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HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW
FIRST APPEAL No. - 119 of 2025

Syed Mohd. Momin Akhtar

.....Appellant(s)

Versus

Saima Faruqi

.....Respondents(s)

Counsel for Petitioners(s)

:

Pramod Kumar Shukla, Anshul Pandey, Ashish Kumar Mishra, Mohd Umar

Counsel for Respondent(s)

:

Aftab Alam Malik

Court No. - 5

HON'BLE ALOK MATHUR, J.

HON'BLE SYED QAMAR HASAN RIZVI, J.

(Per: Syed Qamar Hasan Rizvi, J.)

1. By means of the present Appeal filed under Section 19 of the Family Courts Act, 1984, the appellant/husband has assailed the judgment and order dated 20.05.2025 passed by the learned Additional Principal Judge, Court No.8, Family Court, Lucknow in Matrimonial Case No. 3872 of 2024 (Syed Mohd. Momin Akhtar Vs. Saima Faruqi) and has also prayed for declaration of matrimonial status of parties as 'divorced'.

2. The facts of the case in brief, shorn of unnecessary details, are that the appellant and the respondent are Sunni Muslims, their marriage was solemnized on 01.02.2022 as per the customs and practices recognized under the Muslim Personal law.

3. On account of some matrimonial disputes between the spouse / parties to this appeal, they got

separated. The respondent left her matrimonial house on 12.09.2023 and started residing at her mother's house. Since then, the appellant and respondent are living separately. It is the pleaded that the appellant that he tried his level best to save their marriage, but all his efforts went in vain as no amicable settlement could have arrived. Having failed to settle the strife; appellant approached Darul Kaza Faringi Mahal at Aishbagh (herein after referred to as 'Darul Kaza'), Lucknow and sought its help towards the settlement of discord through conciliation between the parties. On the call of Darul Kaza, the respondent appeared before the same on 22.05.2024 and demanded Talaq from the appellant. Under such circumstances, the appellant, having no other option but to resort to Talaq-e-hasan. Accordingly, the respondent (wife) was conveyed the same by means of three notices, at an interval of about one month each. The first Talaq notice was sent to the respondent, through registered post on 22.07.2024, the second notice on 22.08.2024 and finally the third notice on 25.09.2024. All the said three notices of Talaq, sent through registered post were duly received by the respondent. However, during the aforesaid period the respondent never contacted the appellant nor responded to the said notices in any manner, whatsoever. Thereafter, the appellant sought opinion from the Darul Uloom Nadwatul Ulema. On specific query regarding the status of the matrimonial relationship between the parties, Darul Uloom Nadwatul Ulema, on 07.10.2024 gave the following opinion:

"In the present matter, the matrimonial bond has already come to an end, and there is no possibility of reconciliation or renewal of Nikah. That is all"

4. It is stated on behalf of the appellant that he paid Rs. 1,00,000/- (Rupees one lakh) as Mehar to the respondent.

5. It is pleaded on behalf of the appellant that to get a formal declaration of the dissolution of marriage / Talaq, he approached the competent Court of law by preferring a declaratory Suit under Section 7 of the Family Courts Act, 1984, on 29.10.2024; before the Court of Principal Judge, Family Court, Lucknow. The said Suit was registered as Case No. 3872 of 2024 (Syed Mohammad Momin Akhtar versus Saima Faruqi). The respondent submitted her Written Statement on 24.01.2025, inter-alia admitting the averments made in the plaint. Further, the respondent / defendant in her Statement (as DW-1), filed in evidence by way of an affidavit dated 26.03.2025, showed her willingness for grant of decree of Talaq.

6. The Court of Learned Additional Principal Judge, Family Court, Lucknow vide the impugned judgement and order dated 20.05.2025 dismissed the aforesaid Suit on the premise that since neither the defendant nor any other person had challenged or denied the Talaq given by the plaintiff, and the plaintiff did not state in the plaint or evidence as to why such declaration is needed; therefore, the suit being barred by Section 34 of the Specific Relief Act and Section 20 C.P.C. is liable to be dismissed.

7. Assailing the impugned judgment and order dated 20.05.2025, the learned counsel asserted that the learned court below has wrongly applied the provisions of section 34 of the Specific Relief Act and Section 20 of the C.P.C. He contended that the plaintiff / appellant did not file the Suit under section 34 of the Specific Relief Act nor the issue of jurisdiction or cause of action was involved in the Suit therefore, the grounds on which the suit has been dismissed is totally baseless, perverse and unsustainable in law.

8. Learned counsel for the appellant has further contended that the learned Family Court did not have taken into consideration the statements of the witnesses wherein both, the appellant as well as the respondent have admitted the Talaq. It is further contended that the suit filed by the plaintiff is for declaration of the Talaq which is undisputed as is evident from the written statement filed by the defendant / respondent.

9. Vakaltnama on behalf of the respondent has been filed by Sri Aftab Alam Malik, Advocate. However, there is nothing on record to indicate that any reply / objection has been filed by him.

10. Heard the learned counsel for the appellant and perused the material available on record.

11. For better appreciation of facts, it would be apposite to have a glance over the law on the subject and principles governing Talaq under Muslim Personal Law.

12. Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 provides for the application of personal law to Muslims. Subsequently, the Miscellaneous Personal Laws (Extension) Act, 1959 made it applicable to the whole of India except the State of Jammu and Kashmir. For ready reference, Section 2 of the Act of 1937 is quoted herein below:

"Application of personal law to Muslims.--Notwithstanding any custom or usage to the contrary, in all questions regarding intestate succession, special property of females including personal property inherited or obtained under contract or gift or any other provision of personal laws, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties and wakfs (other than charities and charitable institutions and charitable and

religious endowments), the rules of decision in cases where the parties are Muslims, shall be the Muslim Personal Law (Shariat)."

13. A bare reading of the above-quoted provision shows that, in respect of the dissolution of marriage, the rule of decision in cases where the parties are Muslims shall be Muslim Personal Law (Shariat). It further, mentions dissolution of marriage and adds that it will include talaq, ila, zihar, lian, khula and mubaraat. Talaq and Khula are the terms of Muslim matrimonial law meaning divorce by men and at the instance of women respectively, while mubaraat denotes divorce by mutual consent. It would not be out of place to mention that Ila, zihar and lian are pre-Islamic customary concepts abolished by Islamic law.

14. Section 5 of the Act of 1937 dealing with the dissolution of marriage by Court in certain circumstances came to be repealed by the Dissolution of Muslim Marriage Act, 1939 w.e.f. 17.03.1939. The aim and objective of the said Act of 1939, as is reflected from the legislation itself is to clarify the provisions of Muslim Law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie.

15. Under the Muslim Personal Law (Shariat); Talaq may be effected by a husband in any of the following ways:

Modes of talaq:

(i) Talaq-e-ahsan: a single pronouncement of talaq which remains revocable during the iddat period [about three months].

(ii) Talaq-e-hasan: three single pronouncements of talaq made one after the other in a course of at least three months.

(iii) Talaq-e-bid'at: a single pronouncement of talaq adding that it is irrevocable, or three pronouncements made at the same time [repeating the word talaq thrice or saying teen talaq]

16. After the coming into force of the Muslim Women (Protection of Rights on Marriage) Act, 2019 with effect from 31.07.2019, Talaq-e-bid'at, or any other similar form of Talaq having the effect of an instantaneous and irrevocable divorce pronounced by a Muslim husband, has been declared void, illegal, and punishable. For ready reference, Sections 2(c), 3, and 4 of the Act of 2019 are reproduced herein below:

2. Definitions. In this Act, unless the context otherwise requires,

(a) "electronic form" shall have the same meaning as assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(b) "Magistrate" means a Judicial Magistrate of the first class exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974), in the area where the married Muslim woman resides; and

(c) "talaq" means talaq-e-biddat or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband.

3. Talaq to be void and illegal. Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

4. Punishment for pronouncing talaq. - Any Muslim husband who pronounces talaq referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

17. Talaq may be effected orally (by spoken words) or by a written document called Talaq-nama. No particular form of words is prescribed for effecting a Talaq. If the words are express, or well understood as implying divorce, no proof of intention is required. If the words are ambiguous, the intention of the husband to end the marriage has to be proved. However, under the Shia law, Talaq has to be pronounced using a particular format in the presence and hearing of a religious functionary and competent witnesses.

18. The Hon'ble Supreme Court of India, while dealing with the issue of rights of Muslim women regarding the dissolution of marriage, in the case of Shayara Bano versus Union of India, reported in (2017) 9 SCC 1, has been pleased to lay down the foundational principles governing the application of Muslim Personal Law to matrimonial matters. For convenience, the relevant paragraph of the said judgment is quoted here-in-below:

"145. A close examination of Section 2, extracted above, leaves no room for any doubt, that custom and usage, as it existed amongst Muslims, were sought to be expressly done away with, to the extent the same were contrary to Muslim Personal Law. Section 2 also mandated, that Muslim Personal Law (Shariat) would be exclusively adopted as "... the rule of decision..." in matters of intestate succession, special property of females, including all questions pertaining to "... personal property inherited or

obtained under contract or gift or any other provision of "Personal Law", marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, gifts, trusts and trust properties, and wakfs...". Section 3 added to the above list, "... adoption, wills and legacies...", subject to the declaration expressed in Section 3."

.....
.....

291. If the Muslim Personal Law (Shariat) Application Act, 1937, had incorporated the manner in which questions regarding intestate succession, special property of females including personal property inherited or obtained under contract or gift or matters such as marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (as in Section 2 thereof), had to be dealt with, as per Muslim Personal Law—"Shariat" according to the petitioners, it would be quite a different matter. All the same, the Shariat Act did not describe how the above questions and subjects had to be dealt with. And, therefore, for settlement of disputes amongst Muslims, it would need to be first determined what the Muslim Personal Law, with reference to the disputation, was. Whatever it was, would in terms of Section 2 of the 1937 Act, constitute "the rule of decision".

19. In view of the above it is abundantly clear that Talaq is an expressly recognised and valid mode of dissolution of marriage under Muslim Personal Law. The Talaq may take place as an extra-judicial divorce and is complete the moment the husband pronounces divorce in accordance with the recognized mode as prescribed under the Muslim Personal Law . (Shariat).

20. The Family Courts Act, 1984 confers jurisdiction upon the Family Court to entertain suits and proceedings of the nature referred to in the Explanation appended to Section 7. For ready reference the same is quoted herein below:

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"7. Jurisdiction.-

(1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.-

The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

21. The High Court of Kerala at Ernakulam, in the case of Asbi K.N versus Hashim M.U., reported in 2021 SCC OnLine Ker 3945, has laid down comprehensive guidelines for the Family Court's role in cases of extra-judicial divorce. In Paragraph 4 of the said judgment, the Court has been pleased to hold:

"4. The Division Bench of this Court in X v. Y (2021 (2) KHC 709) has held that the Family Court in exercise of the jurisdiction under Explanation (d) of S.7 of the Act is competent to endorse an extrajudicial

divorce to declare the marital status of a person. It was made clear in the said judgment that in the matter of unilateral dissolution of marriage invoking khula and talaq, the scope of enquiry before the Family Court is limited and in such proceedings, the Court shall record the khula or talaq to declare the marital status of the parties after due notice to other party. In the matter of mubaraat, the Family Court shall declare the marital status without further enquiry on being satisfied that the dissolution was effected on mutual consent. It was observed that such matter shall be disposed treating it as uncontested matter without any delay by passing a formal order declaring the marital status. It was further held that if any person wants to contest the effectiveness of khula or talaq, it is open for such person to contest the same in appropriate manner known under the law.

5. The unilateral extrajudicial divorce under Muslim Personal law is complete when either of the spouse pronounce/declare talaq, talaq-e-tafweez or khula, as the case may be, in accordance with Muslim Personal Law. So also extrajudicial divorce by mubaarat mode is complete as and when both spouses enter into mutual agreement. The seal of the Court is not necessary to the validity of any of these modes of extra judicial divorce. The endorsement of extrajudicial divorce and consequential declaration of the status of the parties by the Family Court invoking S.7(d) of the Act is contemplated only to have a public record of the extrajudicial divorce. Hence, detailed enquiry is neither essential nor desirable in a proceeding initiated by either of the parties to endorse an extrajudicial divorce and to declare the marital status. The Family Court has to simply ascertain whether a valid pronouncement/declaration of talaq or khula was made and it was preceded by effective attempt of conciliation. In the case of khula, it has to be further ascertained whether there was an offer by the wife to return the "dower". It could be ascertained by perusal of the recitals in talaq nama/khula nama or its communication (if it is in writing) or by recording the statement of the parties. No further enquiry as in the case of an adversarial litigation like chief examination and cross-examination of the parties are not at all contemplated in such a proceedings. If the Court is prima facie satisfied that there was valid pronouncement of talaq/khula/talaq-e-tafweez, it shall endorse the same and declare the status of the parties. In the case of mubaarat, if the Court is prima facie satisfied that mubaarat agreement has been executed and signed by both parties, it shall endorse the same and declare the status of the parties. The Court shall pass formal order declaring the marital status without any delay. If any of the parties want to challenge the extrajudicial divorce by talaq, khula, mubaarat or talaq-e-tafweez mode, he/she is free to challenge the same in accordance with law in appropriate forum. The declaration granted by the Family Court u/s 7(d) endorsing the extrajudicial divorce shall be subject to the final outcome of such proceedings, if any. We consider it desirable to formulate the following guidelines to be followed by the Family Court in a petition filed u/s 7(d) of the Act to endorse an extrajudicial divorce under Muslim Personal Law and to declare the marital status of the parties to the marriage.

- (i) On receipt of the petition, the Family Court shall issue notice to the respondent.
- (ii) After service of summons or appearance of the respondent, as the case may be, the Family Court shall formally record the statement of both parties. The parties shall also be directed to produce talaq nama/khula nama (if pronouncement/declaration is in writing)/mubaarat agreement.
- (iii) The Family Court shall thereafter on perusal of the recitals in talaq nama/khula nama/ communication of talaq, khula or talaq-e-tafweez (if available) and the statement of the parties, ascertain whether there was valid pronouncement of talaq/khula/talaq-e-tafweez. In the case of mubaarat, the Family Court shall ascertain whether the parties have executed and signed mubaarat agreement.
- (iv) On prima facie satisfaction that there was valid pronouncement of talaq, khula, talaq-e-tafweez, as the case may be, or valid execution of mubaarat agreement, the Family Court shall proceed to pass order endorsing the extrajudicial divorce and declaring the status of the parties without any further enquiry.
- (v) The enquiry to be conducted by the Family Court shall be summary in nature treating it as an uncontested matter.
- (vi) The Family Court shall dispose of the petition within one month of the appearance of the respondent. The period can be extended for valid reasons.
- (vii) If any of the parties is unable to appear at the Court personally, the Family Court shall conduct enquiry using video conferencing facility."

22. In the present case, the facts that stands admitted and undisputed between the parties are that the marriage between the appellant and the respondent was solemnized on 01.02.2022 as per the practice recognized under the Muslim Personal Law. However, on account of matrimonial discord, the parties started living separately since 12.09.2023.

23. The appellant made efforts for reconciliation through Darul Kaza, Faringi Mahal, but the same could

not materialize. The respondent / defendant on the call of the Darul Kaza, Faringi Mahal, at Lucknow, appeared and demanded Talaq. Accordingly, the appellant sent three separate Talaq notices dated 22.07.2024, 22.08.2024 and 25.09.2024 through registered post, the same were duly received by the respondent / defendant. Thereafter, the appellant, to ensure his matrimonial status pursuant to the said exercise of Talaq; sought opinion from the Darul Uloom Nadwatul Ulema. In response to the same the Darul Uloom Nadwatul Ulema on 07.10.2024 gave a categorical opinion / Fatwa that "In the present matter, the matrimonial bond has already come to an end, and there is no possibility of reconciliation or renewal of Nikah".

24. It is also to be noted that the defendant / respondent apart from the facts as narrated above has also not denied the receipt of amount of Rs. 1,00,000/- as Mehar.

25. From a bare perusal of the Written Statement dated 24.01.2025 filed by the defendant / respondent (Annexure-4) it is abundantly clear that she did not dispute the factum of Talaq nor did she contested the case by disputing the averments made in the plaint. Rather, in paragraph 16 of the same, she not only accepted the claim of the appellant / plaintiff but had stated to the extent that she has no objection if a decree is passed in the Suit. For better appreciation of the case, the contents of the aforementioned Written Statement is reproduced herein below:

" प्रतिवादिनी ने वादी द्वारा दाखिल किये गये दावे को पढ़कर ठीक से समझ लिया है जिसका प्रस्तरवार जवाब निम्न है :-

1. यह कि वाद पत्र की धारा 1 सही है।
2. यह कि वाद पत्र की धारा 2 के जवाब की आवश्यकता नहीं है।
3. यह कि वाद पत्र की धारा 3 के जवाब की आवश्यकता नहीं है।
4. यह कि वाद पत्र की धारा 4 सही है। अतः धारा 4 स्वीकार है।
5. यह कि वाद पत्र की धारा 5 के जवाब की आवश्यकता नहीं है।
6. यह कि वाद पत्र की धारा 6 सही है तथा किसी भी टिप्पणी की आवश्यकता नहीं है।
7. यह कि वाद पत्र की धारा 7 सही हैं। मैं प्रतिवादिनी मेहर की रकम ₹0 1,00,000/- (एक लाख रुपये) वादी से प्राप्त कर चुकी हूँ।
8. यह कि वाद पत्र की धारा 8 सही हैं। वादी व प्रतिवादिनी के कोई सन्तान नहीं है।
9. यह कि वाद पत्र की धारा 9 सही हैं जिस पर किसी भी टिप्पणी की आवश्यकता नहीं है।
10. यह कि वाद पत्र की धारा 10 सही है। प्रतिवादिनी मेदान्ता अस्पताल में नौकरी करती है तथा मुझ प्रतिवादिनी को भी तलाक की डिक्री की आवश्यकता है।
11. यह कि वाद पत्र की धारा 11 के जवाब की आवश्यकता नहीं है।
12. यह कि वाद पत्र की धारा 12 के जवाब की आवश्यकता नहीं है।
13. यह कि वाद पत्र की धारा 13 के जवाब की आवश्यकता नहीं है।
14. यह कि वाद पत्र की धारा 14 के जवाब की आवश्यकता नहीं है।
15. यह कि वाद पत्र की धारा 15 के जवाब की आवश्यकता नहीं है।
16. यह कि वादी के उपरोक्त वाद को स्वीकार करते हुए उक्त वाद में डिक्री पारित की जाती है तो मुझ प्रतिवादिनी को कोई आपत्ति नहीं है। "

26. Further, in her statement on oath as DW-1, in evidence, she not only accepted the Talaq but herself prayed for a decree of divorce. For ready reference, relevant extract of the aforesaid Statement is quoted herein below:

"मेरा निकाह वादी के साथ दिनांक 01.02.2022 को मुस्लिम सुन्नी रीति रिवाज के अनुसार घरवालों एवं रिश्तेदारों की उपस्थिति में जनपद लखनऊ में सम्पन्न हुआ था। निकाह के पश्चात मैं विदा होकर वादी के घर भवन सं0 432/55-4ए/2 कैम्पबेल रोड, न्यू विद्या एकेडमी के सामने, लखनऊ गई और बतौर पत्नी वादी के साथ रहने लगी। शादी के कुछ समय बाद हमारे विचार मेल न खाने के कारण आपसी रिश्ते खराब होने लगे। बात ज़्यादा बढ़ी तो मैं दिनांक 12.09.2023 को वादी को छोड़कर अपने मायके चली गई तब से मैं अपने मायके में रह रही हूँ। दारुल कज़ा फरंगी महल ऐशबाग लखनऊ में बड़े बुजुर्गों

के बीच दिनांक 22.05.2024 को एक बैठक हुई, मैंने उस बैठक में वादी के पास जाने से साफ मना कर दिया और खूब सोच समझ कर वादी से तलाक की माँग की।

जब वादी को इस बात का यकीन हो गया कि मैं उसके साथ रहने के लिये तैयार नहीं हूँ तो वादी ने इस्लामी शरीयत में बताए गये "तलाके हसन" की रीति को अपनाते हुए मुझे एक एक माह के अंतराल पर तलाक की तीन लिखित नोटिसें रजिस्टर्ड डाक द्वारा भेजी। वादी द्वारा एक एक माह के अंतराल पर भेजी गई तलाक की तीनों नोटिसों को मैंने प्राप्त कर लिया तथा मुझे वादी द्वारा दी गई तलाक स्वीकार भी है। मैं निकाह में तयशुदा मेहर की रकम रु० 1,00,000/- (एक लाख रुपये) वादी से पहले ही प्राप्त कर चुकी हूँ। हमारी कोई संतान नहीं है। मुझको भी माननीय न्यायालय से तलाक की डिक्री की आवश्यकता है। माननीय न्यायालय द्वारा वादी के साथ मेरा निकाह दिनांक 01.02.2022 को विघटित करते हुये तलाक की घोषणात्मक आज्ञा पारित किया जाना न्यायहित में उचित है।"

27. As is available on record (Annexure-2); the opinion / fatwa accorded by the Darul Uloom Nadwatul Ulema, Lucknow, also certified the Talaq in question as complete and final. It would not be out of place to mention here that although fatwa is not a verdict of any kind but just an expert opinion based on classical sources. The opinion is being sought and the reply is being given to the best of knowledge and belief of the person or body consulted. The Darul Uloom Nadwatul Ulema, Lucknow a widely recognized muslim seminary maintains a department known as Dar-ul-Ifta staffed by experts in religious laws who answer all sorts of queries believed to be of religious significance, their replies / opinions being popularly known as fatwa.

28. The admission made by the respondent / defendant in the Written Statement and in her own affidavit filed as DW-1 in evidence, leaves no room to disbelieve the factum of Talaq.

29. It is trite in law that admission, if clear, are by far the best proof of the facts admitted. Admission in pleadings or judicial admission, if admissible, made by the parties stand on a higher footing even than an evidentiary admission and the court can very well pass an order on the basis of an undisputed admission of a party in accordance with law. On an admission of facts either made in the pleadings or otherwise, whether orally or in writing, the court at any stage of the proceeding may make such order or give such judgment as it may think fit, having regard to such admission.

30. Upon careful reading of the impugned judgment and order, this Court finds that the learned Family Court although found the factum of Talaq between the parties, proved and also recorded categorical finding that the respondent / defendant did not have challenged the Talaq and has admitted the claims of the appellant / plaintiff as have been made in the plaint; yet dismissed the Suit on the premise that since, neither the respondent nor any other person had denied or challenged the Talaq, nor the appellant / plaintiff has disclosed in the plaint that what necessitated him to seek declaratory decree of Talaq, as such, the court is not competent to pass decree under Section 34 of the Specific Relief Act read with Section 20 C.P.C. The relevant part of the impugned judgement and order is extracted herein below for convenience:-

" प्रतिवादिनी की ओर से जवाबदावा कागज सं० ए-8 प्रस्तुत करते हुए कहा गया है।

उभयपक्ष के अभिवचनों के आधार पर दिनांक 10.02.2025 को निम्नलिखित वाद बिन्दु विरचित किये गये:-

1. क्या उभयपक्ष के मध्य हुआ तलाक विधिमान्य है?

2. अनुतोष?

वादी की ओर से स्वयं का साक्ष्य शपथ पत्र पी०डब्लू०-1 के रूप में कागज सं० ए-11 को पत्रावली पर दाखिल किया गया है।

प्रतिवादिनी की ओर से स्वयं का साक्ष्य शपथ पत्र डी०डब्लू०-2 के रूप में कागज सं० ए-13 को दाखिल किया गया है।

वादी की ओर से दस्तावेजी साक्ष्य के रूप में कागज सं० सी-4/4 लगायत सी-4/14 प्रपत्रों की फोटोप्रतियाँ पत्रावली पर दाखिल की गयी हैं।

प्रतिवादिनी की ओर से दस्तावेजी साक्ष्य के रूप में स्वयं के आधारकार्ड की फोटोप्रति कागज सं० सी-9/2 को पत्रावली पर दाखिल किया गया है।

मैंने उभयपक्ष के विद्वान विधिक सलाहकार को सुना तथा पत्रावली का परिशीलन किया।

निस्तारण वाद बिन्दु संख्या-1

वाद बिन्दु सं०-1 इस आशय के विरचित किया गया है कि-क्या उभयपक्ष के मध्य हुआ तलाक विधिमान्य है?

वादी द्वारा अपने वाद पत्र में कथन किया गया है कि उसका निकाह प्रतिवादिनी के साथ दिनांक 01.02.2022 को मुस्लिम सुन्नी रीति रिवाज के अनुसार सम्पन्न हुआ था, निकाह के पश्चात प्रतिवादिनी विदा होकर वादी के घर आई और बतौर पत्नी रहने लगी। वादी ने प्रतिवादिनी का खाने पीने रहने व जरूरत की हर चीज का उचित इंतजाम किया। शादी के कुछ समय बाद वादी व प्रतिवादिनी के विचार मेल न खाने के कारण आपसी रिश्ते खराब होने लगे और धीरे धीरे प्रतिवादिनी का व्यवहार वादी के प्रति गैर जिम्मेदाराना व क्रूर हो गया। प्रतिवादिनी दिनांक 12.09.2023 को वादी को छोड़कर अपने मायके चली गई तब से प्रतिवादिनी अपने मायके में रह रही है। वादी ने प्रतिवादिनी को वापस लाने की हर मुमकिन कोशिश की लेकिन दारुल कजा फरंगी महल ऐशबाग लखनऊ में बड़े बुजुर्गों के बीच दिनांक 22.05.2024 को हुई बैठक में प्रतिवादिनी ने वादी के पास आने से साफ मना कर दिया और वादी से तलाक की माँग की। इसलिये वादी ने इस्लामी शरीयत में बताए गये तलाके हसन की रीति को अपनाते हुए 2 गवाहों की मौजूदगी में अपने पूरे होश व हवास में बिना किसी जोर व दबाव नाजायज के दिनांक 22.07.2024 को प्रथम तलाक की नोटिस रजिस्टर्ड डाक (EU389237556IN) द्वारा प्रतिवादिनी को भेजी। एक माह का समय बीत जाने के बाद वादी ने दिनांक 22.8.2024 को प्रतिवादिनी को द्वितीय तलाक की नोटिस रजिस्टर्ड डाक (EU249507345IN) द्वारा भेजी। वादी ने प्रतिवादिनी को उपरोक्त रीति के अनुसरण में दिनांक 25.09.2024 को तृतीय तलाक की नोटिस रजिस्टर्ड डाक (EU532231755IN) द्वारा भेजी। वादी द्वारा एक एक माह के अंतराल पर भेजी गई तलाक की तीनों नोटिसों को प्रतिवादिनी ने प्राप्त कर लिया है। वादी निकाह में तयशुदा मेहर की रकम ₹0 1,00,000/- (एक लाख रुपये) प्रतिवादिनी को पहले ही अदा कर चुका है। मुस्लिम रीति रिवाज के अनुसार वादी एवं प्रतिवादिनी के मध्य तलाक के सम्बन्ध में मर्कजी दारुल कजा नदवतुल उलेमा लखनऊ की राय फतवा के रूप में ली गई है।

प्रतिवादी द्वारा उक्त सभी तथ्यों को अपने प्रतिवाद पत्र में स्वीकार किया गया है।

उभयपक्ष द्वारा पी०डब्लू०-1 व डी०डब्लू०-1 के रूप में भी उक्त तथ्य यको स्वीकार किया गया है।

तदनुसार वाद बिन्दु सं० 1 निस्तारित किया जाता है।

निस्तारण वाद बिन्दु संख्या-2

वाद बिन्दु संख्या-2 इस आशय का विरचित किया गया है कि-

अनुतोष ?

वाद बिन्दु सं० 1 के निष्कर्ष से यह सिद्ध है कि वादी ने इस्लामी शरीयत में बताए गये 'तलाके हसन की रीति को अपनाते हुए 2 गवाहों की मौजूदगी में अपने पूरे होश व हवास में बिना किसी जोर व दबाव नाजायज के दिनांक 22.07.2024 को प्रथम तलाक की नोटिस रजिस्टर्ड डाक (EU389237556IN) द्वारा प्रतिवादिनी को भेजी। एक माह का समय बीत जाने के बाद वादी ने दिनांक 22.8.2024 को प्रतिवादिनी को द्वितीय तलाक की नोटिस रजिस्टर्ड डाक (EU249507345IN) द्वारा भेजी। वादी ने प्रतिवादिनी को उपरोक्त रीति के अनुसरण में दिनांक 25.09.2024 को तृतीय तलाक की नोटिस रजिस्टर्ड डाक (EU532231755IN) द्वारा भेजी। वादी द्वारा एक एक माह के अंतराल पर भेजी गई तलाक की तीनों नोटिसों को प्रतिवादिनी ने प्राप्त कर लिया है। वादी निकाह में तयशुदा मेहर की रकम ₹0 1,00,000/- (एक लाख रुपये) प्रतिवादिनी को पहले ही अदा कर चुका है। मुस्लिम रीति रिवाज के अनुसार वादी एवं प्रतिवादिनी के मध्य तलाक के सम्बन्ध में मर्कजी दारुल कजा नदवतुल उलेमा लखनऊ की राय फतवा के रूप में ली गई है।

प्रतिवादिनी द्वारा उस तथ्य को स्वीकार किया गया है। यहाँ यह उल्लेखनीय है कि विनिर्दिष्ट अनुतोष अधिनियम की धारा-34 घोषणा के संबंध में न्यायालय को विवेकाधिकार प्रदान करता है। यह अधिकार तब प्राप्त होता है जबकि कोई व्यक्ति किसी व्यक्ति के किसी हिसियत या अधिकार पर उसके हक का प्रत्याख्यान करता है या प्रत्याख्यान करने में हितबद्ध हो। प्रस्तुत प्रकरण में किसी प्रतिवादिनी अथवा किसी अन्य व्यक्ति द्वारा वादी द्वारा दिए गए तलाक को चुनौती नहीं दी गयी है ना ही उसे अस्वीकार किया गया है। वादी द्वारा अपने वाद पत्र अथवा साक्ष्य में यह उल्लेख नहीं किया गया है कि उसे इस उद्घोषणा की आवश्यकता क्यों हुई। अतः चूँकि प्रस्तुत वाद धारा-34 विनिर्दिष्ट अनुतोष अधिनियम व धारा-20 सी०पी०सी०

से बाधित है, वादी किसी अनुतोष को प्राप्त करने का अधिकारी नहीं है। वादी द्वारा प्रस्तुत वाद बावत तलाक उद्घोषणा निरस्त किये जाने योग्य है।

आदेश

वादी द्वारा प्रस्तुत वाद बावत तलाक उद्घोषणा निरस्त किया जाता है।

पत्रावली नियमानुसार दाखिल दफ्तर की जाए। "

31. The extra-judicial divorce under Muslim Personal Law by way of Talaq is complete when the spouse pronounces Talaq in the manner as prescribed under the Muslim Personal Law (Shariat). The endorsement of extra-judicial divorce and the consequential declaration of the marital-status of the parties by the Family Court invoking Section 7(b) of the Family Courts Act, 1984 is contemplated only to have a public record of the extra-judicial divorce. The Family Court has to simply ascertain whether a valid pronouncement of Talaq was made in accordance with the applicable law. No further enquiry, as in the case of adversarial litigation, is at all contemplated in such proceedings. It bears emphasis that proceedings for declaration instituted under Section 7 of the Family Court Act, 1984 wherein a party approaches the competent Court, seeking declaration of matrimonial status and the other side chooses not to dispute the claim made there under, the Court on being prima-facie satisfied that valid pronouncement of Talaq as per the applicable law has been effected, it may endorse the same and declare the marital-status of the parties accordingly, by treating the same as uncontested proceedings, without adhering to the rigorous procedure attendant upon adversarial litigation. Nothing herein shall preclude any aggrieved party from challenging the validity of an extra judicial divorce by Talaq in appropriate proceeding in accordance with law, before the Court having jurisdiction. Any declaration granted by the Family Court under Section 7(b) or Section 7(d) endorsing such extra-judicial divorce shall remain subject to the final adjudication of any such challenge, if preferred. It would not be out of place to observe that the said provision reflects the legislative intent to address a significant societal need: that every member of a civilised society is entitled to have a clear and definite marital status, particularly where such status arises from the applicable personal laws or through recognised and accepted customary practices. In such circumstances, judicial endorsement of marital status is not merely desirable but, in appropriate circumstances, imperative.

32. Under the given facts and circumstances as narrated herein above, this court finds that although the learned Family Court, recorded categorical finding that the Talaq-e-hasan between the parties is proved and also the same is undisputed as the respondent / defendant has not denied the facts either in evidence or in her written statement; yet dismissed the suit on totally misplaced and unwarranted grounds, thus the impugned judgment and order dated 20.05.2025 is liable to be set-aside being perverse and unsustainable in law.

33. In view of the peculiar facts of the present case and the law as narrated herein above, this Court is of the considered opinion that when the Court of learned Additional Principal Judge, Family Court, Lucknow was satisfied with the validity or otherwise of the Talaq and there was no contest on the subject matter between the parties concerned rather the defendant / respondent herself expressed willingness for a decree of divorce / Talaq; the learned Family Court ought to have declare the matrimonial status of the parties as 'divorced'.

34. Finding the Suit for declaration filed by the appellant / plaintiff cognizable under the provisions of Section 7 of the Family Courts Act, 1984, and the prayer made by the appellant for declaration of his matrimonial status on the basis of the Talaq recognized under the Muslim Personal Law (Shariat) well-founded in law; further, there is no dispute or challenge from the side of the respondent / defendant and the parties are living separately with no sign of reconciliation, this Court is satisfied that the said Talaq in question is liable to be endorsed by this Court.

ORDER

1. The appeal is allowed. The impugned judgment and order dated 20.05.2025 passed by the Court of learned Additional Principal Judge, Court No.8, Family Court, Lucknow in Matrimonial Case No.3872 of 2024 is hereby set-aside.

2. The suit for declaration preferred by the plaintiff / appellant having Case No.3872 of 2024 is hereby decreed.

3. The matrimonial-status of the parties, as prayed for, is hereby declared divorced.

(Syed Qamar Hasan Rizvi,J.)(Alok Mathur,J.)

July 03, 2026
Arun

This is an UNCERTIFIED copy for information/reference. For authentic copy please refer to certified copy only. In case of any mistake, please bring it to the notice of Deputy Registrar(Copying).

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

LUCKNOW

FIRST APPEAL No. - 119 of 2025

Syed Mohd. Momin Akhtar

.....Appellant(s)

Versus

Saima Faruqi

.....Respondents(s)

Counsel for Petitioners(s)

:

Pramod Kumar Shukla, Anshul Pandey, Ashish Kumar Mishra, Mohd Umar

Counsel for Respondent(s)

:

Aftab Alam Malik

Court No. - 5

HON'BLE ALOK MATHUR, J.

HON'BLE SYED QAMAR HASAN RIZVI, J.

(Per: Syed Qamar Hasan Rizvi, J.)

1. By means of the present Appeal filed under Section 19 of the Family Courts Act, 1984, the appellant/husband has assailed the judgment and order dated 20.05.2025 passed by the learned Additional Principal Judge, Court No.8, Family Court, Lucknow in Matrimonial Case No. 3872 of 2024 (Syed Mohd. Momin Akhtar Vs. Saima Faruqi) and has also prayed for declaration of matrimonial status of parties as 'divorced'.

2. The facts of the case in brief, shorn of unnecessary details, are that the appellant and the respondent are Sunni Muslims, their marriage was solemnized on 01.02.2022 as per the customs and practices recognized under the Muslim Personal law.

3. On account of some matrimonial disputes between the spouse / parties to this appeal, they got separated. The respondent left her matrimonial house on 12.09.2023 and started residing at her mother's house. Since then, the appellant and respondent are living separately. It is the pleaded that the appellant that he tried his level best to save their marriage, but all his efforts went in vain as no amicable settlement could have arrived. Having failed to settle the strife; appellant approached Darul Kaza Faringi Mahal at Aishbagh (herein after referred to as 'Darul Kaza'), Lucknow and sought its help towards the settlement of discord through conciliation between the parties. On the call of Darul Kaza, the respondent appeared before the same on 22.05.2024 and demanded Talaq from the appellant. Under such circumstances, the appellant, having no other option but to resort to Talaq-e-hasan. Accordingly, the respondent (wife) was conveyed the same by means of three notices, at an interval of about one month each. The first Talaq notice was sent to the respondent, through registered post on 22.07.2024, the second notice on 22.08.2024 and finally the third notice on 25.09.2024. All the said three notices of Talaq, sent through registered post were duly received by the respondent. However, during the aforesaid period the respondent never contacted the appellant nor responded to the said notices in any manner, whatsoever. Thereafter, the appellant sought opinion from the Darul Uloom Nadwatul Ulema. On specific query regarding the status of the matrimonial relationship between the parties, Darul Uloom Nadwatul Ulema, on 07.10.2024 gave the following opinion:

"In the present matter, the matrimonial bond has already come to an end, and there is no possibility of reconciliation or renewal of Nikah. That is all"

4. It is stated on behalf of the appellant that he paid Rs. 1,00,000/- (Rupees one lakh) as Mehar to the respondent.

5. It is pleaded on behalf of the appellant that to get a formal declaration of the dissolution of marriage / Talaq, he approached the competent Court of law by preferring a declaratory Suit under Section 7 of the Family Courts Act, 1984, on 29.10.2024; before the Court of Principal Judge, Family Court, Lucknow. The said Suit was registered as Case No. 3872 of 2024 (Syed Mohammad Momin Akhtar versus Saima Faruqi). The respondent submitted her Written Statement on 24.01.2025, inter-alia admitting the averments made in the plaint. Further, the respondent / defendant in her Statement (as DW-1), filed in evidence by way of an affidavit dated 26.03.2025, showed her willingness for grant of decree of Talaq.

6. The Court of Learned Additional Principal Judge, Family Court, Lucknow vide the impugned judgement and order dated 20.05.2025 dismissed the aforesaid Suit on the premise that since neither the

defendant nor any other person had challenged or denied the Talaq given by the plaintiff, and the plaintiff did not state in the plaint or evidence as to why such declaration is needed; therefore, the suit being barred by Section 34 of the Specific Relief Act and Section 20 C.P.C. is liable to be dismissed.

7. Assailing the impugned judgment and order dated 20.05.2025, the learned counsel asserted that the learned court below has wrongly applied the provisions of section 34 of the Specific Relief Act and Section 20 of the C.P.C. He contended that the plaintiff / appellant did not file the Suit under section 34 of the Specific Relief Act nor the issue of jurisdiction or cause of action was involved in the Suit therefore, the grounds on which the suit has been dismissed is totally baseless, perverse and unsustainable in law.

8. Learned counsel for the appellant has further contended that the learned Family Court did not have taken into consideration the statements of the witnesses wherein both, the appellant as well as the respondent have admitted the Talaq. It is further contended that the suit filed by the plaintiff is for declaration of the Talaq which is undisputed as is evident from the written statement filed by the defendant / respondent.

9. Vakaltnamea on behalf of the respondent has been filed by Sri Aftab Alam Malik, Advocate. However, there is nothing on record to indicate that any reply / objection has been filed by him.

10. Heard the learned counsel for the appellant and perused the material available on record.

11. For better appreciation of facts, it would be apposite to have a glance over the law on the subject and principles governing Talaq under Muslim Personal Law.

12. Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 provides for the application of personal law to Muslims. Subsequently, the Miscellaneous Personal Laws (Extension) Act, 1959 made it applicable to the whole of India except the State of Jammu and Kashmir. For ready reference, Section 2 of the Act of 1937 is quoted herein below:

"Application of personal law to Muslims.--Notwithstanding any custom or usage to the contrary, in all questions regarding intestate succession, special property of females including personal property inherited or obtained under contract or gift or any other provision of personal laws, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties and wakfs (other than charities and charitable institutions and charitable and religious endowments), the rules of decision in cases where the parties are Muslims, shall be the Muslim Personal Law (Shariat)."

13. A bare reading of the above-quoted provision shows that, in respect of the dissolution of marriage, the rule of decision in cases where the parties are Muslims shall be Muslim Personal Law (Shariat). It further, mentions dissolution of marriage and adds that it will include talaq, ila, zihar, lian, khula and mubaraat. Talaq and Khula are the terms of Muslim matrimonial law meaning divorce by men and at the instance of women respectively, while mubaraat denotes divorce by mutual consent. It would not be

out of place to mention that Ila, zihar and lian are pre-Islamic customary concepts abolished by Islamic law.

14. Section 5 of the Act of 1937 dealing with the dissolution of marriage by Court in certain circumstances came to be repealed by the Dissolution of Muslim Marriage Act, 1939 w.e.f. 17.03.1939. The aim and objective of the said Act of 1939, as is reflected from the legislation itself is to clarify the provisions of Muslim Law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie.

15. Under the Muslim Personal Law (Shariat); Talaq may be effected by a husband in any of the following ways:

Modes of talaq:

(i) Talaq-e-ahsan: a single pronouncement of talaq which remains revocable during the iddat period [about three months].

(ii) Talaq-e-hasan: three single pronouncements of talaq made one after the other in a course of at least three months.

(iii) Talaq-e-bid'at: a single pronouncement of talaq adding that it is irrevocable, or three pronouncements made at the same time [repeating the word talaq thrice or saying teen talaq]

16. After the coming into force of the Muslim Women (Protection of Rights on Marriage) Act, 2019 with effect from 31.07.2019, Talaq-e-bid'at, or any other similar form of Talaq having the effect of an instantaneous and irrevocable divorce pronounced by a Muslim husband, has been declared void, illegal, and punishable. For ready reference, Sections 2(c), 3, and 4 of the Act of 2019 are reproduced herein below:

2. Definitions. In this Act, unless the context otherwise requires,

(a) "electronic form" shall have the same meaning as assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(b) "Magistrate" means a Judicial Magistrate of the first class exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974), in the area where the married Muslim woman resides; and

(c) "talaq" means talaq-e-biddat or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband.

3. Talaq to be void and illegal. Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

4. Punishment for pronouncing talaq. - Any Muslim husband who pronounces talaq referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

17. Talaq may be effected orally (by spoken words) or by a written document called Talaq-nama. No particular form of words is prescribed for effecting a Talaq. If the words are express, or well understood as implying divorce, no proof of intention is required. If the words are ambiguous, the intention of the husband to end the marriage has to be proved. However, under the Shia law, Talaq has to be pronounced using a particular format in the presence and hearing of a religious functionary and competent witnesses.

18. The Hon'ble Supreme Court of India, while dealing with the issue of rights of Muslim women regarding the dissolution of marriage, in the case of Shayara Bano versus Union of India, reported in (2017) 9 SCC 1, has been pleased to lay down the foundational principles governing the application of Muslim Personal Law to matrimonial matters. For convenience, the relevant paragraph of the said judgment is quoted here-in-below:

"145. A close examination of Section 2, extracted above, leaves no room for any doubt, that custom and usage, as it existed amongst Muslims, were sought to be expressly done away with, to the extent the same were contrary to Muslim Personal Law. Section 2 also mandated, that Muslim Personal Law (Shariat) would be exclusively adopted as "... the rule of decision..." in matters of intestate succession, special property of females, including all questions pertaining to "... personal property inherited or obtained under contract or gift or any other provision of "Personal Law", marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, gifts, trusts and trust properties, and wakfs...". Section 3 added to the above list, "... adoption, wills and legacies...", subject to the declaration expressed in Section 3."

.....

.....

291. If the Muslim Personal Law (Shariat) Application Act, 1937, had incorporated the manner in which questions regarding intestate succession, special property of females including personal property inherited or obtained under contract or gift or matters such as marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (as in Section 2 thereof), had to be dealt with, as per Muslim Personal Law—"Shariat" according to the petitioners, it would be quite a different matter. All the same, the Shariat Act did not describe how the above questions and subjects had to be dealt with. And, therefore, for settlement of disputes amongst Muslims, it would need to be first determined what the Muslim Personal Law, with reference to the disputation, was. Whatever it was, would in terms of Section 2 of the 1937 Act, constitute "the rule of decision".

19. In view of the above it is abundantly clear that Talaq is an expressly recognised and valid mode of dissolution of marriage under Muslim Personal Law. The Talaq may take place as an extra-judicial

divorce and is complete the moment the husband pronounces divorce in accordance with the recognized mode as prescribed under the Muslim Personal Law . (Shariat).

20. The Family Courts Act, 1984 confers jurisdiction upon the Family Court to entertain suits and proceedings of the nature referred to in the Explanation appended to Section 7. For ready reference the same is quoted herein below:

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"7. Jurisdiction.-

(1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.-

The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

21. The High Court of Kerala at Ernakulam, in the case of Asbi K.N versus Hashim M.U., reported in 2021 SCC OnLine Ker 3945, has laid down comprehensive guidelines for the Family Court's role in cases of extra-judicial divorce. In Paragraph 4 of the said judgment, the Court has been pleased to hold:

"4. The Division Bench of this Court in X v. Y (2021 (2) KHC 709) has held that the Family Court in exercise of the jurisdiction under Explanation (d) of S.7 of the Act is competent to endorse an extrajudicial divorce to declare the marital status of a person. It was made clear in the said judgment that in the matter of unilateral dissolution of marriage invoking khula and talaq, the scope of enquiry before the Family Court is limited and in such proceedings, the Court shall record the khula or talaq to declare the marital status of the parties after due notice to other party. In the matter of mubaraat, the Family Court shall declare the marital status without further enquiry on being satisfied that the dissolution was effected on mutual consent. It was observed that such matter shall be disposed treating it as uncontested matter without any delay by passing a formal order declaring the marital status. It was further held that if any person wants to contest the effectiveness of khula or talaq, it is open for such person to contest the same in appropriate manner known under the law.

5. The unilateral extrajudicial divorce under Muslim Personal law is complete when either of the spouse pronounce/declare talaq, talaq-e-tafweez or khula, as the case may be, in accordance with Muslim Personal Law. So also extrajudicial divorce by mubaarat mode is complete as and when both spouses enter into mutual agreement. The seal of the Court is not necessary to the validity of any of these modes of extra judicial divorce. The endorsement of extrajudicial divorce and consequential declaration of the status of the parties by the Family Court invoking S.7(d) of the Act is contemplated only to have a public record of the extrajudicial divorce. Hence, detailed enquiry is neither essential nor desirable in a proceeding initiated by either of the parties to endorse an extrajudicial divorce and to declare the marital status. The Family Court has to simply ascertain whether a valid pronouncement/declaration of talaq or khula was made and it was preceded by effective attempt of conciliation. In the case of khula, it has to be further ascertained whether there was an offer by the wife to return the "dower". It could be ascertained by perusal of the recitals in talaq nama/khula nama or its communication (if it is in writing) or by recording the statement of the parties. No further enquiry as in the case of an adversarial litigation like chief examination and cross-examination of the parties are not at all contemplated in such a proceedings. If the Court is prima facie satisfied that there was valid pronouncement of talaq/khula/talaq-e-tafweez, it shall endorse the same and declare the status of the parties. In the case of mubaarat, if the Court is prima facie satisfied that mubaarat agreement has been executed and signed by both parties, it shall endorse the same and declare the status of the parties. The Court shall pass formal order declaring the marital status without any delay. If any of the parties want to challenge the extrajudicial divorce by talaq, khula, mubaarat or talaq-e-tafweez mode, he/she is free to challenge the same in accordance with law in appropriate forum. The declaration granted by the Family Court u/s 7(d) endorsing the extrajudicial divorce shall be subject to the final outcome of such proceedings, if any.

We consider it desirable to formulate the following guidelines to be followed by the Family Court in a petition filed u/s 7(d) of the Act to endorse an extrajudicial divorce under Muslim Personal Law and to declare the marital status of the parties to the marriage.

- (i) On receipt of the petition, the Family Court shall issue notice to the respondent.
- (ii) After service of summons or appearance of the respondent, as the case may be, the Family Court shall formally record the statement of both parties. The parties shall also be directed to produce talaq nama/khula nama (if pronouncement/declaration is in writing)/mubaarat agreement.
- (iii) The Family Court shall thereafter on perusal of the recitals in talaq nama/khula nama/communication of talaq, khula or talaq-e-tafweez (if available) and the statement of the parties, ascertain whether there was valid pronouncement of talaq/khula/talaq-e-tafweez. In the case of mubaarat, the Family Court shall ascertain whether the parties have executed and signed mubaarat agreement.
- (iv) On prima facie satisfaction that there was valid pronouncement of talaq, khula, talaq-e-tafweez, as the case may be, or valid execution of mubaarat agreement, the Family Court shall proceed to pass order endorsing the extrajudicial divorce and declaring the status of the parties without any further enquiry.
- (v) The enquiry to be conducted by the Family Court shall be summary in nature treating it as an uncontested matter.
- (vi) The Family Court shall dispose of the petition within one month of the appearance of the respondent. The period can be extended for valid reasons.
- (vii) If any of the parties is unable to appear at the Court personally, the Family Court shall conduct enquiry using video conferencing facility."

22. In the present case, the facts that stands admitted and undisputed between the parties are that the marriage between the appellant and the respondent was solemnized on 01.02.2022 as per the practice recognized under the Muslim Personal Law. However, on account of matrimonial discord, the parties started living separately since 12.09.2023.

23. The appellant made efforts for reconciliation through Darul Kaza, Faringi Mahal, but the same could not materialize. The respondent / defendant on the call of the Darul Kaza, Faringi Mahal, at Lucknow, appeared and demanded Talaq. Accordingly, the appellant sent three separate Talaq notices dated 22.07.2024, 22.08.2024 and 25.09.2024 through registered post, the same were duly received by the respondent / defendant. Thereafter, the appellant, to ensure his matrimonial status pursuant to the said exercise of Talaq; sought opinion from the Darul Uloom Nadwatul Ulema. In response to the same the Darul Uloom Nadwatul Ulema on 07.10.2024 gave a categorical opinion / Fatwa that "In the present matter, the matrimonial bond has already come to an end, and there is no possibility of reconciliation or renewal of Nikah".

24. It is also to be noted that the defendant / respondent apart from the facts as narrated above has also not denied the receipt of amount of Rs. 1,00,000/- as Mehar.

25. From a bare perusal of the Written Statement dated 24.01.2025 filed by the defendant / respondent (Annexure-4) it is abundantly clear that she did not dispute the factum of Talaq nor did she contested the case by disputing the averments made in the plaint. Rather, in paragraph 16 of the same, she not only accepted the claim of the appellant / plaintiff but had stated to the extent that she has no objection if a decree is passed in the Suit. For better appreciation of the case, the contents of the aforementioned Written Statement is reproduced herein below:

" प्रतिवादिनी ने वादी द्वारा दाखिल किये गये दावे को पढ़कर ठीक से समझ लिया है जिसका प्रस्तरवार जवाब निम्न है :-

1. यह कि वाद पत्र की धारा 1 सही है।
2. यह कि वाद पत्र की धारा 2 के जवाब की आवश्यकता नहीं है।
3. यह कि वाद पत्र की धारा 3 के जवाब की आवश्यकता नहीं है।
4. यह कि वाद पत्र की धारा 4 सही है। अतः धारा 4 स्वीकार है।
5. यह कि वाद पत्र की धारा 5 के जवाब की आवश्यकत नहीं है।
6. यह कि वाद पत्र की धारा 6 सही है तथा किसी भी टिप्पणी की आवश्यकता नहीं है।
7. यह कि वाद पत्र की धारा 7 सही हैं। मैं प्रतिवादिनी मेहर की रकम ₹0 1,00,000/- (एक लाख रुपये) वादी से प्राप्त कर चुकी हूँ।
8. यह कि वाद पत्र की धारा 8 सही हैं। वादी व प्रतिवादिनी के कोई सन्तान नहीं है।
9. यह कि वाद पत्र की धारा 9 सही हैं जिस पर किसी भी टिप्पणी की आवश्यकता नहीं है।
10. यह कि वाद पत्र की धारा 10 सही है। प्रतिवादिनी मेदान्ता अस्पताल में नौकरी करती है तथा मुझ प्रतिवादिनी को भी तलाक की डिक्री की आवश्यकता है।
11. यह कि वाद पत्र की धारा 11 के जवाब की आवश्यकता नहीं है।
12. यह कि वाद पत्र की धारा 12 के जवाब की आवश्यकता नहीं है।
13. यह कि वाद पत्र की धारा 13 के जवाब की आवश्यकता नहीं है।

14. यह कि वाद पत्र की धारा 14 के जवाब की आवश्यकता नहीं है।

15. यह कि वाद पत्र की धारा 15 के जवाब की आवश्यकता नहीं है।

16. यह कि वादी के उपरोक्त वाद को स्वीकार करते हुए उक्त वाद में डिक्री पारित की जाती है तो मुझ प्रतिवादिनी को कोई आपत्ति नहीं है। "

26. Further, in her statement on oath as DW-1, in evidence, she not only accepted the Talaq but herself prayed for a decree of divorce. For ready reference, relevant extract of the aforesaid Statement is quoted herein below:

"मेरा निकाह वादी के साथ दिनांक 01.02.2022 को मुस्लिम सुन्नी रीति रिवाज के अनुसार घरवालों एवं रिश्तेदारों की उपस्थिति में जनपद लखनऊ में सम्पन्न हुआ था। निकाह के पश्चात मैं विदा होकर वादी के घर भवन सं0 432/55-4ए/2 कैम्पबेल रोड, न्यू विद्या एकेडमी के सामने, लखनऊ गई और बतौर पत्नी वादी के साथ रहने लगी। शादी के कुछ समय बाद हमारे विचार मेल न खाने के कारण आपसी रिश्ते खराब होने लगे। बात ज़्यादा बढ़ी तो मैं दिनांक 12.09.2023 को वादी को छोड़कर अपने मायके चली गई तब से मैं अपने मायके में रह रही हूँ। दारुल कज़ा फरंगी महल ऐशबाग लखनऊ में बड़े बुजुर्गों के बीच दिनांक 22.05.2024 को एक बैठक हुई, मैंने उस बैठक में वादी के पास जाने से साफ मना कर दिया और खूब सोच समझ कर वादी से तलाक की माँग की।

जब वादी को इस बात का यकीन हो गया कि मैं उसके साथ रहने के लिये तैयार नहीं हूँ तो वादी ने इस्लामी शरीयत में बताए गये "तलाके हसन" की रीति को अपनाते हुए मुझे एक एक माह के अंतराल पर तलाक की तीन लिखित नोटिसें रजिस्टर्ड डाक द्वारा भेजी। वादी द्वारा एक एक माह के अंतराल पर भेजी गई तलाक की तीनों नोटिसों को मैंने प्राप्त कर लिया तथा मुझे वादी द्वारा दी गई तलाक स्वीकार भी है। मैं निकाह में तयशुदा मेहर की रकम ₹ 1,00,000/- (एक लाख रुपये) वादी से पहले ही प्राप्त कर चुकी हूँ। हमारी कोई संतान नहीं है। मुझको भी माननीय न्यायालय से तलाक की डिक्री की आवश्यकता है। माननीय न्यायालय द्वारा वादी के साथ मेरा निकाह दिनांक 01.02.2022 को विघटित करते हुये तलाक की घोषणात्मक आज्ञा पारित किया जाना न्यायहित में उचित है। "

27. As is available on record (Annexure-2); the opinion / fatwa accorded by the Darul Uloom Nadwatul Ulema, Lucknow, also certified the Talaq in question as complete and final. It would not be out of place to mention here that although fatwa is not a verdict of any kind but just an expert opinion based on classical sources. The opinion is being sought and the reply is being given to the best of knowledge and belief of the person or body consulted. The Darul Uloom Nadwatul Ulema, Lucknow a widely recognized muslim seminary maintains a department known as Dar-ul-Ifta staffed by experts in religious laws who answer all sorts of queries believed to be of religious significance, their replies / opinions being popularly known as fatwa.

28. The admission made by the respondent / defendant in the Written Statement and in her own affidavit filed as DW-1 in evidence, leaves no room to disbelieve the factum of Talaq.

29. It is trite in law that admission, if clear, are by far the best proof of the facts admitted. Admission in pleadings or judicial admission, if admissible, made by the parties stand on a higher footing even than an evidentiary admission and the court can very well pass an order on the basis of an undisputed admission of a party in accordance with law. On an admission of facts either made in the pleadings or otherwise, whether orally or in writing, the court at any stage of the proceeding may make such order or give such judgment as it may think fit, having regard to such admission.

30. Upon careful reading of the impugned judgment and order, this Court finds that the learned Family Court although found the factum of Talaq between the parties, proved and also recorded categorical finding that the respondent / defendant did not have challenged the Talaq and has admitted the claims of the appellant / plaintiff as have been made in the plaint; yet dismissed the Suit on the premise that since, neither the respondent nor any other person had denied or challenged the Talaq, nor the appellant / plaintiff has disclosed in the plaint that what necessitated him to seek declaratory decree of Talaq, as such, the court is not competent to pass decree under Section 34 of the Specific Relief Act read with Section 20 C.P.C. The relevant part of the impugned judgement and order is extracted herein below for convenience:-

" प्रतिवादिनी की ओर से जवाबदावा कागज सं० ए-8 प्रस्तुत करते हुए कहा गया है।

उभयपक्ष के अभिवचनों के आधार पर दिनांक 10.02.2025 को निम्नलिखित वाद बिन्दु विरचित किये गये:-

1. क्या उभयपक्ष के मध्य हुआ तलाक विधिमान्य है?

2. अनुतोष?

वादी की ओर से स्वयं का साक्ष्य शपथ पत्र पी०डब्लू०-1 के रूप में कागज सं० ए-11 को पत्रावली पर दाखिल किया गया है।

प्रतिवादिनी की ओर से स्वयं का साक्ष्य शपथ पत्र डी०डब्लू०-2 के रूप में कागज सं० ए-13 को दाखिल किया गया है।

वादी की ओर से दस्तावेजी साक्ष्य के रूप में कागज सं० सी-4/4 लगायत सी-4/14 प्रपत्रों की फोटोप्रतियाँ पत्रावली पर दाखिल की गयी हैं।

प्रतिवादिनी की ओर से दस्तावेजी साक्ष्य के रूप में स्वयं के आधारकार्ड की फोटोप्रति कागज सं० सी-9/2 को पत्रावली पर दाखिल किया गया है।

मैंने उभयपक्ष के विद्वान विधिक सलाहकार को सुना तथा पत्रावली का परिशीलन किया।

निस्तारण वाद बिन्दु संख्या-1

वाद बिन्दु सं०-1 इस आशय के विरचित किया गया है कि-क्या उभयपक्ष के मध्य हुआ तलाक विधिमान्य है?

वादी द्वारा अपने वाद पत्र में कथन किया गया है कि उसका निकाह प्रतिवादिनी के साथ दिनांक 01.02.2022 को मुस्लिम सुन्नी रीति रिवाज के अनुसार सम्पन्न हुआ था, निकाह के पश्चात प्रतिवादिनी विदा होकर वादी के घर आई और बतौर पत्नी रहने लगी। वादी ने प्रतिवादिनी का खाने पीने रहने व जरूरत की हर चीज का उचित इंतजाम किया। शादी के कुछ समय बाद वादी व प्रतिवादिनी के विचार मेल न खाने के कारण आपसी रिश्ते खराब होने लगे और धीरे धीरे प्रतिवादिनी का व्यवहार वादी के प्रति गैर जिम्मेदाराना व क्रूर हो गया। प्रतिवादिनी दिनांक 12.09.2023 को वादी को छोड़कर अपने मायके चली गई तब से प्रतिवादिनी अपने मायके में रह रही है। वादी ने प्रतिवादिनी को वापस लाने की हर मुमकिन कोशिश की लेकिन दारुल कजा फरंगी महल ऐशबाग लखनऊ में बड़े बुजुर्गों के बीच दिनांक 22.05.2024 को हुई बैठक में प्रतिवादिनी ने वादी के पास आने से साफ मना कर दिया और वादी से तलाक की माँग की। इसलिये वादी ने इस्लामी शरीयत में बताए गये तलाके हसन की रीति को अपनाते हुए 2 गवाहों की मौजूदगी में अपने पूरे होश व हवास में बिना किसी जोर व दबाव नाजायज कें दिनांक 22.07.2024 को प्रथम तलाक की नोटिस रजिस्टर्ड डाक (EU389237556IN) द्वारा प्रतिवादिनी को भेजी। एक माह का समय बीत जाने के बाद वादी ने दिनांक 22.8.2024 को प्रतिवादिनी को द्वितीय तलाक की नोटिस रजिस्टर्ड डाक (EU249507345IN) द्वारा भेजी। वादी ने प्रतिवादिनी को उपरोक्त रीति के अनुसरण में दिनांक 25.09.2024 को तृतीय तलाक की नोटिस रजिस्टर्ड डाक (EU532231755IN) द्वारा भेजी। वादी द्वारा एक एक माह के अंतराल पर भेजी गई तलाक की तीनों नोटिसों को प्रतिवादिनी ने प्राप्त कर लिया है। वादी निकाह में तयशुदा मेहर की रकम ₹0 1,00,000/- (एक लाख रुपये) प्रतिवादिनी को पहले ही अदा कर चुका है। मुस्लिम रीति रिवाज के अनुसार वादी एवं प्रतिवादिनी के मध्य तलाक के सम्बन्ध में मर्कजी दारुल कजा नदवतुल उलेमा लखनऊ की राय फतवा के रूप में ली गई है।

प्रतिवादी द्वारा उक्त सभी तथ्यों को अपने प्रतिवाद पत्र में स्वीकार किया गया है।

उभयपक्ष द्वारा पी०डब्लू०-1 व डी०डब्लू०-1 के रूप में भी उक्त तथ्य यको स्वीकार किया गया है।

तदनुसार वाद बिन्दु सं० 1 निस्तारित किया जाता है।

निस्तारण वाद बिन्दु संख्या-2

वाद बिन्दु संख्या-2 इस आशय का विरचित किया गया है कि-

अनुतोष ?

वाद बिन्दु सं० 1 के निष्कर्ष से यह सिद्ध है कि वादी ने इस्लामी शरीयत में बताए गये 'तलाके हसन की रीति को अपनाते हुए 2 गवाहों की मौजूदगी में अपने पूरे होश व हवास में बिना किसी जोर व दबाव नाजायज के दिनांक 22.07.2024 को प्रथम तलाक की नोटिस रजिस्टर्ड डाक (EU389237556IN) द्वारा प्रतिवादिनी को भेजी। एक माह का समय बीत जाने के बाद वादी ने दिनांक 22.8.2024 को प्रतिवादिनी को द्वितीय तलाक की नोटिस रजिस्टर्ड डाक (EU249507345IN) द्वारा भेजी। वादी ने प्रतिवादिनी को उपरोक्त रीति के अनुसरण में दिनांक 25.09.2024 को तृतीय तलाक की नोटिस रजिस्टर्ड डाक (EU532231755IN) द्वारा भेजी। वादी द्वारा एक एक माह के अंतराल पर भेजी गई तलाक की तीनों नोटिसों को प्रतिवादिनी ने प्राप्त कर लिया है। वादी निकाह में तयशुदा मेहर की रकम ₹0 1,00,000/- (एक लाख रुपये) प्रतिवादिनी को पहले ही अदा कर चुका है। मुस्लिम रीति रिवाज के अनुसार वादी एवं प्रतिवादिनी के मध्य तलाक के सम्बन्ध में मर्कजी दारूल कजा नदवतुल उलेमा लखनऊ की राय फतवा के रूप में ली गई है।

प्रतिवादिनी द्वारा उस तथ्य को स्वीकार किया गया है। यहाँ यह उल्लेखनीय है कि विनिर्दिष्ट अनुतोष अधिनियम की धारा-34 घोषणा के संबंध में न्यायालय को विवेकाधिकार प्रदान करता है। यह अधिकार तब प्राप्त होता है जबकि कोई व्यक्ति किसी व्यक्ति के किसी हैसियत या अधिकार पर उसके हक का प्रत्याख्यान करता है या प्रत्याख्यान करने में हितबद्ध हो। प्रस्तुत प्रकरण में किसी प्रतिवादिनी अथवा किसी अन्य व्यक्ति द्वारा वादी द्वारा दिए गए तलाक को चुनौती नहीं दी गयी है ना ही उसे अस्वीकार किया गया है। वादी द्वारा अपने वाद पत्र अथवा साक्ष्य में यह उल्लेख नहीं किया गया है कि उसे इस उद्घोषणा की आवश्यकता क्यों हुई। अतः चूंकि प्रस्तुत वाद धारा-34 विनिर्दिष्ट अनुतोष अधिनियम व धारा-20 सी०पी०सी० से बाधित है, वादी किसी अनुतोष को प्राप्त करने का अधिकारी नहीं है। वादी द्वारा प्रस्तुत वाद बावत तलाक उद्घोषणा निरस्त किये जाने योग्य है।

आदेश

वादी द्वारा प्रस्तुत वाद बावत तलाक उद्घोषणा निरस्त किया जाता है।

पत्रावली नियमानुसार दाखिल दफ्तर की जाए। "

31. The extra-judicial divorce under Muslim Personal Law by way of Talaq is complete when the spouse pronounces Talaq in the manner as prescribed under the Muslim Personal Law (Shariat). The endorsement of extra-judicial divorce and the consequential declaration of the marital-status of the parties by the Family Court invoking Section 7(b) of the Family Courts Act, 1984 is contemplated only to have a public record of the extra-judicial divorce. The Family Court has to simply ascertain whether a valid pronouncement of Talaq was made in accordance with the applicable law. No further enquiry, as in the case of adversarial litigation, is at all contemplated in such proceedings. It bears emphasis that proceedings for declaration instituted under Section 7 of the Family Court Act, 1984 wherein a party approaches the competent Court, seeking declaration of matrimonial status and the other side chooses

not to dispute the claim made there under, the Court on being prima-facie satisfied that valid pronouncement of Talaq as per the applicable law has been effected, it may endorse the same and declare the marital-status of the parties accordingly, by treating the same as uncontested proceedings, without adhering to the rigorous procedure attendant upon adversarial litigation. Nothing herein shall preclude any aggrieved party from challenging the validity of an extra judicial divorce by Talaq in appropriate proceeding in accordance with law, before the Court having jurisdiction. Any declaration granted by the Family Court under Section 7(b) or Section 7(d) endorsing such extra-judicial divorce shall remain subject to the final adjudication of any such challenge, if preferred. It would not be out of place to observe that the said provision reflects the legislative intent to address a significant societal need: that every member of a civilised society is entitled to have a clear and definite marital status, particularly where such status arises from the applicable personal laws or through recognised and accepted customary practices. In such circumstances, judicial endorsement of marital status is not merely desirable but, in appropriate circumstances, imperative.

32. Under the given facts and circumstances as narrated herein above, this court finds that although the learned Family Court, recorded categorical finding that the Talaq-e-hasan between the parties is proved and also the same is undisputed as the respondent / defendant has not denied the facts either in evidence or in her written statement; yet dismissed the suit on totally misplaced and unwarranted grounds, thus the impugned judgment and order dated 20.05.2025 is liable to be set-aside being perverse and unsustainable in law.

33. In view of the peculiar facts of the present case and the law as narrated herein above, this Court is of the considered opinion that when the Court of learned Additional Principal Judge, Family Court, Lucknow was satisfied with the validity or otherwise of the Talaq and there was no contest on the subject matter between the parties concerned rather the defendant / respondent herself expressed willingness for a decree of divorce / Talaq; the learned Family Court ought to have declare the matrimonial status of the parties as 'divorced'.

34. Finding the Suit for declaration filed by the appellant / plaintiff cognizable under the provisions of Section 7 of the Family Courts Act, 1984, and the prayer made by the appellant for declaration of his matrimonial status on the basis of the Talaq recognized under the Muslim Personal Law (Shariat) well-founded in law; further, there is no dispute or challenge from the side of the respondent / defendant and the parties are living separately with no sign of reconciliation, this Court is satisfied that the said Talaq in question is liable to be endorsed by this Court.

ORDER

1. The appeal is allowed. The impugned judgment and order dated 20.05.2025 passed by the Court of learned Additional Principal Judge, Court No.8, Family Court, Lucknow in Matrimonial Case No.3872 of 2024 is hereby set-aside.

2. The suit for declaration preferred by the plaintiff / appellant having Case No.3872 of 2024 is hereby decreed.

3. The matrimonial-status of the parties, as prayed for, is hereby declared divorced.

(Syed Qamar Hasan Rizvi,J.)(Alok Mathur,J.)

July 03, 2026

Arun