

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 576 of 2026**

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YOGESHBHAI SHANKARBHAI PATEL

Versus

KALPANABEN YOGESHBHAI PATEL, D/O BABUBHAI CHANIYABHAI
PATEL

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Appearance:

MANAN K PANERI(7959) for the Appellant(s) No. 1

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CORAM: **HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE**Date : 23/02/2026****ORAL ORDER****(PER : HONOURABLE MS. JUSTICE SANGEETA K. VISHEN)**

1. Mr Manan K. Paneri, learned advocate for the appellant submitted that the divorce petition was filed on two grounds, namely, cruelty and desertion. Both the grounds were not accepted by the learned Judge; however, the fallacy lies when the learned Judge decided the issue as regards maintainability of the application which otherwise, was not formulated. It is submitted that below issue no.3, the issue of maintainability of the family suit has been decided exclusively relying upon sub-section (2) of section 2 of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act of 1955"). It is submitted that the Apex Court, in the case of *Labishwar Manjhi v. Pran Manjhi* reported in (2000) 8 SCC 587 was dealing with *pari materia* provision of the Hindu Succession Act, 1956 and it has been noted that if the parties belonging to the scheduled tribe are following the customs of Hindus, the exclusion as contained in sub-section (2) of section 2 of the Act of 1955 would not apply. It is also submitted that it is the case of the parties that the marriage was solemnized as per the Hindu rights despite which, the application has been rejected on the ground of it not being maintainable taking recourse of sub-section (2) of section 2 of the Act of 1955.

2. Considered the submissions. Issue notice to the respondent, returnable on 06.04.2026.

(SANGEETA K. VISHEN,J)

RAVI P. PATEL

(NISHA M. THAKORE,J)