

**Order No. 07 dt. 04.3.25**

Today is fixed for passing order.

Both sides file hazira.

The record is now taken up for passing order upon the maintainability petition heard in presence of both the sides.

Ld Advocate for the respondent had submitted during the hearing of the said petition that the instant case has been filed wrongly under section 9 of the Hindu Marriage Act, 1955 and that it should have filed under section 22 of the Special Marriage Act 1954, as the marriage between the petitioner and the respondent had been registered under the Special Marriage Act, 1954 vide Certificate No. 156/2008. He prayed for dismissal of the instant suit for misquotation of the section.

Ld Advocate for the petitioner submitted that the marriage between the parties had been solemnised under the Hindu Marriage Act, 1955 as per Hindu customary rites and ceremonies as per section 7 of the Hindu Marriage Act and that it had been registered as per Hindu Marriage Act. He also submitted that even if it is assumed for argument purpose that the said marriage has been registered subsequently under the Special Marriage Act, 1954, the said marriage would be held to governed under the Hindu Marriage Act 1955. He drew the attention of this court to the filed citations of *Swapananjali Sandeep Patil Vs Sandeep Ananda Patil* of the Hon'ble Supreme Court of India and *Shruti Agnihotri Vs Ananda Kumar Srivastava* of the Hon'ble Allahabad High Court and prayed for dismissal of the said maintainability petition filed by the respondent in this matter.

Heard both the sides. Perused the petition and the record. Considered.

It appears from scrutiny of the plaint filed by the petitioner in this case that the petitioner has captioned the plaint as Suit for restitution of conjugal rights u/s 9 of Hindu Marriage Act. It further appears therein that the petitioner has averred that the said marriage took place according to Hindu rites, customs including Sampradan, Saptapadi and Sindurdan as per Hindu Marriage Act. The plaint further mentions that the said marriage between both the parties had been duly registered as per Hindu Marriage Act. It further appears in the plaint that the petitioner has averred therein that respondent is the legally married wife of the petitioner and that the petitioner is entitled to lead a happy conjugal life with his wife i.e. respondent according to the provision of law of Hindu Marriage Act. Thus, the plaint filed by the petitioner in this case does not bear any whisper that the marriage was registered under the Special Marriage Act. The respondent has not filed any scrap of paper to prove that the said marriage was registered under the Special Marriage Act. In absence of any such proof at this stage, this court is unable to hold that the said marriage was registered under the Special Marriage Act. Even otherwise, the case of the petitioner cannot be thrown out simply because he has mentioned an incorrect provision of law in this matter.

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Hence, the instant petition filed by the respondent is considered and dismissed. Let the matter be fixed for reconciliation between the parties.

Both parties should remain present on the next date.

To 19.06.2025 for reconciliation

Dictated & Corrected by

Sd/-

Addl. District Judge, 2<sup>nd</sup> Court  
Serampore

Sd/-

Addl. District Judge, 2<sup>nd</sup> Court  
Serampore.

