

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

R/FIRST APPEAL NO. 3246 of 2024
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/FIRST APPEAL NO. 3246 of 2024

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YOGESH AMRUTBHAI PATEL

Versus

HANSABEN YOGESHBHAI PATEL D/O AMRUTBHAI PATEL

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Appearance:

JAY J JANI(9303) for the Appellant(s) No. 1

MR NIRAD D BUCH(4000) for the Defendant(s) No. 1

MRS. BHAVINI N. BUCH(5403) for the Defendant(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 02/07/2026

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. We have heard learned counsel Mr. Jay Jani and Mr. Nirad Buch for the respective parties.
2. With the consent of learned counsel, this appeal is taken up for its final adjudication.
3. This First Appeal is directed against the judgment and decree dated 21.08.2024 passed by the learned Family Court, Kadi, Mehsana, whereby, the suit for divorce filed under Section 13(1)(ia) and (ib) by the appellant husband came to be dismissed on the preliminary ground of limitation.
4. Mr. Jay Jani, learned advocate while assailing the judgment and decree has submitted that, the trial Court has committed an error of



law while dismissing the suit, as no issue of the maintainability of the suit has been framed; if the Family Court would have intend to dismiss the suit on the ground of limitation, then, the Court would not have determined the other grounds for the divorce; even the findings on the other grounds are not based on the evidence. In such circumstances, it is submitted that, either appeal may be remanded to decide the issue fresh or by setting aside the impugned judgment and decree, a liberty may be granted to file a fresh suit on the same ground.

5. Mr. Nirad Buch, learned advocate vehemently opposed the contention advanced by learned counsel Mr. Jani and submitted that, once the Family Court has decided the issues on merits, then, question does not arise to remand the matter or to give fresh opportunity to file a suit on the same ground.
6. We have carefully examined the impugned judgment and decree. Admittedly, the Family Suit was presented within a period of 1 year. Section 14 of the Hindu Marriage Act clearly provides that, no court can entertain any petition for divorce of marriage unless at the date of presentation of the petition, one year has elapsed since the date of marriage. The Family Court has decided the suit on merits. In para-(9-2) of the judgment, the Family Court, has clearly opined that, the suit is prematured and is not maintainable as it was filed within one year from the date of marriage. The Family Court in the judgment, more particularly in para (9-2) has discussed the ground of cruelty and desertion and came to conclusion that it was



the appellant husband who was not interested to live with the respondent wife. In such circumstances, in our opinion, when suit is pre-matured or having been filed in violation of Section 14 of the Hindu Marriage Act, then the proper recourse available to the Family Court, is either return the plaint or dismiss the suit reserving the right of the parties to file fresh suit. The Family Court could not have discussed the merits of other grounds. In the present case, the Family Court failed to assign proper and sound reasons on the other grounds also.

7. For the reasons recorded, we are of the clear view that, the impugned judgment and decree dated 21.08.2024 in Family Suit No. 27 of 2024 passed by the Family Court, Kadi, Mehsana is set aside. The appellant is permitted to file fresh suit on the available grounds as provided under the Hindu Marriage Act. As and when the suit is filed, the Family Court shall decide the suit afresh. Parties are also permitted to led fresh evidence. The parties shall not rely on the evidence led in the present suit (27 of 2024).
8. With the aforesaid observations and directions, the First Appeal is allowed in the aforesaid terms. No order as to costs.

ORDER IN CIVIL APPLICATION :

In view of the order passed in main First Appeal, no order in Civil Application and is disposed of accordingly.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

P.S. JOSHI