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2026:DHC:9444

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

% ***Judgment reserved on: 04.08.2026***
Judgment pronounced on: 27.10.2026

CNR No. DLHC010140792021

\+ CM(M) 268/2021

[redacted]

.....Petitioner

Through: Ms. Geeta Luthra, Sr. Adv. with Mr. Pranjal Pandey, Mr. Anuj Singh, Mr. Prasann Prashar, Ms. Janvi Desai and Ms. Prachi Sharma, Advs.

versus

[redacted]

.....Respondent

Through: Mr. Prosenjeet Banerjee, Sr. Adv. with Ms. Shreya Singhal, Ms. Anshika Sharma, Ms. Mhasilenuo Keditsu & Ms. Kushagra, Advs. alongwith Respondent in person.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition has been preferred under Article 227 of the **Constitution of India**[1], assailing the **Order dated 19.10.2020**[2] passed by the **learned Principal Judge, South-East District, Family**

[1] Constitution
[2] Impugned Order

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Courts, Saket, New Delhi[3], in H.M.A. No. 794/2013 titled *'Sachin Taneja v. Shona (Sonali) Taneja'*, whereby the **Application filed in December 2019**[4] by the Respondent herein under Order VI Rule 17 of the **Code of Civil Procedure, 1908**[5], seeking amendment of his pleadings, came to be allowed.

2. By the Impugned Order, the learned Family Court has allowed the Application filed by the Respondent seeking amendment of his pleadings in the proceedings instituted by him under Section 25 read with Section 26 of the **Hindu Marriage Act, 1955**[6], seeking modification of the Judgment and Order dated 29.11.2011 and 11.05.2012 passed in the proceedings for dissolution of marriage between the parties by mutual consent.

3. The present Petition arises from the proceedings pending before the learned Family Court under Section 25 read with Section 26 of the HMA, wherein the Respondent seeks modification of the terms contained in the Judgment and Order dated 29.11.2011 and 11.05.2012, *inter alia*, with respect to the financial obligations towards the children and the arrangements concerning their custody and visitation. In the said proceedings, issues were framed by the learned Family Court on 27.03.2014, and the matter thereafter proceeded to trial. The Respondent's evidence was tendered on 01.11.2018 and his cross-examination commenced on 04.12.2018. It was during the pendency of the said proceedings, and after commencement of trial, that the Respondent filed the Application under Order VI Rule 17 of the CPC seeking amendment of his

[3] learned Family Court
[4] Amendment Application
[5] CPC
[6] HMA

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pleadings, which came to be allowed by the Impugned Order dated 19.10.2020.

4. At the outset, it is made clear that the principal question which arises for consideration in the present Petition is whether the learned Family Court was justified in allowing the Respondent's Application for amendment after commencement of trial, having regard to the requirements of Order VI Rule 17 of the CPC, the nature of the proceedings under Sections 25 and 26 of the HMA and, in particular, the power of the Family Court under Section 10(3) of the Family Courts Act, 1984 to adopt an appropriate procedure for arriving at the truth of the facts in issue.

5. For the sake of clarity, uniformity and consistency, the parties in the present petition shall hereinafter be referred to in accordance with their ranks before this Court.

BRIEF FACTS:

6. Shorn of unnecessary details, the brief facts necessary for the adjudication of the present Petition are as follows:

a) The marriage between the parties was solemnized on 03.03.1999 as per Hindu rites and ceremonies at New Delhi. Two children were born from the wedlock, namely, Armaan and Amaaya. The parties started residing separately in or around October 2010 and, having been unable to reconcile their differences, instituted proceedings under Sections 13B(1) and 13B(2) of the HMA seeking dissolution of their marriage by mutual consent. The first motion was allowed on 29.11.2011, while the second motion was allowed *vide* Judgment dated 11.05.2012, pursuant whereto the marriage between the parties stood dissolved by a decree of divorce by mutual consent.

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b) The aforesaid proceedings for dissolution of marriage were accompanied by a settlement between the parties governing, *inter alia*, the expenses and education of the children, household expenses, their supervision, custody and visitation. Under the arrangement so recorded, the Respondent herein had undertaken various financial obligations towards the children and the household, while the parties also agreed upon terms governing the residence of the children and their interaction and visitation with the parties.

c) Thereafter, the Respondent instituted proceedings before the learned Family Court by way of an Application dated 30.07.2013 under Section 25 read with Section 26 of the HMA, seeking variation/modification of the terms contained in the aforesaid Judgment and Order dated 29.11.2011 and 11.05.2012. The said proceedings, instituted in July 2013, sought modification of the arrangements relating to maintenance, custody and visitation, and was founded, *inter alia*, upon the Respondent's case concerning the circumstances in which the mutual-consent settlement had been arrived at and the subsequent conduct of the parties.

d) On the basis of the pleadings of the parties, the learned Family Court framed issues on 27.03.2014. The principal issue concerned whether the Judgment and Order dated 29.11.2011 and 11.05.2012 were liable to be modified in terms of the reliefs sought in the aforesaid Application. The learned Family Court also directed the parties to lead evidence.

e) In pursuance of the aforesaid directions, the Respondent filed his Evidence by way of Affidavit in January 2017 and an additional

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Affidavit of Evidence in November 2018. His evidence was tendered on 01.11.2018, and his cross-examination commenced on 04.12.2018.

f) In December 2019, the Respondent filed an Application under Order VI Rule 17 read with Order VII Rule 14 and Section 151 of the CPC, read with Section 10 of the **Family Courts Act, 1984**[7], seeking amendment of his pleadings and permission to place additional documents on record. Thus, by the time the Amendment Application came to be filed, the trial in the proceedings had already commenced. The Application sought to introduce, *inter alia*, averments concerning the Respondent's alleged change in financial circumstances, his association with Modular Infratech Pvt. Ltd., the health condition of his mother, the financial circumstances and lifestyle of the Petitioner, and subsequent developments concerning the custody and access arrangements relating to the children.

g) Among the further averments sought to be incorporated were allegations concerning the change of the children's surname from *"Taneja"* to *"Nath"*, which, according to the Respondent's own proposed amendment, came to his knowledge in May 2016, as well as the alleged removal of the children from their school and their subsequent shifting to the United Kingdom, in respect whereof reliance was sought to be placed upon a Letter dated 07.03.2018. The Amendment Application also sought to replace the existing Prayer so as to seek modification of the terms relating to children's and household expenses in view of the circumstances pleaded therein.

h) The Petitioner opposed the aforesaid Amendment Application, principally contending that the same had been filed after

[7] Family Courts Act

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commencement of trial and that the facts and documents sought to be introduced, save for certain events which were themselves subsequently pleaded, were either within the knowledge of the Respondent well before the commencement of trial or did not pertain to the real controversy arising in the proceedings under Section 25 and 26 of the HMA. It was further contended that the Amendment Application did not satisfy the requirement of *"due diligence"* contemplated under the *proviso* to Order VI Rule 17 of the CPC.

i) The Respondent, in reply, opposed the challenge to the amendment and contended that the proposed amendments related to subsequent events and changes in circumstances relevant to the modification of the maintenance, custody and visitation arrangements. It was also contended that proceedings under Sections 25 and 26 of the HMA, read with the provisions of the Family Courts Act, contemplate consideration of subsequent changes in circumstances and ought not to be subjected to a rigid application of the CPC in a manner which defeats the purpose of such proceedings.

j) *Vide* the Impugned Order dated 19.10.2020, the learned Family Court allowed the Amendment Application. The learned Family Court observed that, although the divorce by mutual consent had taken place long ago and there had been prolonged litigation between the parties, the amendments sought were necessary for the just decision of the case and did not change the nature of the proceedings. It was further observed that some of the amendments related to events which had taken place after the divorce and even after filing of the Application for modification under Section 25 and 26 HMA, but were nevertheless considered necessary for the just decision of the case.

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k) Aggrieved by the aforesaid Order, the Petitioner has approached this Court under Article 227 of the Constitution, principally contending that the amendment could not have been permitted after commencement of trial without satisfaction of the requirement of *"due diligence"* under the *proviso* to Order VI Rule 17 of the CPC. The Respondent, on the other hand, contends that the proceedings under Sections 25 and 26 of the HMA are concerned with changing circumstances and, read with Section 10 of the Family Courts Act, warrant a more flexible approach to the applicability of the aforesaid requirement. The rival contentions, therefore, call for consideration of the permissibility of the amendments in the facts and circumstances of the present case.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

7. Learned counsel appearing for the Petitioner submits that the Impugned Order is unsustainable, having been passed without considering the statutory requirement contained in the *proviso* to Order VI Rule 17 of the CPC. It is submitted that the Amendment Application was filed in December 2019, nearly one year after commencement of trial and almost six years after the issues had been framed on 27.03.2014. The Respondent had already filed his evidence and his cross-examination had commenced on 04.12.2018. It is, therefore, contended that the burden lay upon the Respondent to demonstrate that, despite due diligence, the matters sought to be introduced could not have been raised before commencement of trial, which burden was neither discharged nor even properly addressed by the learned Family Court.

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8. Learned counsel further submits that the proposed amendments are not necessary for determination of the real controversy in the proceedings under Sections 25 and 26 of the HMA. It is submitted that the Respondent's substantive case in the modification proceedings concerns the alleged fraud and circumstances surrounding his consent to the mutual-consent divorce, and that such question has necessarily to be determined with reference to the facts and circumstances existing at the relevant time, i.e., prior to the first and second motions which were allowed on 29.11.2011 and 11.05.2012 respectively. The subsequent events sought to be introduced by way of amendment, according to the Petitioner, do not advance the determination of that controversy.

9. It is further submitted that several of the facts and documents sought to be introduced were admittedly within the knowledge of the Respondent much prior to the filing of the Amendment Application. In particular, the Respondent's association with Modular Infratech Pvt. Ltd. had admittedly ceased in 2014; the documents concerning his financial position related to the period prior to commencement of evidence; and the Respondent himself had pleaded that the change in the surname of the children came to his knowledge in May 2016. It is thus contended that there was no explanation as to why such matters were not brought on record earlier, despite the issues having been framed in 2014 and evidence having commenced thereafter.

10. Learned counsel submits that the Amendment Application, in substance, seeks to introduce a new and materially different case concerning the Respondent's alleged financial incapacity, the health of his mother and the alleged conduct of the Petitioner concerning the

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children, which travels beyond the case originally pleaded in the modification proceedings. It is contended that the same would alter the fundamental nature of the proceedings and cannot be permitted under Order VI Rule 17 of the CPC. Reliance is placed upon the judgment of the Supreme Court in ***Revajeetu Builders & Developers v. Narayanaswamy & Sons***[8] in support of the submission that an amendment which changes the basic nature or character of the case ought not to be permitted.

11. Learned counsel further submits that the learned Family Court failed to record the specific satisfaction contemplated by the *proviso* to Order VI Rule 17 of the CPC. Reliance is placed upon ***M. Revanna v. Anjanamma***[9], ***Pandit Malhari Mahale v. Monika Pandit Mahale***[10] and ***Vidyabai v. Padmalatha***[11], to contend that once trial has commenced, the discretion to permit amendment stands circumscribed by the requirement of *"due diligence"* and the Court must return a finding that, despite exercising due diligence, the matter could not have been raised earlier. It is submitted that in the absence of such finding, the Impugned Order cannot be sustained.

12. Learned counsel accordingly submits that the Impugned Order, having permitted the Respondent to introduce the aforesaid amendments at a belated stage without satisfying the statutory requirements governing such amendment, is liable to be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

13. ***Per contra***, learned counsel appearing for the Respondent submits that there is no infirmity in the Impugned Order, whereby the

[8] (2009) 10 SCC 84
[9] (2019) 4 SCC 332
[10] (2020) 11 SCC 549
[11] (2009) 2 SCC 409

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Application seeking amendment of the modification proceedings was allowed. It is submitted that the amendments sought are founded upon events and circumstances which arose subsequent to the passing of the mutual-consent divorce decree and are directly relevant to the question whether the terms of settlement, particularly those relating to the children's expenses, access and other obligations, require modification. It is contended that the amendments neither alter the nature of the proceedings nor introduce an altogether new cause of action, but merely bring subsequent developments on record for an effective adjudication of the dispute.

14. Learned counsel submits that the proceedings under Sections 25 and 26 of the HMA are distinct in their nature and are intended to accommodate changes in the circumstances of the parties even after a decree has been passed. Section 25 of the HMA expressly empowers the Court to vary, modify or rescind an order for permanent alimony and maintenance upon a change in circumstances, while Section 26 of the HMA enables the Court to pass orders from time to time with respect to the custody, maintenance and education of minor children. It is, therefore, submitted that such proceedings cannot be treated as static proceedings that concluded with the passing of the original decree.

15. Learned counsel submits that the Family Courts Act is a special legislation and, in view of Section 10(3) thereof, the Family Court is not required to be bound by a rigid or technical application of the CPC in proceedings of the present nature. The object of the Family Court, it is contended, is to facilitate the settlement of disputes and ascertain the truth, and the procedural provisions must consequently be applied

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in a manner which advances substantive adjudication rather than defeats it on technical grounds. Reliance is placed upon ***A.V.T. v. T.***[12], ***S.V. v. V.***[13], ***Dipti Kapur v. Kunal Julka***[14], and ***Amina Bharatram v. Sumant Bharatram***[15], in support of the submission that proceedings before the Family Court are not to be subjected to a rigid application of the CPC where such an approach would impede the ascertainment of truth and effective adjudication of the matrimonial dispute.

16. Learned counsel further submits that the facts sought to be introduced by way of Amendment Application are material to the adjudication of the modification Application. These include the Respondent's subsequent financial circumstances, the financial position and lifestyle of the Petitioner, circumstances relating to the custody and removal of the children, and the alleged change in their surname. It is submitted that these developments have a direct bearing upon the continuing obligations arising from the settlement and are therefore relevant to the relief sought by the Respondent. The Respondent consequently submits that the proposed amendment would assist the Court in determining the real controversy and would avoid multiplicity of proceedings.

17. Learned counsel also submits that the *proviso* to Order VI Rule 17 of the CPC cannot be applied mechanically so as to defeat an amendment in proceedings under Sections 25 and 26 of the HMA, particularly where the very nature of the proceedings contemplates consideration of subsequent changes in circumstances. Reliance is placed upon the judgments cited in the written submissions, including

[12] 2018 SCC OnLine Del 9395
[13] 2018 SCC OnLine Del 100053
[14] AIR 2020 Del 156
[15] 2016 (231) DLT 682 (DB)

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Anshuman Sharma v. Monica Gupta[16], ***Malathi Ravi v. B.V. Ravi*** [17] and ***Rajnesh v. Neha***[18], to contend that proceedings for modification under Sections 25 and 26 of the HMA constitute a continuation of the matrimonial jurisdiction and are capable of taking into account circumstances arising after the original decree.

18. Learned counsel submits that the fact that the Amendment Application was filed after commencement of trial cannot, by itself, be determinative. The proposed amendments concern facts, circumstances and documents which arose or became relevant at different stages of the proceedings, including subsequent developments relevant to the adjudication of the Application seeking modification under Sections 25 and 26 of the HMA. It is further submitted that the Amendment Application specifically stated that the material sought to be brought on record was not available to the Respondent earlier and that there had been no delay in seeking the amendment.

19. Learned counsel lastly submits that permitting the amendments would, rather than prolonging the proceedings, enable the Court to adjudicate the entire controversy in the existing proceedings and avoid multiplicity of litigation.

20. On these grounds, learned counsel submits that the learned Family Court rightly exercised its discretion in allowing the Amendment Application and that no jurisdictional or legal infirmity has been demonstrated which would warrant interference by this

[16] 2008 SCC OnLine Del 1382
[17] (2014) 7 SCC 640
[18] (2021) 2 SCC 324

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Court. The present Petition, according to the Respondent, is therefore liable to be dismissed.

ANALYSIS:

21. Before proceeding to examine the rival contentions, it would be apposite to delineate the scope of the jurisdiction exercised by this Court under Article 227 of the Constitution. The jurisdiction under Article 227 of the Constitution is supervisory in nature and is intended to ensure that subordinate Courts and Tribunals act within the bounds of their jurisdiction and in accordance with law. It is not an appellate jurisdiction and is not intended to enable the High Court to substitute its own view for that of the subordinate Court merely because another view is possible.

22. The contours of the aforesaid jurisdiction are well settled. The power of superintendence is to be exercised sparingly and with a high degree of judicial discipline, and interference is warranted only where the order of the Court below suffers from a patent jurisdictional error, perversity, manifest illegality or results in a gross failure of justice. The Hon'ble Supreme Court in ***Shalini Shyam Shetty v. Rajendra Shankar Patil***[19], and ***Garment Craft v. Prakash Chand Goel***[20] has reiterated the aforesaid limitations and the requirement of judicial restraint while exercising supervisory jurisdiction.

23. In ***Shalini Shyam Shetty*** *(supra),* the Hon'ble Supreme Court has held that the power under Article 227 of the Constitution is to be exercised sparingly and only in appropriate cases where interference is necessary to keep the subordinate Courts within the bounds of their

[19] (2010) 8 SCC 329
[20] (2022) 4 SCC 181

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authority. The relevant observations of the Hon'ble Supreme Court read as under:

> " ****
> (*c*) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.
> (*d*) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in ***Waryam Singh***[21] and the principles in ***Waryam Singh*** (Supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.
> (*e*) According to the ratio in ***Waryam Singh*** (Supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, "within the bounds of their authority".
> (*f*) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.
> (*g*) Apart from the situations pointed in (*e*) and (*f*), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.
> (*h*) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.
> ****"

24. In ***Garment Craft*** *(supra)*, the Hon'ble Supreme Court reiterated that Article 227 of the Constitution does not permit the High Court to act as a court of first appeal and reappreciate/reweigh

[21] AIR 1954 SC 215

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evidence. The relevant observations of the Hon'ble Supreme Court read as under:

> "15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [***Prakash Chand Goel* v. *Garment Craft***[22]] is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. [***Celina Coelho Pereira* v. *Ulhas Mahabaleshwar Kholkar***[23]] The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.
> 16. Explaining the scope of jurisdiction under Article 227, this Court in ***Estralla Rubber* v. *Dass Estate (P) Ltd.***[24] has observed : (SCC pp. 101-102, para 6)
>
> > "*6.* The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is

[22] 2019 SCC OnLine Del 11943
[23] (2010) 1 SCC 217
[24] (2001) 8 SCC 97

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> also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

25. Keeping in view the aforesaid scope and parameters governing the exercise of jurisdiction under Article 227 of the Constitution, this Court shall now examine the rival contentions and the Impugned Order to determine whether any jurisdictional or legal infirmity warranting interference by this Court is made out. The relevant finding recorded in the Impugned Order are reproduced hereinbelow:

> "No doubt the divorce by mutual consent took place long ago between the parties and there is history of long drawn litigation between the parties, but at present the applicant is seeking certain amendments in his application under Section 25(2) read with Section 26 of HMA. I have also perused the written arguments of both the parties.
> The amendments sought by the applicant are necessary for the just decision of the case and it does not change the nature of the case. No doubt, some of the amendments sought are the events which took place in the life of the parties after the divorce took place and after filing of the application but they are necessary for the just decision of the case. Accordingly, the application is allowed."

26. The Court has considered the submissions advanced by learned counsel for the parties and perused the material placed on record. The question which arises for consideration is whether, while considering the Respondent's Amendment Application, the learned Family Court was required to apply the provisions of Order VI Rule 17 of the CPC strictly and in isolation, or whether the said provision was required to be considered in the context of the special procedural framework

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governing proceedings before a Family Court under Section 10 of the Family Courts Act, particularly where the proceedings arise under Sections 25 and 26 of the HMA.

27. The answer to the aforesaid question must necessarily begin with the legislative scheme underlying the Family Courts Act. The Statement of Objects and Reasons reflects the legislative recognition that disputes concerning marriage and family relationships require a forum and an approach different from that ordinarily adopted in civil litigation. The legislation was intended to promote conciliation, secure socially desirable results and reduce the rigidity of procedural and evidentiary requirements which may impede effective resolution of family disputes. The Family Courts Act was, therefore, conceived as a specialised statutory framework within which family disputes could be dealt with in a manner responsive to their peculiar nature and directed towards substantial and effective justice.

28. Section 10 of the Family Courts Act gives statutory expression to this legislative policy. While sub-section (1) makes the provisions of the CPC applicable to suits and proceedings before a Family Court, it expressly makes such application subject to the other provisions of the Act and the Rules. Sub-section (3), in turn, preserves the power of the learned Family Court to lay down its own procedure with a view to arriving at a settlement or at the truth of the facts alleged by one party and denied by the other. The provision is thus not merely an enabling provision permitting departure from procedure for convenience; it recognises that the effective adjudication of family disputes may, in an appropriate case, require a procedural course

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different from that which would ordinarily govern a civil trial. Section 10 of the Family Courts Act is reproduced hereinbelow:

> "**10. Procedure generally**.—(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.
> (2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.
> (3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other."

29. The scope and purpose of the procedural framework contemplated under Section 10 of the Family Courts Act has also been considered by this Court in ***Kusum Sharma v. Mahinder Kumar Sharma***[25]. While considering the statutory scheme of the Family Courts Act, this Court noticed that the Act adopts a less formal procedure and that, notwithstanding the applicability of the CPC under Section 10(1) of the Family Courts Act, the learned Family Court is empowered to evolve its own procedure. Significantly, the Court noticed that Section 10(3) of the Family Courts Act expressly uses the expression *"truth"* and empowers the learned Family Court to devise a procedure for determining the "truth of the facts" alleged by one party and denied by the other. The decision thus underscores that the procedural framework before a Family Court is intended to facilitate

[25] 2020 SCC OnLine Del 931

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ascertainment of the truth and effective determination of the substantive dispute. The relevant portion of the aforesaid Judgment is reproduced hereinbelow:

> "***Section 10 of Family Courts Act, 1984***
> **26.** The Family Courts Act adopts a less formal procedure. Although Section 10 of the Act makes the procedure laid down under the Code of Civil Procedure, 1908 applicable to Family Court proceedings, it also lays down that the Family Court is free to evolve its own rules of procedure.
> **27.** Section 10(3) of the Family Courts Act specifically uses the word '***truth'*** and casts a duty on the Family Court to lay down procedure to determine the truth of the facts alleged by one party and denied by the other. Section 10 of the Family Courts Act is reproduced hereunder:
>
> *"**Section 10** - **Procedure generally***
> *(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings other than proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)], before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.*
> *(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973, (2 of 1974), or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.*
> *(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the **truth** of the facts alleged by the one party and denied by the other."*
>
> *(Emphasis Supplied)*
>
> ***Truth should be the Guiding Star in the Entire Judicial Process***
> **28.** It is the duty of the Court to ascertain the true income of the parties and then pass the appropriate order relating to maintenance. Truth is the foundation of justice. Dispensation of justice, based on truth, is an essential feature in the justice delivery system. People would have faith in Courts when truth alone triumphs. The justice based on truth would establish peace in the society.

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29. Krishna Iyer J. in *Jasraj Inder Singh* v. *Hemraj Multanchand*, (1977) 2 SCC 155 described truth and justice as under:

> *"8. ...Truth, like song, is whole, and half-truth can be noise! Justice is truth, is beauty and the strategy of healing injustice is discovery of the whole truth and harmonising human relations. Law's finest hour is not in meditating on abstractions but in being the delivery agent of full fairness. This divagation is justified by the need to remind ourselves that the grammar of justice according to law is not little litigative solution of isolated problems but resolving the conflict in its wider bearings."*
>
> *(Emphasis Supplied)*

30. In *Union Carbide Corporation* v. *Union of India*, (1989) 3 SCC 38, the Supreme Court described justice and truth to mean the same. The observations of the Supreme Court are as under:

> *"30. ...when one speaks of justice and truth, these words mean the same thing to all men whose judgment is uncommitted. Of Truth and Justice, Anatole France said:*
> *"Truth passes within herself a penetrating force unknown alike to error and falsehood. I say truth and you must understand my meaning. For the beautiful words Truth and Justice need not be defined in order to be understood in their true sense. They bear within them a shining beauty and a heavenly light. I firmly believe in the triumph of truth and justice. That is what upholds me in times of trial...."*
>
> *(Emphasis Supplied)*

31. In *Mohanlal Shamji Soni* v. *Union of India*, 1991 Supp (1) SCC 271, the Supreme Court observed that the presiding officer of a Court should not simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost. The presiding officer has a legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice.

32. In *Chandra Shashi* v. *Anil Kumar Verma*, (1995) 1 SCC 421, the Supreme Court observed that to enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, pre-variation and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in Courts when they would find that truth alone triumphs in Courts.

33. In *Zahira Habibullah Sheikh* v. *State of Gujarat*, (2006) 3 SCC 374, the Supreme Court observed that right from the inception of

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the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying existence of Courts of justice.

34. In *Himanshu Singh Sabharwal* v. *State of Madhya Pradesh*, (2008) 3 SCC 602, the Supreme Court held that the trial should be a search for the truth and not about over technicalities. The Supreme Court's observation are as under:

> *"5. ... 31. In 1846, in a judgment which Lord Chancellor Selborne would later describe as 'one of the ablest judgments of one of the ablest judges who ever sat in this Court', Vice-Chancellor Knight Bruce said* [Pearse *v.* Pearse, *(1846) 1 De G&Sm. 12 : 16 LJ Ch 153 : 63 ER 950 : 18 Digest (Repl.) 91, 748] : (De G&Sm. pp. 28-29):*
>
> > *"31. The discovery and vindication and establishment of truth are main purposes certainly of the existence of courts of justice; still, for the obtaining of these objects, which, however valuable and important, cannot be usefully pursued without moderation, cannot be either usefully or creditably pursued unfairly or gained by unfair means, not every channel is or ought to be open to them. The practical inefficacy of torture is not, I suppose, the most weighty objection to that mode of examination,... Truth, like all other good things, may be loved unwisely—may be pursued too keenly—may cost too much.*
> >
> > *xxxxxxxxx*
> >
> > *35. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice—often referred to as the duty to vindicate and uphold the 'majesty of the law'.*
> >
> > *(Emphasis Supplied)*

35. In *Maria Margarida Sequeria Fernandes* v. *Erasmo Jack de Sequeria*, (2012) 5 SCC 370, the Supreme Court again highlighted the significance of truth and observed that the truth should be the guiding star in the entire legal process and it is the duty of the Judge to discover truth to do complete justice. The Supreme Court stressed that Judge has to play an active role to discover the truth and he should explore all avenues open to him in order to discover the truth. The Supreme Court further observed as under:

> *"32. In this unfortunate litigation, the Court's serious endeavour has to be to find out where in fact the truth lies.*
>
> *33. The truth should be the guiding star in the entire judicial process. Truth alone has to be the foundation of*

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> *justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.*
>
> *xxxxxxxxx*
>
> *35. What people expect is that the Court should discharge its obligation to find out where in fact the truth lies. Right from inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.*
>
> *xxxxxxxxx*
>
> *52. Truth is the foundation of justice. It must be the endeavour of all the judicial officers and judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth."*
>
> *(Emphasis Supplied)*"

30. A similar view has been taken by the Punjab and Haryana High Court in ***Karan Puri v. Sonika Chaudhary***[26]. While considering an objection founded upon the procedural requirements of the CPC in proceedings before a Family Court, the Court examined the interplay between Sections 10 and 20 of the Family Courts Act and held that the provisions of the CPC do not apply to proceedings before a Family Court with their full rigour. It was observed that Section 10(3) vests the Family Court with the necessary latitude to adopt a procedure suited to the facts and circumstances of the case for effectively adjudicating the dispute and ascertaining the truth. The Court, however, also emphasised that such procedural latitude must remain consistent with the principles of natural justice, good conscience and equity. The decision thus supports the view that procedural provisions

[26] 2023 SCC OnLine P&H 7322

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of the CPC cannot be applied in isolation so as to defeat the special procedural framework contemplated under the Family Courts Act. The relevant portion of the aforesaid Judgment is reproduced hereinbelow:

> "**9.** Sections 10(1) of the 1984 Act empowers a Family Court to be a Civil Court for the purposes of exercising all powers vested in a Civil Court and the provisions of CPC have been made applicable to the proceedings before the Family Court, but at the same time it has been expressly stipulated in Section 10(1) of the 1984 Act itself that such application of CPC shall be *"subject to the other provisions of this Act and the Rules"*. Section 10(3) of the 1984 Act postulates that nothing in Section 10(1) shall prevent the Family Court from laying down its own procedure so as to deal with the matter in issue before it i.e. for arrival at a settlement in respect of the *lis* of any suit/proceedings before it or to determine the truthfulness of the facts in dispute. This provision by itself shows that the legislature, while broadly mandating for application for CPC to proceedings before a Family Court, has vested discretion in favour of such Family Court to devise a procedure on its own. The provisions of Section 10(1) and Section 10(3) of 1984 Act, when juxtaposed, reflect the clear legislative intent to the effect that CPC does not apply compulsorily to proceedings before Family Court.
>
> **9.1.** Further a perusal of Section 20 of the 1984 Act shows that it contains a clause having overriding effect viz-a-viz anything contained in any other law for the time being in force.
>
> **9.2.** The Golden Rule of Interpretation (Literal Rule of Interpretation), as relied upon by the Hon'ble Supreme Court in the judgments of ***Dikshitulu's case***[27] (supra) and ***Laxmi Narain Dhut's case***[28] (supra), when applied in the present scenario to the provisions of 1984 Act, shows that the language as also phraseology employed in the legislation in question is precise, plain, unambiguous and unequivocal. The legislative intent, that CPC does not mandatorily apply in full force to proceedings under 1984 Act, is clearly decipherable from a bare reading of the legislation in question.
>
> **10.** The statement of objects and reasons recorded for enactment of the Family Courts Act, 1984 reads;
>
> > "*The Law Commission in its 59th Report (1974) had also stressed that in dealing with disputes concerning the family the Court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. The Civil Procedure*

[27] (1979) 2 SCC 34
[28] (2007) 3 SCC 700

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Code, 1908 was amended in 1976 to provide for a special procedure to be adopted in suits or proceedings relating to matters concerning the family. However, not much use has been made by the Courts in adopting this conciliatory procedure and the Courts continue to deal with family disputes in the same manner as other civil matters and the same adversary approach prevails. The need was, therefore, felt, in the public interest to establish Family Courts for speedy settlement of family disputes.

10.1. The Statement of objects and reasons for the enactment in question i.e. Family Courts Act, 1984 further states:

"The Bill, inter alia, seeks to,-

(g) provide that the parties to a dispute before a Family Court shall not be entitled, as of right, to be represented by a legal practitioner. However, the Court may, in the interest of justice, seek assistance of a legal expert as amicus curiae;

(h) simplify the rules of evidence and procedure so as to enable a Family Court to deal effectively with a dispute"

10.2. A critical analysis of the above, when interpreted in light of the Heydon's Rule of Interpretation (as relied upon by the Hon'ble Supreme Court in the judgment of ***R.M.D. Chamarbaugwalla's case***[29]-supra), reflects that the 1984 Act was enacted to adopt a radically different approach from that adopted in ordinary civil proceedings & simplify the rules of evidence/procedure so that a Family Court could more effectively deal with a matrimonial dispute. This aspect, when examined in the backdrop of Section 13 of the 1984 Act (where entitlement, as of right, to a legal practitioner has been denied and discretion has been vested with the Family Court to allow assistance of a legal expert) clearly indicates that the technicalities & intricacies of the CPC are not to apply to the proceedings before the Family Court. A bare perusal of Section 14 of the 1984 Act shows that the same has also been introduced to wither away the rigours of Evidence Act, 1872 & the Family Court has been empowered to take any material into evidence which as per its opinion furthers the cause of effective adjudication of a matrimonial dispute. The Bombay High Court in ***Shivanand Damodar Shanbhag's case***[30] (supra) has also held that the Family Court should not go into technicalities of the Evidence Act and should take a broad decision on the material placed before it.

11. The 1984 Act is a special law brought in by legislation exclusively for adjudicating matrimonial *lis*. CPC is a general procedural law for civil litigation. Also, CPC was enacted in the year 1908 whereas the Family Courts Act has been enacted in the

[29] 1957 SCC OnLine SC 11
[30] (2013) 16 RCR (Civ) 623

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year 1984. The 1984 Act has been brought into force in Haryana w.e.f. 02.11.1992, in Punjab w.e.f. 01.01.2013 and in Union Territory, Chandigarh w.e.f. 16.02.2015. Therefore, it is clear that the 1984 Act is not only a special legislation but has also been enacted subsequently in point of time than CPC. Hence, it would be pragmatic approach; as per principle of *generalia specialibus non derogant* (as relied upon by Hon'ble Supreme Court in judgment of ***Jose Paulo Coutinho's case***[31]- supra) as well, to come to an inevitable conclusion that Family Courts are not fully bound by provision of CPC.

*****

13. As an upshot of above discussion, the following principles of law can be culled out:

(I) Sub Section (3) to Section 10 read with Section 20 of the Family Court Act, contains non-obstante clause and gives supremacy to the provisions of the said Act, vis-à-vis the provisions of other enactments/Acts.

(II) CPC, 1908 is not applicable with its full rigours to proceedings under the Family Courts Act, 1984. In other words; a Family Court is entitled to lay down its own procedure, as warranted by facts/circumstances of a given case and it is not bound by the procedural rigours of CPC, 1908. However, while devising its such own procedure, the Family Court ought to ensure that such procedure is in consonance with the basic cannons of the jurisprudence such as principles of natural justice, good conscience and equity.

(III) A Family Court is well within its powers to take into evidence any material, which in the judicial discretion of such Family Court, may be essential for effectively adjudicating a *lis* before it whether or not such material fulfills the requirements of Evidence Act, 1872. However, while exercising such discretion, the Family Court ought to bear in mind that receiving of such material by way of evidence does not violate the basic principles of our legal system.

(IV) Order VIII, Rule 1-A CPC of 1908 is not a mandatory provision and rather it is a directive in nature only especially with respect to the proceedings under Family Court Act, 1984. A Family Court will be well within its judicial discretion to take into evidence any material in terms of sub-rule (3) of Order VIII, Rule 1-A of CPC, 1908 without any formal application for grant of leave by the defendant. However, while exercising such discretion the Family Court is required to pass a reasoned order."

[31] (2019) 20 SCC 85

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31. The decision of the Kerala High Court in ***P. Saraswathi v. Krishnadas P.***[32], is particularly apposite to the issue arising in the present case. There too, an amendment application before the Family Court was opposed on the ground that the trial had commenced and that the requirement of due diligence under the *proviso* to Order VI Rule 17 of the CPC had not been satisfied, with reliance being placed upon ***Vidyabai*** *(supra)*. While examining the challenge, the Court considered the scope of Sections 10(3) and 20 of the Family Courts Act and held that, where necessary for arriving at the truth of the facts in dispute, the Family Court would have jurisdiction to depart from the procedure ordinarily prescribed under the CPC. The Court further recognised that proceedings before a Family Court are not of the same character as ordinary civil proceedings and that the rigour of civil procedure may not apply with the same strictness. Finding that the amendment was necessary for an effective determination of the dispute and caused no prejudice to the opposite party, the Court declined to interfere with the order allowing the amendment in exercise of jurisdiction under Article 227 of the Constitution. The relevant portion of the aforesaid Judgment is reproduced hereinbelow:

> "8. Section 10 of the Family Courts Act, 1984 (hereinafter referred to as 'the Act') provides that subject to the other provisions of the Act and the Rules, the provisions of the Code of Civil Procedure, 1908 and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court. Sub-section (3) of Section 10 of the Act provides that nothing in sub-Section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure

[32] 2012 SCC OnLine Ker 12676

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> with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by one party and denied by the other. Sub-section (3) of Section 10 of the Act contemplates two contingencies; (1) to arrive at a settlement in respect of the subject matter of the suit or proceeding and (2) to arrive at the truth of the facts alleged by one party and denied by the other. Sub-section (3) of Section 10 is an exception to sub-sections (1) and (2). If for arriving at the truth of the facts, a deviation from the procedure laid down in the Code of Civil Procedure is required, the Family Court would have jurisdiction to resort to the same. Section 20 of the Act provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 13 of the Act states that no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner. The proceedings before the Family Court and the proceedings before the Civil Court are not of the same character. Section 16 of the Act provides for reading in evidence the affidavit of a formal character. The rigor of the procedure in respect of suits before the Civil Court as such may not apply in respect of the proceedings before the Family Court. Speedy settlement of the disputes relating to marriage and family affairs is aimed at by the establishment of Family Courts."

32. Section 20 of the Family Courts Act further provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. The cumulative effect of Sections 10 and 20 of the Family Courts Act is that, although the CPC ordinarily governs proceedings before a Family Court, its application remains subject to the special statutory scheme and cannot be treated as displacing the procedural flexibility expressly conferred upon the learned Family Court by Section 10(3) of the Family Courts Act. Section 20 of the Family Courts Act is reproduced hereinbelow:

> "**20. Act to have overriding effect**.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

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33. This does not, however, mean that Section 10(3) of the Family Courts Act confers an unstructured or unreviewable discretion upon the learned Family Court. The procedure adopted by the learned Family Court must remain connected with the statutory object of facilitating settlement and ascertaining the truth, must bear a rational nexus with the controversy before it, and must conform to the principles of natural justice and fairness. The flexibility contemplated by Section 10(3) of the Family Courts Act is intended to advance substantial justice and facilitate effective adjudication; it cannot be employed as a device to disregard fundamental procedural safeguards or to cause prejudice to a party without justification.

34. The statutory framework assumes particular significance in the present case since the proceedings before the learned Family Court arise under Sections 25 and 26 of the HMA. Section 25 of the HMA contemplates, *inter alia*, the making of provision for permanent alimony and maintenance and permits such provision to be varied, modified or rescinded where there is a change in the circumstances of either party. Section 26 of the HMA similarly empowers the Court, from time to time, to make, revoke, suspend or vary orders concerning the custody, maintenance and education of minor children. The statutory language thus recognises that the circumstances relevant to the relief may undergo change and that the Court's consideration of such relief is not necessarily confined to the factual position obtaining on the date of the original decree. Sections 25 and 26 of the HMA are reproduced hereinbelow:

> "**25. Permanent alimony and maintenance**.—(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case

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may be, order that the respondent shall [33]* * * pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant [34][the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, [35][it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just].

26. Custody of children.—In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made:

[36][Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.]"

35. The scope of the power under Section 25 of the HMA to vary, modify or rescind an order of permanent alimony or maintenance in

[33] The words "while the applicant remains unmarried" omitted by Act 68 of 1976, s. 18 (w.e.f. 27-5-1976).

[34] Subs. by s. 18, ibid., for certain words. (w.e.f. 27-5-1976).

[35] Subs. by s. 18, ibid., for "it shall rescind the order" (w.e.f. 27-5-1976).

[36] Ins. by Act 49 of 2001, s. 9 (w.e.f. 24-9-2001)

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changed circumstances has been recognised by the Hon'ble Supreme Court in ***Rakesh Malhotra v. Krishna Malhotra***[37], and ***Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy***[38]**.** These decisions recognise that the relief under Section 25 of the HMA is not immutable and may be reconsidered in accordance with the statutory framework where a change in the circumstances of either party so warrants. The Supreme Court, in ***Rakesh Malhotra*** *(supra)* observed as follows:

> "**7.** At the stage of passing a decree for dissolution of marriage, the court thus considers not only the earning capacity of the respective parties, the status of the parties as well as various other issues. The determination so made by the court has an element of permanency involved in the matter. However, Parliament has designedly kept a window open in the form of sub-sections (2) and (3) in that, in case there be any change in circumstances, the aggrieved party can approach the court under sub-section (2) or (3) and ask for variation/modification. Since the basic order was passed by the court concerned under Section 25(1), by very nature, the order of modification/variation can also be passed by the court concerned exercising power under Section 25(2) or 25(3) of the Act."

In ***Kalyan Dey Chowdhury*** *(supra)*, the Supreme Court held as under:

> "**14.** Section 25 of the Hindu Marriage Act, 1955 confers power upon the court to grant a permanent alimony to either spouse who claims the same by making an application. Sub-section (2) of Section 25 of the Hindu Marriage Act confers ample power on the court to vary, modify or discharge any order for permanent alimony or permanent maintenance that may have been made in any proceeding under the Act under the provisions contained in sub-section (1) of Section 25. In exercising the power under Section 25(2), the court would have regard to the "change in the circumstances of the parties". There must be some change in the circumstances of either party which may have to be taken into account when an application is made under sub-section (2) of Section 25 for variation, modification or rescission of the order as the court may deem just."

[37] (2020) 14 SCC 150
[38] (2017) 14 SCC 200

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36. The continuing nature of the jurisdiction under Section 26 of the HMA is evident from ***Padmja Sharma v. Ratan Lal Sharma***[39], wherein the Supreme Court recognised the amenability of orders concerning maintenance of children to modification in changed circumstances. Likewise, in ***Vikram Vir Vohra v. Shalini Bhalla***[40], the Supreme Court reiterated that custody orders remain capable of modification in accordance with the changing needs and welfare of the child. These decisions reaffirm that relief under Section 26 of the HMA must remain responsive to subsequent developments, with the welfare of the child continuing to be the paramount consideration. In ***Padmja Sharma*** *(supra)*, the Hon'ble Supreme Court observed as under:

> "**9.** The respondent before us has not appeared instead of notice to him. We have heard the arguments of the wife ex parte. On 28-2-2000 an application was filed by the appellant for placing on record additional documents which are all of the period after filing of this appeal. No notice has been given to the respondent of this application. The purpose of the application appears to be to further enhance the amount of maintenance taking into account the changed circumstances as the salary of the respondent husband is stated to have increased by the passage of time. Various documents like receipts for payment of school fees, buying of books, school bags, etc. have been filed. We are not inclined to permit this application at this stage. If circumstances have changed for enhancement of maintenance the appellant can approach the Family Court again as an order under Section 26 of the Act is never final and a decree passed thereunder is always subject to modification."

The Supreme Court, in ***Vikram Vir Vohra*** *(supra)* held as follows:

> "**11.** The argument of the learned counsel for the appellant, that in view of the provisions of Section 26 of the Act, the order of custody of the child and the visitation rights of the appellant cannot be changed as they are not reflected in the decree of mutual divorce, is far too hypertechnical an objection to be considered

[39] (2000) 4 SCC 266
[40] (2010) 4 SCC 409

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seriously in a custody proceeding. A child is not a chattel nor is he/she an article of personal property to be shared in equal halves.

12. In a matter relating to the custody of a child, this Court must remember that it is dealing with a very sensitive issue in considering the nature of care and affection that a child requires in the growing stages of his or her life. That is why custody orders are always considered interlocutory orders and by the nature of such proceedings custody orders cannot be made rigid and final. They are capable of being altered and moulded keeping in mind the needs of the child.

13. In ***Rosy Jacob* v. *Jacob A. Chakramakkal*** [(1973) 1 SCC 840] a three-Judge Bench of this Court held that all orders relating to the custody of minors were considered to be temporary orders. The learned Judges made it clear that with the passage of time, the Court is entitled to modify the order in the interest of the minor child. The Court went to the extent of saying that even if orders are based on consent, those orders can also be varied if the welfare of the child so demands.

14. The aforesaid principle has again been followed in ***Dhanwanti Joshi* v. *Madhav Unde*** [(1998) 1 SCC 112] .

15. Even though the aforesaid principles have been laid down in proceedings under the Guardians and Wards Act, 1890 these principles are equally applicable in dealing with the custody of a child under Section 26 of the Act since in both the situations two things are common; the first, being orders relating to custody of a growing child and secondly, the paramount consideration of the welfare of the child. Such considerations are never static nor can they be squeezed in a straitjacket. Therefore, each case has to be dealt with on the basis of its peculiar facts.

16. In this connection, the principles laid down by this Court in ***Gaurav Nagpal* v. *Sumedha Nagpal*** [(2009) 1 SCC 42] are very pertinent. Those principles in paras 42 and 43 are set out below: (SCC p. 55)

> "*42*. Section 26 of the Hindu Marriage Act, 1955 provides for custody of children and declares that in any proceeding under the said Act, the court could make, from time to time, such interim orders as it might deem just and proper with respect to custody, maintenance and education of minor children, consistently with their wishes, wherever possible.
>
> *43*. The principles in relation to the custody of a minor child are well settled. In determining the question as to who should be given custody of a minor child, the paramount consideration is the 'welfare of the child' and

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> not rights of the parents under a statute for the time being in force."
>
> That is why this Court has all along insisted on focussing the welfare of the child and accepted it to be the paramount consideration guiding the court's discretion in custody order. (See ***Thrity Hoshie Dolikuka* v. *Hoshiam Shavaksha Dolikuka*** [(1982) 2 SCC 544 : AIR 1982 SC 1276] , AIR p. 1289, para 17.)
> **17.** In the factual and legal background considered above, the objections raised by the appellant do not hold much water."

37. The authorities relied upon by the Respondent, including ***Anshuman Sharma*** *(supra)*, ***Malathi Ravi*** *(supra)* and ***Rajnesh*** *(supra)*, recognise, in the context of maintenance, custody and allied matrimonial reliefs, that the learned Family Court may take cognizance of subsequent changes in circumstances and mould the relief where the statute so permits. Likewise, the decisions in ***A.V.T.*** *(supra)*, ***S.V.*** *(supra)*, ***Dipti Kapur*** *(supra)* and ***Amina Bharatram*** *(supra)*, relied upon by the Respondent, emphasise the procedural flexibility available to the learned Family Court and the need to avoid procedural rigidity where it would impede effective adjudication or ascertainment of truth. These authorities, therefore, support the proposition that the learned Family Court is not confined to a rigid procedural approach and may take into account material subsequent circumstances where relevant to the relief before it. The question, however, remains whether the learned Family Court could, in the facts of the present case, permit the proposed amendments in exercise of that procedural flexibility.

38. The authorities relied upon by the Petitioner, on the other hand, principally concern the general principles governing amendment of pleadings under Order VI Rule 17 of the CPC. ***Vidyabai*** *(supra)*, ***M. Revanna*** *(supra)* and ***Pandit Malhari Mahale*** *(supra)*, emphasise the

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statutory requirement of due diligence once trial has commenced and caution against permitting a party to introduce at a belated stage matters which were already within its knowledge. Those principles undoubtedly constitute the ordinary rule governing an amendment sought under Order VI Rule 17 of the CPC. They cannot, however, be applied in isolation so as to disregard the special procedural framework applicable to proceedings before a Family Court.

39. The decision in ***Revajeetu Builders & Developers*** *(supra)*, also relied upon by the Petitioner, sets out the broader principles governing amendment of pleadings, including the necessity of the proposed amendment for determining the real controversy, the prejudice likely to be caused to the opposite party and the nature of the case sought to be introduced. Those considerations remain relevant while examining an application for amendment. They do not, however, require the Court to disregard the statutory procedural flexibility available to the learned Family Court, particularly where the proposed material bears upon the continuing adjudication of maintenance, custody or allied matrimonial reliefs.

40. The question, therefore, is not whether the *proviso* to Order VI Rule 17 of the CPC can ordinarily be ignored after commencement of trial. **The question is whether, in the proceedings before the learned Family Court, the exercise of its procedural discretion can be tested solely by the standards applicable to an ordinary civil trial, without examining the special powers conferred upon it by Section 10(3) of the Family Courts Act and the nature of the substantive reliefs under consideration.**

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41. In this regard, the mere fact that the Respondent's Amendment Application was captioned under Order VI Rule 17 of the CPC cannot, by itself, be determinative of the procedural power available to the learned Family Court. The Amendment Application also referred to Section 10 of the Family Courts Act and was filed in proceedings in which the learned Family Court was exercising jurisdiction under Sections 25 and 26 of the HMA. The nature of the power exercised by the learned Family Court must, therefore, be determined having regard to the substance of the proceedings, the relief sought, the statutory framework governing the *lis* and the procedure actually adopted by the Court, rather than merely by the nomenclature assigned to the Amendment Application.

42. The proposed amendments, when examined in this statutory context, cannot be treated as constituting a single and indivisible factual case. They include, on the one hand, circumstances which arose after institution of the proceedings, including developments concerning the children and the stroke suffered by the Respondent's mother on 11.01.2019. On the other hand, they include averments concerning the Respondent's association with Modular Infratech Pvt. Ltd., his financial circumstances for earlier periods, the financial position and lifestyle of the Petitioner, and the change in the surname of the children. The latter amendments were within the Respondent's knowledge prior to the filing of the Amendment Application. That circumstance, however, may not, in the view of this Court, suffice to disentitle the Respondent from the benefit of the amendments that were sought. As has been veritably espoused in the various Judgments referred to hereinbefore, the purpose of Section 10 of the Family

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Courts Act is to permit a degree of flexibility, keeping in view the larger intent of the legislature to preserve a certain latitude, denuded of the more technical trappings that may be canvassed in the application of the procedural provisions of the CPC in civil proceedings such as suits. In matters of a more sensitive nature, particularly those relating to matrimony and children, Courts necessarily have to consider the object of arriving at a holistic determination, relatively free from the shackles of procedural technicalities.

43. The requirement of due diligence, as urged by the Petitioner, must also be considered in the context of the nature of the proposed amendments in the Amendment Application. The amendments pertained to facts and circumstances arising at different stages, some having arisen earlier and others subsequent to the institution of the proceedings. Although the Respondent did not furnish a separate explanation as to why each of the proposed facts could not have been introduced earlier, and certain matters admittedly could have been placed before the Court at an earlier stage, the learned Family Court found the amendments, taken as a whole, necessary for the just decision of the case. In the context of the special procedural framework governing proceedings before a Family Court, this Court is unable to adopt an unduly technical approach by examining each proposed amendment in isolation solely with reference to when the Respondent acquired knowledge of the underlying fact. Such an approach would be contrary to the procedural flexibility contemplated under the Family Courts Act, particularly where the learned Family Court has found the material relevant for an effective adjudication of

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the dispute. However, this Court also considers it necessary to add a cautionary note that the permissibility of the amendments sought may have to be examined on a case-to-case basis. In cases where it is found, *ex facie* and on a non-exclusive basis, that the amendments have been sought on grounds that are not *bona fide*, or are calculated to delay the proceedings or the Court's adjudication, or do not, when considered holistically, satisfy the test of being necessary for a proper and just adjudication, the Court may decline to permit the same.

44. The relevant consideration before the learned Family Court, therefore, was whether the proposed amendments, viewed in the context of the reliefs sought under Sections 25 and 26 of the HMA, warranted being brought on record for the proper adjudication of the dispute. The fact that some of the matters had an earlier point of origin could legitimately be taken into account while assessing their evidentiary weight and the prejudice, if any, caused to the opposite party. It did not, however, in the circumstances of the present case, necessarily preclude the learned Family Court from exercising its procedural power to receive and consider such material.

45. This is particularly so because the Impugned Order does not proceed on the basis that the Respondent possessed an unrestricted right to amend his pleadings at any stage. The learned Family Court considered the proposed amendments in the context of the proceedings pending before it and recorded its satisfaction that the amendments were necessary for the just decision of the case and did not alter the nature of the proceedings. The learned Family Court also took note of the fact that several of the proposed amendments related to events which had occurred after the divorce and even after institution of the

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proceedings seeking modification. The approach adopted by the learned Family Court thus cannot be said to be wholly extraneous to the controversy or unrelated to the statutory jurisdiction being exercised by it.

46. It is also significant that the substantive reliefs under Sections 25 and 26 of the HMA are themselves capable of being moulded in the light of changed circumstances. To insist that every fact relevant to such continuing relief must necessarily be introduced only in the manner contemplated by Order VI Rule 17 of the CPC, without regard to the procedural power conferred upon the learned Family Court under Section 10(3) of the Family Courts Act, would risk importing into Family Court proceedings a degree of procedural rigidity which the legislature did not intend. The purpose of Section 10(3) of the Family Courts Act is precisely to confer upon the learned Family Court the procedural flexibility necessary for effective adjudication and ascertainment of the truth.

47. At the same time, this Court is conscious that procedural flexibility cannot be permitted to operate to the prejudice of the opposite party. The Petitioner remains entitled to meet the material sought to be introduced by the Respondent and to contest its relevance, truth and evidentiary value in accordance with law. The record, however, does not disclose such a denial of opportunity or such manifest prejudice as would render the procedure adopted by the learned Family Court contrary to the principles of natural justice. Nor does the Impugned Order disclose that the learned Family Court exercised its discretion for an extraneous purpose or without regard to the nature of the proceedings before it.

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48. The fact that the trial had commenced, and that the Respondent had already tendered his evidence and his cross-examination had commenced, undoubtedly constitutes a relevant circumstance. It cannot, however, be regarded as determinative in isolation. The stage of the proceedings has to be balanced against the nature of the proceedings, the character of the relief sought, the relevance of the proposed material and the statutory power of the learned Family Court to adopt an appropriate procedure for arriving at the truth. The *proviso* to Order VI Rule 17 of the CPC may constitute an important procedural consideration, but it cannot be permitted to be elevated into an inflexible rule which renders Section 10(3) of the Family Courts Act incapable of meaningful application.

49. The approach adopted by the learned Family Court is also consistent with the object underlying the special procedure prescribed for family disputes. Where the Court is required to determine questions concerning maintenance, financial circumstances, custody, visitation and the welfare of minor children, the adjudication cannot be effectively undertaken by artificially freezing the factual position at an earlier point in time. The Court must remain capable of considering material which bears upon the actual circumstances relevant to the relief before it, subject always to the requirements of fairness and a reasonable opportunity to the opposite party.

50. In view of the aforesaid discussion, the objection regarding the requirement of due diligence does not, in the circumstances of the present case, warrant interference with the exercise of discretion by the learned Family Court in permitting the amendments. The authorities cited by the Petitioner establish the ordinary limitations

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governing amendments after commencement of trial; they do not deal with a situation in which the Court exercising jurisdiction under the Family Courts Act has consciously adopted a procedural course having regard to the nature of the matrimonial proceedings and the need to ascertain the relevant facts. The said authorities cannot, therefore, be read as disabling the learned Family Court from exercising the specific procedural discretion vested in it by Section 10(3) of the Family Courts Act.

51. Equally, the authorities relied upon by the Respondent cannot be understood as creating an unrestricted right in a litigant to amend pleadings at any stage merely because proceedings under Sections 25 and 26 of the HMA are continuing in nature. Their significance lies in recognising that subsequent circumstances may be relevant to the substantive relief and that the learned Family Court must retain sufficient procedural latitude to take such circumstances into account. Whether particular material ought ultimately to be relied upon, and what evidentiary weight it deserves, remains a matter for the learned Family Court to consider in accordance with law.

52. The present case must, therefore, be viewed not as one in which the learned Family Court disregarded a mandatory statutory prohibition, but as one in which it exercised the procedural flexibility available to it under the Family Courts Act while dealing with proceedings involving continuing matrimonial reliefs. The Impugned Order reflects due consideration of the nature and relevance of the proposed amendments and does not disclose any manifest jurisdictional error, consideration of irrelevant factors, or denial of a fair opportunity to the Petitioner.

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53. The scope of interference under Article 227 of the Constitution is also well settled. The supervisory jurisdiction is intended to keep subordinate Courts within the bounds of their jurisdiction and to correct patent jurisdictional errors, perversity or grave dereliction of duty; it is not an appellate jurisdiction to substitute the view of this Court for a view reasonably taken by the subordinate Court. Where the subordinate Court has exercised a discretion vested in it upon considerations germane to the controversy, interference is not warranted merely because another view may also be possible.

54. In the present case, the learned Family Court was exercising jurisdiction under a special statutory enactment which expressly confers upon it the power to devise its own procedure for arriving at a settlement or at the truth of the facts in dispute. The Impugned Order reflects an application of mind to the nature of the proposed amendments and their relevance to the proceedings under Sections 25 and 26 of the HMA. The course adopted by the learned Family Court cannot, in the circumstances, be characterised as perverse, arbitrary or wholly contrary to law merely because the Amendment Application could also have been examined by reference to the stricter requirements ordinarily applicable under Order VI Rule 17 of the CPC.

55. Viewed in the context of the limited scope of supervisory jurisdiction under Article 227 of the Constitution, this Court finds no patent illegality or jurisdictional infirmity in the approach adopted by the learned Family Court warranting interference. The statutory scheme, the nature of the proceedings, the relevance of subsequent circumstances and the procedural discretion available to the learned

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Family Court, when considered cumulatively, support the course adopted in the Impugned Order.

CONCLUSION:

56. For the aforesaid reasons, this Court finds no ground to interfere with the Impugned Order dated 19.10.2020. The learned Family Court exercised the procedural discretion available to it in accordance with the statutory framework governing proceedings before a Family Court, and the exercise of such discretion does not disclose any jurisdictional error, perversity or manifest failure of justice.

57. In view of the foregoing discussion, the present Petition is dismissed and the Impugned Order dated 19.10.2020 is upheld.

58. Accordingly, the present Petition, along with pending Application(s), if any, stand disposed of in the above terms.

HARISH VAIDYANATHAN SHANKAR, J.

OCTOBER 27, 2026/ma