



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE RAJESH RAI K

MISCELLANEOUS FIRST APPEAL NO.2361 OF 2025 (FC)

BETWEEN:

SRI AVINASH,
SON OF CHANDRAPPA M.K
AGED ABOUT 35 YEARS
BANK EMPLOYEE
R/AT FLAT NO.5, 2ND FLOOR
VISHWASAI APARTMENT
SIDDESHWARA NAGAR
UNKAL, HUBBALLI- 580021

...APPELLANT

(BY SRI GIRIDHAR S V, ADVOCATE)

AND:

SMT. SHRUTHI
WIFE OF AVINASH
AGED ABOUT 29 YEARS
SERVICE IN KSPCB MYSURU
R/AT NO. 731/1, NEW STREET
NEAR RING ROAD SIGNAL
HINKAL, MYSURU-570017

...RESPONDENT

(BY SRI VENKATESH PRASAD R. ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 19(1) OF FAMILY COURTS ACT PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 06.02.2025 PASSED IN M.C.NO.968/2022 ON THE FILE OF THE I ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, MYSURU, DISMISSING THE PETITION FILED UNDER SECTION 13(1)(i-a) OF THE HINDU MARRIAGE ACT AS NOT MAINTAINABLE.





THIS MISCELLANEOUS FIRST APPEAL COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MR. JUSTICE RAJESH RAI K

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE JAYANT BANERJI)

Heard learned Counsel for the appellant and Sri Venkatesh Prasad.R, learned Counsel appearing for the respondent.

2. Since the point being canvassed by the learned Counsel for the appellant is of such a nature that this Court can proceed to decide the matter without calling for the record and which can be decided on the basis of the submissions being advanced by learned Counsel for the respective parties on a point of law, both the respective Counsel for the parties state that the matter be heard and disposed of at this stage itself.

3. This is an appeal filed by the husband whose petition under Section 13(1)(i-a) of the H.M.Act¹ seeking divorce on the ground of cruelty was dismissed by the

¹ The Hindu Marriage Act, 1955



1st Additional Principal Judge Family Court, Mysuru in M.C.No.968/2022. A prayer has been made for setting aside the aforesaid judgment dated 06.02.2025 and to allow the appeal, allowing the interlocutory application filed by the appellant under Section 14 of the H.M.Act in the present appeal. Remand of the case before the competent Family Court has also been sought.

4. Admittedly the petition under Section 13(1)(i-a) of the H.M.Act was filed within one year of the marriage that was solemnized on 15.03.2021. It is stated by learned Counsel for the appellant that only thirteen days remained for the year to elapse. It is also admitted that in the aforesaid matrimonial case, no application under the *proviso* to sub-Section (1) of Section 14 of the H.M.Act was filed by the appellant.

5. It is stated that since the appellant resides in Hubballi, the matrimonial case was initially filed before the competent Court at Hubballi on 10.02.2022 which was transferred to the Family Court at Mysuru and was registered on 11.10.2022. It is contended that the trial Court proceeded to frame four issues, the second of which was "whether the



petition filed by the appellant-petitioner is maintainable?" The other issues were whether the appellant-petitioner is entitled for a decree of divorce on the ground of cruelty and whether the respondent proved that she is entitled for permanent alimony. The last issue was what decree or order.

6. The contention is that while recording a finding of cruelty on the part of the respondent not being established, the learned judge has proceeded to dismiss the petition on the ground of maintainability. It is contended that this is not permissible and the aspect of maintainability ought to have been decided as a preliminary issue separately, rather than to proceed to record findings on the other issues. It is further stated that presently, the respondent-wife has filed a separate matrimonial case seeking divorce on the ground of cruelty before the competent court at Mysuru in which case, the appellant has put in appearance. These facts are not disputed by learned Counsel for the respondent. However, it is stated by learned Counsel for the respondent that it is always open for the appellant to file his counter claim under Section 23A of the H.M.Act before the Court where the matrimonial case has been



filed by the wife and the present appeal may not require adjudication.

7. What is important to note is that the findings with regard to cruelty recorded by the Family Court in the impugned judgment are likely to operate against the appellant, should he set up a counter claim before the Family Court in the fresh matrimonial case filed by the wife. Therefore, the submission of learned Counsel for the respondent that no adjudication may be required in the present case is not acceptable.

8. Given the fact that the submissions raised by learned Counsel for the appellant are undisputed, we deem it fit to allow this appeal and set aside the decree impugned. The matter is remanded to the concerned Family Court. The Court concerned shall connect the matrimonial case from which the instant appeal arises with the matrimonial case filed by the wife. It is stated by the learned Counsel for the parties that the matrimonial case filed by the wife bears M.C.No.470/2025.

9. It is made clear that it shall be open for the appellant to raise all pleas including filing of such applications as permissible.



10. It is clarified that the aforesaid consideration is only for the purpose of deciding the short question involved in this appeal and shall not be taken as an expression of opinion of this Court on merits of the case.

All pending IAs stand disposed of.

Sd/-
(JAYANT BANERJI)
JUDGE

Sd/-
(RAJESH RAI K)
JUDGE