RAJASTHAN HIGH COURT
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**HIGH COURT OF JUDICATURE FOR RAJASTHAN**
**AT JODHPUR**

D.B. Civil Miscellaneous Appeal No. 2725/2026
CNR: RJHC010816092026 | URN: CMA / 6864U / 2026

Rajasthan High Court
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Zafar Khan Pathan S/o Shareef Pathan, Aged About 39 Years, House Number 35, Machla Magra Colony, Kishanpole,udaipur Raj.

----Appellant

Versus

Shahin Sheikh W/o Zafar Khan Pathan, D/o Late Azeez Sheikh R/o 184, Street Number 1, Ambavgarh, Kacchi Basti, Upar Wala Chowk, Udaipur

----Respondent

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For Appellant(s) : Ms. Priyanka Vishnoi for
Mr. Avin Chhangani

For Respondent(s) : -----

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**HON'BLE MR. JUSTICE ARUN MONGA**
**HON'BLE MR. JUSTICE YOGENDRA KUMAR PUROHIT**

**Order(Oral)**

**Reportable**

**04/11/2026**

**Per: Arun Monga,J.**

1. The appellant herein seeks to assail the judgment and decree dated 04.06.2026 passed by the learned Family Court No. 3, Udaipur, in Case No. 12/2022, whereby the suit filed by the appellant seeking a declaration that his marriage with the respondent stood dissolved by way of Talaq-e-Hasan under Sunni Muslim Personal Law was dismissed.

2. The brief facts of the case are that the marriage between the appellant and the respondent was solemnized on 07.05.2017 in

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accordance with the rites and customs applicable to Sunni Muslim Personal Law, with Mehar fixed at Rs.1,51,789/-. Out of the wedlock, one son, namely, Mohammad Ali, was born on 28.07.2018. It is alleged that subsequently, the respondent started behaving rudely towards the appellant and his family members, frequently quarrelling with and abusing them, and threatening to implicate them in false criminal cases, resulting in strained matrimonial relations. On 15.03.2020, the respondent allegedly left the matrimonial home of her own accord and has been residing separately since then.

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2.1. It is further averred that despite several efforts made by the appellant, including personal requests and legal notices, the respondent did not return to the matrimonial home. Consequently, invoking the principles of Talaq-e-Hasan under Sunni Muslim Personal Law, the appellant issued the first notice of divorce on 23.02.2022, followed by the second and third notices through his counsel, communicating the subsequent pronouncements of Talaq in the presence of respectable members of the community. Thereafter, the appellant approached the learned Family Court seeking a declaration that the marriage between the parties stood dissolved by a valid Talaq-e-Hasan. The respondent contested the petition by filing a reply.

2.2. On the basis of the pleadings, the learned Family Court framed issues and, after recording the evidence of both parties, wherein the appellant examined three witnesses and produced documents (Exhibits-1 to 24), while the respondent examined two witnesses and produced documents (Exhibits-A to A9), dismissed the appellant's petition vide judgment and decree dated 04.06.2026.

2.3. Aggrieved thereby, the appellant has preferred the present appeal.

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3. Learned counsel for the appellant argues that the impugned judgment and decree dated 04.06.2026 are contrary to the pleadings, evidence available on record and settled principles of Sunni Muslim Personal Law governing Talaq-e-Hasan. It is argued that the learned Family Court failed to appreciate that the respondent had voluntarily left the matrimonial home on 15.03.2020 and had been residing separately since then, without establishing that she was compelled to leave on account of any wrongful act attributable to the appellant. It is further contended that the appellant made repeated bona fide efforts to restore the matrimonial relationship by personally requesting the respondent to return and issuing legal notices, but she declined to resume cohabitation.

3.1. Learned counsel further submits that the appellant had duly complied with the essential requirements of Talaq-e-Hasan under Sunni Hanafi Muslim Personal Law by making three separate pronouncements of Talaq at the prescribed intervals and communicating the same through legal notices and registered post. It is contended that the first notice dated 23.02.2022 was duly received by the respondent, whereas her subsequent refusal to accept the remaining notices could not defeat the legal consequences of their dispatch in accordance with the prescribed procedure. The learned Family Court, therefore, erred in treating such refusal as a ground to invalidate the Talaq, particularly when a party cannot be permitted to take advantage of her own deliberate avoidance of service.

3.2. It is lastly argued that the learned Family Court failed to properly appreciate the oral testimony of PW-1 Zafar Khan Pathan, PW-2 Mohammad Shakeel and PW-3 Mohammad Farid, as well as the documentary evidence exhibited as Exhibits-1 to 24, which corroborated

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the appellant's case regarding the strained matrimonial relationship, separate residence of the respondent, efforts at reconciliation and pronouncement and communication of Talaq. It is contended that the findings recorded by the learned Family Court suffer from misreading and non-consideration of material evidence, while undue reliance has been placed upon the respondent's bald denials, unsupported by cogent evidence. Learned counsel further submits that the parties have been residing separately since 2020 and there remains no possibility of reconciliation, demonstrating that the marriage has irretrievably broken down.

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4. In this backdrop, we have heard the learned counsel for the appellant and perused the case file. We find no grounds to interfere in the present appeal. Let us see how.

5. But, before proceeding further, it would be appropriate to refer to the impugned judgment passed by the learned Family Court so as to appreciate what weighed on its mind. The relevant portion of its English translation is reproduced hereinbelow:

> *"15. On the basis of the pleadings of both the parties, the following issues were framed:*
> *1. Whether the plaintiff, Zafar Khan, has divorced his wife, Shahin Sheikh, in accordance with Muslim Shariat, on the basis of three registered Talaqnamas?*
>
> *Onus to prove: Plaintiff*
>
> *2. Relief?*
>
> *x-x-x-x-x*
>
> *22. According to the plaintiff's case, he has already divorced the respondent three times by way of Talaq-e-Hasan under Sunni Muslim Shariat and, therefore, he is entitled to seek a declaration of divorce through the present suit. Under Muslim Law, there is a prescribed procedure for granting divorce through Talaq-e-Hasan. Since the plaintiff, in his plaint, has pleaded that he and the respondent have been divorced in accordance with Muslim Shariat, the burden of proving this fact clearly lies upon the plaintiff, namely, that he has divorced the respondent by strictly complying with the procedure prescribed under Muslim Law.*
> *23. Under Muslim Law, Talaq means expressing an intention to dissolve a marriage. The words used for Talaq must be clear and unequivocal in nature, demonstrating the intention to dissolve the marriage. Where the words are ambiguous, Talaq cannot be presumed. When the words of Talaq are pronounced in the presence of the wife, or when the declaration of Talaq comes to the knowledge of the wife, its consequence is dissolution*

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*of the marriage. Under all schools of Muslim Law, a husband may divorce his wife by his unilateral act; however, for Talaq to become effective, it is necessary that the wife must have knowledge of the fact of Talaq. It is not necessary that Talaq must be addressed to the wife; however, as soon as the fact of Talaq comes to the knowledge of the wife, Talaq becomes effective.*

*In Talaq-e-Hasan, the husband is required to make a total of three pronouncements of Talaq, at intervals of one month/menstrual period. After the first pronouncement, the husband is required to make the second pronouncement of Talaq in the second month, after the expiry of one month, and thereafter, after one further month, upon making the third pronouncement of Talaq, the Talaq becomes irrevocable. Further, all the aforesaid three pronouncements must be made during the period of Tuhr. In other words, at the time of making the pronouncement, the wife should not be in a state of menstruation. Further, after the first pronouncement, the husband cannot establish marital relations with his wife. Establishment of marital relations in any manner during this period would annul the pronouncement of Talaq.*

*Thus, it is clear that in Talaq-e-Hasan, the three successive pronouncements for dissolution of marriage are required to be made during three successive periods of Tuhr, and no marital relations should be established between the parties during this period. After the first pronouncement, the second and third pronouncements must also be made during the respective periods of Tuhr, at intervals of one month each. Divorce granted through Talaq-e-Hasan becomes irrevocable after the third pronouncement of Talaq. If the husband pronounces Talaq upon his wife during her menstrual period, such pronouncement shall not be considered valid. It is not necessary that the pronouncement of Talaq must be addressed to the wife or made in her presence; however, Talaq becomes effective only when it comes to the knowledge of the wife.*

*24. In the light of the aforesaid formalities of Talaq-e-Hasan, upon examining the evidence produced by the plaintiff in the present case, it is evident that the plaintiff has nowhere mentioned in his pleadings that all three pronouncements of Talaq were made successively during three periods of Tuhr and that all the three pronouncements came to the knowledge of his wife. From the evidence available on record, at the most, it is established that the first pronouncement of Talaq was within the knowledge of the respondent. However, with regard to the second and third pronouncements of Talaq coming to the knowledge of the respondent, the plaintiff himself has categorically admitted in his cross-examination as follows:*

> *"Exhibits-13 and 14 notices were returned again because the respondent was not residing at the said address. The three legal notices of Talaq were not received by the respondent; only one notice was received."*

*From the admission made by the plaintiff in his cross-examination, it is clear that after the first notice, the second and third notices (regarding the pronouncements of Talaq) did not come to the knowledge of the respondent. According to the plaintiff, the original second notice of Talaqnama is Exhibit-12 and the third notice is Exhibit-13. Upon examining Exhibits-12 and 13, it is clear that Exhibit-12 is the envelope relating to the second pronouncement of Talaq, upon which the postal official made an endorsement stating that the person residing at the given address refused to accept it, stating that the respondent did not reside there. Similarly, Exhibit-13 is the notice of the third Talaq, upon which the postal official made an endorsement stating that, upon visiting the given address, the persons residing there refused to accept it, stating that the respondent was not present there and, therefore, they could not accept it.*

*Thus, from an examination of Exhibits-12 and 13, it is clear that at the time when the said notices were sent, the respondent was not residing at the said address, and therefore, the persons residing at that address*

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*refused to accept the notices, stating that the respondent did not reside there. In view of the endorsements made by the postal official on Exhibits-12 and 13, it cannot be held that the respondent herself had refused to accept the notices relating to the pronouncements of Talaq.*

*25. Apart from this, upon examining the pleadings and evidence of the respondent in this regard, it is evident that the respondent specifically pleaded in her written statement that:*

> *"The plaintiff never sent any notice of Talaq to her; only one notice was received by her, and no further notice was received thereafter."*

*The respondent reiterated the same facts in her examination-in-chief before the Court and categorically stated that:*

> *"I have not received any of the notices sent by my husband which have been produced on record. My husband has not divorced me in accordance with Muslim Law."*

*The plaintiff did not put even a single question to the respondent in her cross-examination regarding these statements made in her examination-in-chief. In such circumstances, the evidence of the respondent on this point may be considered uncontroverted, as the statements made by her in her examination-in-chief were not challenged in her cross-examination. Rather, the respondent categorically stated that:*

> *"I have no knowledge of the notices because I did not receive any notice."*

*Thus, at this stage, having regard to the overall facts and circumstances of the case and the evidence available on record, the plaintiff has completely failed to establish that, for the purpose of validly granting divorce to the respondent under Talaq-e-Hasan, the three successive pronouncements of Talaq were made during the periods when the respondent was not menstruating (periods of Tuhr), and that the second and third pronouncements of Talaq came to the knowledge of the respondent. The plaintiff has also failed to specifically establish that no marital or conjugal relations existed between the parties throughout the aforesaid period. Thus, the plaintiff has completely failed to prove, through his oral and documentary evidence, that he had fulfilled all the formalities prescribed under Muslim Law for making the divorce effective through Talaq-e-Hasan. Accordingly, Issue No.1 is not proved by the plaintiff's own evidence and is, therefore, decided against the plaintiff and in favour of the respondent.*

*Relief*

*26. Since the plaintiff has failed to prove Issue No.1, the plaintiff's suit is liable to be dismissed."*

6. The entire edifice of the impugned judgment is built upon the following admitted position, extracted from the mouth of PW-1 (the plaintiff) himself:

> *"It is correct that only notices Exhibits-4 and 5 were received by the respondent. No other notice was received by the respondent. The three legal notices of Talaq were not received by the respondent; only one notice was received."*
>
> *And*
>
> *"It is correct that notices Exhibits-6, 7 and 8 were returned to the Court with the endorsement that the respondent was not residing at the said address and that the addressee did not reside there, and hence, they were refused."*

Findings recorded on the basis of such categorical admissions do not leave any scope for re-appreciation. In the case in hand, findings

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are based on evidence. Neither are they preverse nor product of a material illegality or misreading. The mere existence of "another possible view" is no ground for us to interfere.

7. Moreover, it is trite that a husband who sets up a plea of divorce by Talaq-e-Hasan must strictly prove every ingredient of that mode of divorce. In ***Shamim Ara v. State of U.P.***[1], the Constitution Bench of Hon'ble Supreme Court laid down certain requirements which are summarised as follows:

(a) the talaq must be for a reasonable cause, and not at the mere whim and caprice of the husband;

(b) it must not be secret;

(c) there must be a time gap between pronouncement and finality to allow reconciliation;

and

(d) there must be a process of arbitration/reconciliation through representatives of both spouses before talaq is pronounced.

8. Where a husband pleads talaq, the burden is on him to prove the mode, the timing (three successive tuhrs), abstinence from intercourse during the relevant period, and the reasons for exercising the right. A bare plea of talaq in deposition does not effect dissolution.

9. The learned Family Court, therefore, proceeded on the correct legal premise when it held that the burden of proving strict compliance with the formalities of Talaq-e-Hasan i.e.

(i) three pronouncements during three successive periods of Tuhr;

(ii) abstinence from marital relations throughout the intervening period;

and

[1] (2002) 7 SCC 518

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(iii) communication of the pronouncements so as to bring them to the knowledge of the wife, lay entirely upon the plaintiff.

10. The plaintiff-appellant failed on each count, by his own showing.

11. Before we part, we may also note here that the matter was earlier heard by us on 01.10.2026, when the following order was passed:

> *"Subject to payment of Rs.50,000/-as miscellaneous/litigation expenses to be paid to the respondent wife upon her causing appearance, issue notice, returnable on 04.11.2026."*

12. Aforesaid order has not been complied with which also further persuades us to grant no indulgence apart from appeal otherwise being bereft of merits as already discussed in the preceding part.

13. We thus find no grounds to interfere in the order passed by the learned Family Court. The sine qua non for interference in a first appeal is the demonstration of a perversity, a misreading of evidence, or an error of law apparent on the record. A finding of fact which flows from the admissions of the plaintiff himself in cross-examination cannot, by any stretch, be characterised as perverse or as a misreading.

14. Accordingly, the present appeal is dismissed on both grounds.

15. All pending applications also stand disposed of.

**(YOGENDRA KUMAR PUROHIT),J** **(ARUN MONGA),J**

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