

A.F.R.

Neutral Citation No. - 2025:AHC:147955

Reserved On: 21.08.2025

Delivered On: 26.08.2025

Court No. - 9

Case :- MATTERS UNDER ARTICLE 227 No. - 9347 of 2025

Petitioner :- Sunil Dubey

Respondent :- Minakshi

Counsel for Petitioner :- Chandan Kumar Chaturvedi

Hon'ble Manish Kumar Nigam,J.

1. This petition has been filed challenging the order dated 31.07.2025 passed by Additional Principal Judge, Family Court, Court No. 1, Azamgarh in Case No. 1138 of 2024 (Sunil Dubey Vs. Minakshi) by which an application filed by the petitioner Paper No. 13-Ka for waiving off the filing of registration certificate of the marriage before the court has been rejected by the court below.

2. Brief facts of the case are that husband-petitioner and defendant-wife filed an application under Section 13 (B) of the Hindu Marriage Act, 1955 for divorce by mutual consent on 23.10.2024 which was registered as Case No. 1338 of 2024. During the pendency of the petition, learned Family Court Judge by order dated 04.07.2025 fixed 29.07.2025 for filing of marriage certificate. The petitioner filed an application Paper No. 13-Ka with the prayer that the Registration Certificate is not available with the parties and there is no compulsory requirement for getting the marriage registered under the Hindu Marriage Act, 1955 (hereinafter referred as "Act, 1955") therefore, the petitioner may be exempted from filing the marriage certificate. The said application was also supported by the opposite party. The court below by order dated 31.07.2025 has rejected the application filed by the petitioner on the ground that as per

Rule 3(a) of Hindu Marriage and Divorce Rules, 1956 dated 18.09.1956, (hereinafter referred as "Rules, 1956") it is mandatory that in every proceeding under the Hindu Marriage Act, 1955 marriage certificate should be annexed along with the proceedings, therefore, even though there is no objection by the other side, since the filing of marriage certificate is mandatory as per Rule 3(a) of Rules, 1956, the same can not be exempted and the application of the petitioner was rejected. Hence the present petition.

3. Learned counsel for the petitioner contended that Section 8 of the Hindu Marriage Act, 1955 provides for registration of marriage but the marriage is not invalidated for want of registration of marriage and it has been further submitted by the counsel for the petitioner that since the marriage of the petitioner was solemnized on 27.06.2010, therefore, the provisions of Uttar Pradesh Marriage Registration Rules, 2017 (hereinafter referred as "Rules, 2017") will not apply to marriage solemnized before the commencement of the Rules and even otherwise, as per Rule 6 of Rules, 2017, the marriage will not be illegal for want of registration.

4. Since there is no objection by the other side to the application filed by the petitioner and the petition is arising out of proceedings under Section 13(B) of the Hindu Marriage Act, 1955 this petition is being disposed of at the admission stage itself without issuing notice to the opposite party as there is no factual dispute in the petition.

5. Before considering the submission of learned counsel for the petitioner, it would be appropriate to consider the provisions of Section 8 of the Hindu Marriage Act, 1955 which is quoted as under:-

"Section 8 in The Hindu Marriage Act, 1955

8. Registration of Hindu marriages.-

(1)For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner

and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose.

(2)Notwithstanding anything contained in sub-section (1), the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such cases as may be specified, and where any such direction has been issued, any person contravening any rule made in this behalf shall be punishable with fine which may extend to twenty-five rupees.

(3)All rules made under this section shall be laid before the State Legislature, as soon as may be, after they are made.

(4)The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee.

(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."

6. There was no requirement of registration of the Hindu marriage before the commencement of Hindu Marriage Act, 1955. Generally, Hindus do not get their marriages registered unlike adoption, transfer of property and partition. The Hindu Marriage Act, 1955 does not contain the rules of registration and the State Government has been authorized to make the rules. The State Government has promulgated Uttar Pradesh Marriage Registration Rules, 2017 in exercise of powers under Article 154 read with Article 162 of the Constitution of India. Rule 6(1) of the Rules, 2017 provides that after the commencement of the Rules, any marriage solemnized where one of the parties is permanent resident of State of U.P. or where the marriage has been solemnized within the limits of State of U.P., the registration will be mandatory. Sub-rule (2) of Rule 6 provides, in case, the marriages which are not being registered can be registered after commencement of these Rules in accordance with the procedure prescribed by Rule 7 of Rules, 2017. It further provides that any marriage solemnized prior to commencement of this Rule or after the commencement of this Rule will not be illegal for want of registration.

Rule 6 of Uttar Pradesh Marriage Registration Rules, 2017 is quoted as under:-

"(1) इस नियमावली के प्रारम्भ होने के पश्चात, सम्पन्न प्रत्येक विवाह या पुनर्विवाह, जहाँ विवाह के पक्षकारों में से कोई एक उत्तर प्रदेश राज्य का स्थायी निवासी हो अथवा विवाह उत्तर प्रदेश राज्य की सीमा के अन्दर सम्पन्न हुआ हो, का पंजीकरण कराया जाना अनिवार्य होगा।

परन्तु यह कि ऐसे विवाह जिनका पंजीकरण भारत के किसी राज्य में प्रवृत्त विवाह पंजीकरण अधिनियम /नियमावली के अधीन किया गया है इस नियमावली के लागू होने के पश्चात इस नियमावली के अन्तर्गत पंजीकृत माने जायेंगे।

(2) ऐसे विवाह जिनका पंजीकरण अभी तक नहीं कराया गया है, इस नियमावली के लागू होने के पश्चात नियम 7 में विहित रीति से कराया जा सकता है। इस नियमावली के लागू होने के पूर्व अथवा पश्चात सम्पन्न विवाह मात्र इस कारण से अविधिमान्य नहीं होगा कि ऐसा विवाह इस नियमावली के अन्तर्गत पंजीकृत नहीं कराया गया है।"

7. When a Hindu marriage is solemnized in accordance with the provisions of Hindu Marriage Act, 1955, in order to facilitate proof of such marriage by Section 8(1) of the Act, 1955, the State Governments are empowered to make rules for registration of such marriage. Such Rules may provide for keeping over Hindu Marriage Register wherein parties may record the particulars of their marriage in such manner and subject to such condition as may be prescribed. The purpose of registration is only to furnish a convenient evidence of marriage.

8. Sub-section (4) of Section 8 of Act, 1955 provides that Hindu Marriage Register will be admitted as evidence. Sub-section (2) of Section 8 of Act, 1955 provides if the State Government deems it proper, it can make registration compulsory. The violation of this requirement, however, would not affect the validity of marriage.

9. By sub-Section (5) of Section 8 of Act, 1955, it is provided that omission to make an entry in pursuance of the provisions of this Section does not, however, affect the validity of marriage. Thus, notwithstanding

any Rules made in pursuance of the provisions in sub-Section (1) to (4) of Section 8 of Act, 1955 and due to failure to make entry of the marriage in the register, the validity of marriage is not affected. In view of this Section, even where the State Government makes rules for compulsory registration of marriage, there cannot be a Rule declaring marriage invalid for want of registration. Even the sub-Rule (2) of Rule 6 of Rules, 2017 provides that marriage will not be invalid for non-registration of marriage.

10. In case of **Malati Dasi Vs. Japa Hari Pal and Ors** reported in **MANU/WB/0363/1989**, Calcutta High Court in paragraph No. 10 of the judgment has held as under:-

"10. Mr. Sengupta's second contention that since the marriage has been registered under Section 8 of the Hindu Marriage Act the Certificate Ext. 2 has conclusively proved the second marriage in this case. The provision for registration of a Hindu Marriage was made to provide a separate mode of proving the marriage. We have already indicated that even if the accused admits a second marriage that may not be sufficient to warrant, a conviction under Section 494 I.P.C. It has to be established in evidence that the second marriage during the subsistence of the first marriage has been solemnized as contemplated by law. If admission is insufficient to prove the second marriage only a certificate of marriage issued by the Marriage Registrar under Section 8 of the Hindu Marriage Act cannot sufficiently establish the marriage to warrant a conviction under Section 494 I.P.C. Ext. 2 will indicate that the marriage was registered at the instance of the accused. At best it can be construed as his admission or marriage with Malati. But whether it was a marriage solemnized properly would not be proved by that certificate alone."

11. In case of **R. Anita Marginic Vs. R. Annadurai** reported in **1992(1) HLR 509**, High Court of Madras had held in paragraph No. 10 of the judgment as under:-

"10. When the factum of marriage is disputed, evidence regarding performance of marriage according to Hindu rites must be brought on record to show that there had been a valid marriage. The registration is not the sole proof of marriage in order to become a valid marriage. Reference can be usefully made to the decision of the Calcutta High Court, reported in Mousumi Chakraborty v. Subrata Guha Royd (1991) 2 CCC 401. In the said decision a Division Bench of the Calcutta High Court has held as follows:

In this particular case, the appellant had filed a suit stating that there had been no marriage at all between her and the respondent. On the contrary, the

respondent claimed that there was a valid marriage. It is well settled principle that the burden of proof lies upon the party who substantially asserts the affirmative of the issue. The evidential burden in matrimonial case is that the burden is on the proponent, or in other words, the party who claims that there was a valid marriage, has to prove that marriage. The question is whether the production of marriage registration certificate raises a presumption and even if a presumption is there, whether the same could be rebutted. Section 8 of the Hindu Marriage Act, 1955 provides Hindu Marriages registration has been introduced for the purpose of facilitating the proof of Hindu Marriage. The registration is not the sole proof of marriage in order to become a valid marriage. Section 7 of the said Act provides that the validity of a marriage will depend on observance of "customary rites and ceremonies."

12. In case of **P. Kamakshi alias Kala Jacob Vs. P. Devaki and others** reported in **2000(2) MLJ 564**, Madras High Court in paragraph No. 34 of the judgment has held as under:-

"34. Merely because a marriage has not been registered under Hindu Marriage Act, it does not follow that in fact marriage has not taken place. To register the marriage is only for the purpose of evidence to prove the fact of marriage which has already taken place. An omission to register marriage will not invalidate marriage if in fact a marriage ceremony was performed. I take guidance to have the above view in view of the decision reported in Janaki Amma v. Rama Warier, 1985 K.L.T. 283, where learned Judge held omission to register marriage under Kerala Nair Act does not render a marriage invalid."

13. In case of **Varindra Singh and another Vs. State of Rajasthan** reported in **2005 (2) HLR 544**, Rajasthan High Court in paragraph No. 22 of the judgment has held as under:-

"22. Apart from the above, it will be worthwhile to mention here that Section 8 of the Act of 1955 only provides that for the purpose of facilitating the proof of Hindu marriage, the State Government may make rules providing the parties to any such marriage may have the particulars in relation to there marriage entered in such manner and subject to such conditions as may be prescribed. Therefore, the certificate itself is not a conclusive proof of the marriage and as per Sub-section 1 of the Section 8 itself, it is only a certificate of "facilitating the proof of Hindu Marriages."

14. The Supreme Court in case of **Seema (SMT) Vs. Ashwani Kumar** reported in **(2006) 2 SCC 578**, in paragraph Nos. 15 and 16 of the judgment has held as under:-

"15. As is evident from narration of facts though most of the States have framed rules regarding registration of marriages, registration of marriage is not compulsory in several States. If the record of marriage is kept, to a large extent, the dispute concerning solemnization of marriages between two persons is avoided. As rightly contended by the National Commission, in most cases non registration of marriages affects the women to a great measure. If the marriage is registered it also provides evidence of the marriage having taken place and would provide a rebuttable presumption of the marriage having taken place. Though, the registration itself cannot be a proof of valid marriage per se, and would not be the determinative factor regarding validity of a marriage, yet it has a great evidentiary value in the matters of custody of children, right of children born from the wedlock of the two persons whose marriage is registered and the age of parties to the marriage. That being so, it would be in the interest of the society if marriages are made compulsorily registrable. The legislative intent in enacting Section 8 of the Hindu Act is apparent from the use of the expression "for the purpose of facilitating the proof of Hindu Marriages".

16. As a natural consequence, the effect of non registration would be that the presumption which is available from registration of marriages would be denied to a person whose marriage is not registered."

15. The Supreme Court in case of **Dolly Rani Vs. Manish Kumar Chanchal** reported in **2024 LawSuit (SC) 387** has held in paragraph No. 19 as under:-

"19. Under Section 8 of the Act, it is open for two Hindus married under the provisions of the Act to have their marriage registered provided they fulfil the conditions laid down therein regarding performance of requisite ceremonies. It is only when the marriage is solemnised in accordance with Section 7, there can be a marriage registered under Section 8. The State Governments have the power to make rules relating to the registration of marriages between two Hindus solemnised by way of requisite ceremonies. The advantage of registration is that it facilitates proof of factum of marriage in a disputed case. But if there has been no marriage in accordance with Section 7, the registration would not confer legitimacy to the marriage. We find that the registration of Hindu marriages under the said provision is only to facilitate the proof of a Hindu marriage but for that, there has to be a Hindu marriage in accordance with Section 7 of the Act inasmuch as there must be a marriage ceremony which has taken place between the parties in accordance with the said provision. Although the parties may have complied with the requisite conditions for a valid Hindu marriage as per Section 5 of the Act in the absence of there being a "Hindu marriage" in accordance with Section 7 of the Act, i.e., solemnization of such a marriage, there would be no Hindu marriage in the eye of law. In the absence of there being a valid Hindu marriage, the Marriage Registration Officer cannot register such a marriage under the provisions of Section 8 of the Act. Therefore, if a certificate is issued stating that the couple had undergone marriage and if the marriage

ceremony had not been performed in accordance with Section 7 of the Act, then the registration of such marriage under Section 8 would not confer any legitimacy to such a marriage. The registration of a marriage under Section 8 of the Act is only to confirm that the parties have undergone a valid marriage ceremony in accordance with Section 7 of the Act. In other words, a certificate of marriage is a proof of validity of Hindu marriage only when such a marriage has taken place and not in a case where there is no marriage ceremony performed at all."

16. This Court in case of **Maharaj Singh Vs. State of U.P. and another** in **Application U/S 482 No. 38746 of 2024** decided on 8.04.2025 has held as under in paragraph No. 8 of the judgment as under:-

"8. The Apex Court in the case of Seema Vs. Ashwini Kumar, (2006) 2 SCC 578 directed to all the State Governments that marriage of all persons who are citizens of India should be compulsorily registrable irrespective of their religion and in pursuance of the direction of the Apex Court in the case of Seema Vs. Ashwini Kumar (supra) U.P. Registration of Marriage Rules 2017 were framed by the Governor of U.P. in exercise of his power under Article 154 r.w.s. 162 of the Constitution of India. As per the Marriage Registration Rules 2017, registration of marriage has been made compulsory irrespective of the religion of the parties to the marriage, and there is also a provision for issuing a marriage registration certificate. The above marriage certificate facilitates prima facie proof of factum of marriage. However, it is subject to the condition that the marriage registration certificate should be obtained after performing a valid marriage in accordance with the law. Therefore if the marriage between two Hindus was not performed in accordance with the procedure mentioned in section-7 of the Hindu Marriage Act, even then, the marriage registration certificate issued under the Rules of 2017 will not be a substantive proof of marriage."

17. Thus, from the laws as laid down by various High Courts including this Court as well as the Supreme Court, it is settled that registration certificate is only an evidence to prove the marriage and absence of registration of marriage will not invalidate the marriage in view of sub-Section 5 of Section 8 of the Hindu Marriage Act, 1955.

18. Coming to the facts of the present case, the petition for divorce has been filed under Section 13(B) of the Hindu Marriage Act, 1955 seeking divorce by mutual consent. There is no dispute between the parties regarding factum of marriage, rather the same is admitted. The insistence of the court below for filing the registration certificate relying upon sub-

Rule 3(a) of the Hindu Marriage Divorce Rules, 1956 dated 18.09.1956 is uncalled for.

19. In the case of **Sangram Singh versus Election Tribunal Kotah AIR 1955 SCC425**, the Hon'ble Supreme Court, has held that the Code of Procedure must be regarded as such. It is "procedure", something designed to facilitate justice and further its end. Not a penal indictment for punishment and penalties. Not a thing designed to trip people up. Too technical construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against, provided always that justice is done to both sides lest, the very means designed for furtherance of justice. It has also been held that our laws of procedure are grounded on a principle of natural justice. The relevant paragraph nos. 16 and 17 of the case of Sangram Singh (supra) are being reproduced as under:-

"16. Now a code of procedure must be regarded as such. It is 'procedure', something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to 'both' sides) lest the very means designed for the furtherance of justice be used to frustrate it."

"17 Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle."

20. In **Chinnammal and other versus Arumugham (1990) 1 SCC 513** the Hon'ble Supreme Court has held that the Code of Civil Procedure is body of procedural laws designed to facilitate justice and it should not be treated as enactment providing for punishment and penalties. The laws of procedure should be so construed as to render justice wherever

reasonably possible. Paragraph nos. 16 and 17 of the aforesaid judgment are being reproduced as under:-

"16. This is also the principle underlying Section 144 of the CPC. It is the duty of all the Courts as observed by the Privy Council "as aggregate of those tribunals" to take care that no act of the court in the course of the whole of the proceedings does an injury to the suitors in the Court. The above passage was quoted in the majority judgment of this Court in A.R. Amtulay v. R.S. Nayak and Ors., MANU/SC/0002/1988MANU/SC/0002/1988 : 1988CriLJ1661 . Mukherjee, J., as he then was, after referring to the said observation of Lord Cairns, said (at 672):

No man should suffer because of the mistake of the Court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the handmaids of justice and not the mistress of the justice. Ex debito justitiae, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied.

17. It is well to remember that the CPC is a body of procedural law designed to facilitate justice and it should not be treated as an enactment providing for punishments and penalties. The laws of procedure should be so construed as to render justice wherever reasonably possible. It is in our opinion, not unreasonable to demand restitution from a person who has purchased the property in court auction being aware of the pending appeal against the decree."

21. In the case of **Ghanshyam Das versus Union of India (1984) 3 SCC 46**, the Hon'ble Supreme Court has held that our laws of procedure are based on the principle that as far as possible no proceedings in a court of law should be allowed to be defeated on their technicalities. In the case of **Sukhveer Singh versus Brijpal Singh (1997) 2 SCC 200** it was held that procedure is the handmaid to substantial rights.

22. In the case of **Salem Advocate Bar Association versus Union of India reported in AIR 2005 SCC 3353**, the Hon'ble Supreme Court has held that the rule and procedure are handmaid of justice and not its mistress. It is relevant to reproduce Paragraph 21 of the report as under:-

"21. The use of the word "shall" in Order VII Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its

design and context in which it is enacted. The use of the word "shall" is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are hand-maid of justice and not its mistress. In the present context, the strict interpretation would defeat justice."

23. Rule 3(a) of the Hindu Marriage and Divorce Rules, 1956 dated 18.09.1956 framed by the High Court of Judicature at Allahabad is quoted as under:

"3. Petition- (a) Every petition under the Act shall be accompanied by a certified extract from the Hindu Marriage Register maintained under section 8 of the Act, where the marriage has been registered under this Act.

b...."

24. Even the sub-Rule (a) of Rule 3 of Rules, 1956 provides that the petition under Hindu Marriage Act shall be accompanied by a certified extract from Hindu Marriage Register maintained under Section 8 of the Act where the marriage has been registered under this Act. The requirement of filing registration certificate is only in cases where the marriage is registered under Section 8 of Act. Admittedly, in the present case, the marriage which was solemnized in the year 2010 is not registered and therefore, there is no necessity of filing registration certificate.

25. In view of the laws laid down by the Supreme Court and also in view of sub-Rule (a) of Rule 3 of Rules, 1956, I am of the view that insistence by the Principal Judge, Family Court for filing the marriage certificate is wholly uncalled for and therefore, the order passed by the court below is liable to be set aside.

26. Accordingly, the petition is allowed and order dated 31.07.2025 is set aside.

27. Since the petition for mutual divorce is pending since 2024, Additional Principal Judge, Family Court, Court No. 1, Azamgarh is

directed to consider and decide the aforesaid pending proceeding, in accordance with law, expeditiously, after giving opportunity of hearing to the parties concerned as well as an opportunity to lead evidence in support of their case and without granting unnecessary adjournments to either of the parties provided that there is no other legal impediment, keeping in view the statutory mandate of Section 21-B of the Hindu Marriage Act.

Order Date: 26.08.2025

Nitika Sri.

(Manish Kumar Nigam,J.)