



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Misc. Appeal No. 14/2025

Smt. Salma W/o Abid Khan, Aged About 23 Years, D/o Akbar Khan, R/o Village Asada, Tehsil Pachpadra, Dist. Barmer.

----Appellant

Versus

Abid Khan S/o Noor Mohammed, Aged About 27 Years, R/o Village Bhatala, Tehsil Sindhari, Dist. Barmer.

----Respondent

For Appellant(s)	:	Mr. Chena Ram Rajpurohit
For Respondent(s)	:	None present

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE SUNIL BENIWAL
Order(Oral)

27/03/2026

Per: Arun Monga, J

1. The present appeal arises out of the Judgment and Decree dated 18.11.2022 passed by the learned Judge, Family Court, Balotra, whereby the petition filed by the appellant seeking dissolution of marriage, on the grounds that the Nikah was performed during the applicant's minority without her consent and that she repudiated the same upon attaining majority, was dismissed.

2. Succinctly, the facts of the case are that the appellant wife filed a petition seeking dissolution of her marriage with the respondent-husband, contending that their Nikah was solemnized during her minority without her knowledge or consent. Upon attaining majority, she refused to accept the marriage and alleged that the respondent and his family were exerting undue pressure on her to resume cohabitation (*muklawā*). The respondent denied



these allegations, asserting that the marriage was validly solemnized with her consent in the presence of community members and that she had voluntarily signed the Nikahnama. He further stated that the applicant is residing at her parental home without establishing marital relations.

2.1. The learned Family Court, after hearing the parties, vide Judgment and Decree dated 18.11.2022, dismissed the petition on the ground that the appellant failed to adduce any oral or documentary evidence in support of her claims, leading to the dismissal of the petition by the learned Family Court.

2.2. Hence, this instant appeal.

3. Learned counsel for the appellant argues that the impugned Judgment and Decree passed by the learned Family Court is wholly perverse, illegal, and contrary to the facts and material available on record, and therefore deserves to be quashed and set aside. It is contended that the learned trial court has failed to properly appreciate the pleadings and evidence adduced by the appellant and has dismissed the petition.

3.1 Learned counsel further submits that the appellant had specifically pleaded and deposed that her Nikah with the respondent was solemnized when she was a minor and without her free consent, and that she does not wish to continue in such a matrimonial relationship. The appellant has now attained the age of 23 years and is capable of understanding her welfare and future.

3.2 It is argued that the appellant is also being subjected to pressure for "Muklawā", to which she has not consented. However,



the learned Family Court failed to consider these material aspects in their proper perspective.

4. Heard learned counsel and perused material available on record.

5. The divorce petition filed by the appellant-wife has been dismissed by the learned Family court essentially on the ground that the petitioner-wife failed to prove the fact that the marriage took place when she was minor. She failed to produce any oral or documentary evidence in support of this contention. Consequently, due to lack of evidence, the petition was dismissed. The relevant portion of the impugned order of the learned Family Court, translated into English, is reproduced herein below:

“

x-x-x-x

6. On the basis of the pleadings of both parties, the Court framed the following issues for determination:

(i) Whether the petitioner is entitled, upon attaining majority, to seek dissolution of the marriage solemnized with the respondent on 26-04-2015 at village Asada, Tehsil Pachpadra, according to Muslim rites, on the ground that it was performed during her minority?

(ii) Relief.

7. As regards to Issue No. 01, the petitioner has stated in her petition that the marriage with the respondent took place during her minority and on that basis has sought its dissolution; however, no oral or documentary evidence has been produced by the applicant in support of this contention. Therefore, in the absence of any evidence on record regarding this issue, the same is decided against the applicant.

8. The petition being unsupported by evidence, is liable to be rejected and dismissed.”

6. Having heard learned counsel for the appellant and upon perusal of the impugned order, coupled with the candid submission by learned counsel for appellant in course of hearing before this Court that the appellant-wife, despite being afforded an opportunity, indeed did not adduce evidence, but same was due to



reasons beyond her control, we deem it appropriate to grant her a further opportunity to do the needful.

7. In view of the above, and given that the respondent, despite due opportunity, has chosen not to contest the present appeal is deemingly suggestive that there is no objection to it being allowed. The impugned order and judgment dated 18.11.2022 is thus set aside.

8. Accordingly, the matter is remanded to the learned Family Court for fresh adjudication. The learned Family Court shall afford both parties adequate opportunity to adduce their respective evidence and thereafter proceed in accordance with law.

9. The appeal is allowed in above terms.

10. All pending applications stand disposed of.

(SUNIL BENIWAL),J

(ARUN MONGA),J