IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 14615 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DEVAN M. DESAI

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Approved for Reporting Yes No ✓

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[redacted]

Versus

STATE OF GUJARAT

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Appearance:
MR BHARGAV HASURKAR(5640) for the Petitioner(s) No. 1,2
MR VISHWAJITSINH V JADEJA(11128) for the Petitioner(s) No. 1,2
MR ANGESH PANCHAL AGP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE DEVAN M. DESAI**

Date : 27/10/2026

JUDGMENT

1. The present petition is filed under Article 226 of Constitution of India, 1950, by petitioners praying for following reliefs:-

> *"(A) Admit this Special Civil Application;*
>
> *(B) Issue a writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the impugned order No. Mahiti/602/2026 dated 28.09.2026 passed by the Respondent; annexed herewith to this petition as Annexure "A";*
>
> *(C) Issue a writ of mandamus or any other appropriate writ, order or direction directing the Respondent to receive and act upon the Notice of Intended Marriage submitted by the Petitioners, to*

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enter it in the Marriage Notice Book and publish it under Section 6 of the Special Marriage Act, 1954 and thereafter to proceed in accordance with Sections 7 to 13 of the said Act.
This Hon'ble Court be pleased to also direct the Respondent not to insist upon the production of a decree or order of a Court in respect of the dissolution of the earlier marriage of Petitioner No. 2, and further direct the Respondent to treat the Consent Deed of Divorce dated 30.01.2018 and the Divorce Certificate dated 27.03.2018 as sufficient proof of dissolution in the absence of any objection under Section 7 of the Special Marriage Act, 1954. This Hon'ble Court be also pleased to further direct the Respondent to proceed and conclude the same within such time as may be deemed fit by this Hon'ble Court;

(D) Pending the admission, hearing and final disposal of this petition, direct the Respondent to receive the Notice of Intended Marriage of the Petitioners, to enter it in the Marriage Notice Book and publish it under Section 6 of the Special Marriage Act, 1954, and to proceed further in accordance with law, subject to the final outcome of this petition;

(E) Grant ex-parte ad-interim relief in terms of prayer (D) above;

(F) Award the costs of this petition to the Petitioners; and

(G) Grant such other and further relief(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. Rule. Learned AGP Mr. Angesh Panchal for respondent No.1 waives service of notice of rule on behalf of respondent No.1.

3. Heard learned advocate Mr. Bhargav Hasurkar for petitioner and Learned AGP Mr. Angesh Panchal for respondent No.1.

4. Brief facts of the present case are as under:-

4.1. Petitioner No.1 was married to one [redacted], and a decree of divorce was drawn dated 11.02.2026 pursuant to a settlement agreement executed during the pendency of the petition before the Hon'ble Supreme Court. Petitioner No.2 was initially married to [redacted] on 30.11.2014 at Ahmedabad according to the rites and practices of Shia Imami Ismaili Muslims. Owing to matrimonial disputes, Petitioner No. 2 approached National Conciliation and Arbitration Board for India, Mumbai, seeking permission to dissolve the marriage. Upon failure of mediation efforts, the Board, by its decision dated 16.01.2018, granted permission to dissolve the marriage by mutual consent. Accordingly, the spouses executed a consent deed of divorce on 30.01.2018 at Ahmedabad. After the expiry of the Iddat period of three months, the Board

issued a divorce certificate dated 27.03.2018, confirming the dissolution of the marriage.

4.2. Thereafter, the petitioners decided to marry each other. As they profess different religions, they submitted a Notice of Intended Marriage to the respondent under Section 5 of the Special Marriage Act, 1954 ('for short' "the Act") claiming that both had been residing at Ahmedabad for more than 30 days. By an order dated 28.09.2026, the respondent accepted the divorce decree produced by Petitioner No.1 but held that the conditions prescribed under Section 4 of the Special Marriage Act, 1954, were not satisfied in respect of Petitioner No.2 and rejected the Notice of Intended Marriage without publishing copy of it into Marriage Notice Book. The petitioners have challenged the said order as being contrary to the provisions of Sections 5 to 8 of the Act. It is contended that Section 6 mandates the Marriage Officer to preserve the notice and publish it by affixing a copy at a conspicuous place in the office. Further, Section 7 provides an opportunity to any

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person to raise an objection to the proposed marriage, on the grounds of contravening conditions specified under Section 4, within 30 days from the date of publication of the notice. According to petitioners, the respondent prematurely rejected the notice without following the statutory procedure for publication and inviting objections. Being aggrieved and dissatisfied with the impugned order, petitioners are before this Court by way of present petition.

5. Learned advocate for petitioner, at the outset, contended that petitioner No.1 was married to one [redacted] and a decree of divorce was drawn on 11.02.2026 pursuant to a settlement agreement executed during the pendency of the petition before the Hon'ble Supreme Court. Petitioner No.2 was married to [redacted] on 30.11.2014 at Ahmedabad according to rights and practice of Shia Imami Islami Muslims. As disputes cropped up, petitioner No.2 approached His Highness Prince Aga Khan Shia Imami Ismaili National Conciliation and Arbitration Board for India, Mumbai

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seeking permission to divorce. The mediation efforts were failed. On 16.01.2018, NCAB, India granted permission to dissolve the marriage by consent. On 30.01.2018, petitioner No.2 and her husband executed a consent deed of divorce at Ahmedabad and as per the Governing law of Shia Imami Ismaili Muslims in India, the marriage between petitioner No.2 and [redacted] was dissolved. After the Iddat period, NCAB India issued a divorce certificate on 27.03.2018. Thereafter, Petitioners decided to marry each other. However as both are professing different religions petitioners submitted a notice of intended marriage to respondent under Section 5 of the Act. It is submitted that both the petitioners are residing at Ahmedabad for over 30 days. By an order dated 28.09.2026, respondent accepted decree of divorce produced by petitioner No.1 but held that the requirements of Section 4 of the Act are not satisfied with regard to petitioner No.2 and rejected the notice without displaying the notice or entering it into Marriage Notice Book. It is submitted that the order is bad in

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law. Section 6 contemplates that the marriage officer shall keep all notices given under Section 5 with the records of his office. The provision further mandates the marriage officer shall cause every notice to be published by affixing to conspicuous place of office. It is submitted that the provisions of Section 5 to Section 8 of the Act has been contravened by the respondent. It is submitted that Section 7 stipulates that any person may object to the marriage on the ground that it contravenes any of the conditions specified in Section 4 before expiration of 30 days from the date on which notice is published under sub-section(2) of Section 6 of the Act. In the present case, before the stage comes regarding any objection being raised by any person, respondent has rejected the application. It is therefore submitted that the rejection of notice of intended marriage is a premature action and deserves to be set aside. Except above, no other submissions were made by learned advocate for petitioner.

6. Learned AGP for respondent has submitted that the

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impugned order is legal and valid. However, the petitioner No.2 is required to give an undertaking to respondent that in case any objections are raised regarding execution of consent divorce deed for dissolution of marriage, the respondent authority would not be held responsible for registering the marriage of petitioners. Except above, no other submissions were made by learned AGP.

7. Having considered the submissions of learned advocates for parties, it appears that the petitioners decided to marry each other however, since both petitioners professing different religions, therefore, they submitted a notice of intended marriage as contemplated under Section 5 of the Special Marriage Act, 1954. The respondent authority rejected the notice of intended marriage before publishing the same or affixing it on the conspicuous place of office as well as did not enter the true copy of notice in the book in Marriage Notice Book on the ground of breach of conditions stipulated under Section 4 of the Act. Section 4 of the Act prescribes conditions

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relating to solemnization of special marriage. Section 4, 5 and 6 are reproduced as under:-

> ***"4. Conditions relating to solemnization of special marriages.****-Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:-*
> *(a) neither party has a spouse living;*
> *[(b) neither party-*
> *(i) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or*
> *ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or*
> *(iii) has been subject to recurrent attacks of insanity [****];]*
> *(c) the male has completed the age of twenty-one years and the female the age of eighteen years;*
> *[(d) the parties are not within the degrees of prohibited relationship: Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and]*
> *(e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends].*
> *[Explanation. In this section, "custom", in relation to a person belonging*

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to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family:

Provided that no such notification shall be issued in relation to the members of any tribe, community, group or family, unless the State Government is satisfied-

(i) that such rule has been continuously and uniformly observed for a long time among those members;

(ii) that such rule is certain and not unreasonable or opposed to public policy; and

(iii) that such rule, if applicable only to a family, has not been

discontinued by the family.]

5. Notice of intended marriage.- *When a marriage is intended to be solemnized under this Act, the parties to the marriage shall give notice thereof in writing in the form specified in the Second Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage has resided a period of not less than thirty days immediately preceding the date on which such notice is given.*

6. Marriage Notice Book and publication.- *(1) The Marriage Officer shall keep all notices given under section 5 with the records of his office and shall also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the Marriage Notice Book, and such book shall be open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same.*

> *(2) The Marriage Officer shall cause every such notice to be published by affixing a copy thereof to some conspicuous place in his office.*
> *(3) Where either of the parties to an intended marriage is not permanently residing within the local limits of the district of the Marriage Officer to whom the notice has been given under section 5, the Marriage Officer shall also cause a copy of such notice to be transmitted to the Marriage Officer of the district within whose limits such party is permanently residing, and that Marriage Officer shall thereupon cause a copy thereof to be affixed to some conspicuous place in his office."*

8. Section 4 which lays down conditions for solemnization of marriage, the Marriage Officer has to be satisfied that neither party has a spouse living at the time of marriage nor party is incapable of giving valid consent to it due to unsoundness of mind or though capable of giving consent, is not suffering from mental disorder making them unfit for marriage and procreation of children or has been subjected to recurrent attacks of insanity. The marriage officer shall also to be satisfied himself that the male party has completed age of 21 years and female party has completed age of 18 years and

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parties are not within the degrees of prohibited relationship. Section 4 does not contemplate that in case either of the parties is married earlier or divorced by a customary deed of dissolution of marriage, the marriage officer is precluded from receiving notice of intended marriage and displaying a copy of notice on conspicuous place in the office. What is contemplated under section 7 of the Act is before expiration of 30 days from the date of publication of notice under sub-section(2) of Section 6, any person may object regarding solemnization of marriage on the ground of non-compliance of stipulated conditions specified under Section 4 of the Act. The intention of Legislature in inserting words "any person" in Section 7 is unambiguous. "Any person" denotes in Section 7 refers to such person who has any objection against granting of customary divorce or a person who is directly affected by divorce deed. In the present case, before any objections are invited, respondent authority rejected the notice of intended marriage.

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9. Section 5 deals with the provision of notice of intended marriage. The said provision mandates a written notice of intended marriage must be submitted to the designated officer before the marriage can be solemnized. At least one of the parties to the marriage must have resided in the district where the notice is filed for not less than 30 days immediately preceding the date of notice. Section 6 prescribes publication of notice by Marriage Officer. The marriage officer records the notice in Marriage Notice Book and publish it publicly in their office for inviting objections.

10. Any objection regarding solemnization of marriage can be raised by any person within thirty days from the date of publication of notice under sub-section(2) of section 6, on the ground that there is a breach of one or more conditions stipulated under Section 4 of the Act. If any person objects to the marriage on the ground that it contravenes any of the conditions specified in Section 4, the marriage officer shall not

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solemnized the marriage until inquiry is held into the matter and is satisfied with the inquiry report that solemnization of marriage ought not to be prevented.

11. In the present case, petitioner No.2 and her former husband executed a consent deed of divorce on 30.01.2018 which was certified by His Highness Agakhan Shia Imami Ismaili National Conciliation and Arbitration Board for India. The divorce certificate has also been issued by the said Board on 27.03.2018 whereby the Board has confirmed the dissolution of marriage being a valid mode of divorce of Shia Imami Ismaili Muslims in India who are governed by the Shia Imami Ismaili Constitution, Rules and Regulations. Therefore, in my view, the respondent authority could not have straightway rejected notice of intended marriage before it is being published by affixing a copy of notice on the conspicuous place in the office. In the result, and considering the facts and the provisions of law, I am of the view that the

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order dated 28.09.2026 passed by respondent requires to be interfered with and I hold that the order dated 28.09.2026 is erroneous and passed without considering the relevant provisions of Special Marriage Act, 1954. Resultantly, the same is quashed and set aside. The petition is allowed accordingly. Rule is made absolute accordingly. No order as to costs.

(D. M. DESAI,J)

SHIVANI SHUKLA

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SHIVANI SHUKLA(HC02350), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 17/11/2026 14:15:29

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