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

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*Judgment reserved on: 10.03.2026**Judgment pronounced on: 05.05.2026**Judgment uploaded on: 08.05.2026*+ **CRL.REV.P.(MAT.) 171/2024 & CRL.M.A. 38498/2024,**
CRL.M.A. 38499/2024, CRL.M.A. 38500/2024

[REDACTED]

.....Petitioner

Through: Ms. Meera Kaura Patel
(DHCLSC), Ms. Ritika Saini
and Ms. Monika Chowdhary,
Advocates
Mr. Shailesh Chandra Jha,
DHCLSC in CRL.M.A.
38435/2025

versus

[REDACTED]

.....Respondent

Through: Respondent-in-person

CORAM:**HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J****CRL.M.A. 38435/2025 (impleadment of R-2) in**
CRL.REV.P.(MAT.) 171/2024

1. By way of the present application, the applicant, i.e., the second wife of the respondent-husband, seeks her impleadment in the above-captioned petition, whereby the petitioner-wife assails the judgment dated 16.04.2024 [hereafter 'impugned judgment'] passed



by the learned Judge, Family Court-02, East District, Karkardooma Courts, Delhi, in MT 247/2021, title [REDACTED] [REDACTED]. The said petition had been filed under Section 125 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'] by the petitioner herein, claiming maintenance for herself as well as for the two minor children in her custody.

2. By way of the impugned judgment dated 16.04.2024, the learned Family Court was pleased to grant maintenance of ₹10,000/- per month each to the minor daughter and son of the petitioner and the respondent, amounting to a total of ₹20,000/- per month, till such time as they remained entitled to receive the same as per law. However, no maintenance was awarded to the petitioner-wife in view of Section 125(4) of the *Cr.P.C.*, on the ground that she was residing separately from her husband without any sufficient reason.

3. Aggrieved by the denial of maintenance to herself, the petitioner-wife preferred the present petition.

4. In the meantime, it is also pertinent to note that the marriage between the parties was solemnized on 20.01.2005 at an Arya Samaj Mandir, and was again solemnized in the presence of their family members on 30.04.2006. The parties were blessed with a female child 'M' on 03.03.2007 and a male child 'A' on 15.10.2008. The relationship between the parties turned sour, particularly in the years 2018 and 2019. In October 2019, the respondent-husband had filed a petition under Section 9 of the Hindu Marriage Act, 1955 [hereafter



‘HMA’] against the petitioner-wife, seeking restitution of conjugal rights, which petition was opposed by the petitioner. The said petition was eventually withdrawn in May 2022. Prior thereto, the petitioner-wife had filed a petition seeking divorce on the ground of cruelty against the respondent (i.e., HMA no. 739/2022) in April 2022. In August 2022, the respondent-husband instituted a petition under Sections 13(1)(i-a) and (i-b) of the HMA (i.e., HMA no. 1410/2022), seeking divorce from the petitioner-wife on the grounds of cruelty as well as desertion.

5. By way of a judgment dated 16.01.2024, the learned Family Court was pleased to allow HMA no. 1410/2022 and dissolve the marriage between the petitioner and the respondent, after holding that the petitioner-wife had deserted, as well as inflicted cruelty upon, the respondent-husband. However, the divorce petition filed by the petitioner-wife was not decided by the learned Family Court.

6. It is in this background of the judgment dated 16.01.2024 that the learned Family Court, while passing the impugned judgment dated 16.04.2024, held that the petitioner-wife was not entitled to maintenance since she had deserted the respondent-husband.

7. It is further relevant to note that the judgment dated 16.01.2024 passed by the learned Family Court, granting divorce in favour of the respondent-husband, was challenged by the petitioner-wife before the Division Bench of this Court by way of MAT.APP. (F.C.) 256/2024 in August 2024, and vide order dated 13.08.2024, the operation of the



said judgment and the decree passed thereunder was stayed by the Division Bench of this Court.

8. Notably, on 29.07.2024, the respondent-husband solemnized marriage with the applicant. The applicant states that the said marriage was solemnized on 29.07.2024, in accordance with Hindu rites and ceremonies, after the expiry of the statutory period for assailing the judgment of divorce. It is thus contended that the said marriage is legally valid in terms of Section 15 of the HMA.

9. The learned counsel appearing for the petitioner, i.e., the first wife of the respondent, submits that the applicant, being the second wife of the respondent, seeks her impleadment in the present revision petition. However, the *lis* in question is confined to the issue of maintenance between the revisionist and her children on the one hand, and the respondent on the other. It is contended that the applicant is neither a necessary nor a proper party, as her presence is not required for the effective adjudication of the present proceedings, and therefore, she ought not to be impleaded. It is further submitted that impleadment of the applicant would unnecessarily delay the proceedings and unduly widen their scope. The learned counsel also argues that merely by virtue of being the second wife of the respondent, the applicant cannot claim impleadment as a matter of right, particularly when no relief has been sought against her in the present petition. It is contended that the revisionist, being *dominus litis*, cannot be compelled to litigate against a person against whom



no relief is claimed. Accordingly, it is prayed that the present application be dismissed.

10. The learned counsel appearing for the applicant, i.e., the second wife of the respondent, submits that the applicant is a necessary party to the present petition, being the legally wedded wife of the respondent, and that her marriage was solemnized after the decree of divorce had attained finality in terms of Section 15 of the HMA. It is further submitted that the presence of the applicant is essential for the effective and complete adjudication of the issues involved in the present maintenance proceedings. It is also argued that, in the absence of impleadment, any order passed in the present proceedings may adversely affect the rights of the applicant, thereby resulting in a violation of the principles of natural justice. Accordingly, it is prayed that the applicant be impleaded as a party to the present proceedings in the interest of justice.

11. This Court has **heard** arguments addressed on behalf of the petitioner as well as the applicant, and has perused the case file.

12. The issue before this Court is whether the applicant, who claims to be the second wife of the respondent, ought to be impleaded as respondent no. 2 in the present case, and whether her non-impleadment has any bearing on the adjudication of the present petition.

13. At the outset, this Court is of the considered opinion that a person may be impleaded in a petition only if such person qualifies



either as a necessary party or a proper party to the proceedings in question, i.e. the *lis*.

14. A “necessary party” is one who ought to be joined in the proceedings and in whose absence no effective decree can be passed by the Court. Non-impleadment of such a party is fatal to the proceedings. A “proper party,” on the other hand, is not essential for passing an effective decree, but whose presence enables the Court to completely, effectively, and conclusively adjudicate upon all the issues involved in the dispute, even though no relief may be directly granted to or against such party.

15. The Hon’ble Supreme Court in ***Mumbai International Airport (P) Ltd. v. Regency Convention Centre and Hotels (P) Ltd.*** (2010) 7 SCC 417, in context of civil suits, held as under:

“8. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure (“the Code”), which provides for the impleadment of proper or necessary parties. The said sub-rule is extracted below:

“Court may strike out or add parties

(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be



necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party. A ‘necessary party’ is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a ‘necessary party’ is not impleaded, the suit itself is liable to be dismissed. A ‘proper party’ is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff....”

16. A Coordinate Bench of this Court, in ***Nazra Khatoon v. Mohd. Zafar & Ors.***: 2025 DHC 10008, has reiterated the distinction between necessary and proper parties and has also laid down the tests for determining who qualifies as a necessary party. The relevant observations are reproduced hereinbelow:

“4. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely,



effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. Merely the fact that a person is likely to secure a right/interest in the suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit. Two tests are to be satisfied for determining the question as to who is the necessary party and these tests are - (a) there must a right to some relief against such party in respect of the controversies involved in the proceedings and (b) no effective decree can be passed in the absence of such party. Proper party is one whose presence is necessary for effective and complete adjudication of all the questions involved in the suit.”

17. From the foregoing discussion, it is evident that a person may be impleaded in a proceeding only if such person qualifies either as a necessary party or a proper party; in the absence thereof, no third party can be added to the array of parties merely at the instance of such person.

18. In the present case, the applicant, who is the second wife of the respondent, asserts that she may be adversely affected in the event the proceedings are decided in favour of the revisionist. However, this Court is of the view that such an apprehension, by itself, does not confer upon her the status of either a necessary or a proper party for the purposes of the present proceedings.

19. Insofar as the present proceedings are concerned, the revisionist has instituted the petition seeking maintenance from the respondent for herself and their children. In this Court’s opinion, the



applicant is neither a necessary party, in whose absence the matter cannot be effectively adjudicated or any enforceable order cannot be passed, nor can she be regarded as a proper party, as her participation is not required for a complete, effective, and comprehensive determination of the issues involved in the present lis. The proceedings under Section 125 of the Cr.P.C. are confined to the rights and obligations *inter se* the petitioner and the respondent, and the status or claims of the applicant, if any, do not have any direct or substantial bearing on the adjudication of such rights.

20. Further, one of the contentions raised by the applicant for seeking impleadment is that she would be adversely affected if the revision petition is allowed and maintenance is granted to the revisionist, as she is dependent upon the respondent. It is also contended that she married the respondent after a decree of divorce had been granted in his favour and maintenance had been denied to the revisionist. This contention also is unmerited and cannot be accepted. If such a plea were to be entertained, it would open the door for every person claiming to be dependent, upon a person from whom maintenance is sought, to seek impleadment in such proceedings, which would unnecessarily enlarge the scope of what are otherwise summary proceedings under Section 125 of Cr.P.C. Such an approach would render the adjudication of the present revision petition unwieldy and defeat the very purpose of proceedings under Section 125 of Cr.P.C., which are intended to be expeditious and limited in scope.



21. It is also to be noted that no relief has been sought by the petitioner against the applicant. The dispute is essentially between the petitioner and the respondent, and the petitioner, being dominus litis, cannot be compelled to litigate against a person against whom no relief is claimed. The presence of the applicant is, therefore, not required for the effective adjudication of the present case.

22. Moreover, even assuming that the applicant is financially dependent upon the respondent-husband, it always remains open to the respondent to place all such relevant facts before this Court. It is also to be noted that though the applicant claims to have married the respondent after a decree of divorce had been granted in his favour, the said decree of divorce has admittedly been stayed by the Division Bench of this Court. The validity and effect of the said decree, as well as the rights flowing therefrom, are therefore sub judice before the Division Bench and would be adjudicated in those proceedings.

23. In the present proceedings, this Court is concerned only with the limited issue of maintenance as between the petitioner-wife and the respondent-husband. It is well settled that even a divorced wife is entitled to claim maintenance under Section 125 Cr.P.C., subject to the statutory conditions. Therefore, the entitlement of the petitioner-wife cannot be negated solely on account of the respondent's subsequent marriage, especially when the very decree of divorce is under challenge and its operation stands stayed.

24. Further, in the event the revision petition is allowed, the Court,



while determining the quantum of maintenance, would necessarily take into account the overall financial capacity of the respondent, including his income, liabilities, and obligations towards other dependents, if any. In this context, even if the applicant claims to be dependent upon the respondent, such a circumstance can always be brought on record by the respondent himself and duly considered by the Court while fixing the quantum of maintenance. This position stands settled by the Hon'ble Supreme Court in **Rajnish v. Neha: (2021) 2 SCC 324**, wherein comprehensive guidelines have been laid down for determining maintenance, including the requirement to consider the financial responsibilities and liabilities of the respondent-husband towards his dependents.

“III. Criteria for determining quantum of maintenance

77. The objective of granting interim/permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

78. The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependant children; whether the Applicant is educated and professionally qualified; whether the Applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the Applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.

79. In *Manish Jain v. Akanksha Jain* this Court held that the financial position of the parents of the applicant-wife, would



not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the Court should mould the claim for maintenance based on various factors brought before it.

80. On the other hand, **the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid.** The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications.

81. A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the Respondent, and the standard of living that the Applicant was accustomed to in her matrimonial home. The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the Respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.”

25. Thus, the interest of the applicant, if any, is sufficiently safeguarded within the existing framework of adjudication, and her impleadment is neither necessary nor warranted for the purposes of the present proceedings.



26. The applicant has also contended that her non-impleadment would amount to a violation of the principles of natural justice, inasmuch as any order passed in her absence would adversely affect her rights. This submission is equally untenable in this Court's opinion, since the principles of natural justice are attracted where a person's legal rights are directly and substantially in issue before the Court. In the present case, no adjudication is being undertaken with respect to any independent right of the applicant, and the proceedings in this petition are confined to determining the statutory obligation of the respondent to maintain the petitioner and the children born out of their wedlock.

27. As already noted above, no relief has been claimed against the applicant, nor is any determination being made regarding her marital status or her independent rights in this petition. At best, any impact on the applicant would be indirect or incidental, arising out of the financial obligations of the respondent. Such an incidental effect cannot be equated with a direct infringement of rights so as to attract the principles of natural justice or to confer a right of impleadment. Accordingly, the plea of violation of natural justice, being misconceived, is also rejected.

28. Therefore, having considered the submissions made and the settled position of law, and in view of the foregoing discussion, this Court is of the considered view that the presence of the applicant is neither necessary, nor required for the effective adjudication of the



present proceedings. The controversy in the captioned revision petition is confined to the claim of maintenance by the petitioner and her children against the respondent-husband, and the impleadment of the applicant would only unnecessarily expand the scope of the proceedings under Section 125 of Cr.P.C., and lead to avoidable delay. Thus, this Court is of the view that the applicant is neither a necessary nor a proper party to the present revision petition, and her impleadment is not called for.

29. Accordingly, the application seeking impleadment stands dismissed.

30. It is, however, clarified that any observations made herein are confined to the adjudication of the present application and shall not prejudice the rights and contentions of the parties in the main petition or in any other proceedings pending between them.

31. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

MAY 05, 2026/
TD/RB/AP