

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 13220 of 2025**

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JAY VIKRANT PUROHIT & ANR.

Versus

AARTI RAJENDRA DESAI

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Appearance:

MR BJ TRIVEDI(921) for the Petitioner(s) No. 1,2

MS.AISHWARYA P RAVAL(17709) for the Petitioner(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE DEVAN M. DESAI****Date : 23/09/2025****ORAL ORDER**

1. The present petition is filed under Articles 226 and 227 of the Constitution of India praying for the following reliefs.

“A) YOUR LORDSHIPS be pleased to allow this petition;

B) YOUR LORDSHIPS be pleased to quash and set aside the impugned order dated 04/08/2025 passed below Exhibit 1, by Ld. Principal Judge, Family Court, Gandhinagar in divorce petition being Family Suit No. 50 of 2025, as the same is erroneous, arbitrary, passed without considering the facts on record, contrary to the provisions of law and against the settled legal position.

C) YOUR LORDSHIPS be pleased to direct the Ld. Principal Judge, Family Court, Gandhinagar to expedite the hearing and disposal of Family Suit No. 50 of 2025 in accordance with law.

D) YOUR LORDSHIPS be pleased to stay the implementation, execution and operation of impugned order dated 04/08/2025 passed by Ld. Principal Judge, Family Court, Gandhinagar below Exhibit 1 in Divorce Petition being Family Suit No. 50 of 2025, whereby Ld. Principal Judge, Family Court, Gandhinagar has issued notice to the power of attorney holder of Mrs. Liliya along with Adv. S. G. Desai and Notary public Hema N. Sadariya, pending the admission, hearing and final disposal of this petition.”

2. Learned advocate Mr. B.J. Trivedi for the petitioners has filed leave note. However, Ms.Aishwarya P. Raval submits that she has instructions to appear on behalf of learned advocate Mr. B.J. Trivedi for the petitioners. Rule returnable forthwith.

3. With the consent of learned advocate for the petitioners, this petition is taken up for final disposal.

4. Learned Advocate for the petitioner submits that petitioner No.1 and 2 are legally wedded husband and wife respectively. The petitioners filed a petition for divorce by mutual consent under Section 28 of the Special Marriage Act, 1954 before the learned Principal Judge, Family Court, Gandhinagar. The marriage between the petitioners was solemnized on 01.10.2011 under the provisions of Special Marriage Act, 1954 before the Marriage Officer at Gandhinagar. Due to differences of opinions, cultures and lifestyles, the relationship between petitioners *inter se* got spoiled, and ultimately, it broke down. Despite reconciliation efforts, petitioners could not reconcile

and thereafter, in the year 2017, both the petitioners agreed to live separately. Petitioner No.1 is staying in Gandhinagar, whereas, petitioner No.2 is residing at Bulgaria. Petitioners decided to file a joint petition for a decree of divorce under Section 28 of the Special Marriage Act, 1954. The Family suit No.50 of 2025 came to be filed before the Learned Principal Judge, Family Court, Gandhinagar. As petitioner No.2, is residing at Bulgaria, presented the petition through her Power of Attorney Holder, Shri Chudasma Dhrumal Prakashkumar. The said Power of Attorney was executed and notarized in Bulgaria on 15.01.2025. The Power of Attorney was accepted before a Notary Public Hema N. Sadariya on 29.01.2025 at Gandhinagar.

3. It is further contended that the Power of Attorney being a foreign document, though needs a registration before the Gujarat State Stamp authority by paying requisite stamp duty before it being used in any judicial proceedings could not be registered

by the acceptor of the Power of Attorney and the said Power of Attorney was used in the proceedings of divorce which was presented on 29.01.2025.

4. It is further contended that pending proceedings, said Power of Attorney was got registered before the Sub-Registrar, Gandhinagar on 12.09.2025. A copy of the registered Power of Attorney is produced and marked at Annexure-E. Learned Family Court on 04.08.2025 issued a notice to learned advocate, Mr. S.G. Desai, Notary Hema N. Sadariya as well as the Power of Attorney Holder of petitioner no.2 to produce the evidence that petitioner No.2 was present in Gandhinagar on 29.01.2025.

5. Pursuant to the Order, the Notary Hema N. Sadariya and learned Advocate Mr. S.G. Desai filed their reply-cum-clarification before the learned Family Court. The said reply is annexed at Annexure-F.

6. It is contended that the impugned order needs to be quashed and set aside as the non-registration of the Power of

Attorney is merely a technicality and for non-registration of a Power of Attorney, the learned Family Court ought not to have doubted the genuineness of the Power of Attorney.

7. It is further contended that petitioner no.2 is a permanent resident of Bulgaria and the Power of Attorney Holder is a known person of petitioner no. 2 in whose favor the Power of Attorney was executed.

8. It is pointed out by learned Advocate for the petitioner that the Power of Attorney was executed on 15.01.2025. There is a typographical error in mentioning the date of Power of Attorney as 15.01.2024. It is therefore contended that the impugned order be quashed and set aside and the learned Family Court be directed to expedite the proceedings of family suit.

9. Considering the application as well as the submissions, it appears that the petitioners herein have jointly filed a family suit under Section 28 of the Special Marriage Act, 1954, seeking a decree of divorce. Petitioner No.1 is resident of Gandhinagar,

whereas, petitioner No.2 is the resident of Bulgaria. In the family suit, petitioner No.2 (wife) was represented through her Power of Attorney Holder, Shri Chudasma Dhrumal Prakashkumar, in whose favour, a Power of Attorney dated 15.01.2025 was executed by petitioner No.2 at Bulgaria. However, when the family suit was filed, the acceptor of the Power of Attorney got the Power of Attorney notarized before a Notary Hema N. Sadariya on 29.01.2025, the day on which the family suit was filed. Undisputedly, when the family suit was filed, Power of Attorney was unregistered as mandatory under the provisions of the Gujarat Stamp Act. However, the Act mandates a Power of Attorney executed outside India must be stamped with applicable stamp duty within 3 months of its receipts in India. Such requirement is crucial for its enforceability within India. Delay in stamping and registration can weaken legal standing of Power of Attorney, potentially making it ineffective. Copy of registered Power of Attorney dated 12.09.2025 is placed on record at page No.36 of the

compilation. When the impugned order dated 04.08.2025 came to be passed, the Power of Attorney was already got registered by paying requisite stamp duty. Undisputedly, there was a flaw on part of petitioner No.2 by using a document which is executed outside India without registering it by paying necessary stamp duty. The defect is a technical defect which is cured during the pendency of a family suit. The learned Family Court had raised doubt about the execution of Power of Attorney at Bulgaria as original Power of Attorney was not produced by petitioners along with the plaint. The learned Family Court passed the impugned Order on the fact which appeared on record that the Power of Attorney was got notarized on 29.01.2025 at Gandhinagar and on the same day, the family suit came to be instituted. The learned Family Court further went on to observe that petitioner No.2 was absent on 29.01.2025, the day on which the family suit was filed. And therefore, to ascertain and confirm presence of petitioner No.2, the impugned order came to be passed.

10. Considering the aforesaid factual aspect surfacing on record, the defect in not getting the Power of Attorney registered before the same was used in legal proceedings in India was rectified during the pendency of the family suit. The defect is not a defect which will render the proceedings nullity. At the most it is an irregularity which cannot disentitle petitioners from claiming prayers in the family suit.

11. Keeping in mind the settled proposition of law that substantial justice should prevail upon the technicalities and applying the same principle, the substantial justice would be served when the family suit is decided on merits rather than on technicalities and on technical defects. Resultantly, the impugned order below Exhibit-1 of the family Suit No.50 of 2025 is hereby quashed and set aside. The learned Family Court shall decide the suit as expeditiously as possible keeping in mind the pending matters before the concerned family Court. Petitioner No.2 shall file an affidavit stating the date of execution of Power of Attorney at Bulgaria and also state on

oath whether petitioner No.2 was present before the Notary at Bulgaria at the time of execution of the Power of Attorney or not. The original Power of Attorney shall be produced by petitioners before the learned Family Court before the oral evidence of petitioners are recorded. The learned Family Court shall decide the family suit strictly on merits and without being influenced by the observations made herein above.

12. With this, the present petition is partly allowed. Rule stands made absolute.

RINKU MALI

(D. M. DESAI,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: RINKU MALI(HC01574), PRIVATE SECRETARY, at High Court of Gujarat on 26/09/2025 18:05:15