

**Present:**  
**Mr. Justice Zafar Ahmed**  
**And**  
**Mr. Justice S M Kuddus Zaman**  
**And**  
**Mr. Justice Mubina Asaf**

**Civil Reference Case No.02 of 2025.**

Mahmudur Rahman  
...Plaintiff-petitioner  
-Versus-  
Nondita Sarker  
...Defendant-opposite party  
No one appears  
.....For both the parties  
Mr. Shahida Khatun, AAG  
....For the State

**Heard & Judgment on: 21.08.2025.**

**S M Kuddus Zaman, J**

This reference under section 17 of the Divorce Act, 1869 has been submitted by the learned District Judge, Dhaka for confirmation of decree for divorce passed in Civil Suit No.43 of 2024 on 12.02.2024 under Section 10 of the above Act.

Facts in short are that Mr. Mahmudur Rahman a Muslim man as plaintiff filed above suit against defendant Nondita Sarker, a Hindu woman alleging that the defendant was his colleague in the Jahangirnagar University and out of choice and love they were involved in a relation and beyond the knowledge of their respective family they voluntarily and willingly solemnized marriage on 01.03.2021 under the Special Marriage Act, 1872. On the insistence of

the defendant above marriage was kept secret and they continued to live separately with their respective family. But within 04 months conflicting opinion, view and choice centering family, religion and other important issues emerged and they realized that they cannot move forward with above marital relation. They voluntarily and peacefully decided for dissolution of above marriage and they appeared before an advocate and executed and notarized an affidavit on 22.05.2022 voluntarily dissolving their marriage. Defendant is staying in the USA and the plaintiff wants to formalize above dissolution of marriage through court and seeks a decree for cancellation of above marriage.

Despite service of process the defendant did not enter appearance in above suit and the learned District Judge took up above suit for ex-parte hearing. Plaintiff himself gave evidence as P.W.1 and produced and proved documents which were marked as Exhibit Nos.1-4.

On consideration of facts and circumstances of the case and materials on record the learned District Judge decreed above suit and dissolved above marriage by divorce subject to confirmation by this court.

No one appears on behalf of the petitioner/plaintiff or the opposite party / defendant at the time of hearing of this reference.

Ms. Shahida Khatun, learned Assistant Attorney General for the state submits that the plaintiff and the defendant both were teachers of the Jahangirnagar University and they willingly and voluntarily solemnized their marriage under the Special Marriage Act, 1872 but due to difference of religion they were unable to continue their conjugal life happily and peacefully. As such they willingly decided to dissolve above marriage and accordingly they executed and notarized an affidavit on 30.06.2022 (Exhibit No.1) for dissolution of above marriage. The defendant is staying in USA and unable to come to Bangladesh to give consent to formalize above divorce. The learned District Judge has on correct appreciation of above materials on record rightly decreed above suit and dissolved above marriage by divorce which may be confirmed by this court.

We have considered the submissions of the learned Assistant Attorney General and carefully examined all materials on record.

As mentioned above plaintiff Mahmudur Rahman, a Muslim man and defendant Nondita Sarker, a Hindu woman, two adult and highly educated persons fell in love and they voluntarily and willingly beyond the knowledge of their respectively family solemnized marriage under the Special Marriage Act, 1872.

It turns out from the affidavit sworn in by the plaintiff in connection of the plaint of above suit that the plaintiff is a Muslim by

birth. It has been stated in the notarized affidavit jointly executed by the plaintiff and the defendant on 30.06.2022 (Exhibit No.1) that the conflicting opinion, view and choice emerged centering family, religion and other important issues. Above materials shows that the plaintiff and defendant are devout believers of their respective religion, namely, Islam and Hindu.

Section 2 of the Special Marriage Act, 1872 runs as follows:

“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”.

It is crystal clear from above provision that a Muslim man or woman has been excluded from the purview of the Special Marriage Act, 1872 (Act No.III of 1872) and a Muslim cannot solemnize marriage under above law. 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. The Sharia law permits a Muslim man to marry a Jew woman or Christian woman as they are regarded as people of the Book. Since above marriage of the plaintiff and the defendant was not lawfully solemnized under the Special Marriage Act, 1872 filing of above suit for dissolution of above marriage by divorce under section 10 of the Divorce Act, 1869 was misconceived and not tenable in law.

In the plaint the plaintiff did not seek a decree for divorce but sought cancellation of above marriage. It is not understandable if employing the word “cancellation” was erroneous or intentional. Since above marriage was not lawfully solemnized under Act No.III of 1872 there is no legal necessity nor any scope for cancelation of above marriage.

The learned District Judge utterly failed to appreciate above legal aspect of the case and most illegally decreed above suit for divorce under section 10 of the Divorce Act, 1869 and sent this reference under Section 17 of the above Act which is not tenable in law.

Before parting we feel it necessary to mention that the plaintiff and the defendant two adult, bachelor and educated individuals out of love and free consent constituted a union of willing to live together and run their life peacefully. There is no illegality in above conducts of the plaintiff and the defendant. The plaintiff and the defendant on the basis of practical experience in life realized that with so many differences of opinion and choice as to social and religious issues it was difficult to continue above union of willing for a better future. On above realization the plaintiff and the defendant jointly and voluntarily resolved to bring an end to above union by execution and notarization of an affidavit on 30.06.2022 (Exhibit No.1). By execution and notarization of above affidavit the relation or union of willing of the defendant and the plaintiff has been dissolved and both of them are free to choose their own path of life with a wife or husband. They are not required to formalize above dissolution of willful union by a decree of a court of law.

In above view of the facts and circumstances of the case and materials on record we hold that the learned District Judge erroneously decreed above suit and dissolved above marriage by divorce which was not in fact a lawful marriage under the Special Marriage Act, 1872 and above divorce cannot be confirmed.

In the result, this reference is dismissed and the decree for desolation of above marriage as passed by the learned District Judge in Civil Suit No.43 of 2024 is not confirmed.

**Zafar Ahmed, J:**

I agree.

**Mubina Asaf, J:**

I agree.