintendence over subordinate Courts, such power is supervisory in nature and cannot be exercised as a substitute for appellate jurisdiction. The existence of this constitutional power does not entitle a litigant to seek re-examination of every order or decree merely because the litigant is aggrieved by the conclusion arrived at by the subordinate Court.

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28. The Hon'ble Supreme Court in ***Estralla Rubber v. Dass Estate (P) Ltd.***[10], explained that the power under Article 227 is not an unlimited jurisdiction to correct every erroneous decision of a subordinate Court. It held that interference may be warranted where there is a serious dereliction of duty, a flagrant violation of fundamental principles of law or justice, want of jurisdiction, or a finding so perverse that no reasonable person could have arrived at it. It was further clarified that the High Court cannot, while exercising such jurisdiction, substitute its own judgment for that of the subordinate Court as though it were exercising appellate jurisdiction.

29. The aforesaid principle has been reiterated by the Hon'ble Supreme Court in ***Radhey Shyam v. Chhabi Nath***[11], and ***M/s Garment Craft v. Prakash Chand Goel***[12]. These decisions emphasise that supervisory jurisdiction is to be exercised sparingly and does not permit the High Court to reappreciate or reweigh evidence merely because another view is possible. Interference must be justified by a patent legal or jurisdictional infirmity of the nature warranting the exercise of such extraordinary power.

30. More importantly, the Hon'ble Supreme Court has repeatedly emphasised the significance of an available statutory appellate remedy while considering the exercise of jurisdiction under Article 227. In ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society***[13], the Apex Court held that, where proceedings are before a civil Court, and the CPC itself provides a remedy of appeal, the availability of such remedy operates, as a matter

[10] (2001) 8 SCC 97
[11] (2015) 5 SCC 423
[12] 2022 INSC 37
[13] (2019) 9 SCC 538

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of judicial discipline and prudence, as a near-total bar to the exercise of supervisory jurisdiction under Article 227. The Court cautioned against permitting a litigant to challenge even a decree under Article 227 on grounds which could properly be urged in the statutory appeal.

31. The principle is particularly relevant in the context of an *ex parte* decree. In ***Mohamed Ali v. V. Jaya***[14], the Hon'ble Supreme Court adjudicated a case in which an *ex parte* judgment and decree had been sought to be challenged before the High Court under Section 115 of the CPC and Article 227, despite the availability of a statutory appeal. The Apex Court held that, where a statutory alternative remedy by way of appeal was available against the *ex parte* judgment and decree, the High Court ought not to have entertained the revision petition under Section 115 or the petition under Article 227 for the purpose of challenging the decree. The Court also took note of the substantial delay in the proceedings under Order IX Rule 13 CPC and emphasised that the question of condonation of such delay could not be bypassed by directly assailing the original decree under Article 227.

32. The principle in ***Mohamed Ali*** (supra) is directly relevant to the present case. Having pursued the remedy under Order IX Rule 13 CPC and failed therein, the Petitioner cannot ordinarily invoke Article 227 to reopen the very decree against which a statutory appeal was available. Permitting such a course would effectively enable the Petitioner to circumvent the limitation governing the appellate remedy and to seek, through supervisory jurisdiction, an adjudication which ought to have been pursued through the statutory appellate mechanism.

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[14] (2022) 10 SCC 477

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33. The Hon'ble Supreme Court had, even on earlier occasions, cautioned against such an approach. In ***Mohd. Yunus v. Mohd. Mustaqim***[15], wherein the Apex Court deprecated the tendency of litigants to bypass the normal remedy of appeal or revision by invoking Article 227. The Court emphasised that supervisory jurisdiction cannot ordinarily be employed as a substitute for an available statutory remedy. This principle reinforces the requirement that the constitutional power of superintendence be exercised within its recognised limits and not as a means of securing an additional forum for adjudication on merits.

34. The question of delay must also be considered in the context of the nature of the jurisdiction invoked. In ***Bithika Mazumdar v. Sagar Pal***[16], the Hon'ble Supreme Court held that no statutory period of limitation is prescribed for an application under Article 227 of the Constitution. At the same time, the Court recognised that such a petition is expected to be filed without unreasonable delay and that any delay must be satisfactorily explained. The absence of a prescribed period of limitation, therefore, does not confer an unrestricted right to reopen a concluded adjudication at any point of time.

35. The Andhra Pradesh High Court, in ***R.K. Agarwal v. Ch. Vijaya Kumari***[17], similarly recognised that, where the ordinary appellate remedy has become barred by limitation, a litigant who has allowed the order of the subordinate Court to attain finality by failing to approach the appellate forum within time cannot ordinarily invoke Article 227 to circumvent the limitation applicable to that remedy.

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[15] (1983) 4 SCC 566
[16] (2017) 2 SCC 748
[17] 2006 SCC OnLine AP 840

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The principle underscores that the constitutional supervisory jurisdiction cannot be converted into an alternative route for securing relief which has not been pursued through the prescribed statutory procedure.

36. It is, however, apposite to clarify that the existence of a statutory remedy or the expiry of the period of limitation does not extinguish the constitutional power under Article 227. Nevertheless, the availability of an appeal permitting examination of the matter both on facts and on law, coupled with substantial or unexplained delay, constitutes a compelling consideration for judicial restraint. The Court must consider the nature of the alleged infirmity, the conduct of the litigant, the extent of the delay, the explanation furnished therefor, and the consequences of permitting a concluded adjudication to be reopened. Supervisory jurisdiction is intended to correct jurisdictional failures and grave procedural or legal infirmities, and not to provide a second appellate forum where the statutory remedy has not been pursued within time.

37. In the present case, the relevant circumstances must, therefore, be considered cumulatively. These include the existence of a specific statutory appeal against the Judgment and Decree dated 08.02.2019; the period prescribed under Section 19(3) of the Family Courts Act, 1984; the Petitioner's election to pursue the distinct remedy under Order IX Rule 13 CPC; the condonation of delay in that proceeding and the adjudication of the Application on merits; its dismissal on 11.07.2025; and the subsequent attempt to challenge the original decree itself after a substantial lapse of time. Entertaining the challenge in these circumstances would permit the Petitioner to achieve indirectly what she did not pursue through the statutory

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appellate mechanism, thereby undermining the limitation prescribed for such remedy.

38. The challenge sought to be mounted against the Judgment and Decree dated 08.02.2019 is not confined to a jurisdictional defect in the proceedings culminating in the decree. The Petitioner seeks, in substance, to re-open the original adjudication itself. The grounds advanced in relation to the alleged procedural irregularity, the circumstances of her absence and the alleged failure to consider her explanation substantially overlap with the issues which formed the subject matter of the proceedings under Order IX Rule 13 CPC. The Court must, therefore, distinguish between a case in which Article 227 is invoked to correct a patent jurisdictional error or grave miscarriage of justice and one in which the jurisdiction is invoked to secure a fresh adjudication of a decree for which the legislature has already provided an appellate remedy.

39. In this context, the reliance placed by the Petitioner upon ***Bhanu Kumar Jain*** (supra) requires to be understood in its proper perspective. The Hon'ble Supreme Court recognised the availability of distinct remedies against an *ex parte* decree, namely, an application under Order IX Rule 13 CPC and an appeal against the decree itself. While the former concerns the circumstances in which the decree came to be passed in the absence of a party, the latter enables the aggrieved party to challenge the decree on merits within the scope of the appellate jurisdiction. The said judgment, however, does not dispense with the procedural requirements governing the invocation of these remedies, nor does it confer an unrestricted right to reopen the original decree through subsequent collateral or supervisory proceedings. The pursuit of an application under Order IX

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Rule 13 CPC cannot, therefore, be construed as conferring an unlimited period within which the original decree may subsequently be challenged under Article 227 of the Constitution.

40. The Petitioner has also sought to overcome the aforesaid difficulty by contending that the Judgment and Decree dated 08.02.2019 was allegedly obtained by fraud and suppression of material facts. Reliance has, in this regard, been placed upon the judgments of the Hon'ble Supreme Court in *S.P. Chengalvaraya Naidu v. Jagannath* (supra) and *A.V. Papayya Sastry v. Government of A.P.* (supra).

41. There can be no quarrel with the principle enunciated in *S.P. Chengalvaraya Naidu* (supra) that a judgment or decree obtained by playing fraud upon the Court cannot be permitted to stand and that fraud, when established, vitiates the judicial process. The judgment proceeds on the premise that the Court has been deceived into passing an order on account of a fraudulent act or suppression of a material fact. Similarly, in *A.V. Papayya Sastry* (supra), the Hon'ble Supreme Court reiterated that a judgment, decree or order obtained by fraud is a nullity and may be questioned even in appropriate collateral proceedings. These authorities, however, do not dispense with the requirement of establishing the foundational facts constituting fraud. The mere assertion of fraud, without proof of the fraudulent act complained of, does not automatically render the statutory scheme of remedies and limitation inapplicable.

42. The distinction is material in the present case. The Petitioner has alleged fraud and suppression principally in relation to the manner in which the matrimonial proceedings proceeded and the circumstances in which the Judgment and Decree dated 08.02.2019

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came to be passed. However, there is no finding by the learned Family Court establishing that the decree was procured by fraud upon the Court. On the contrary, the circumstances relied upon by the Petitioner, including her absence from the matrimonial proceedings, her medical condition and her simultaneous participation in the criminal proceedings, were specifically placed before and considered by the learned Family Court while adjudicating the Application under Order IX Rule 13 CPC. Consequently, *Bhanu Kumar Jain* (supra), which concerns the distinct remedies available against an *ex parte* decree, and *S.P. Chengalvaraya Naidu* (supra) and *A.V. Papayya Sastry* (supra), which address the consequences of fraud when established, do not support the proposition that a mere allegation of fraud, in the absence of proof establishing the same, is sufficient to overcome the statutory framework governing remedies against a decree.

43. In the present case, therefore, the invocation of the principle that fraud vitiates judicial proceedings cannot, by itself, furnish an independent basis for permitting the Petitioner to reopen the Judgment and Decree dated 08.02.2019. The allegations of fraud are substantially intertwined with the circumstances which formed the subject matter of the Petitioner's Application under Order IX Rule 13 CPC, and those circumstances have already been examined by the learned Family Court. In the absence of any established case of fraud or any demonstrated jurisdictional infirmity in the Judgment dated 11.07.2025, this Court finds no basis to invoke its revisional or supervisory jurisdiction for reopening the original decree.

44. Accordingly, while this Court retains its constitutional power of superintendence under Article 227, the exercise of such power must

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be justified by circumstances warranting supervisory intervention and not merely by an allegation that the original decree was erroneous or that another view of the material was possible. In the absence of a demonstrated jurisdictional error, patent perversity, violation of fundamental principles of procedure or an established case of grave miscarriage of justice, the supervisory jurisdiction cannot ordinarily be employed as a substitute for the statutory appellate remedy or to reopen an adjudication which has otherwise attained finality.

45. In view of the foregoing discussion, this Court finds that the Judgment and Decree dated 08.02.2019 was independently amenable to a statutory appeal under Section 19(1) of the Family Courts Act, 1984, which was required to be preferred within the period prescribed under Section 19(3) thereof, subject to condonation of delay upon sufficient cause being shown. The Petitioner, however, did not avail of the said remedy within the prescribed period and instead approached the learned Family Court by way of an Application under Order IX Rule 13 read with Section 151 of the CPC, seeking recall of the said decree. The said Application was accompanied by an Application under Section 5 of the Limitation Act seeking condonation of delay, and was ultimately adjudicated on merits and dismissed on 11.07.2025. In these circumstances, and in the absence of any demonstrated jurisdictional infirmity or other exceptional circumstance warranting interference, the challenge to the original decree cannot be entertained at this belated stage as a means of circumventing the statutory appellate mechanism and the limitation governing its exercise.

46. This Court is conscious of the submission of the Petitioner that she had participated in the matrimonial proceedings for a considerable

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period and that the decree dated 08.02.2019 came to be passed when she was not appearing before the learned Family Court. However, the question whether her absence was occasioned by sufficient cause was specifically examined in the proceedings under Order IX Rule 13 CPC. The learned Family Court, after considering the material and evidence on record, returned a finding against the Petitioner. No jurisdictional infirmity, material irregularity or perversity warranting interference with the Judgment dated 11.07.2025 has been demonstrated before this Court.

47. The mere institution and subsequent prosecution of an Application under Order IX Rule 13 CPC cannot have the effect of indefinitely extending or reviving the period prescribed for availing the independent statutory remedy against the original decree. The fact that the Petitioner elected to pursue the former remedy cannot, by itself, confer upon her a fresh or unlimited period within which the original decree may subsequently be assailed in collateral or supervisory proceedings. Such a course would defeat the distinction between the statutory remedies recognised in *Bhanu Kumar Jain* (supra) and would, in substance, permit the limitation applicable to a challenge to the original decree to be circumvented by recourse to a subsequent proceeding.

48. In view of the foregoing discussion, this Court finds no ground to interfere with the Judgment dated 11.07.2025. The challenge to the Judgment and Decree dated 08.02.2019, having been raised after a substantial lapse of time and in circumstances where the Petitioner's Application seeking recall of the said decree has already been adjudicated and dismissed, cannot be permitted to be pursued in the present proceedings merely by invoking the revisional or supervisory

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jurisdiction of this Court. Any examination of the merits of the original decree would, in effect, amount to permitting the Petitioner to circumvent the statutory remedy available against the said decree and the limitation governing such remedy.

49. Accordingly, the present Petition is liable to be dismissed. The challenge to the Judgment dated 11.07.2025 is rejected on merits, while the challenge to the Judgment and Decree dated 08.02.2019 is not liable to be entertained at this belated stage.

50. The Petition is, accordingly, dismissed and disposed of, along with pending applications, if any.

HARISH VAIDYANATHAN SHANKAR, J.

OCTOBER 27, 2026/va

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