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

\+ **CS(OS) 602/2025 & I.A. 21712-21714/2025**

SHELLY MAHAJAN .....Plaintiff

Through: Ms. Malavika Rajkotia, Ms. Purva Dua and Mr. Mayank Grover, Advocates.

versus

MS BHANUSHREE BAHL & ANR. .....Defendants

Through: Mr. K.C. Jain, Advocate for D-1.
Mr. Prabhjit Jauhar, Ms. Tulika Bhatnagar and Mr. Sehaj Kataria, Advocates for D-2.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% 15.09.2025

1. Ms. Malavika Rajkotia, learned counsel appears for the plaintiff.

2. Mr. K.C. Jain, learned counsel for defendant no.1, and Mr. Prabhjit Jauhar, learned counsel for defendant no.2, appear on advance notice.

3. The present suit has been instituted seeking damages on the premise that the plaintiff was entitled to the affection and companionship of defendant no. 2, and that such affection was allegedly withdrawn on account of the active and *mala fide* conduct of defendant no.1.

4. While seeking damages for Alienation of Affection [AoA], the plaintiff also alleges that defendant no.1 knowingly and intentionally interfered with her marital relationship, thereby causing its breakdown.

5. The brief facts, as they *emerge* from the record, indicate that the

plaintiff married defendant no.2 on 18.03.2012 and the couple was blessed with twin children in 2018. The plaintiff joined the family business as Lab Director in 2019, while defendant no.2 continued to be actively engaged in both the family enterprise and also in his independent venture. In 2021, defendant no.1 joined the said venture as an Analyst. Stated to be aware of the subsisting marriage between the plaintiff and defendant no.2, defendant no.1 is alleged to have developed a close and personal relationship with defendant no.2. It is averred that defendant no.1 would frequently visit the marital home, accompany defendant no.2 on work trips, and gradually became his exclusive travel companion, causing the plaintiff serious apprehensions.

6. The matters escalated in March 2023, when the plaintiff allegedly overheard intimate remarks exchanged between defendant no.2 and defendant no.1 and later discovered letters on the laptop of defendant no.2, confirming the extramarital relationship. The in-laws and extended family are stated to have become aware of the affair and attempted intervention, though without success.

7. Upon confrontation, defendant no.1 is alleged to have categorically refused to end the said relationship, and defendant no.2 thereafter purportedly began openly appearing with defendant no.1 at social gatherings and humiliating the plaintiff at public functions. It is in this backdrop that defendant no.2 had filed for divorce, service of which was effected on the plaintiff on 04.04.2025.

8. In view of the aforesaid context, the plaintiff has instituted the present proceedings seeking damages for the tort of AoA.

9. Against the institution of suit and the issuance of summons, defendant

nos.1 and 2 have made their submissions.

10. Learned counsel for defendant no.2 submits that, in light of Section 7 of the Family Courts Act, 1984, and the interpretation placed thereon by the Division Bench of this Court in ***Geeta Anand v. Tanya Arjun***[1], the present suit is not maintainable. He further relies on a decision of the Division Bench of this Court in ***Tanvi Chaturvedi v. Smita Shrivastava***[2], to contend that in an action of this nature, the alleged adulterer is a necessary party before the Family Court.

11. According to him, these objections go to the very maintainability of the suit. Learned counsel further submits that the issue of adultery has already been framed before the Family Court at the behest of the plaintiff herein, which is pending between the parties.

12. He points out that defendant no. 2 herein has instituted a divorce petition under the Hindu Marriage Act, 1955 [HMA], against the plaintiff. The plaintiff herein is the respondent in those proceedings, and the allegations regarding adultery or other matrimonial grounds can appropriately be raised and adjudicated therein. It is further contended that the written statement/counter affidavit filed by the plaintiff in the divorce proceedings is virtually identical to the present plaint, which is therefore nothing but a counterblast.

13. Learned counsel further contends that the entire dispute emanates from the marital relationship between the parties and falls squarely within the exclusive jurisdiction of the Family Court, and under Section 9 of the Code of Civil Procedure, 1908 [CPC], read with the provisions of the HMA,

[1] 2024 SCC OnLine Del 2327
[2] 2025 SCC OnLine Del 5712

the jurisdiction of this Court is ousted. Further reliance was placed by the learned counsel for the defendants on decisions of the Kerala High Court in the case of ***Leby Issac v. Leena M. Ninan***[3], wherein the Court examined the scope of Section 7(1) read with Explanation (d) of the Family Courts Act in view of the findings of the Court on the meaning of the expression *"in circumstances arising out of a marital relationship."*

14. Another contention raised on behalf of defendant no.2 is that he, more than being a husband, is first an individual vested with full rights and liberties under law, and consequently enjoys autonomy over his body and personal choices. He contended that the plaintiff cannot, under any circumstance, seek to curtail or control the freedom and autonomy of defendant no.2, and on that premise, no civil action can be maintained. Learned counsel further submitted that though he does not directly rely on the decision of the Supreme Court in ***Joseph Shine v. Union of India***[4], which was concerned with striking down adultery as a criminal offence on the ground of it being a gendered legislation, nevertheless, the principle underlying the decision recognises the autonomy of consenting adults and the non-interference of the State in private matters. It was contended that, in the present case, the plaintiff is effectively attempting to indirectly invite State intervention into the private sphere of individuals, which is impermissible in law.

15. Learned counsel for defendant no. 1, while adopting the submissions advanced on behalf of defendant no. 2, further contended that defendant no. 1 could have been impleaded in the pending divorce proceedings itself, and

[3] 2005 SCC OnLine Ker 345
[4] 2019 (3) SCC 39

that the institution of the present suit amounts to opening parallel forums.

16. He further submitted that defendant no.1, at best, is entirely alien to the marital relationship between the plaintiff and defendant no. 2, and therefore owes no legal duty to refrain from interacting with defendant no. 2. On that basis, he contends that no cause of action can lie against defendant no. 1, since there is no recognised legal obligation restraining her conduct towards either the plaintiff or defendant no.2.

17. *Per contra*, Ms. Rajkotia, learned counsel for the plaintiff, submits that a *prima facie* case stands made out and that summons ought to be issued in terms of the reliefs claimed. It is her contention that the plaintiff has suffered damages on account of the alleged overt acts of defendant no.1, which resulted in the withdrawal of the affection and companionship to which she was entitled to from her husband. On this basis, the plaintiff asserts that she is the victim of the tort of AoA and, subject to the proof in accordance with the procedure prescribed under civil law, she is entitled to claim damages.

18. I have heard the learned counsel appearing for the parties and have perused the record.

19. It is seen that, as on date, Indian legislation does not expressly recognise the tort of AoA. The concept is one fundamentally derived from Anglo-American Common Law and belongs to the category of so-called *"heart-balm"* torts[5]. In the common law tradition, a heart-balm action is a civil claim, whereby a party seeks monetary compensation for the termination or disruption of a romantic or marital relationship. Certain

jurisdictions in the United States enacted "heart-balm statutes" specifically to prohibit such actions. Heart-balm actions historically included seduction, criminal conversation, AoA, and breach of a promise to marry. Among these, criminal conversation and AoA were treated as marital torts, initially available only to husbands, but in many States, later extended to spouses irrespective of gender. Seduction and breach of promise to marry were classified as non-marital torts.

20. The first major decision that seems to have touched upon this subject is in the case of ***Pinakin Mahipatray Rawal v. State of Gujarat***[6], whereby the Supreme Court has noted that AoA, if proved against a stranger, constitutes an intentional tort involving interference in the marital relationship with the intent to draw one spouse away from the other.

21. Noting that *"heart-balm"* actions originate in Anglo-Saxon common law, the same remains nascent in India. Historically, such claims were compensatory in nature, with the object of deterring wrongful interference and thereby protecting the institution of marriage. The Court recognised that both spouses hold a valuable interest in their marital relationship, which includes the aspects of intimacy, companionship, support, duties, affection, and the welfare of children.

22. At the same time, the Supreme Court observed that in India, where a marital relationship is strained and a spouse lives separately, the primary statutory remedy available is a claim for maintenance. Although a third party may be instrumental in alienating the affection or companionship of a

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[5] HEARTBALM STATUTE - A state law that abolishes the rights of action for monetary damages as solace for the emotional trauma occasioned by a loss of love and relationship - Black's Law Dictionary [8th ed. 2004] – Page 2113-14

[6] (2013) 10 SCC 48

spouse, it is rare for the aggrieved spouse to pursue an action against such an intruder. Even if such an action were pursued, it would raise questions as to whether the injury could be adequately compensated through monetary damages, since such a remedy may not restore the marriage, but only compensate for harm suffered.

23. Importantly, the Supreme Court laid emphasis on the strict evidentiary standards that would apply to such actions. It was noted that mere association or acquaintance with a spouse is insufficient. There must be clear evidence of active and wrongful interference, with acts that are intentional and calculated to entice one spouse away from the other.

24. Moreover, passive involvement, such as a situation where the married person independently develops affection for another, without any act attributable to the third party, is not actionable. The Supreme Court also noted that in many jurisdictions, particularly in several States of the United States, such claims have been abolished on account of the difficulty in proving them and in quantifying damages, and because they were viewed as unduly burdensome. The relevant portion of the said decision reads as under:-

> *"13. Alienation of affection by a stranger, if proved, is an intentional tort i.e. interference in the marital relationship with intent to alienate one spouse from the other. Alienation of affection is known as "Heart Balm" action. Anglo-Saxon common law on alienation of affection has not much roots in this country, the law is still in its nascent stage. Anglo-Saxon based action against the third parties involving tortious interference with the marital relationship was mainly compensatory in nature which was earlier available to the husband, but, of late, a wife could also lay such a claim complaining of alienation of affection. The object is to preserve marital harmony by deterring wrongful interference, thereby to save the institution of marriage. Both the spouses have a valuable interest in the married relationship, including its intimacy, companionship, support, duties, affection, welfare of*

children, etc.

14. We notice, in this country, if the marital relationship is strained and if the wife lives separately due to valid reasons, the wife can lay a claim only for maintenance against the husband and if a third party is instrumental for disrupting her marriage, by alienating her spouse's affection, companionship, including marital obligations, seldom, we find the disgusted spouse proceeds against the intruder into her matrimonial home. Possibly, in a given case, she could question the extent, that such injuries can be adequately compensated, by a monetary award. Such an action, of course, may not protect a marriage, but it compensates those who have been harmed."

25. Furthermore, in ***Indra Sarma v. V.K.V. Sarma***[7], the Supreme Court observed that where a woman knowingly enters into a relationship with a married man, thereby encouraging a bigamous relationship, such conduct may amount to an intentional tort, namely, interference with the marital relationship by alienating the husband from his legally wedded wife and children. The Court noted that such interference results in loss of marital companionship, consortium, and family association, and thus may give rise to a cause of action for the spouse and children against the third party as well. The judgment noted that marriage and family are social institutions of vital importance, and, drawing from its earlier decision in ***Pinakin Mahipatray Rawal***, the Court reaffirmed that AoA constitutes an intentional tort in principle. These *dicta* indicate that, at least in theory, an Indian spouse could maintain an action against a third party for maliciously inducing the other spouse to withdraw affection. The relevant portion of the said decision reads as under:-

"Alienation of affection

66. *The appellant had entered into this relationship knowing well that the respondent was a married person and encouraged bigamous relationship. By entering into such a relationship, the appellant has committed an intentional tort i.e., interference in the marital*

[7] 2013) 15 SCC 755

> *relationship with intentionally alienating the respondent from his family i.e. his wife and children. If the case set up by the appellant is accepted, we have to conclude that there has been an attempt on the part of the appellant to alienate the respondent from his family, resulting in loss of marital relationship, companionship, assistance, loss of consortium, etc., so far as the legally wedded wife and children of the respondent are concerned, who resisted the relationship from the very inception.*
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> ***67.*** *Marriage and family are social institutions of vital importance. Alienation of affection, in that context, is an intentional tort, as held by this Court in Pinakin Mahipatray Rawal case [Pinakin Mahipatray Rawal v. State of Gujarat, (2013) 10 SCC 48 : (2013) 4 SCC (Civ) 616 : (2013) 3 SCC (Cri) 801] , which gives a cause of action to the wife and children of the respondent to sue the appellant for alienating the husband/father from the company of his wife/children, knowing fully well they are legally wedded wife/children of the respondent."*

26. However, the Court therein did not decide such a claim on the merits, nor does any Indian statute expressly provide for such an action.

27. In practice, no reported civil case has been brought to the knowledge of the Court by either of the parties, which alludes to the enforcement of damages for the tort of AoA, as the concept remains judicially acknowledged, but not formally adopted.

28. Subsequent decisions of various High Courts, including in ***S.A. Margaret Angel v. State Rep. by the Inspector of Police***[8], the Madras High Court reproduced the analysis in the case of ***Pinakin Mahipatray Rawal*** almost *verbatim,* and reiterated that alienation of affection is a tort in theory but *"has not much roots in this country"*. The Court therein stressed the need for clear proof of active interference of the third party to the marriage.

29. Similarly, in ***Devendra Kumar v. Manita***[9] and ***V. Karuppusami v. Indira***[10], the Courts therein cited ***Pinakin's*** definition of AoA as intentional

[8](Crl.O.P.(MD) No. 15407 of 2016, dated 05.10.2018),
[9]2017 SCC OnLine Utt 866
[10]2019 SCC OnLine Mad 29805

interference, extending the reasoning to relationships in the nature of marriage.

30. However, it is important to note that all these observations, both of the Supreme Court and of various High Courts, have been made in the context of proceedings concerning domestic violence, adultery, or related criminal matters.

31. To date, no Indian Court appears to have granted relief in a civil suit seeking damages solely on the basis of AoA, nor has any Court prescribed a procedure for adjudicating such a claim. Thus, while Indian jurisprudence has acknowledged the concept in principle as a possible tort, and the action by the aggrieved spouse to be maintainable, the Courts have, thus far, not evolved any substantive law or remedies to support its enforcement in practice.

32. In contrast to India, a number of U.S. States have long recognized the tort of AoA. However, as of 2016, it survives in only a handful of jurisdictions (notably Hawaii, Mississippi, New Mexico, North Carolina, South Dakota, and Utah). In these States, a spouse who has been affected can sue the *paramour* or the third party who willfully impaired the marriage. However, the plaintiff/aggrieved spouse must show that love existed, the affection was lost, and the defendant's malicious conduct specifically caused that loss.

33. In England and Wales, AoA has been obsolete for almost two centuries. English law abolished the related tort of *"criminal conversation" (suit for adultery)* in 1857, and by that time, actions for AoA had already fallen into disuse.

34. By 1857 both torts *"grew into disfavour"* in the English Courts and have been *"extinct in England for all practical purposes".* Contemporary UK Courts recognize no cause of action for interfering with marriage, and divorce is granted on no-fault terms, and civil law there focuses on divorce settlements, not punishing extramarital liaisons.

35. In Canada, the Supreme Court therein unequivocally rejected a suit based on AoA. In ***Kungl v. Schiefer***[11], reference was made to the English authority/commentary titled ***Lush on the Law of Husband and Wife*** to note that enticement and the alienation of the wife's affections, which was one of the consequences of the enticement, was part of the *damnum* resulting from that *injuria*, the *injuria* being caused by criminal conversion. Since that decision, the Canadian Courts have considered the matter closed. AoA *(and criminal conversation)* as an independent relief has no legal basis in Canada.

36. It is pertinent to note that Indian Courts have historically drawn upon English common law principles, particularly in areas such as tort, contract, equity, and commercial law, where indigenous statutory provisions were either absent or incomplete. Such principles of the common law of England continue to be applied in India, but only to the extent that they are consistent with the Indian statutory framework and the constitutional scheme.

37. However, codified enactments of the English Parliament, which may have modified, restricted, or abrogated earlier common law rules in England, are not binding on Indian Courts unless specifically adopted by Indian legislation.

38. The distinction is well settled. While English common law, as received in India, has persuasive value, and is rarely precedential, English

statutory law does not apply *proprio vigore*. At best, such enactments may be referred to for guidance, but the binding force in India flows solely from Indian statutes and judicial precedents. The Supreme Court has consistently held that English law is of persuasive value only and that even in fields originally derived from English common law, Indian Courts are free to evolve distinct principles suited to Indian conditions.

39. Thus, at the stage of issuing summons, it is sufficient if the plaintiff is able to demonstrate that she has suffered an injury allegedly caused by the acts of a third party, and that such acts are, in their nature, capable of constituting a tort. Unless the defendants are able to show that the suit is expressly barred under Section 9 of the CPC or any other provision of CPC or by any other codified law specifically barring the institution of such suit, an action for damages based on an alleged tort cannot be outrightly rejected.

40. The inquiry at this preliminary stage is not whether the relief ultimately sought is grantable, or whether the plaintiff has established a *prima facie* case for success on the merits. The limited question is only whether the basic ingredients necessary for instituting the suit have been disclosed.

41. Insofar as the objections raised by the defendants are concerned, with respect to the issue of non-joinder or misjoinder of necessary parties, the same do not furnish valid grounds for rejecting the plaint at this stage. In particular, non-joinder or misjoinder of parties is, at best, a curable defect, and in any event, does not even constitute a ground for rejection of the plaint under Order VII Rule 11 CPC as well. Consequently, such an objection

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[11][1962] S.C.R. 443

cannot be relied upon to deny issuance of summons.

42. With respect to the contention of learned counsel for defendant no.1 that no legally binding obligation rests on defendant no.1 to refrain from interacting with defendant no. 2, and therefore no cause of action can lie against her, that submission, so far as it seems to rest upon Hohfeld's analytic schema, proceeds from the *ex facie* correct observation that a claim-right presupposes a correlative duty.

43. However, applying Hohfeld's analysis to the present facts does not render the notion of an AoA action conceptually incoherent. If a spouse is held to possess a protectable interest in marital consortium, intimacy, and companionship, the correlative legal duty would be that any third party must not intentionally and wrongfully interfere with that relationship by acts calculated to alienate the affection of a spouse to the other spouse, which the other spouse is legally entitled to.

44. At the same time, a spouse retains the inherent liberty to make personal choices. Where the conduct of a spouse is completely voluntary, not induced and uncoerced, that exercise of such liberty of one spouse will defeat third-party liability.

45. Viewed in this light, a civil action for wrongful interference is analytically sustainable, so long as the plaintiff can, on proper pleading and proof, establish (i) intentional and wrongful conduct by the defendant directed at alienating the marital relationship of the plaintiff, (ii) clear causation linking that conduct to a legally cognisable injury to the plaintiff, and (iii) that the loss claimed is susceptible of rational assessment.

46. Accordingly, and without prejudging the merits, the Court is of the view that an action for AoA may be maintainable under the Hohfeldian

framework, while the extent to which any relief is grantable, if any, is a matter to be decided during the course of trial.

47. With respect to the contention of learned counsel for the defendants that the present suit is barred by Section 9 CPC read with Section 7 of HMA and by the decision of the Division Bench in ***Geeta Anand***, the Court is unable to accede to that submission at this stage. Learned counsel for the defendants have relied upon ***Geeta Anand*** to argue that where the cause of action is intrinsically linked to the marital relationship, or where the rights and obligations on which the cause of action rests owe their genesis to the marital relationship, the dispute falls within the exclusive jurisdiction of the Family Court and is therefore barred under Section 9 CPC. However, if the said decision is appreciated holistically, it is seen that in the facts of the said case, the mother-in-law, therein, had filed a suit for injunction against her daughter-in-law from the suit property therein. The son and daughter-in-law had married in 2005 and had two children. Marital discord led to the daughter-in-law continuing to reside in the suit property and, according to the plaintiff therein, caused constant alleged harassment and harassment. The plaintiff alleged exclusive title to the property by registered sale deeds and sought relief in the nature of a permanent injunction and costs.

48. The central legal question referred for consideration was whether a suit for possession or injunction over a property, instituted by in-laws against a daughter-in-law claiming exclusive ownership of the property, must be tried exclusively by a Family Court under Section 7(1)(d) of the Family Courts Act, or whether the Civil Courts retain jurisdiction. Another question for reference was whether impleading (or not impleading) the husband affects maintainability?

49. These questions arose in the backdrop of conflicting precedents of this Court. In ***Avneet Kaur v. Sadhu Singh***[12], the Court took the view that the powers of the Family Court are broad and that its jurisdiction extends to adjudicating a wide range of disputes falling within *"in circumstances arising out of a marital relationship."* On the other hand, in ***Manita Khurana v. Indra Khurana***[13], and ***Meena Kapoor v. Ayushi Rawal***[14], where the parties were related through marriage, but the dispute concerned exclusive civil rights, such as ownership or possession of property, the respective Courts therein held that jurisdiction lies with the Civil Courts. Those decisions emphasised that Family Courts are specialised forums designed to deal with a narrower class of matrimonial causes and related matters, and cannot be expanded to cover every dispute merely because the parties happen to share a marital nexus.

50. Upon considering the submissions, the Division Bench emphasised that the phrase *"in circumstances arising out of a marital relationship"* must be read with attention to the cause of action. Family Courts are specialized fora with relaxed procedures intended to promote conciliation and speedy resolution of matrimonial disputes. The special character of these special Courts/Tribunals suggest against importing independent civil rights, which have foundations in an independent civil right, such as disputes pertaining to ownership of immovable property, into the jurisdiction of Family Court under the Family Court Act. The Division Bench observed that merely because the parties are related by marriage, or that a dispute

[12] 2022 SCC OnLine Del 4815
[13] 2010 SCC OnLine Del 225
[14] 2020 SCC OnLine Del 2481

arises in a family setting, the same does not, by itself, render the marital relationship the foundational fact for a suit concerning proprietary rights.

51. Applying the cause of action test, it was held that claims of exclusive ownership, and reliefs of possession or injunction based on such proprietary rights, are civil in nature and do not, by themselves, fall within the exclusive jurisdiction of the Family Courts under Section 7(1)(d).

52. Accordingly, the broader interpretation adopted in ***Avneet Kaur*** was overruled, and the narrower approach in ***Manita Khurana*** and ***Meena Kapoor*** was affirmed.

53. When the functional test in ***Geeta Anand*** is applied to the facts at hand, it is apparent that the wrong alleged here, i.e., the intentional and wrongful interference by defendant no.1 resulting in the loss of consortium and companionship of defendant no.2, is pleaded not as an incidental outcome of marriage, but as an actionable civil injury arising from independent tortious conduct.

54. That is a materially distinct claim from disputes whose very origin lies in the marital bond itself, such as maintenance, custody, or restitution of conjugal rights. On a *prima facie* reading of the plaint, therefore, the cause of action does not fall within the exclusive jurisdiction of the Family Court.

55. The reliance placed by the defendants on Section 9 CPC read with Section 7 of the Family Courts Act, and on the authority of ***Geeta Anand***, is therefore misplaced. As clarified in that decision, the test is not the mere existence of a marital relationship, but whether the cause of action has an intrinsic and unavoidable nexus with that relationship.

56. Here, the plaint asserts a third party tort and seeks monetary compensation for that civil wrong.

57. Such a claim is quintessentially within the purview of the ordinary Civil Courts, and not one over which the Family Court has exclusive jurisdiction.

58. The pendency of parallel matrimonial proceedings between the plaintiff and defendant no.2 does not, without more, bar the institution of this separate civil suit for damages against defendant no.1. The relief sought in this suit, i.e., compensation for tortious interference, is distinct from the remedies pursued under the matrimonial law.

59. Even if there is factual overlap, the Civil Court is competent to proceed, and these considerations do not warrant rejection of the plaint at the threshold stage of issuing summons.

60. With respect to the decision of the Kerala High Court in ***Leby Issac,*** as relied upon by the learned counsel for the defendants, the Court therein observed that the Family Courts Act is a special legislation, enacted to provide a distinct procedural framework for disputes concerning marriage, marital relationships, and family. The Court therein noted that the beneficent object of the legislation required a liberal interpretation of its provisions, and that a narrow construction would defeat its purpose. It was observed that the expression *"in circumstances arising out of a marital relationship"* must be understood broadly to include not only occurrences during the subsistence of the marital relationship but also those preceding and closely following it. The central test, according to the Kerala High Court, is whether the foundation of the claim lies in the marital relationship and whether the reliefs sought arise from circumstances intimately connected with that relationship. Applying this principle, the Court concluded that since a divorce petition was already pending before the Family Court between the

parties, and as the subsequent suit for damages arose from substantially the same set of facts, the matter ought to have been retained by the Family Court rather than relegated to an ordinary Civil Court.

61. The approach of the Kerala High Court in ***Leby Issac,*** in extending Family Courts' jurisdiction to claims of damages by reason of a broad and liberal reading of *"in circumstances arising out of a marital relationship,"* overlooks the essential requirement under Section 9 CPC that exclusion of Civil Court jurisdiction must be express or clearly implied.

62. This Court is, therefore, unable to endorse the reasoning in ***Leby Issac,*** which is broadly aligned with the approach taken in ***Avneet Kaur*****.** On the contrary, this Court is bound by the principle laid down in ***Geeta Anand,*** which expressly overruled ***Avneet Kaur***, and affirmed that Family Courts must remain confined to their intended domain of matrimonial causes and not encroach upon Civil matters which are founded on an independent legal cause of action, despite the parties sharing some marital relationship.

63. With respect to the contention of defendant no.2 that they are private individuals and, in view thereof, their liberties and discretions cannot be curtailed or controlled by the plaintiff, and that the State under no circumstances can intrude into the private sphere of an individual's life and choices, this Court is in agreement to the extent that personal autonomy must be protected, and if defendant no.2 is found to have acted entirely of his own volition, no action would lie against defendant no.1. This position is also consistent with the jurisprudence on AoA, which recognises that no claim is maintainable where the alleged conduct of the third party played no role, and the erring spouse acted independently of any external influence.

64. At the outset, whether the conduct of defendant no.2 was the result of any external influence or was undertaken entirely of his own volition is a pure question of fact, to be established through evidence, and therefore cannot be determined at this preliminary stage.

65. With respect to the contention advanced by defendant no.2 on the aspect of personal liberty to act on his volition, in effect, is a coin with two sides. It is a settled position of law, and was affirmed in ***Joseph Shine***, that the State has no role in criminalising the private lives and intimate choices of individuals, and that neither the State nor its executive ought to interfere in such domains. In fact, there does not lie an absolute right upon any individual to maintain intimate relations outside marriage, without consequences. The decision in ***Joseph Shine*** decriminalised adultery; it did not create a license to enter into intimate relationships beyond marriage, free from civil or legal implications.

66. The fact remains that, at the time of institution of the present civil action, the plaintiff and defendant no.2 continued to be legally married. During the course of arguments, the position of defendant no.2 appears to be that there is no restriction upon him from engaging in intimate relationships outside marriage with a person of his choice.

67. Assuming, without prejudice to defendant no.2, that the allegations of the plaintiff are true, it would indicate that the plaintiff entered into a legally recognised marital relationship with defendant no.2, which, though not exhaustively defined in statute, is understood as a civil union carrying social and often religious connotations.

68. A core and accepted norm of such a union is exclusivity in the intimate sphere between the spouses. Treating marriage analogously to a

contract, this norm may be viewed as one of its essential terms; a breach thereof by either spouse, particularly where it is alleged that a third party, with *mala fide* intent, facilitated or contributed to such breach, can result in serious injury to the other spouse and may ultimately lead to the irretrievable breakdown of the relationship.

69. Whereas under HMA and other allied legislations, the steps for determining a valid, void, or voidable marriage are codified, none of these statutes lay down a comprehensive definition of "marriage" or expressly articulate the expectations arising within such a relationship. However, Section 13 of the HMA makes it clear that voluntary sexual intercourse by either spouse with any person other than their spouse constitutes a valid ground for divorce. The reference in the provision to "his" or "her" is to be understood in the context of the statutory scheme and may be better appreciated when read alongside earlier enactments, such as the (now repealed) Indian Matrimonial Causes (War Marriages) Act, 1948, which under Section 2(b) defined "marriage" to include even a purported marriage that was *void ab initio*, and provided that the terms "husband" and "wife" be construed accordingly.

70. A conjoint reading of these provisions indicates that within the framework of matrimonial law, the parties to a marriage, being husband and wife, are bound by the expectation of sexual exclusivity, and voluntary sexual intercourse by either spouse with a person outside the marriage is recognised as a valid ground for dissolution of the marital bond.

71. The codified law provides avenues for a spouse to seek dissolution of marriage and allied reliefs such as compensation, maintenance, or custody

against the erring spouse before the appropriate forum, here the concerned Family Court.

72. However, in the present case, the plaintiff is not seeking any relief against defendant no.2, who is only arraigned as a *proforma* defendant.

73. The grievance raised pertains instead to the alleged interference of defendant no.1 in the marital relationship of the plaintiff and defendant no.2, and it is asserted that such interference, whether actuated by intent and *malice* or otherwise, contributed to the breakdown of the relationship. The nature of that interference, and whether it was voluntary or otherwise, is a matter to be established during trial. Significantly, neither the HMA nor any other matrimonial legislation provides a codified remedy enabling the Family Court to grant relief against the alleged acts of a third party in such circumstances. In the absence of any such remedy under matrimonial law, and equally in the absence of any statutory bar, a civil action seeking damages against a third party is not excluded and can be pursued before the Civil Court.

74. Thus, defendant no.2, defendant no.1, or indeed any individual, must recognise that actions carry effects and consequences, a principle that applies across all aspects of life. At times, those consequences extend beyond the individual actor, and affect those closely connected with them.

75. The Court is mindful that, the facts and circumstances, as alleged in the plaint, if taken at face value, may result in profound emotional turmoil, not only for the individuals exercising their wide liberty, but also for those who are intimately bound to these individuals exercising the liberty, such as their spouse and children.

76. Individuals may hold certain expectations from the sanctity of marriage. While the exercise of personal liberty is not criminal and therefore cannot attract penal sanction by the State as a matter of public offence, such conduct may nevertheless give rise to civil consequences. When one spouse claims to have suffered legal injury on account of the disruption of the marital relationship, the law, under tort, recognises that compensation may be sought from those alleged to have contributed to the breach of that sanctified bond.

77. Moreover, the present action, as framed, is directed not against the spouse but against defendant no.1, a third party, for her alleged conduct of engaging in an intimate relationship with defendant no.2 and thereby causing injury and loss of affection, which the plaintiff was entitled to. The claim for damages is founded on the alleged acts of defendant no.1 alone, and not on any relief arising from or within the matrimonial relationship between the plaintiff and defendant no.2.

78. In that sense, the cause of action is independent of the marital tie and is premised on the tortious interference of a third party with the plaintiff's legally recognised relationship. Consequently, the Court is satisfied that the instant proceedings do not fall within the ambit of Section 7(1)(d) of the Family Courts Act, which is confined to suits or proceedings *"arising out of a marital relationship,"*. In fact, the Court is of the considered opinion that the instant *lis* is wholly regarding civil rights related to tort, and the Civil Court retains the jurisdiction.

79. For these reasons, and making it clear that the observations herein are confined solely to examining the maintainability of the suit at the stage of issuing summons, without expressing any opinion on the merits, the Court is

satisfied that the plaint *prima facie* discloses a civil cause of action for tortious interference, i.e., AoA, which is distinct from the remedies falling within the exclusive jurisdiction of the Family Courts.

80. Summons are accordingly directed to be issued to the defendants, with liberty reserved to them to invoke the provisions of Order VII Rule 11 CPC, should they seek rejection of the plaint at the appropriate stage.

81. Reserving all rights and contentions of the defendants, let the plaint be registered as a suit.

82. Mr. K.C. Jain, learned counsel appearing for defendant no.1, and Mr. Prabhjit Jauhar, learned counsel appearing for defendant no.2, are present in Court.

83. They confirm receipt of the suit paper book and waive formal service of summons.

84. Written statement(s) shall be filed within thirty days from today.

85. The defendants shall also file affidavits of admission/denial of the documents filed by the plaintiffs, failing which the written statements shall not be taken on record.

86. The plaintiff is at liberty to file replications thereto within thirty days thereafter. The replications shall be accompanied by affidavits of admission/denial in respect of the documents filed by the defendants, failing which the replications shall not be taken on record.

87. It is made clear that any unjustified denial of documents may lead to an order of costs against the concerned party. Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.

88. List this matter before the concerned Joint Registrar for completion of service and pleadings, marking of exhibits, and admission/denial of documents on 10.12.2025.

89. Thereafter, list before the Court on the date to be fixed by the concerned Joint Registrar.

PURUSHAINDRA KUMAR KAURAV, J

SEPTEMBER 15, 2025
Nc/sp