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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 01.08.2025***

Judgment pronounced on: 11.08.2025

\+ MAT.APP.(F.C.) 112/2025

NITIN JAIN ...Appellant

Through: Mr. P. Sureshan, Adv.

versus

PALLAVI JAIN ...Respondent

Through: Mr. V. K. Srivastava, Adv.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

ANIL KSHETARPAL, J.

1. The present Appeal has been filed under Section 19 of the Family Courts Act, 1984 assailing the Judgement dated 08.01.2025 [hereinafter referred to as the 'Impugned Judgment'], passed by the learned **Principal Judge, Family Court, District North West, Rohini Court, Delhi**[1], in HMA No. 1040/2020 titled ***Pallavi Jain v. Nitin Jain***, allowing the petition under Section 13(1A)(ii) of HMA filed by the Respondent herein and thereby dissolving the marriage between the parties.

FACTUAL MATRIX:

2. At the outset, it will be apposite to advert to the salient facts leading up to the institution of the present appeal. The marriage

[1] Family Court

between the Appellant and the Respondent was solemnized on 15.01.2005, according to Hindu rites and customs at Delhi. Out of the said wedlock, a child was born on 30.10.2006.

3. On a petition filed by the Appellant under Section 9 of the **Hindu Marriage Act, 1955**[2], for restitution of the conjugal rights, a Judgment dated 11.09.2018 was passed by the learned Family Court, Central, Tis Hazari Courts, Delhi, in favour of the Appellant. Pursuant thereto, an execution petition under Order XXI Rule 32 and 33 of the **Code of Civil Procedure, 1908**[3] bearing No.10/2019 was filed by the Appellant, which is pending adjudication before the learned Principal Judge, Family Court, Delhi.

4. Thereafter, a divorce petition was filed by the Respondent under Section 13(lA)(ii) of the HMA before the learned Family Court, Rohini Courts, Delhi. *Vide* the Impugned Judgment, the marriage of the Appellant and the Respondent was dissolved. Being aggrieved, the Appellant has filed the present Appeal.

CONTENTIONS OF THE PARTIES

5. The primary contention of the Appellant is that the learned Family Court lacked territorial jurisdiction to decide the case. This contention arises from the Appellant's claim that the Respondent resides in Gurugram, Haryana, and that apart from the present impugned proceedings, all other proceedings between the parties relating to the dispute were conducted or are currently pending within the State of Haryana. Further, it was stated that the Exhibit PW-14

[2] HMA
[3] CPC

therein, i.e., the Rent Agreement, does not support the claim of the Respondent for invoking the jurisdiction of the learned Family Court.

6. Learned counsel for the Appellant has contended that since the execution petition is pending against the Respondent, the matter is *sub-judice* between the parties and the divorce ought not to have been granted.

7. Learned counsel for the Appellant has further submitted that the Respondent concealed material facts relevant to the present divorce proceedings. Notably, the Respondent had earlier filed a petition under Section 10 of the HMA (Case No. 1384/2018) before the learned Family Court, Gurgaon, which was dismissed as withdrawn, and a divorce petition under Section 13(1)(ia) of the HMA (Case No. 52/2017), which was dismissed on 12.07.2018.

8. Learned counsel for the Appellant submits that Section 13(1A)(ii) of the HMA grants a statutory right to either party to seek divorce, which must be read with Section 23(1)(a) of the HMA, which bars a party from taking advantage of their own "wrong".

ANALYSIS

9. We have heard the Appellant at length and have also perused the pleadings.

10. A perusal of the impugned Judgement indicates that the contention of territorial jurisdiction was raised by the Appellant herein before the learned Family Court as well. The learned Family Court, while finding the contention not tenable, held that the Rent Agreement, Ex. P.W. 1/4 has been proved on record through the

testimony of RW-2, who is the landlord of the Respondent. This Court is not inclined to disagree with the reasoning of the learned Family Court.

11. Section 21 of the CPC, particularly its sub-section 3 thereof, states that if the objection as to the competence of the Executing Court with reference to the local limits of its jurisdiction, shall not be allowed by any Appellate or Revisional Court unless such objection was taken in the Executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice. In the present case, the Appellant has not pleaded that there was any failure of justice or that the Appellant was prejudiced.

12. Be that as it may, it is a settled law that the objection to territorial or pecuniary jurisdiction does not *ipso facto* make a decree void unless there are other sustaining defects in the judgment. The Hon'ble Supreme Court in the Judgement of ***Subhash Mahadevasa Habib v. Nemasa Ambasa Dharmadas***[4], has held:-

> *"33. What is relevant in this context is the legal effect of the so-called finding in OS No. 4 of 1972 that the decree in OS No. 61 of 1971 was passed by a court which had no pecuniary jurisdiction to pass that decree. The Code of Civil Procedure has made a distinction between lack of inherent jurisdiction and objection to territorial jurisdiction and pecuniary jurisdiction. Whereas an inherent lack of jurisdiction may make a decree passed by that court one without jurisdiction or void in law, a decree passed by a court lacking territorial jurisdiction or pecuniary jurisdiction does not automatically become void. At best it is voidable in the sense that it could be challenged in appeal therefrom provided the conditions of Section 21 of the Code of Civil Procedure are satisfied.*
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> *34. It may be noted that Section 21 provided that no objection as to place of the suing can be allowed by even an appellate or revisional court unless such objection was taken in the court of first instance at*

[4] (2007) 13 SCC 650

the earliest possible opportunity and unless there has been a consequent failure of justice. In 1976, the existing section was numbered as sub-section (1) and sub-section (2) was added relating to pecuniary jurisdiction by providing that no objection as to competence of a court with reference to the pecuniary limits of its jurisdiction shall be allowed by any appellate or revisional court unless such objection had been taken in the first instance at the earliest possible opportunity and unless there had been a consequent failure of justice. Section 21-A also was introduced in 1976 with effect from 1-2-1977 creating a bar to the institution of any suit challenging the validity of a decree passed in a former suit between the same parties on any ground based on an objection as to the place of suing. The amendment by Act 104 of 1976 came into force only on 1-2-1977 when OS No. 4 of 1972 was pending. By virtue of Section 97(2)(c) of the Amendment Act, 1976, the said suit had to be tried and disposed of as if Section 21 of the Code had not been amended by adding sub-section (2) thereto. Of course, by virtue of Section 97(3) Section 21-A had to be applied, if it has application. But then, Section 21-A on its wording covers only what it calls a defect as to place of suing."

(***Emphasis supplied***)

13. While a decree passed by a court lacking inherent jurisdiction would be null and void in law, a decree passed by a court lacking territorial or pecuniary jurisdiction does not become void *ipso facto*. Rather, it is merely voidable and can only be set aside if challenged in appeal, subject to the fulfilment of the conditions laid down in Section 21 of the CPC. In the present case, as the conditions are not satisfied, the decree cannot be held to be invalid on this ground alone.

14. Moving further, the material facts concealed by the Respondent have been dealt with by the learned Family Court in the Impugned Judgement, wherein it has been noted that the Respondent, in paragraph 26 of the petition, has disclosed that an *ex-parte* Decree under Section 9 of the HMA for restitution of conjugal rights was passed on 11.09.2018, and that execution petition against the same is pending. Additionally, while the Respondent did not initially disclose the filing of petitions under Sections 10 and 13(1)(ia) of the HMA, she

has admitted to both the petitions in her replication. Hence, the allegation of concealment by the Appellant was found to be without merit and liable to be dismissed. We find no ground to interject with the findings of the learned Family Court herein, and therefore, the allegation of concealment of facts does not merit acceptance.

15. We now turn to consider the remaining contentions. Section 13(1A) specified that either party can seek divorce on the ground that there has been no restitution of conjugal rights for a period of one year or more after the passing of the decree of restitution of conjugal rights. It is not disputed that before filing the petition for divorce, the parties were living separately for more than a year, and there had been no restitution of conjugal rights. Therefore, the pre-requisite for filing the divorce petition under Section 13(1A) was duly fulfilled.

16. The Appellant has strongly argued that the Respondent cannot be permitted to take advantage of her own wrong, which is expressly barred under Section 23(1)(a) of the HMA. The wrong, as per the Appellant, is that the Respondent engaged in serious misconduct by deliberately suppressing the proceedings before the Gurugram Court. Section 23(1)(a) of the HMA reads as follows:

> *"**23. Decree in proceedings.—***
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> *(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that*
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> *(a) any of the grounds for granting relief exists and the petitioner 2 [except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5] is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and…"*

17. The concept of "wrong" is grounded in the equity maxim, "*he who comes to equity must come with clean hands.*" In the judgment of **Dharmendra Kumar v. Usha Kumar**[5], the Hon'ble Supreme Court, while contemplating upon Sections 13(1A) and 23 of the HMA, held that:

> "3. *Section 13(1-A)(ii) of the Hindu Marriage Act. 1955 allows either party to a marriage to present a petition for the dissolution of the marriage by a decree of divorce on the ground that there has been no restitution of conjugal rights as between the parties to the marriage for the period specified in the provision after the passing of the decree for restitution of conjugal rights. Sub-section (1-A) was introduced in Section 13 by Section 2 of the Hindu Marriage (Amendment) Act, 1964 (44 of 1964). Section 13 as it stood before the 1964 Amendment permitted only the spouse who had obtained the decree for restitution of conjugal rights to apply for relief by way of divorce; the party against whom the decree was passed was not given that right. The grounds for granting relief under Section 13 including sub-section (1-A) however continue to be subject to the provisions of Section 23 of the Act. We have quoted above the part of Section 23 relevant for the present purpose. It is contended by the appellant that the allegation made in his written statement that the conduct of the petitioner in not responding to his invitations to live with him meant that she was trying to take advantage of her own wrong for the purpose of relief under Section 13(1-A)(ii). On the admitted facts, the petitioner was undoubtedly entitled to ask for a decree of divorce. Would the allegation, if true, that she did not respond to her husband's invitation to come and live with him disentitle her to the relief? We do not find it possible to hold that it would. In* ***Ram Kali case*** *a Full Bench of the Delhi High Court held that mere non-compliance with the decree for restitution does not constitute a wrong within the meaning of Section 23(1)(a). Relying on and explaining this decision in the later case of Gajna Devi v. Purshotam Giri, a learned Judge of the same High Court observed:*
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> > *"Section 23 existed in the statute book prior to the insertion of Section 13(1-A) ... Had Parliament intended that a party which is guilty of a matrimonial offence and against which a decree for judicial separation or restitution of conjugal rights had been passed, was in view of Section 23 of the Act, not entitled to obtain divorce, then it would have inserted an exception to Section 13(1-*

[5] (1977) 4 SCC 12

A) and with such exception, the provision of Section 13(1-A) would practically become redundant as the guilty party could never reap benefit of obtaining divorce, while the innocent party was entitled to obtain it even under the statute as it was before the amendment. Section 23 of the Act, therefore, cannot be construed so as to make the effect of amendment of the saw by insertion of Section 13(1-A) nugatory.

. . . the expression 'petitioner is not in any way taking advantage of his or her own wrong' occurring in clause (a) of Section 23(1) of the Act does not apply to taking advantage of the statutory right to obtain dissolution of marriage which has been conferred on him by Section 13(1-A) . . . In such a case, a party is not taking advantage of his own wrong, but of the legal right following upon of the passing of the decree and the failure of the parties to comply with the decree . . ."

In our opinion the law has been stated correctly in Ram Kali v. Gopal Dass and Gajna Devi v. Purshotam Giri. Therefore, it would not be very reasonable to think that the relief which is available to the spouse against whom a decree for restitution has been passed, should be denied to the one who does not insist on compliance with the decree passed in his or her favour. In order to be a "wrong" within the meaning of Section 23(1)(a), the conduct alleged has to be something more than a mere disinclination to agree to an offer of reunion, it must be misconduct serious enough to justify denial of the relief to which the husband or the wife is otherwise entitled."

(***Emphasis supplied***)

18. Mere estrangement or lack of desire to continue the matrimonial bond cannot amount to "wrong". The Appellant has failed to show that the Respondent had taken any advantage in the divorce proceedings or that the Appellant suffered prejudice.

19. In our considered view, the learned Family Court has correctly appreciated the factual matrix and has arrived at a reasoned conclusion.

20. In view of the aforesaid discussion on facts and law, we do not find any reason to interfere with the Impugned Judgement dated

08.01.2025 passed by the learned Family Court in HMA No. 1040/2020.

21. Having found no merit in the Appeal, the same, along with the pending application(s), if any, is accordingly dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

AUGUST 11, 2025/sg/er/rgk