



2025:AHC-LKO:61623-DB

AFR

Reserved on : 24.09.2025

Delivered on : 07.10.2025

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

FIRST APPEAL No. - 130 of 2025

Dr. Madhu Singh Chaudhary

.....Petitioners(s)

Versus

Dr. Atul Bharti

.....Respondents(s)

| | | |
|----------------------------|---|-----------------------------|
| Counsel for Petitioners(s) | : | Pratul Gupta, Ayush Gupta |
| Counsel for Respondent(s) | : | Vivek Kumar Rai, Ajai Kumar |

Court No. - 9

**HON'BLE RAJESH SINGH CHAUHAN, J.
HON'BLE SYED QAMAR HASAN RIZVI, J.**

(Delivered by: Hon'ble Syed Qamar Hasan Rizvi, J.)

1. Rejoinder affidavit filed by Shri Pratul Gupta, learned counsel for the appellant is taken on record.
2. Heard Shri Pratul Gupta, learned counsel for the appellant and Shri Vivek Kumar Rai, learned counsel for the respondent.
3. By means of the present appeal under Section 19 (1) of the Family Courts Act, 1984, the appellant herein / opposite party has challenged the judgment and Order dated 07.07.2025 passed in Divorce Petition having H.M. No. 13 of 2016, 'Dr. Atul Bharti versus Dr. Madhu Singh' by the learned Additional Principal Judge, Family Court- 8, District- Lucknow, whereby an application under Order XIV Rule 1, 2, 3, 4, 5 read with Section 151 of the Civil Procedure Code (CPC) has been rejected.

4. The facts of the case that have culled out from the pleadings and are relevant for the adjudication of the present appeal, in brief, are that the respondent / petitioner herein filed a divorce petition in the Court of learned Principal Judge Family Court, Lucknow on 19.05.2015, under Section 13 of the Hindu Marriage Act, 1955 against the appellant herein namely Dr. Madhu Singh Chaudhary. In the said proceeding, Dr. Atul Bharti the respondent herein, filed an application under Order VI Rule 17 of the CPC on 31.08.2015, *inter alia* seeking certain amendments in the petition. The respondent herein by means of the said application prayed for permission to incorporate certain amendments in the paragraph No. 29 of the petition and also to insert new paragraphs numbered as '25.a' and '25.b'. The said application preferred by the respondent was allowed by the learned Court vide Order dated 23.10.2015. The petitioner / respondent herein carried out the amendments in the petition and also impleaded one Shri Santosh Kumar as the opposite party No. 2 in the petition without taking any recourse in the manner as prescribed under Order I Rule 10 CPC and made amendment in the array of parties without there being any order by the learned Court permitting the respondent to implead Shri Santosh Kumar as opposite party No. 2. By means of the aforesaid amendment, the petitioner / respondent herein made allegation against the opposite party / appellant herein that she is living in adultery with the aforesaid Shri Santosh Kumar (opposite party No. 2).

5. In response to the aforesaid divorce petition, the present appellant filed a Counter Affidavit in the month of February, 2016 *inter alia* denying the allegations made against her in the said divorce petition and also raised serious objections regarding the unlawful impleadment of Shri Santosh Kumar as the opposite party No. 2.

6. The aforesaid Shri Santosh Kumar also filed a detailed Objection dated 05.12.2015 wherein he denied the allegations levelled against him, by the plaintiff by way of amendment in the divorce petition. In the said objections, he narrated certain facts to indicate that the respondent is in

adulterous relationship with a lady named as Km. Seema Rawat. However, he very categorically submitted in said objections that he has nothing to do with the dispute between the couple i.e. the present appellant and the respondent herein. He further stated that unnecessarily he has been dragged in the divorce proceedings; perhaps to create undue pressure upon him. He further asserted that he belongs to a reputed family and his impleadment as opposite party No. 2 in the said divorce case has tarnished his image and reputation in the society and he also prayed for the deletion of his name from the array of parties.

7. The learned Additional District and Sessions Judge/ F.T.C., II vide Order dated 31.08.2016 directed the petitioner / respondent herein to delete the name of the aforesaid Shri Santosh Kumar from the array of parties, within three days. But the petitioner / respondent herein did not comply the said Order. However, the learned Additional District and Sessions Judge/ F.T.C., II, Lucknow vide order dated 26.11.2016 granted permission to the plaintiff / respondent herein to delete the name of the aforesaid Shri Santosh Kumar (opposite party No. 2). It would be relevant to note here that the order for the deletion of the name of the opposite party No. 2 was passed by the learned Court below holding therein that since no relief has been sought against the opposite party No. 2 namely Shri Santosh Kumar therefore he is not a necessary party in the divorce petition, as such it would not be proper to proceed against him.

8. The respondent herein / petitioner moved an application dated 13.08.2024 under Order I Rule 10 read with Section 151 of CPC seeking impleadment of the aforesaid Shri Santosh Kumar as opposite party No. 2. The learned Court below allowed the said application vide order dated 02.09.2024 without appreciating the fact that the name of Shri Santosh Kumar was directed to be deleted from the array of parties by the detailed orders of the Court dated 31.08.2016 & 26.11.2016.

9. The learned Family Court vide order dated 03.01.2017 framed the following issues: -

1. क्या प्रतिवादिनी द्वारा वादी के साथ अत्यन्त कटुता का व्यवहार किया गया?
2. क्या वादी एवं प्रतिवादिनी के मध्य पति पत्नी का सम्बन्ध स्थापित नहीं है?
3. क्या प्रतिवादिनी जारता में निवास कर रही है?
4. क्या वादी प्रतिवादिनी से विवाह विच्छेद की डिक्री प्राप्त करने का अधिकारी है?

10. The evidence of the prosecution witnesses PW-1 and PW-2 were recorded between the period 2017-2023 and the defence witnesses DW-1 and DW-2 were examined in between the period 2023-2024.

11. The appellant herein / opposite party No. 1, after a period of about eight years, filed an application dated 14.05.2025 under Order XIV Rule 1, 2, 3, 4, 5 read with Section 151 CPC inter alia praying for framing of additional issue on the strength of the averments made by the opposite party No. 2 in paragraph No. 1 under the heading 'Additional Pleas' of the aforesaid Objections filed by him. In response to the said application, the petitioner / respondent herein filed Objections. The Court of learned Additional Principal Judge, Court No.- 8, Family Court, Lucknow decided the said application vide impugned order dated 07.07.2025. The operative portion of the judgment and Order dated 07.07.2025 is extracted here-in-below for convenience: -

“उभयपक्ष द्वारा प्रस्तुत तर्कों के परिप्रेक्ष्य में पत्रावली का सम्यक परिशीलन किया।

दौरान बहस प्रतिवादिनी के विद्वान विधिक सलाहकार द्वारा कथन किया गया कि विपक्षी द्वारा स्वयं आपत्ति दाखिल नहीं की गयी है अपितु उसके विधिक सलाहकार द्वारा आपत्ति की गयी है व शपथपत्र प्रस्तुत नहीं किया गया है।

पत्रावली के अवलोकन से विदित है कि प्रार्थना पत्र सी-129 प्रतिवादिनी द्वारा अंतर्गत आदेश 14 नियम 1, 2, 3, 4, 5 सपठित धारा 151 सी०पी०सी० प्रस्तुत किया गया है। उक्त प्रावधान सिविल प्रक्रिया में वाद-बिन्दु विरचन से संबंधित है। परन्तु प्रतिवादिनी द्वारा अपने प्रार्थना पत्र सी-129 व प्रत्युत्तर सी-132 में पूर्व में हुयी प्रक्रियाओं पर प्रश्नचिन्ह लगाए हैं व विद्वान प्रधान न्यायाधीश महोदय द्वारा पारित आदेश का विश्लेषण किया गया है जो कि किसी भी दृष्टि से उक्त प्रावधान के अंतर्गत नहीं आते व जिनकी बाबत पूर्व में मत व्यक्त किया जा चुका है।

प्रतिवादिनी द्वारा जो वादबिन्दु विरचित करने की प्रार्थना की गयी है वह वाद-बिन्दु ना ही बनता है व ना ही आवश्यक है। वादी द्वारा याचित अनुतोष व प्रतिवादिनी द्वारा मूलवाद संख्या-2842/2023 में बहसियत वादिनी याचित अनुतोष की बाबत वाद-बिन्दु विरचित किये जा चुके हैं। पत्रावली प्राचीन श्रेणी की है व विगत कई तिथियां पूर्व बहस हेतु नियत की जा चुकी हैं। प्रतिवादिनी द्वारा बिना किसी आधार, विधिक प्रावधान व औचित्य के यह प्रार्थना पत्र प्रस्तुत किया गया है जिससे पत्रावली की कार्यवाही विलंबित हुयी है।

अतः प्रार्थना पत्र स्वीकार किये जाने का कोई आधार नहीं है। प्रार्थना पत्र सी-129 हर्जों पर निरस्त किये जाने योग्य है।

आदेश

प्रार्थना पत्र सी-129 मु0 500/- रुपये हर्जे पर निरस्त किया जाता है।

पत्रावली वास्ते बहस दिनांक 16.07.2025 को पेश हो।”

12. The contention of the learned counsel for the appellant is that the learned Court below while dismissing the application of the appellant seeking framing the additional issue has ignored the material fact that has come into light through the objections by the opposite party No. 2 in response to the plaint filed under Section 13 of the Hindu Marriage Act, 1955 alleging therein that the plaintiff / respondent herein is having illicit relations with one Km. Seema Rawat and he is living in adultery. He further submits that the person who himself is implicated of living in adultery cannot level allegation of adultery on the other side to seek divorce. It has been very emphatically argued on behalf of the appellant that the statement made by the opposite party No. 2 in his objections to the plaint is sufficient to give rise to the framing of ‘additional issue’ regarding the adultery on the part of the plaintiff.

13. The learned counsel for the appellant has contended that the non-framing of the additional issue on the basis of the facts as disclosed by the opposite party No. 2 under the heading ‘Additional Pleas’ in his objections, goes to the very root of the matter and in case if the controversy pertaining to the adulterous relationship between the respondent and Km. Seema Rawat is not properly addressed by the learned Family Court while deciding the respondent’s case under Section 13 of the Hindu Marriage Act, 1955 shall cause serious prejudice to the appellant.

14. Per contra, the learned counsel appearing on behalf of the respondent raised serious objections against the submissions advanced by the learned counsel for the appellant. He contended that the instant appeal filed by the opposite party No. 1 / appellant herein is just a delaying tactic just to halt the proceedings of divorce under Section 13 of the Hindu Marriage Act, 1955 which is pending before the learned Family Court since the year 2015. He submits that the issues were framed in the

case on 03.01.2017 in the presence of the parties but the appellant herein never raised any objection or pressed for framing of any additional issue and now when the case is ripe for final decision and more particularly when the stage of evidence is over, the appellant has come out with such a prayer which is totally unsustainable in law.

15. The next submission as advanced by the learned counsel for the respondent is that the appellant cannot press for framing of additional issues of adultery on the basis of the pleadings of third party i.e. defendant No. 2. He further submits that in the instant case, the appellant herein/ opposite party has never filed any Counter-Claim to establish the allegation of adultery against the petitioner / respondent herein and there is no assertion or denial on the part of the appellant and the respondent on the same, the learned Family Court has passed the impugned order perfectly in accordance with law and has rightly rejected the petitioner's application regarding the framing of additional issues.

16. It is further submitted on behalf of the respondent herein / petitioner that on the one hand the appellant herein / opposite party No. 1 herself has filed a case for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 on 18.08.2023 and on the other hand she is pressing for the framing of an additional issue against the respondent herein / petitioner regarding the adultery on his part. That goes to show that the application under Order XIV Rule 1, 2, 3, 4, 5 read with Section 151 of CPC was filed by the opposite party / appellant herein with an ulterior motive which has been rightly rejected by the learned Family Court by a detailed and reasoned order dated 07.07.2025.

17. Order XIV of the Code of Civil Procedure, 1908 (CPC) lays down rules for the settlement of issues and determination of suits on issues of law or on issues agreed upon. Under Rule 1, issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. Rule 2 give a discretion to the Court to decide a particular issue as a preliminary issue. Rule 3 give a discretion to the court to frame issues

on the basis of the allegations made on oath by the parties or by the persons present on their behalf or made by the pleaders of such parties, the allegations made in the plaint or in answer to interrogatories delivered in the suit and on the basis of the contents of documents produced by either party; Rule 4 gives power to the court to examine witnesses or documents before framing issues. By Rule 5, power is conferred on the Court to amend or strike out issues. Further power is given under Rule 5 to frame additional issues on such terms as it thinks fit or as may be necessary for determining the matter in controversy between the parties. The power to frame additional issues is a discretionary power of the trial court. Additional issues may be framed if the Court thinks necessary for determining the matter in controversy by an order refusing to frame additional issues or allowing an application for framing of additional issues on right or obligation of the parties in controversy is adjudicated upon by the court. The Court, after examining the pleadings and other material on record as required under Rule 3, may frame the issues.

18. A bare perusal of Rule I of Order XIV of CPC makes it clear that necessity to frame an issue would arise, if only, there is assertions by one party and denial by another. Such assertions and denials can be only through pleadings. Each material proposition affirmed by one party and denied by the other should form the subject of a distinct issue. The object of an issue is to tie down the evidence and arguments and decisions to a particular question so that there may be no doubt on what the dispute is. The judgment, then proceedings issue-wise would be able to tell precisely how the dispute was decided.

19. However, if by such a refusal to frame issues a serious prejudice is being caused to the plaintiff or the defendants then it is always expedient for the trial court to exercise its jurisdiction in framing such issues to facilitate the parties to adduce evidence in the light of pleadings on the basis of which issues were framed.

20. In the given facts of the present case no right or obligation of a party is determined by an order refusing to frame additional issues such an order cannot be held to be deciding a case between the parties, thus, we do not find that any prejudice would be caused to the appellant / defendant. When the case under Section 13 of the Hindu Marriage Act, 1955 has been instituted by the husband wherein allegation of adultery has been levelled against the wife, so the determination of allegation of adultery against the husband shall be of no consequence in the instant case. In any case, it is the discretionary power of the Trial Court to frame additional issues if it finds it necessary for determining the lis between the parties.

21. The allegation of illicit relation with the Km. Seema Rawat with the petitioner / respondent herein is not the subject matter of dispute giving rise to the filing of the petition under Section 13 of the Hindu Marriage Act, 1955 by the respondent, nor a dispute for adjudication in the said proceeding. The opposite party No. 1 / appellant herein did not claim any relief through counter-claim, thus the learned Court below has rightly rejected the said application dated 14.05.2025.

22. Taking into consideration the fact that the respondent / husband, Dr. Atul Bharti, instituted a petition under Section 13 of the Hindu Marriage Act, 1955 against his wife, Dr. Madhu Singh Chaudhary, the appellant herein, alleging acts of cruelty and adultery. The subject matter of the dispute concerns the determination of the issues framed on 03.01.2017, which remained unchallenged for a period of eight years. The appellant / wife subsequently moved an Application under Order XIV of the Code of Civil Procedure, 1908, seeking framing of additional issues based on allegations raised by a third party against the respondent / husband through objections dated 05.12.2015. It is manifest that such allegations against the Respondent/husband did not constitute the subject matter of the dispute which led to the filing of the petition under Section 13 of the Hindu Marriage Act, 1955 wherein the husband sought divorce. In reply thereto, the appellant / wife filed a written statement denying all

allegations. The wife, however, made certain averments disputing the locus of the Respondent/husband by contending that a person himself indulged in an adulterous relationship cannot maintain a petition on the ground of adultery.

23. It is pertinent to observe that the stand taken by the appellant / wife could have afforded her a valid ground to seek dissolution of marriage against her husband. However, in the present case, she has neither instituted a petition for divorce nor filed any Counter-Claim to that effect. Instead, she has instituted a proceeding under Section 9 of the Hindu Marriage Act, 1955 which is pending before the Family Court, Lucknow.

24. Accordingly, the allegation of adulterous relationship between the respondent / husband and Km. Seema Rawat cannot be taken as an issue for adjudication in the pending divorce proceedings under Section 13 of the Hindu Marriage Act, 1955 instituted by the respondent / husband. Consequently, in the facts and circumstances of the case, the prayer of the appellant / wife seeking framing of additional issues in respect of the alleged adultery on the part of the respondent / husband has been rightly rejected by the learned Court below.

25. Therefore, in view of the above, the Impugned Order dated 07.07.2025 passed by the learned Additional Principal Judge, Family Court- 8, District- Lucknow, rejecting the Application of the appellant / wife, filed under Order XIV Rules 1, 2, 3, 4, 5 read with Section 151 of the Code of Civil Procedure, 1908, in Divorce Petition having H. M. No. 13 of 2016, 'Dr. Atul Bharti versus Dr. Madhu Singh' calls for no interference by this Court and the same is hereby affirmed.

26. Accordingly, the present appeal stands **dismissed**. No order as to costs.

(Syed Qamar Hasan Rizvi, J.) (Rajesh Singh Chauhan, J.)

October 7, 2025
(Manoj K.)