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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

WRIT PETITION NO.33261 OF 2025 (GM-FC)

BETWEEN:



THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT, ORDER OR DIRECTION/S IN THE NATURE OF CERTIORARI SETTING-ASIDE THE IMPUGNED ORDER DATED 26.06.2025 PASSED BY THE LEARNED SENIOR CIVIL JUDGE AND JMFC, KANAKAPURA, IN M.C. NO.18/2024, VIDE ANNEXURE-A AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 16.03.2026 AND COMING ON FOR PRONOUNCEMENT, THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE DR. JUSTICE K.MANMADHA RAO

CAV ORDER

This Writ Petition is filed under Article 227 of the Constitution of India, by the petitioner, challenging the Order on I.A.No.I dated 26.06.2025 passed by the Court of Senior Civil Judge and JMFC, Kanakapura, in M.C.No.18/2024, rejecting I.A.No.I filed by the respondent under Section 15 of Special Marriage Act.

2. Petitioner-wife before this Court is the respondent and Respondent-husband before this Court is the petitioner before the Family Court.

Brief facts of the case are as under:

3. The marriage between the petitioner-wife and respondent-husband was solemnized on 30.04.2006 at Samudaya Bhavan, Kabbalu, Kanakapura taluk, according to community and customary rites. The marriage was

never solemnized under the Special Marriage Act, 1954. The parties cohabited as husband and wife and gave birth to a girl child Vinutha C @ Ishwarya, who is presently residing with the petitioner. Due to matrimonial differences, they are living separately since 18.02.2009. As both the parties belong to "Meda" scheduled tribe, they are excluded from the operation of Section 2(2) of the Hindu Marriage Act and their marriage itself is not valid.

4. The respondent-husband had instituted M.C.No.46/2015 under Section 13 of the Hindu Marriage Act, seeking divorce against the petitioner-wife, which was rejected for want of jurisdiction Section 2(2) of the Hindu Marriage Act. Thereafter, husband had filed petition under Section 27(b) and 27(b) of Special Marriage Act, 1954, for dissolution of marriage between petitioner and respondent. I.A.No.I was filed in M.C.No.46/2015 by the respondent-husband praying to reject the petition as the marriage was not registered under the provisions of said Act.

5. It has been observed by the Family Court in Paragraph 15 that Section 15 of the Act only prescribes the conditions required for registration of marriage and do not declare that registration of marriage is compulsory or that petition for divorce under Section 27 of the Act is not maintainable unless the marriage is registered. The Family Court rejected I.A.No.I filed by the husband-respondent before this Court. Aggrieved by the same, petitioner-wife is before this Court.

6. Learned counsel for the petitioner-wife submitted that earlier she had filed CRP No.724/2025 before this Court. This Court directed the petitioner to withdraw said petition and to file writ petition. It is submitted that the Family Court failed to appreciate that petitioner's marriage being neither solemnized nor registered under the Special Marriage Act, falls outside the purview of the Act. It is submitted that the registration of marriage is only directory and not mandatory is erroneous. The interpretation adopted by the Court dilutes Section 15 of the Special Marriage Act.

7. It is further submitted by petitioner that continuation of M.C.No.18/2024 would amount to harassment of the respondent through vexatious litigation and would also result in multiplicity of proceedings. It is contended that the impugned order passed on I.A.No.I in M.C.No.18/2024 may be set aside.

8. Learned counsel for the petitioner has relied upon the following decision of Calcutta High Court:

Amitava Bhattacharya Vs. Smt. Aparna Bhattacharya in ***2009 SCC ONLINE 300*** appellant therein had sought to declare the registered marriage null and void on certain grounds. The Hon'ble High Court of Calcutta, after coming to the conclusion that when the marriage took place, age of the respondent/wife was below the prescribed age of 21 years, declared that marriage itself could not have been registered, ultimately under Section 24(2) of the Act declared that purported registration of the marriage was of no effect.

9. It is submitted by the learned counsel for the respondent-husband that with an intention to protract the proceedings and to harass him, the petitioner has filed the application I.A.No.I. It is further contended that the marriage is not registered under the provisions of Special Marriage Act. The petition M.C.No.46/2015 filed under Section 13 of the Hindu Marriage Act by the husband, seeking divorce was rejected for want of jurisdiction under Section 2(2) of Hindu Marriage Act. Therefore, as the petitioner is restricted to get his remedy of divorce under the Hindu Law, he is having remedy only under Special Marriage Act and contended that the order passed by the Family Court on I.A.No.I is erroneous.

10. Section 2(2) of Hindu Marriage Act reads as under:

2(2).Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

11. Heard the learned counsel for the petitioner as well as respondent and perused the records.

12. As observed by this Court, admittedly, parties herein have not registered their marriage under the provision of Special Marriage Act. However, Section 27 of the Special Marriage Act do not contemplate requirement of registration of the marriage under the Act to maintain an application to seek the decree of divorce. Respondent is seeking decree of divorce on the ground of desertion and cruelty. Section 15 of the Act deals with registration of marriage. Under the provisions of the Special Marriage Act, 1954, registration of marriage is not mandatory but if the marriage is registered, Section 18 of the Act gives certain benefits. Except the same, there is no requirement of compulsory registration of marriage.

13. Hence, it is held that there is no specific provisions in the Special Marriage Act 1954, which contemplates that petition for decree of divorce is not maintainable unless marriage is registered under the Act. In so far as the judgment relied upon by the petitioner-

husband in the case of ***Amitava Bhattacharya Vs. Smt. Aparna Bhattacharya*** in ***2009 SCC ONLINE 300*** appellant therein had sought to declare the registered marriage null and void on certain grounds. The Hon'ble High Court of Calcutta, after coming to the conclusion that when the marriage took place, age of the respondent/wife was below the prescribed age of 21 years, declared that marriage itself could not have been registered, ultimately under Section 24(2) of the Act declared that purported registration of the marriage was of no effect.

14. Section 15 of the Special Marriage Act only prescribes the conditions required for registration of the marriage and do not declare that registration of the marriage is compulsory or that petition for divorce under Section 27 of the Act is not maintainable unless the marriage is registered. It would suffice to refer to Section 15 of the Special Marriage Act, which reads as under:

15. Registration of marriages celebrated in other forms.—*Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 (III of 1872) or under this Act may be registered under this Chapter by a Marriage Officer in the territories to which*

this Act extends if the following conditions are fulfilled, namely:—

(a) a ceremony of marriage has been performed between the parties and they have .been living together as husband and wife ever since;

(b) neither party has at the time of registration more than one spouse living;

(c) neither party is an idiot or a lunatic at the time of registration;

(d) the parties have completed the age of twenty-one years at the time of registration;

(e) the parties are not within the degrees of prohibited relationship:

Provided that in the case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and

(f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.

15. However, as per Section 27 of the Special Marriage Act do not contemplate requirement of registration of the marriage under the Act to maintain an application to seek the decree of divorce. Section 27 of the Act is extracted hereunder:

27. Divorce.—*Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court either by the husband or the wife on the ground that the respondent—*

(a) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(c) is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code (45 of 1860)

(d) has since the solemnization of the marriage treated the petitioner with cruelty; or

(e) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

(f) has been suffering from venereal disease in a communicable form; or

(g) XXX

(h) 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 the respondent if the respondent had been alive;

27A. Alternative relief in divorce proceedings.—*In any proceeding under this Act, on a petition for dissolution of marriage by a decree of divorce, except insofar as the petition is founded on the ground mentioned in clause (h) of sub-section (1) of section 27, the court may, if it considers it just so to do having regard to the circumstances of the case, pass instead a decree for judicial separation.*

16. In view of the foregoing discussion and upon hearing the learned counsel for the parties, the following order is passed:

The Writ Petition is ***dismissed***.

The Order dated 26.06.2025 passed by the Court of Senior Civil Judge and JMFC, Kanakapura, in M.C.No.18/2024, rejecting I.A.No.I filed by the respondent under Section 15 of Special Marriage Act, is upheld.

**SD/-
(DR.K.MANMADHA RAO)
JUDGE**

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