

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FAMILY COURT APPEAL NO.84 OF 2022

VILAS KASHINATH KOLI
VERSUS
SUREKHA @ SAMRUDHI VILAS KOLI

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Advocate for Appellant : Mr. Hemant Surve.
Advocate for Respondent: Mr. S.A. Gaikwad.

**CORAM : NITIN W. SAMBRE
& S.G. CHAPALGAONKAR, JJ.**

DATE : 14th MARCH 2023

P.C.:-

Heard.

2. Before the Family Court, Aurangabad Exh.1 is the application taken out by the applicant for grant of divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

3. Since parties admittedly belong to Scheduled Tribe, the Family Court, initially was of the view that the proceedings are not maintainable in view of the provisions of Section 2(2) of the Hindu Marriage Act. As a sequel of above, parties were called upon to address the Family Court. In view of the position being conceded by the parties, vide order dated September, 7, 2022, the Family Court ruled that the proceedings for decree for divorce are not maintainable.

4. Feeling aggrieved, this appeal.

5. The counsel for the applicant Mr. Surve would invite attention of this Court to the provision of clause (25) of Article 366 of the Constitution of India so also, to the law laid down by the Apex Court in the matter of *“Labishwar Manjhi vs. Pran Manjhi and others, delivered in Civil Appeal No. 1935 of 1992 on July 19, 2000.* According to him, even if the parties are admittedly belonging to Scheduled Tribe category and are continued with the customary traditions; after they being Hinduised, having changed their customs which are followed by the Hindus, parties can be said to be governed by the Hindu Marriage Act and not the customary laws of tribes.

6. A case for consideration is made out.

7. Admit.

8. Mr. Gaikwad, Advocate waives notice on appeal being admitted.

9. Notice for final disposal returnable on 26.6.2023.

10. Call for R. & P.

[S.G. CHAPALGAONKAR]
JUDGE

[NITIN W. SAMBRE]
JUDGE

grt/-