TEAM CODE: FL-10

4TH SURANA & SURANA AND ARMY INSTITUTE OF LAW
NATIONAL FAMILY LAW MOOT COURT COMPETITION 2023

BEFORE THE HON'BLE DISTRICT COURT OF CHANDIGARH

In HMA Petition No… of 2023

IN THE MATTER BETWEEN

ANIL.....APPLICANT

V.

FATIMA… .....RESPONDENT

Petition under Section 9 of the HMA, 1955

UPON SUBMISSION TO THE HON'BLE DISTRICT COURT OF CHANDIGARH

-MEMORIAL ON THE BEHALF OF THE APPLICANT-

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LIST OF ABBREVIATIONS

&	And
AC	Appeal Cases
AIR	All India Reporter
Anr.	Another
AP	Andhra Pradesh
Art.	Article
Del.	Delhi
Ed.	Edition
HC	High Court
HMA	Hindu Marriage Act, 1955
Hon'ble	Honourable
i.e.	That is
In Re	In Reference
Inc.	Incorporation
IT	Information Technology
Ltd.	Limited

MP	Madhya Pradesh
Ors.	Others
P & H	Punjab and Haryana
r/w	Read with
S.	Section
SC	Supreme Court
SCC	Supreme Court Case
SCR	Supreme Court Reporter
u/s	Under Section
V.	Versus
Vol.	Volume

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28. Rev. Stainislaus v. State of Madhya Pradesh AIR 1977 SC 908
29. Sangita v. Arjun MANU/MH/0465/2011
30. Sapna Jacob, Minor v. The State of Kerala & Ors AIR 1993 Ker 75
31. Saroj Rani v. Sudarshan Kumar Chadha, (1984) 4 SCC 90
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33. Sharda v. Dharmpal (2003) 4 SCC 493
34. Shraddha Anand vs. Anand Ramkumar MANU/SCOR/12135/2021
35. Smt. Madhavi Ramesh Dudani v. Ramesh K. Dudani AIR 2006 Bom 94
36. Sushilabai Prem Narayan v. Prem Narayan Shamlal Rai, 1985 SCC OnLine MP 46
37. Syed Akbar v. State of Karnataka 1979 AIR 1848, 1980 SCR (1) 25
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STATUTES

1. Hindu Marriage Aact, 1955.
2. Family Courts Act, 1984.
3. Constitution of India, 1950.

BOOKS AND REPORT

1. Mulla’s Hindu Law (15th Edn.)
2. Prof. Kusum, *Family Law Lectures, Family Law I* (4th Ed., Lexis Nexis, 2015).
3. Sumeet Malik, B.P. Beri’s Law of Marriage and Divorce, (3rd Ed., Eastern Book Company, 2020).
4. Law Commission Report, Conversion/reconversion to another religion-mode of proof, (Law Com No. 235, 2010)

STATEMENT OF JURISDICTION

It is humbly submitted that the Applicant has approached the Hon'ble District Court of Chandigarh under, s.19 of the HMA, 1955.

"***Section 19. Court to which petition shall be presented:***
Every petition under this Act shall be presented
to the District Court within the local limits of whose ordinary original civil jurisdiction:—
(i) the marriage was solemnized, or
(ii) the respondent, at the time of the presentation of the petition, resides, or
(iii) the parties to the marriage last resided together, or
[(iiia) in case the wife is the petitioner, where she is residing on the date of presentation of the
petition; or]
(iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is at that time, residing outside the territories to which this Act extends, or has not been
heard of as being alive for a period of seven years or more by those persons who would naturally have
heard of him if he were alive."

STATEMENT OF FACTS

1. Fatima, Anil, and Raza joined an Engineering course at a college in Chandigarh in 2014. Anil and Fatima developed a fondness for each other. Despite their different backgrounds, they decided to convince their families for the relationship. In May 2017, Anil introduced Fatima to his sister and conveyed their intention to marry. In December 2018, Anil decided to meet Fatima's parents with the intention of asking her hand for marriage. Fatima's family did not take the news well and threatened Anil to stay away from their daughter.
2. Anil and Fatima decided not to meet but it was not easy for them. They continued to pursue their respective degrees and gave their final exam in May 2019. They decided to get married in a Hindu Temple and exchanged garlands, application of vermillion and ceremony solemnized by a priest on 23rd August 2020. Fatima took care of the household expenses while Anil focused on qualifying for Civil Services. Fatima felt overburdened and started communicating with Raza, who had come to Chandigarh on 27th September 2021, for two months.
3. Raza and Fatima liked the company of each other, visited his hotel several times and also shared some close moments. Anil noticed a change in Fatima’s behaviour, but he kept quiet as he was unaware about Raza. But soon this incident came to his knowledge, which led to a fight between them and resulted in Fatima leaving the house. Fatima moved back with Anil in December 2021, when she discovered she was expecting a child and Anil shared the news with his parents. Anil wanted to shift with his parents for the well-being of their child. Fatimawas unhappy but still moved into Anil’s Family and participated in religious ceremonies. Shetried to convince Anil to move back to Chandigarh, but he paid no attention, so eventually sheleft for her parent’s house on January 10th, 2022.
4. Fatima’s parents contacted Raza and he made necessary arrangements for Fatima’s visit to the US. Raza did not ask anything and proposed to her for marriage. On August 5th, 2022, Fatima was blessed with a baby boy and to take medical benefits, Fatima got the name of the parents in the hospital records as Father-Raza Ahmed and Mother-Begum Fatima.
5. In October 2022, Anil got to know and claimed his child back, to which Fatima denied his paternity. Anil has now reached the District Court, Chandigarh, asking for restitution of conjugal rights and for a Paternity Test. In his plaint, he also pleads that in case restitution is not granted, then custody of child be given to him. Fatima denies the existence of marriage and custody of the child.

STATEMENT OF ISSUES

-ISSUE I-
WHETHER THE PRESENT SUIT IS MAINTAINABLE IN THE DISTRICT COURT CHANDIGARH?

-ISSUE II-
WHETHER THE MARRIAGE BETWEEN ANIL AND FATIMA IS VALID?

-ISSUE III-
WHETHER THE ANIL IS ENTITLED FOR A DECREE OF RESTITUTION OF CONJUGAL RIGHTS?

-ISSUE IV-
WHETHER THE APPLICATION FOR PATERNITY TEST IS JUSTIFIED?

SUMMARY OF ARGUMENTS

I. WHETHER THE PRESENT SUIT IS MAINTAINABLE IN THE DISTRICT COURT CHANDIGARH?

It is humbly submitted that the present suit is maintainable as, s.19 of the Hindu Marriage Act, 1955 expressly states the jurisdiction of the District Court in petitions under the Act.

II. WHETHER THE MARRIAGE BETWEEN ANIL AND FATIMA IS VALID?

It is humbly submitted that the marriage between Anil and Fatima is valid as, *Firstly* it is valid under the HMA, 1955; *Secondly*, the Respondent was a Hindu at the time of marriage**;** *Thirdly* registration of marriage is not mandatory.

III. WHETHER THE ANIL IS ENTITLED FOR A DECREE OF RESTITUTION OF CONJUGAL RIGHTS?

It is humbly submitted that the Applicant is entitled for a decree of restitution of conjugal rights since *Firstly,* there exists a valid marriage between the two parties as the factum of marriage is proved in Issue 2. *Secondly,* the essential grounds to be satisfied under s.9 of the HMA, 1955 stand fulfilled. *Thirdly,* there exists a bona fide intention to live with the respondent.

IV. WHETHER THE APPLICATION FOR PATERNITY TEST IS JUSTIFIED?

It is humbly submitted that the application for Paternity test is justified. *Firstly,* it is for the welfare of the child. *Secondly* that the Appellant has *prima facie* evidence to apply for conducting the paternity test.

ARGUMENTS ADVANCED

I. WHETHER THE PRESENT SUIT IS MAINTAINABLE IN THE DISTRICT COURT, CHANDIGARH?

1) It is contended before the Hon'ble District Court of Chandigarh that it has the jurisdiction to hear and decide the matter concerning Anil v. Fatima and thereby the present suit is maintainableas, **[1.1]** s.19 of the HMA, 1955 expressly states the jurisdiction of the District Court in petitions under the Act.

[1.1] PRESENT SUIT MAINTAINABLE UNDER S.19 OF THE HMA, 1955

2) In the present case, the marriage of the Applicant and Respondent comes under the jurisdiction of the HMA, 1955 according to s.2 of the Act[1] as the same was solemnized according to Hindu customs and rituals and both the parties are Hindu at the time of marriage. **[2.1]**

3) It is submitted that S.19 of the HMA, 1955, which pertains to jurisdiction, states that every petition under the Act shall be presented to the District Court. Furthermore, a bare perusal of s.9 of the HMA indicates that a petition of restitution may be presented to the District Court. Thus, by reading the two sections in conjunction, it is clearly evident that both Sections 9 and 19 emphasize that, a petition for restitution of conjugal rights ought to be presented to the District Court.

[1.1.1] *Absence of a Family Court in Chandigarh*

4) It is to be noted by the Hon'ble Court that the Applicant is well aware that the Family Courts Act, 1984 had come into force in Chandigarh in 2015 and thus, the same has an overriding effect on other laws. However, it is to be also noted that as of date, there exists no Family Court in Chandigarh. According to S.8 of the Family Courts Act, 1984 no District Court or a

[1] §.2, The HMA, 1955.

Subordinate Civil Court will have jurisdiction in respect of any suit in an area where a Family Court has been established.[2] In *V. Sailaja v. V. Koteswara Rao*[3], the Hon'ble AP HC held that, *"… in places where family court is not constituted, then the said exclusion contemplated under s.8 is not applicable to the civil courts, which are functioning in such places. In such cases, the local civil courts will continue to exercise the jurisdiction in respect of all matrimonial matters."*

5) Therefore, it is humbly pleaded that the Applicant's petition is maintainable, and his action is excusable according to the principle of '*Impotentia Excusat Legem'*. Thus, it is humbly submitted that the present suit is maintainable before the Hon'ble District Court of Chandigarh.

II. WHETHER THE MARRIAGE BETWEEN ANIL AND FATIMA IS VALID?

6) It is humbly submitted that the marriage between Anil and Fatima is valid. **[2.1]** *Firstly* it is valid under the HMA, 1955, **[2.2]** *secondly*, the Respondent was a Hindu at the time of marriage**, [2.3]** *Thirdly* registration of marriage is not mandatory.

[2.1] THE MARRIAGE IS VALID UNDER THE HMA, 1955

7) It is humbly submitted before this Hon'ble Court that for Hindus, marriage is a sacrosanct union and an important social institution. The marriage between Fatima and Anil is a perfectly valid marriage under the provisions of HMA, 1955.

8) Under the section 2, sub section (c) of the HMA[4]

> *Explanation. —The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case*
>
> (c*) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina, or Sikh religion.*
>
> Under these provisions of the HMA, this marriage is valid under clause (c) of section 2 as Fatima was a convert to Hinduism at the time of their marriage.

[2] §.8 & §.7 of the Family Court Act, 1984.
[3] 2003 (1) ALD 673.
[4] HMA 1955, § 2.

9) It is to be noted, since this marriage is under the scope of HMA, it also satisfies conditions of s.5.[5] It is evident that all the conditions under s.5 of the HMA from sub section (i) to (v) have been sufficed by Anil and Fatima. The importance of compliance has been reiterated by SC in many cases like *V. Prema Kumari*[6] *vs M. Palani* and *Yamunabai A.A v. Anantrao S. Adhav*[7] that highlight that s.5 is of compulsory nature, and as there has been proper compliance by the parties, therefore this is a valid marriage.

[2.1.1] *The marriage has taken place in accordance with proper ceremonial rites.*

10) It is submitted that proper adherence to Hindu rituals is important for the validity of the marriage. The Smritis of Hinduism recognize eight types of marriage, one of them is Gandharva marriage. The marriage ceremonies that occurred between Fatima and Anil were correctly performed and solemnized by a priest, The ceremonies included exchange of garlands and application of vermillion.

11) In view of this, their marriage can be classified as a Gandharva marriage. It is the voluntary connection of a maiden and a man which arises from lust. Thus "the reciprocal connection of a youth and a damsel with mutual desire is the marriage denominated "Gandharva". The Allahabad HC in *Bhaoni* v. *Maharaj Singh*[8], has held that no ceremonies are necessary in the *Gandharva* marriage.

12) In *Balwinder Kaur v. Gurmukh Singh*[9] , the case of *Mausami C. v. Sabrata Roy*[10] was cited where it was held that where the factum of marriage is disputed, essential ceremonies constituting the marriage must be pleaded and proved. In *S. Ammal v. P. Nadar*[11] it was held that a marriage contracted according to Hindu rites by a Hindu with a Christian woman, who

[5] HMA 1955, § 5.
[6] 2013 (6) RCR (Civil) 2953
[7] (1982) 84 BOMLR 298
[8] ILR 3 All 738
[9] AIR 2007 P H 74.
[10] 95 CWN 380, II (1991) DMC 74.
[11](1967) 2 MLJ 334.

before marriage, was converted to Hinduism, was valid. In "*Chandrabhaga v. S.N Kanwar*"[12] it was held that it was not essential to the validity of a marriage that "Saptapadi" must be performed and in fact not even "Kanyadaan" is necessary. Thus it is humbly submitted that there exists a valid marriage as proper ceremonies were followed.

[2.2] RESPONDENT WAS A HINDU AT THE TIME OF MARRIAGE

13) It is humbly argued before this Hon'ble Court that during the time of marriage Respondent had converted into a Hindu. The first condition for a Hindu Marriage is that both parties should be Hindus.[13]Hinduism does not prescribe any formal procedure of conversion, so what pertains to a conversion, is considered by the court subjectively depending on the facts of the case and in the present case, Fatima had converted to Hinduism at the time of their marriage and continued to follow the culture of Hinduism. In *Kailash Sonkar v.. Smt. Maya Devi*[14] the SC stated *"In our opinion, the main test should be a genuine intention of the reconvert to abjure his religion and completely dissociate himself from it"*

14) It is to be noted that religious practices are as much a part of religion as religious faith or doctrines. [15] In the case of *Hindu Religious Endowments, Madras*[16], it is mentioned that Art. 25 and 26 undoubtedly extend to rituals and not just confined to doctrine. In *Vermani v., Vermani*[17] it was held by the HC that there was no need for a person to undergo expiatory ceremony for reconversion into Hinduism. It seen that the Courts do not believe in any specific acts of conversion or even reconversions into Hinduism as well.

15) Further, at times it may be hard to find any rational reason for conversion into another religion. The reason for or propriety of conversion cannot be judged from the standards of rationality or reasonableness. Fatima's love was not accepted by her culture and her actions of living

[12] AIR 2007 Bom 201, 2007 (6) MhLj 471
[13] *Gullipilli Sowria Raj v. Bandaru Pavani* (2009)1SCC714
[14] AIR 1984 SC 600.
[15] *Rev. Stainislaus v. State of MP*, AIR 1977 SC 908.
[16]AIR 1954 SC 282.
[17] MANU/DE/0050/1982

together with Anil and marrying in a temple were all blatantly against the rules of Islam. Conversion cannot be treated as an event which can be achieved through a mere declaration – oral or writing. At the same time, no formalities are required according to the law declared by SC. In fact, no such ceremonies are specifically prescribed in any religious texts or precepts, though certain ceremonies like 'Suddhi' and baptism are gone through in practice in some cases. Credible evidence of the intention to convert followed by definite overt acts to give effect to that intention is necessary.[18]Conversion entails two steps – one is the acceptance of the belief by a person and second, the acceptance of certain rituals performed by a person or some such authority to accept the person into the religion which is being accepted by them.[19]

16) Thus, it can be inferred from the following case laws that two elements are necessary to establish a conversion into Hinduism. *Firstly*, a bonafide intention to convert *Secondly*, accompanied with an unequivocal act of acceptance of the intention.

17) In the present case, Fatima was madly in love with Anil from the years of 2017 to 2020, she knew that her parents are very strict and extremely religious and would never accept the love of her life, so her religion and family had restricted her happiness. She was called Aarti by the sister of Anil and also by his family but she never made a squeak , as all Fatima wanted was the acceptance from her in-laws which led to her attending several festivities in temples and following Hinduism. This was all out of her love for Anil she wanted to convert into Hinduism which is clear by her acceptance of Hindu rituals and festivities and more importantly she got married to Anil in a temple with the blessing of a Hindu priest by following Hindu marriage rituals. Fatima went through all the Hindu rites and rituals that Anil's family made her do when she was found pregnant.

18) In recent case of *M.Chandra v. M. Thangamuthu*[20] the SC observed *"it is a settled principle*

[18] Law Commission, Conversion/reconversion to another religion-mode of proof (Law Com No 235, 2010) para11
[19] Ratilal Panachand Gandhi v. state of Bombay, 1954 AIR 388, 1954 SCR 1035.
[20] (2010) 9 SCC 712.

of law that to prove a conversion from one religion to another, two elements need to be satisfied. First, there must be a conversion and second, acceptance into the community...". Subsequent conduct of the convertee is necessary in reaching the conclusion that there was genuine conversion. The convert must embrace Hinduism (or another religion) and follow the cultural and spiritual traditions and take to the mode of life of that religion." Fatima was accepted by Anil family but not vice versa. In *Smt. Madhavi R. Dudani v. Ramesh K.*[21] a similar precedent was set as the Appellant was a lawful wife, as she had accepted Hindu customs.

19) Thus, it is submitted that Fatima had accepted Hinduism at the time of her marriage which gave her a right to be with her love. Therefore, Fatima was a successful convert to Hinduism.

[2.2.1] *A formal procedure for conversion not needed*

20) It is submitted that although the conversion of Fatima was not done by following any formal ceremony it does not invalidate her conversion as the SC has not deemed it a mandate.

21) In *Sapna Jacob v. The State of Kerala & Ors* it was stated, *"In order to prove that the Applicant was a member of the Hindu community she must have established that there was a bona fide intention to be converted to the Hindu faith accompanied by conduct or unequivocally expressing that intention. It is true that no formal ceremony of purification or expiation is necessary to effectuate conversion."* This has been reiterated in *"Kumari S.Gupta v. Mohd Kaleem*[22]" In the (235th L.C) Commission's view, statutory prescription of procedure to establish conversion or nature of proof required is not desirable, if it is made the only mode of proof, many bona fide converts may be handicapped in proving the conversion merely by reason of failure to adhere to the procedure of registration.

22) It is to be noted that there is no such legislation which guides conversion to Hinduism. Conversion which is bereft of any particular formalities or religious rites, cannot be placed on

[21] AIR 2006 Bom 94, 2006 (1) BomCR 20, (2005) 107 BOMLR 1237, I (2006) DMC 386, 2006 (2) MhLj 307.
[22] 2014 SCC OnLine Del 145.

the same pedestal as marriage which can be recognized in law only if customary rites and ceremonies are done. When the change of religion is a conscious choice of an individual based on his belief in God, the law cannot insist on obtaining the prior permission from the District Magistrate to change his or her religion. [23]A declaration followed by confirmation before a registering authority should not by itself be treated as proof of conversion and it would be highly inappropriate to prescribe by way of legislation the details of ceremonies and formalities to be gone through for conversion or the manner in which conversion is to be proved in a Court of law.[24]

23) In *Syed Akbar v. State of Karnataka*[25] this Court held that there is a marked difference as to the effect of evidence, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt. According to this we can see that the evidence points in the direction of Fatima being a convert. Hence, the fact that no proper procedure was needed for her conversion can be implied.

[2.3] REGISTRATION OF MARRIAGE IS NOT MANDATORY

24) This marriage comes under the HMA where the bare act clearly states in section 8 sub section (5)[26] that *(5) Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry.* So, it is evident just the mere omission of entry in the marriage register does not hold this marriage as invalid.

25) In *Thavamani v. the internal audit O.F and ots*[27], it was held that just because the Applicant had not registered her marriage did not mean that she couldn't claim her rights. Therefore, we can conclude that registration of marriage is not mandatory. It is humbly submitted that the

[23] Law Commission, Conversion/reconversion to another religion-mode of proof (Law Com No 235, 2010) para 10.5
[24] Law Commission, Conversion/reconversion to another religion-mode of proof (Law Com No 235, 2010) para 10.5
[25] (1980) 1 SCC 30
[26] HMA 1955, §.8(5).
[27] MANU/TN/2596/2015

marriage between Anil and Fatima is legal and valid *ab initio* under the HMA.

III. WHETHER ANIL IS ENTITLED FOR A DECREE OF RESTITUTION OF CONJUGAL RIGHTS?

26) It is humbly submitted to the Hon'ble District Court that the Applicant is entitled for a decree of restitution of conjugal rights since **[3.1]** *Firstly,* there exists a valid marriage between the two parties as the factum of marriage is proved in Issue 2. **[3.2]** *Secondly,* the essential grounds to be satisfied under s.9 of the HMA, 1955 stand fulfilled. **[3.3]** *Thirdly,* there exists a bona fide intention to live with the respondent.

[3.1] THERE EXISTS A VALID MARRIAGE

27) It is submitted that the definition of the term 'consortium' can be seen in *Harvinder Kaur v. Harmender Singh*[28]*,:" Consortium has been defined as "a partnership or association; …It involves a sharing of two lives, a sharing of joys and sorrows…".* When such consortium is denied by either spouse, the aggrieved spouse is empowered by the law to enforce it through *s.9* of the HMA[29]. Since, such rights flow out of a marriage, establishing the factum of marriage is a *sine qua non* for claiming restitution.[30].

28) In the present case, the Applicant and Respondent got married to each other on 23rd August 2020 at temple in Chandigarh. The ceremony involved the exchanging of garlands, application of vermillion and was duly solemnized by the priest.[31] Thus, there exists a valid marriage under the HMA, 1955 as already discussed and proved in Issue 2.

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[28] AIR 1984 Del 66
[29] §.9, The HMA
[30] *Pallavi Bhardwaj* v. *Pratap Chauhan* (2011) 15 SCC 531 : (2014) 2 SCC (Civ) 634
[31] Para 8, moot proposition.

[3.2] THE CONDITIONS TO BE SATISFIED UNDER S.9 OF THE ACT, STAND FULFILLED

29) The SC in *Saroj Rani v. Sudarshan Chadha*[32], noted that **"***The essence of marriage is the sharing of common life, a sharing of all the happiness that life has to offer and all the misery that has to face in life.***"** The objective of s.9 is to preserve such essence of marriage. In the present case, the Applicant is unequivocally denied of such conjugal rights that would arise out of a valid marriage and thus is entitled to enforce the same and seek remedy of s.9.

30) In order to obtain a decree, it is crucial to satisfy a few conditions mentioned in the HMA, s.9.

[3.2.1] *The Respondent has withdrawn from the society of the Applicant*

31) It is humbly submitted that the term 'society of the other', as under s.9, refers to the matrimonial home i.e., the house in which the couple jointly reside for a period of time and which they have intended to be their place of residence.[33] In the present case, the Applicant and the Respondent cohabited in a shared accommodation at Chandigarh. The DHC understood cohabitation as: *"The cohabitation of two people as husband and wife means that they are living together as husband and wife…..They must live together not merely as two people living in one house, but as husband and wife."*[34] The parties, actively led their respective lives as husband and wife. Furthermore, the couple also shared a common residence at the Applicant's parent's house, in Chandigarh. Thus, it is abundantly evident that the parties cohabited and lived together as a married couple and the society of the Applicant, for the purpose of s.9, can be inferred to be located at Chandigarh.

32) Furthermore, the Applicant and Respondent continued their marital consortium for over a year and half until January 10th, 2022, when the Respondent withdrew from the Applicant's society

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[32] Saroj Rani v. Sudarshan Kumar Chadha, (1984) 4 SCC 90

[33] In India the matrimonial home is not defined by statute or authoritatively by case law. Thus, the definition of "dwelling house" given under the Family Law Act of England, has been followed.

[34] Wheatley v. Wheatley 1950 1 K.B. 39 (9) per Lord Goddar CJ. at p. 43., quoted in Harvinder Kaur v.. Harmander Singh Choudhry: MANU/DE/0234/1983.

and left India on 14th February, 2022. The Applicant tried to contact the Respondent multiple times via phone calls and text messages. He also visited his in-laws house, where he was met with absolute hostility by the Respondent's family members. [35]

33) It is humbly submitted that, the Hon'ble SC held in *Lachman Kirpalani v. Meena*[36]: to establish desertion ***"****two essential conditions, namely, the factum of separation and the intention to bring cohabitation permanently to an end, must exist on the part of the deserting spouse and the two conditions for the deserted spouse are : 1) absence of consent, and 2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to constitute thenecessary intention."* A bare perusal of the facts, *prima facie* would reveal that both the factum of separation and the *animus deserendi* stand established. While the former is established on the date of the Respondent's withdrawal, the latter is evident from Respondent's departure from India. Furthermore, on both the occasions, there was no express or implied consent givenby the Applicant towards the Respondent's withdrawal and also there exists no reasonable cause for withdrawal of the Respondent from the Applicant's society. Further, in *Sushila Bai v. Prem Narayan*[37], where the husband deserted his wife and thereafter was totally unresponsive, the HC of MP held such behaviour is sufficient to show that he had withdrawn from the society of his wife, and therefore the wife's petition for restitution of conjugal rights was allowed.

34) Therefore, it is most respectfully submitted that the first pre-requisite for applying for restitution of conjugal rights under s.9 of the HMA stands fulfilled.

[3.2.2] *There exists no reasonable excuse for such withdrawal*

35) It is brought to the notice of the Hon'ble court, that like in any normal marriage, the Applicant and Respondent too shared a few disagreements. The crux of the discord was mainly that the

[35] Para 16, moot proposition.
[36] Lachman Utamchand Kirpalani v. Meena, (1964) 4 SCR 331
[37] Sushilabai Prem Narayan v. Prem Narayan Shamlal Rai, 1985 SCC OnLine MP 46

Applicant was not earning and that the Respondent did not like living with the Applicant's parents. The Applicant gave constant reassurance to resolve them. The Applicant was preparing for the Civil Services. This fact was well-known to the Respondent before the marriage and she married him with a complete knowledge of the same. Moreover, the Respondent herself consented to looking after the household expenses through her income to support the Applicant's ambition. Nevertheless, the Applicant realising her hardship expressly promised to start working if he would not clear the said examination within two years.[38]

36) It is submitted that one of the tests to determine whether the withdrawing spouse has reasonable excuse to live apart is whether it has become practically impossible for the spouses to live together.[39] It is mentioned in *K. Ramoki v. K. Kameshwari* that the expression "reasonable excuse" contemplated by Section 9(1) of the Act must be such as would afford a ground either for a judicial separation or for nullity of marriage or for divorce.[40] The facts clearly indicate that there existed no cause that would make it practically impossible for the parties to live together. Furthermore, the Applicant's unemployment does not act as a valid ground for withdrawal as held in *Madan Kohli* v. *Sarla Kohli*[41]. The Court in *Anna Saheb v. Tarabai*[42] *held: "if the husband is not guilty of misconduct, a petition cannot be dismissed merely because the wife does not like her husband or does not want to live with him, because he is too poor..."* and in *Harminder Kaur v. Harmander Singh*[43] it was held that the wife cannot dictate the husband to set up a different residence from his family, it is a decision that must be reached by consensus of all parties and cannot be valid ground for living apart**.** In *Annie Thomas v. Pathrose*[44], it was stated that such a reasonable excuse must be a "rational excuse" which should be more than a mere whim. Thus, there is conclusive proof on the side of the

[38] Para 9, moot proposition.
[39] *Greene* v. *Greene*, 1916 P 188.
[40] *Kuppa Ramoki* v. *Kuppa Kameswari*, 1974 SCC OnLine AP 37 : AIR 1975 AP 3 (DB).
[41] 1966 SCC OnLine P&H 356 : AIR 1967 P&H 397, 399.
[42] *Anna Saheb* v. *Tarabai*, 1968 SCC OnLine MP 82 : AIR 1970 MP 36 : 1969 MPLJ 361.
[43] AIR 1984 Del 66
[44] (1988) 2 KLT 237 at Para 7.

Applicant that the Respondent had no reasonable excuse to withdraw from the society. Thus, it is humbly submitted that the Respondent has withdrawn from the society of the Applicant without a reasonable cause.

[3.2.3] *No legal grounds exist for refusing the decree*

37) It is submitted that there exist no legal grounds for refusing the decree. In light of this, it was stated in *M. Satyanaryana v. M. Veermani*[45]:*"….if she is abandoned, deserted, neglected or cruelly treated or the husband suffered from virulent leprosy, lived with another wife, resided with a concubine, or converted to another religion. These grounds are available to a wife to claim maintenance and the same grounds can be the 'legal grounds' on which a wife can resist a husband's petition for restitution of conjugal rights. The above enumerated grounds under Section 18 of the Act may not be exhaustive… ."*

38) In light of the aforementioned grounds, it is submitted that the Applicant has not been involved in any marital misconduct, physical or mental cruelty, or any act that would pose a serious threat to the Respondent. A conclusion may be drawn by applying *ejusdem generis*, that other acts which are not mentioned in the case but may be of similar nature have not been committed by the Applicant. The Applicant has been a respectful man throughout their marriage. Therefore, it is respectfully submitted that there exist no legal grounds for refusing the decree.

[3.3] THERE EXISTS A *BONA FIDE* INTENTION TO LIVE WITH THE RESPONDENT

39) It is submitted that under s.9 of the HMA it is also crucial to prove the *bona fide* intention of the Applicant. The P&H HC held in *Capt. B.R. Syal v. Smt. Ram Syal* [46] that *"the Applicant must show that he is sincere, in the sense, that he has a bona fide desire to resume matrimonial cohabitation and to render the rights and duties of such cohabitation."* In the present case, the Applicant has *bona fide* intention while applying for remedy under s.9 as there has been no

[45] (1981) 2 DMC 276 : 1981 HLR 707 (AP).
[46] AIR 1968 P&H 489

unreasonable delay in institution proceedings for restitution. The application was filed within 9 months of her desertion.

40) It is humbly submitted that there is no *mala fide* intention on part of the Applicant, as the application has been filed solely to resume cohabitation *sans* any ulterior motive to threaten, pressurise or cause undue harm to the Respondent's interests. Further, the conduct of the Applicant immediately after the Respondent's withdrawal, *prima facie*, show sincerity to resume cohabitation. The Applicant tried several times to contact the Respondent via telephonic calls and text messages. He also visited the Respondent's parents' house but was received with much hostility. These actions indicate the Applicant's *bona fide* intention.

41) *Ceterum*, the well-established legal principle '*Nullus Commodum Capere Potest De Injuria Sua Propria*' i.e., no one can derive an advantage from his own wrong, does not apply in the case of the Applicant as he has not committed any wrong or offence which could have induced the Respondent's withdrawal. The Applicant approaches the Court with clean hands.

42) Therefore, it is humbly submitted that the Applicant presents a *bona fide* to resume cohabitation with the Respondent. Thus, the Applicant is entitled to apply for the said relief.

43) Thus, it is submitted to the Hon'ble Court that the Applicant is entitled to be granted the decree of restitution of conjugal rights under s.9 of the HMA as the preponderance of probabilities is on the Applicant's side.

IV. WHETHER THE APPLICATION FOR PATERNITY TEST IS JUSTIFIED?

44) It is humbly submitted before the Hon'ble District Court, Chandigarh that the application for paternity test is justified. The contention for the same has been submitted in the following two lines of arguments. **[4.1]** Firstly the counsel submits that the paternity test

is for the welfare of the Child. **[4.2]** Secondly that the Appellant has prime facie evidence to apply for conducting the paternity test.

[4.1] THE PATERNITY TEST IS FOR THE WELFARE OF THE CHILD

45) In modern society, one may get the fame, but it is though very difficult yet essential to get the father's name, which can decide his status in the society. Here the question is about the paramount consideration of the welfare of the child and to decide the status of the child[47]. In the given proposition, it is not very clear that the child belongs to whom. As in the first week of December 2021, when Fatima discovered that she was expecting a child that time she had access to both Anil as well as Raza. This can clearly be inferred from paragraph 12 of the given proposition "She started meeting Raza more frequently, visited his hotel several times, sharing close moments with him[48]".

46) In the case of *Goutam Kundu v. State of W. B*[49]., paragraph 24 says that "Access" and "non-access" mean the existence or non-existence of opportunities for sexual intercourse; it does not mean actual "Cohabitation". So, in the present case she had access to both.

47) Further in *Mukesh v. State (NCT of Delhi)* [50] the hon'ble Supreme Court had authoritatively upheld the infallible nature of the DNA test. Also in the case of *Priyanka J. Patil v. Janardhan R. Patil*[51], and *Aparna Ajinkya Firodia* [52]it is noted that DNA test is scientifically accurate and also due to advanced scientific technology, conducting of DNA test would certainly throwlight on the paternity of the child and help to know whether a man is genetically related to child.

48) In *Narayan D. Tiwari v. Rohit Shekhar* [53]Hon'ble Apex Court said in the paragraph 38 "*Even the Constitution of India, while laying down the fundamental duties, by Articles 51-A(h) and*

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[47] *Sangita v. Arjun* MANU/MH/0465/2011.
[48] Para 12, moot proposition.
[49] (1993) 3 SCC 418.
[50] (2017)6 SCC.
[51] 2022 SCC OnLine SC 1047.
[52] *Aparna Ajinkya Firodia v. Ajinkya Arun Firodia*, 2021 SCC OnLine Bom 11774.
[53] (2012) 12 SCC 554.

(j) declares it to be the duty of every citizen of India to develop a scientific temper and the spirit of inquiry and reform and to strive towards excellence, to reach higher levels of achievement. What we wonder is that when modern tools of adjudication are at hand, must the courts refuse to step out of their dogmas and insist upon the long route to be followed at the cost of misery to the litigants. The answer obviously has to be no. The courts are for doing justice, by adjudicating rival claims and unearthing the truth and not for following age- old practices and procedures, when new, better methods are available." The hallmark of justice "*Truth must triumph*[54]", and with a view to know the truth behind the birth of a child and his welfare which is of paramount importance, the Applicant files the said application before the district court praying for conducting a Paternity test.

[4.2] THE APPLICANT HAS *PRIMA FACIE* EVIDENCE

49) It is humbly submitted by the counsel on behalf of the Applicant that the Applicant has strong prima facie case to apply for conducting the paternity test.

50) In *Goutam Kundu* [55], it has been laid down that courts in India cannot order blood test as a matter of course and such prayers cannot be granted to have roving inquiry; there must be strong prima facie case and court must carefully examine as to what would be the consequence of ordering the blood test. In the case of *Sharda v. Dharmpal* [56] while concluding that a matrimonial court has power to order a person to undergo a medical test, it was reiterated that the court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the court. Obviously, therefore, any order for DNA can be given by the court only if a strong prima facie case is made out for such a course.

51) In the Present case, there are prime evidence to show that the Paternity test is important to know the truth. If we look at the paragraph 13 and 14 of the moot proposition.[57]

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[54] *Shraddha Anand vs. Anand Ramkumar* MANU/SCOR/12135/2021
[55] (1993) 3 SCC 418.
[56] *Sharda v. Dharmpal* reported in (2003) 4 SCC 493.
[57] Para 13 & 14, moot proposition.

PRAYER

WHEREFORE, in the light of the facts stated, issues raised, arguments advanced, and authorities cited, it is most humbly prayed and implored before the Hon'ble District court of Chandigarh that it may be graciously pleased to adjudge and declare that:

I. Declare that the present suit is maintainable in the district court of Chandigarh.

II. Declare that the marriage between Anil and Fatima is valid.

III. Declare that Anil is entitled for a decree of Restitution of Conjugal Rights.

IV. Declare that the application for paternity is justified.

And pass any other order that this Hon'ble Court may deem fit in the interests of justice, equity, and good conscience.

All of which is most humbly prayed

PLACE: CHANDIGARH **SD/-**

COUNSEL FOR THE APPLICANTS