



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. _____ OF 2026
(Arising out of SLP (C) No. 2370 of 2016)

... APPELLANT (S)

VERSUS

... RESPONDENT (S)

ORDER

SANJAY KAROL, J.

Leave granted.

2. The present appeal arises from the impugned judgment and order dated 13.10.2015 passed in FA No. 194/1998 by the High Court of Judicature at Allahabad, whereby the appeal of the appellant herein against the order dated 05.03.1998 in Matrimonial Suit No. 304 of 1995 passed by the Family Court, Varanasi seeking divorce came to be dismissed.

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Reason: [?]

3. The brief facts giving rise to this appeal are that the marriage between the appellant and respondent was solemnized in May 1987. A child was born out of the wedlock. The couple remained together for approximately 8 years and separated sometime in the year 1995. The appellant alleges that the respondent left the matrimonial home without any reason. Thereafter, the appellant filed a petition under Section 13 of the Hindu Marriage Act, 1955, before the Family Court, Varanasi, seeking the grant of divorce on the ground of cruelty. The matter was referred to mediation, however, the same remained unsuccessful.
4. Meanwhile, in January, 1996, the respondent filed an application seeking maintenance under Section 125 of the Criminal Procedure Code, 1973. *Vide* order dated 04.07.1997, the Family Court awarded Rs. 400 per month to the wife and Rs. 200 per month towards the child.
5. *Vide* order dated 05.03.1998, the Family Court dismissed the appellant's petition for grant of divorce. It was observed that cruelty on the part of the respondent remains unproved. Aggrieved thereof, the appellant preferred an appeal before the High Court of Judicature at Allahabad.
6. The appellant has submitted that during the pendency thereof, the parties entered into a written compromise for grant of divorce on 17.09.2005. Consequently, on 17.09.2006, the appellant filed an application under Section 151 of the Civil Procedure Code, 1908¹, praying for grant of divorce on the basis of the terms of the compromise. *Vide* order dated 21.12.2006, the High Court directed the Family Court, Varanasi to verify the compromise and submit a report accordingly. After the issuance of notice by the Family Court, it is the appellant's

¹ Hereinafter 'CPC'.

case that the respondent did not appear before the Court and accordingly, the compromise could not be verified.

7. In view thereof, and considering the evidence on record, the High Court passed the impugned order dated 13.10.2015 dismissing the appeal of the appellant.
8. We have heard the learned counsel for the appellant. As the respondent remained unrepresented, this Court appointed learned counsel, Ms. Rohini Narayanan, as *amicus curiae (pro bono)*. *Vide* order dated 30.01.2026, this Court directed the learned *amicus curiae* to get in touch with the respondent directly, in writing, about her entitlement to legal aid and also through the District Legal Services Authority.
9. Thereafter, on 19.03.2026, the learned *amicus curiae* filed a compliance report. Therein, it was stated that the notice came to be returned as '*refused*'. Service was thereafter attempted through the concerned District Legal Services Authority. Upon visitation of the residence on 10-11.03.2026 by a paralegal volunteer, the family members of the respondent informed that she is of unsound mind and has been bedridden for approximately ten years. It has been further stated that access to the respondent was not facilitated and service was refused.
10. Consequently, this Court has to consider what is the appropriate course to be adopted when the question of a party's mental capacity arises in such civil and matrimonial proceedings?
11. It is imperative to discuss the existing statutory scheme, as pointed out by the learned *amicus*.

12. Order XXXII of the CPC deals with *‘Suits by or against Minors and Persons of Unsound Mind’*. Rule 1 provides for institution of a suit by a minor, in the name of a person who is his next friend. Rule 3 thereof provides for appointment of a guardian wherein the defendant is a minor. Rule 15 thereof makes Rules 1 – 14 applicable to persons of unsound mind. It reads:

“15. Rules 1 to 14 (except Rule 2-A) to apply to persons of unsound mind.— Rules 1 to 14 (except Rule 2-A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued.”

13. Notably, the CPC is silent on the specific procedure to be followed for such an enquiry into mental capacity. Reference must also be made to the Mental Healthcare Act, 2017². This Act was enacted in furtherance of India’s obligations under the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol. The objects and reasons thereof read as follows:

“An Act to provide for mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services and for matters connected therewith or incidental thereto.”

14. Chapter V of this Act elucidates certain rights for persons with mental illness. Section 18 recognizes the right to access mental health services and healthcare. Section 20 protects every person with mental illness from cruel, inhuman and degrading treatment. Section 27 provides every person with mental illness the right to free legal services for the purposes of exercising any rights under this Act.

² Hereinafter ‘this act’.

15. The Central Mental Health Authority has come to be established under Section 33 of this Act. Its functions have been enumerated in Section 43, which include the supervision of all mental health establishments, training of law enforcement and mental health professionals, advising the Central Government on matters relating to mental healthcare and maintaining a national register of clinical psychologists and mental health nurses. At the State level, Section 45 establishes State Mental Health Authorities to carry out similar functions at the State level.
16. Chapter X of this Act pertains to Mental Health Establishments and provides for their registration and inspection. Chapter XI constitutes Mental Health Review Boards under Section 73, by State Mental Health Authorities. The functions of these Boards have been enumerated under Section 82, which include, *inter alia*, appointment of a nominated representative on behalf of a person with mental illness; receiving and deciding an application from a person with mental illness against a decision taken by a mental health establishment; and inspecting prisons. Chapter XII contains provisions concerning the admission and treatment of persons with mental illness.
17. Chapter XIII is of particular relevance. Section 105 therein pertains to questions of mental illness. It reads:
- “105. Question of mental illness in judicial process.**—If during any judicial process before any competent court, proof of mental illness is produced and is challenged by the other party, the court shall refer the same for further scrutiny to the concerned Board and the Board shall, after examination of the person alleged to have a mental illness either by itself or through a committee of experts, submit its opinion to the court.”

18. Pertinently, even this Act, akin to the CPC, does not prescribe a procedure to be followed when the question of a party's mental capacity arises in judicial proceedings. Section 105 requires proof of such illness to be furnished and consequently provides for its verification. It is silent on the process to be followed in the absence thereof.
19. Over the recent past, discussions surrounding mental health and mental illness have become increasingly recognized. However, there is still a long way to go. The last National Mental Health Survey (2015-16) under the Ministry of Health and Family Welfare pointed out that approximately 11 out of every 100 adults are living with a diagnosable mental health disorder in India. It was also stated that in their lifetimes, approximately 14 out of 100 people in India have experienced a mental health illness.³ On the global scale, it is estimated that more than a billion people live with mental health conditions.⁴
20. It is borne from the above that mental health illnesses or issues are part of the daily lives of a considerable portion of the population. It is therefore incumbent upon Courts not to permit the use of allegations of mental health of the opposite party as an attempt to marginalize, discredit, malign or obstruct the opposite party. Recently, a Division Bench of this Court (**Vikram Nath, J. and Sandeep Mehta, J.**) in *Sukdeb Saha v. State of Andhra Pradesh and Ors.*⁵ reiterated that mental health is integral to Article 21 of the Constitution:

³ Press Information Bureau. (2025, February 7). *Advancing mental healthcare in India*. Ministry of Health and Family Welfare, Government of India.

⁴ World Health Organization. (2025). World mental health today: latest data.

⁵ 2025 SCC OnLine SC 1515.

“31. Mental health is an integral component of the right to life under Article 21 of the Constitution of India. This Court has, in a consistent line of precedents, affirmed that the right to life does not mean mere animal existence, but a life of dignity, autonomy, and well-being. Mental health is central to this vision. In *Shatrughan Chauhan v. Union of India* and *Navtej Singh Johar v. Union of India*, this Court recognised mental integrity, psychological autonomy, and freedom from degrading treatment as essential facets of human dignity under Article 21 of the Constitution of India. Further, the Mental Healthcare Act, 2017, a rights-based legislation, reinforces this constitutional mandate by recognising every person's right to access mental healthcare and protection from inhuman or degrading treatment in mental health settings. ...”
(emphasis supplied)

21. We also advert to the observations of this Court in *Sharda v. Dharampal*⁶:

“50. ...

The prime concern of the court is to find out as to whether a person who is said to be mentally ill could defend himself properly or not. Determination of such an issue although may have some relevance with the determination of the issue in the lis, nonetheless, the court cannot be said to be wholly powerless in this behalf. Furthermore, it is one thing to say that a person would be subjected to a test which would invade his right of privacy and may in some case amount to battery; but it is another thing to say that a party may be asked to submit himself to a psychiatrist or a psychoanalyst so as to enable the court to arrive at a just conclusion. Whether the party to the marriage requires a treatment or not can be found out only in the event, he is examined by a properly qualified psychiatrist. For the said purpose, it may not be necessary to submit himself to any blood test or other pathological tests.”

(emphasis supplied)

22. Consequently, the natural corollary of the existence of a mental health illness or issue cannot automatically be that the person is unfit to participate in judicial proceedings or understand the consequences of such proceedings, in the absence of a report by a mental health expert/board, in accordance with law. A time-

⁶ (2003) 4 SCC 493.

bound enquiry by the relevant experts is a must in such circumstances. As discussed above, the statutory scheme is silent on the procedure to be followed. It is the need of the hour that the legislature devises a relevant framework in this regard.

23. However, taking into account the statutory framework as it exists on date, we direct The State Mental Health Authority, Uttar Pradesh to facilitate an expert/team of experts, with the assistance of the District Legal Services Authority and State Police, to visit the residence of the Respondent to:

- a. Interact with the family members of the respondent;
- b. Interact with the respondent; ascertain her physical and mental condition;
- c. Render her medical treatment, if required, in accordance with law; and
- d. Suggest any other relevant factor for the adjudication of these proceedings.
- e. Report in this regard to be prepared and filed before this Court.

Needless to add, the respondent or her family would not be unduly disturbed. Prior intimation be made in writing, with advance notice, to the family of the respondent regarding such visit.

24. We are not inclined to accept the submission of the appellant that divorce be granted in the absence of the respondent, at this stage, as there is no evidence on record *qua* the mental state of the respondent.

25. We place on record our appreciation for the efforts of the learned *amicus curiae*.

26. List on 18.09.2026.

.....J.
(SANJAY KAROL)

.....J.
(NONGMEIKAPAM KOTISWAR SINGH)

New Delhi;
August 10, 2026

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).2370/2016

[Arising out of impugned final judgment and order dated 13-10-2015 in FA No.194/1998 passed by the High Court of Judicature at Allahabad]

M [REDACTED]

PETITIONER(S)

VERSUS

J [REDACTED]

RESPONDENT(S)

[HEARD BY: HON. SANJAY KAROL AND HON. NONGMEIKAPAM KOTISWAR SINGH, JJ.]

Date : 10-08-2026 This matter was called on for pronouncement of judgment today.

For Petitioner(s) :

Mr. Varun Singh, Adv.
Mr. Nitin Saluja, AOR
Ms. Bhumi Sharma, Adv.
Ms. Parijat, Adv.
Ms. Urvashi Chauhan, Adv.
Mr. Sidhant Dhingra, Adv.

For Respondent(s) : Mr. Rohini Narayanan, *Amicus Curiae* (pro bono)

1. Hon'ble Mr. Justice Sanjay Karol pronounced the order (reportable) of the Bench comprising His Lordship and Hon'ble Mr. Justice Nongmeikapam Kotiswar Singh.

2. Leave granted.

3. The appeal is adjourned to 18.09.2026 in terms of the signed order (reportable), which is placed on the file.

4. The operative portion of the order reads as under:

" 23. However, taking into account the statutory framework as it exists on date, we direct The State Mental Health Authority, Uttar Pradesh to

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facilitate an expert/team of experts, with the assistance of the District Legal Services Authority and State Police, to visit the residence of the Respondent to:

- a. Interact with the family members of the respondent;
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- c. Render her medical treatment, if required, in accordance with law; and
- d. Suggest any other relevant factor for the adjudication of these proceedings.
- e. Report in this regard to be prepared and filed before this Court.

Needless to add, the respondent or her family would not be unduly disturbed. Prior intimation be made in writing, with advance notice, to the family of the respondent regarding such visit.

24. We are not inclined to accept the submission of the appellant that divorce be granted in the absence of the respondent, at this stage, as there is no evidence on record qua the mental state of the respondent.

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25. We place on record our appreciation for the efforts of the learned amicus curiae.

26. List on 18.09.2026. "

5. The Registry to communicate a copy of this order to all concerned forthwith.

(D. NAVEEN)
COURT MASTER (SH)

(ANU BHALLA)
COURT MASTER (NSH)