

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 2494 of 2026****FOR APPROVAL AND SIGNATURE:****HONOURABLE MRS. JUSTICE M. K. THAKKER**

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Approved for Reporting	Yes	No
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PALAKBEN RAVI LUNI D/O DHAMASIBHAI GOBARBHAI RABARI & ANR.

Versus

NONE

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Appearance:

MR RUTVIJ S OZA(5594) for the Petitioner(s) No. 1,2

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CORAM: HONOURABLE MRS. JUSTICE M. K. THAKKER**Date : 09/03/2026****JUDGMENT**

1. The present petition is filed under Article 227 of the Constitution of India, challenging the order passed by the learned Family Court No. 5, Ahmedabad, whereby the application filed under Exh. 9 dated 14.11.2025 filed by petitioner No. 2 and the Power of Attorney holder of petitioner No. 1, seeking permission to complete the conciliation process via video conferencing, was rejected.

2. The brief facts leading to the present petition are as follows :-

2.1. Family Suit No. 3017 of 2025 was filed by the petitioners under Section 13(b) of the Hindu Marriage Act, 1955, contending that the marriage between Petitioner No. 1 and Petitioner No. 2 was solemnized on 15.04.2024 at Ahmedabad and that the parties have been living separately since 21.04.2024, as Petitioner No. 2 has been residing abroad since shortly after the marriage. Upon filing a petition for a consent decree, under Section 9 of the Family Courts Act and Section 23(2) of the Hindu Marriage Act, the Court is required to make efforts toward conciliation and settlement between the parties. However, in the present case, Petitioner No. 2, being abroad, filed proceedings through a Power of Attorney holder, contending that he is unable to be physically present for the conciliation process, thereby seeking permission to appear via video conferencing. The application filed under Exh. 9 by Petitioner No. 2 through the Power of Attorney was rejected by the learned Court, holding that conciliation could not be conducted through video conferencing. The said order is

the subject matter of the present petition.

3. Heard learned advocate Mr. Rutvij Oza for the petitioners.

3.1. It is respectfully submitted by the learned advocate, Mr. Oza, there has been no cohabitation between the petitioners as husband and wife since 21.04.2024, and the marriage has not been consummated. After the solemnization of the marriage, the petitioners remained in contact only through video calls and WhatsApp communications. Owing to serious differences of opinion, the relationship between Petitioner No. 1 and Petitioner No. 2 became strained and incompatible. The parties have not interacted as husband and wife for a considerable period of time. It is further submitted that the differences between the parties were of such a grave nature that there remained no possibility of reconciliation. Despite several attempts made by relatives and well-wishers to resolve the disputes, all such efforts proved futile. Consequently, the parties have mutually decided to dissolve their marriage by filing a petition under Section 13(B) of the Hindu

Marriage Act, 1955. It is submitted that both parties are well-educated individuals and fully understand the implications and consequences of their decision. The parties have exchanged all articles, gifts, and dowry items received from each other. Petitioner No. 1 has handed over all gold ornaments and other belongings to Petitioner No. 2, and Petitioner No. 2 has likewise returned all gifts and articles. It is further submitted that Petitioner No. 1 voluntarily waives all claims to permanent alimony or maintenance under the Code of Criminal Procedure, the Hindu Adoptions and Maintenance Act, the Protection of Women from Domestic Violence Act, the Hindu Marriage Act, or any other applicable law, as against Petitioner No. 2. In view of the irreconcilable differences in nature and temperament, the parties jointly filed a petition under Section 13(B) of the Hindu Marriage Act before the learned Family Court on 09.09.2025. As Petitioner No. 2 is presently residing in the United States of America and is unable to remain physically present before the Court, the petition has been filed through his duly constituted Power of Attorney holder, along with an undertaking

that Petitioner No. 2 shall remain present through video conferencing. It is submitted that, considering the difficulty faced by Petitioner No. 2 in traveling to India, the learned Court ought to have permitted his appearance through video conferencing. In view of the same, learned advocate Mr. Oza prays to allow this petition.

4. Upon consideration of the submissions advanced by the learned advocate and in light of the factual background referred to hereinabove, the primary issue for determination is, whether Petitioner No. 2 can be exempted from personal appearance and permitted to participate in the conciliation proceedings via video conferencing?

- 4.1. The learned Family Court observed that, under the provisions of the Family Courts Act, 1984, and the Hindu Marriage Act, 1955, it is incumbent upon the Court to make sincere efforts toward conciliation and settlement between the parties. Though the impugned judgment does not pertain to the claim of waiving of the cooling period, however in order to examine the scope and

object of Section 13B of the Hindu Marriage Act this Court has referred to the decision of the Apex Court in the case of **Amit Kumar Vs. Suman Beniwal** reported in **(2023) 17 SCC 648**, wherein the parties had been married for approximately fifteen months but had cohabited only for three days and had filed a petition under Section 13B stating that all joint efforts had failed and that they were unwilling to continue to live together as husband and wife. The Apex Court while considering the scope of Section 13B(2) of the Hindu Marriage Act, 1955 observed that the cooling off period of six months is intended to provide time and opportunity to the parties to reflect, to enable tempers to cool down and to permit reconciliation if possible, however where there is no possibility of reconciliation and the marriage has irretrievably broken down prolonging the agony would serve no useful purpose and in such circumstances it would be appropriate to dissolve the marriage so that the parties may move ahead in life. The relevant observations are reproduced hereinbelow:

“20. The factors mentioned in Amardeep Singh v. Harveen Kaur [Amardeep Singh v. Harveen Kaur, (2017) 8 SCC 746 : (2017) 4

SCC (Civ) 804 : (2017) 3 SCC (Cri) 505] , in para 19 are illustrative and not exhaustive. These are factors which the court is obliged to take note of. If all the four conditions mentioned above are fulfilled, the court would necessarily have to exercise its discretion to waive the statutory waiting period under Section 13-B(2) of the Marriage Act.

21. The Family Court, as well as the High Court, have misconstrued the judgment of this Court in Amardeep Singh v. Harveen Kaur [Amardeep Singh v. Harveen Kaur, (2017) 8 SCC 746 : (2017) 4 SCC (Civ) 804 : (2017) 3 SCC (Cri) 505] and proceeded on the basis that this Court has held that the conditions specified in para 19 of the said judgment, quoted hereinabove, are mandatory and that the statutory waiting period of six months under Section 13-B(2) can only be waived if all the aforesaid conditions are fulfilled, including, in particular, the condition of separation of at least one-and-half year's before making the motion for decree of divorce.

22. It is well settled that a judgment is a precedent for the issue of law that is raised and decided. A judgment is not to be read in the manner of a statute and construed with pedantic rigidity. In Amardeep Singh v. Harveen Kaur [Amardeep Singh v. Harveen Kaur, (2017) 8 SCC 746 : (2017) 4 SCC (Civ) 804 : (2017) 3 SCC (Cri) 505] , this Court held that the statutory waiting period of at least six months mentioned in Section 13-B(2) of the Hindu Marriage Act was not mandatory but directory and that it would be open to the Court to exercise its discretion to waive the requirement of Section 13-B(2), having regard to the facts and circumstances of the case, if there was no possibility of reconciliation between the spouses, and the waiting period would

serve no purpose except to prolong their agony.

23. In Devinder Singh Narula v. Meenakshi Nangia [Devinder Singh Narula v. Meenakshi Nangia, (2012) 8 SCC 580 : (2012) 4 SCC (Civ) 551] , this Court observed : (SCC p. 582, para 8)

“8. We have carefully considered the submissions made on behalf of the parties and have also considered our decision in Anil Kumar Jain case [Anil Kumar Jain v. Maya Jain, (2009) 10 SCC 415 : (2009) 4 SCC (Civ) 226] . It is no doubt true that the legislature had in its wisdom stipulated a cooling off period of six months from the date of filing of a petition for mutual divorce till such divorce is actually granted, with the intention that it would save the institution of marriage. It is also true that the intention of the legislature cannot be faulted with, but there may be occasions when in order to do complete justice to the parties it becomes necessary for this Court to invoke its powers under Article 142 in an irreconcilable situation. In fact, in Kiran v. Sharad Dutt [Kiran v. Sharad Dutt, (2000) 10 SCC 243] , which was considered in Anil Kumar Jain case [Anil Kumar Jain v. Maya Jain, (2009) 10 SCC 415 : (2009) 4 SCC (Civ) 226] , after living separately for many years and 11 years after initiating the proceedings under Section 13 of the Hindu Marriage Act, the parties filed a joint application before this Court for leave to amend the divorce petition and to convert the same into a proceeding under Section 13-B of the Act. Treating the petition as one under Section 13-B of the aforesaid Act, this Court by invoking its powers under Article 142 of the Constitution granted a decree of mutual divorce at the stage of the SLP itself. In different cases, in different situations, this Court had invoked its powers under Article 142 of the Constitution in order to do complete justice between the

parties.”

24. In Soni Kumari v. Deepak Kumar [Soni Kumari v. Deepak Kumar, (2016) 16 SCC 346 : (2017) 5 SCC (Civ) 812] , this Court exercised its power under Article 142 of the Constitution of India to waive the statutory waiting period of six months, where the wife had received the entire compensation of Rs 15 lakhs in full and final settlement of her claims as per the settlement arrived at between the parties, and further granted a decree of divorce to the parties by mutual consent.

25. In Anil Kumar Jain v. Maya Jain [Anil Kumar Jain v. Maya Jain, (2009) 10 SCC 415 : (2009) 4 SCC (Civ) 226] , this Court held : (SCC p. 423, para 29)

“29. In the ultimate analysis the aforesaid discussion throws up two propositions. The first proposition is that although irretrievable breakdown of marriage is not one of the grounds indicated whether under Section 13 or 13-B of the Hindu Marriage Act, 1955 for grant of divorce, the said doctrine can be applied to a proceeding under either of the said two provisions only where the proceedings are before the Supreme Court. In exercise of its extraordinary powers under Article 142 of the Constitution the Supreme Court can grant relief to the parties without even waiting for the statutory period of six months stipulated in Section 13-B of the aforesaid Act.”

26. For exercise of the discretion to waive the statutory waiting period of six months for moving the motion for divorce under Section 13-B(2) of the Hindu Marriage Act, the Court would consider the following amongst other factors:

(i) the length of time for which the parties had been married;

(ii) how long the parties had stayed together as husband and wife;
(iii) the length of time the parties had been staying apart;
(iv) the length of time for which the litigation had been pending;
(v) whether there were any other proceedings between the parties;
(vi) whether there was any possibility of reconciliation;
(vii) whether there were any children born out of the wedlock;
(viii) whether the parties had freely, of their own accord, without any coercion or pressure, arrived at a genuine settlement which took care of alimony, if any, maintenance and custody of children, etc.

27. In this case, as observed above, the parties are both well-educated and highly placed government officers. They have been married for about 15 months. The marriage was a non-starter. Admittedly, the parties lived together only for three days, after which they have separated on account of irreconcilable differences. The parties have lived apart for the entire period of their marriage except three days. It is jointly stated by the parties that efforts at reconciliation have failed. The parties are unwilling to live together as husband and wife. Even after over 14 months of separation, the parties still want to go ahead with the divorce. No useful purpose would be served by making the parties wait, except to prolong their agony.”

5. The learned Trial Court, while passing the impugned order, relied upon the judgment rendered by the Apex Court in the case of **Santhini v. Vijaya Venkatesh** reported in **(2018) 1 SCC 1**, and rejected the

application on the ground that participation through video conferencing in conciliation proceedings would not amount to effective participation. This Court has referred to the judgment rendered in the case of **Santhini** (*supra*), wherein the matter before the Apex Court pertained to a challenge to the orders passed by different High Courts in relation to transfer petitions concerning proceedings pending before various Family Courts. The Apex Court, in the case of **Krishnaveni Nagam v. Harish Nagam** reported in **(2017) 4 SCC 150**, had held that permitting the husband to participate in proceedings instituted under the Hindu Marriage Act, 1955 through video conferencing would meet the ends of justice in cases where transfer petitions are filed and the husband is residing at a distant place. The Apex Court thereafter referred the said issue to a larger Bench to determine whether the ratio laid down in **Krishnaveni Nagam** (*supra*) continued to hold the field. Ultimately, the larger Bench of the Apex Court in **Santhini** (*supra*) overruled the judgment in **Krishnaveni Nagam** (*supra*) and held as under:-

“Therefore, we are disposed to think that once a settlement fails

and if both the parties give consent that a witness can be examined in video conferencing, that can be allowed. That apart, when they give consent that it is necessary in a specific factual matrix having regard to the convenience of the parties, the Family Court may allow the prayer for videoconferencing. That much of discretion, we are inclined to think can be conferred on the Family Court. Such a limited discretion will not run counter to the legislative intention that permeates the 1984 Act. However, we would like to add a safeguard. A joint application should be filed before the Family Court Judge, who shall take a decision. However, we make it clear that in a transfer petition, no direction can be issued for video conferencing. We reiterate that the discretion has to rest with the Family Court to be exercised after the court arrives at a definite conclusion that the settlement is not possible and both parties file a joint application or each party filing his/her consent memorandum seeking hearing by videoconferencing.

57 Be it noted, sometimes, transfer petitions are filed seeking transfer of cases instituted under the Protection of Women from Domestic Violence Act, 2005 and cases registered under the IPC. As the cases under the said Act and the IPC have not been adverted to in Krishna Veni Nagam (supra) or in the order of reference in these cases, we do intend to advert to the same.

58 In view of the aforesaid analysis, we sum up our conclusion as follows :-

58.1 In view of the scheme of the 1984 Act and in particular Section 11, the hearing of matrimonial disputes may have to be conducted in camera.

58.2 After the settlement fails and when a joint application is filed

or both the parties file their respective consent memorandum for hearing of the case through videoconferencing before the concerned Family Court, it may exercise the discretion to allow the said prayer.

58.3 After the settlement fails, if the Family Court feels it appropriate having regard to the facts and circumstances of the case that videoconferencing will sub-serve the cause of justice, it may so direct.

58.4 In a transfer petition, video conferencing cannot be directed.

58.5 Our directions shall apply prospectively.

58.6 The decision in Krishna Veni Nagam (supra) is overruled to the aforesaid extent

59. We place on record our appreciation for the assistance rendered by Mr. Ajit Kumar Sinha, learned senior counsel.

60. The matters be placed before the appropriate Bench for consideration of the transfer petitions on their own merits.”

5.1. Upon referring to the ratio laid down by the Apex Court in ***Santhini*** (supra), it emerges that in cases where transfer petitions are filed and the attempt at settlement fails, witnesses may be examined through video conferencing provided both parties give their consent. It has further been held that where the parties mutually consent, and where the Court finds that such a course is necessary having regard to the specific factual matrix and convenience of the parties, the Family Court

may permit proceedings through video conferencing. It has been further held that the discretion in this regard lies with the learned Family Court, which is required to take an appropriate decision after considering the factual background and circumstances involved in the case. The Apex Court has also observed that when a joint application is filed before the learned Family Court seeking permission for video conferencing, the Family Court shall decide the same after considering the issues involved in the matter. It is therefore submitted that in a transfer petition no direction can be issued mandating video conferencing; however, the discretion has been vested in the Family Court, which may exercise the same after arriving at a definite conclusion that settlement between the parties is not possible and upon the filing of a joint application by both parties or individual consent memorandum seeking hearing through video conferencing.

5.2. As observed in **Santhini** (supra) appropriate deployment of technology serves the cause of access to justice and proceedings under the Family Courts Act are not excluded from this principle. Video conferencing

provides a cost effective and efficient alternative and technology based solutions which must be adopted to facilitate access to justice. In the present case the parties separated within a few days of marriage, nearly one and a half years have passed, the marriage was not consummated, all articles have been exchanged, petitioner No. 1 has waived her claim to alimony and all efforts of reconciliation have failed. Video conferencing is a technological facility which enables persons situated at different locations to conduct face-to-face meetings. The said technology is extensively used across the world. In fact, the use of video conferencing ensures that judicial proceedings are conducted efficiently and without unnecessary delay, thereby facilitating the expeditious disposal of matters in appropriate circumstances, compelling petitioner No. 2 to travel from abroad solely to participate in the conciliation proceedings would be both unfair and unreasonable.

- 5.3. That learned Court blindly relied on **Santhini** (supra) without looking into the fact involved in the case. The Apex Court in the case of **Union of India v. Amritlal Lal Manchanda** reported in **(2004) 3 SCC 75** has held

that "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive. Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches."

6. In the case of **State of Orissa And Others Vs MD. Illiyas** reported in **2006 1 SCC 275**, the Apex Court has held that "Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to

analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament.”

7. Considering the aforesaid background, in the opinion of this Court, the observations made by the Apex Court are required to be read and understood in the context in which they were rendered. However, the learned Trial Court has mechanically and blindly relied upon the said decision and, on that basis, rejected the application of the applicant. Such an approach, which has resulted in a miscarriage of justice, cannot be sustained in the eyes of law and therefore deserves to be interfered with.
8. In that background the impugned order passed below

Exh. 9 deserves to be interfered with and set aside. The learned Family Court is directed to proceed with the petition under Section 13B of the Hindu Marriage Act, permitting petitioner No. 2 to participate in the conciliation proceedings via video conferencing.

9. Resultantly, this petition is allowed. The impugned order dated 14.11.2025 passed below Exh. 9 in Family Suit No. 3017 of 2025 by the learned Family Court No. 5, Ahmedabad, is hereby quashed and set aside.
10. Direct service is permitted.

(M. K. THAKKER,J)

NIVYA A. NAIR

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: NIVYA ABHAY NAIR(HC01901), PRIVATE SECRETARY, at High Court of Gujarat on 09/03/2026 17:50:14