

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(ORIGINAL JURISDICTION)**

Present:

Mr. Justice Zafar Ahmed

Divorce Suit No. 03 of 2024

Sumon Chandra Das

....Petitioner

-Versus-

Nargis Akter

....Respondent

Mr. Abul Khair, Advocate

... For the petitioner

None

... For the respondent

Heard on: 08.12.2025

Judgment on: 17.12.2025

Sumon Chandra Das as petitioner has filed the instant petition under Section 10 of the Divorce Act, 1869 for a decree praying for dissolution of marriage and/or in the alternative for a decree for nullity of marriage with Nargis Akter under Section 18 of the Divorce Act, 1869 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) on the grounds stated therein.

The respondent Nargis Akter did not enter appearance in the suit. Accordingly, the suit proceeded *ex parte*.

The following issues were framed on 27.08.2025:

1. Is the present suit maintainable?
2. Is the suit barred by limitation or by any other law?
3. Is the suit properly valued and duly stamped?
4. Is the plaintiff entitled to get the relief under Section 10 of the Divorce Act, 1869?
5. Is the plaintiff entitled to get relief under Section 18 of the Divorce Act, 1869 read with Section 151 of the Code of Civil Procedure, 1908 for dissolution of marriage?
6. Is the plaintiff entitled to get the relief as prayed for?

On 26.11.2025, the petitioner as PW1 filed an affidavit of statement of facts (examination-in-chief) as per provisions of the newly inserted rule 4A to Order XVII of the CPC along with documentary evidence which were marked as exhibit Nos. 1-4.

It appears from the Registration Certificate dated 21.11.2021 (exhibit-1) that the marriage between the parties was solemnized under the Special Marriage Act, 1872 (Act No. III of 1872). Admittedly, the petitioner *i.e.* the bridegroom is a Hindu and the respondent *i.e.* the bride is a Muslim. There are two issues- firstly, whether the Act, 1872 permits a Muslim man to marry a Hindu woman or *vice versa*; and, secondly, whether the Divorce Act, 1869 applies to the instant suit.

The relevant portions of Section 2 of the Special Marriage Act, 1872 run as follows:

2. Marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish, or the Hindu or the Muslim or the Parsi or the Buddhist, or the Sikh or the Jaina religion, or between persons each of whom professes one or other of the following religions, that is to say, the Hindu, Buddhist, Sikh or Jaina religion upon the following conditions-

- (1) neither party must, at the time of the marriage, have a husband or wife living;
- (2) the man must have completed his age of eighteen years, and the woman her age of fourteen years, according to the Gregorian calendar;
- (3) each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage;
- (4) the parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

Referring to Section 2, a 3-Judges High Court Division Bench presided over by me in Civil Reference Case No. 02 of 2025, where parties to the marriage were Muslim and Hindu, observed that a Muslim man or woman has been excluded from the purview of the Special Marriage Act, 1872 and a Muslim cannot solemnize marriage

under the said law. This Court further observed that in fact there is no other law in force in Bangladesh which provides for solemnization of marriage between a Muslim man and a Hindu woman or *vice versa*. Since the marriage of the plaintiff and the defendant was not lawfully solemnized under the Special Marriage Act, 1872, filing of the suit for dissolution of marriage under Section 10 of the Divorce Act, 1869 was misconceived and not tenable in law.

The observations made in the above-mentioned Civil Reference is fortified with the provisions contained in Sections 22 to 26 of the Act, 1872 relating to the effect of marriage on coparcenary, right of succession, succession to property, no right of adoption and adoption by father which only apply to the parties to the marriage under the Act, 1872 who profess the Hindu, Buddhist, Sikh or Jaina religion.

Now, I turn to the Divorce Act, 1869. Section 2 of the Act states, “Nothing hereinafter contained shall authorise any Court to grant any relief under this Act except where the petitioner or respondent professes the Christian religion”. In the case in hand, neither of the parties professes the Christian religion. Therefore, there is no scope in law to consider and apply the Divorce Act, 1869 to the case.

Since the marriage in question, where the parties are Muslim and Hindu, is not covered by the Special Marriage Act, 1872 and the

Divorce Act, 1869 does not apply to the case, the instant petition for dissolution of marriage under Section 10 or for a decree for nullity of the marriage under Section 18 of the Divorce Act, 1869 is misconceived and not maintainable.

Accordingly, the suit is dismissed as being not maintainable.