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Judicial Diligence and the Perils of Citing Non-Existent Statutes: An Analysis of the Allahabad High Court’s Decision in Hafij v. Parveen Khatoon

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The administration of justice in matrimonial matters demands not merely substantive fairness but also procedural precision, particularly in the identification and application of governing statutes. The High Court of Judicature at Allahabad, in its recent pronouncement in Hafij v. Smt. Parveen Khatoon (2026:AHC:68880-DB), First Appeal No. 178 of 2026, delivered by a Division Bench comprising Hon'ble Justice Atul Sreedharan and Hon'ble Justice Vivek Saran on April 1, 2026, addressed a singularly egregious instance where the Principal Judge of the Family Court at Banda granted a decree of divorce by repeatedly invoking a statute that has no existence in Indian jurisprudence. This article undertakes a comprehensive examination of the factual matrix, the legal principles governing the validity of judgments premised upon erroneous statutory citations, and the ultimate disposition rendered by the appellate forum.

The appellant before the High Court, Hafij, assailed an order dated January 28, 2026, passed by the learned Principal Judge, Family Court, Banda, whereby the respondent-wife, Smt. Parveen Khatoon, was granted a decree of divorce. The gravamen of the appellant's challenge did not lie in the substantive merits of the matrimonial dispute itself, but rather in a glaring procedural and jurisdictional irregularity that permeated the entire judicial record. The plaint filed by the respondent-wife purported to invoke the provisions of what was described as the "Muslim Women Marriage Dissolution Act, 1986?a legislative enactment that, quite remarkably, finds no place in any statute book in India. The Hindi translation employed in the pleadings and the impugned judgment referred to this phantom legislation as "???????? ????-??????? ?????? ????? ??????? ???????, 1986." The High Court observed that such a law simply does not exist, and what the respondent or her counsel perhaps intended to reference was either the Dissolution of Muslim Marriages Act, 1939, which in Hindi reads as "??????? ????? ????? ???????," or alternatively, the Muslim Women (Protection of Rights on Divorce) Act, 1986. The critical distinction between these enactments lies in their respective legislative objects: the Dissolution of Muslim Marriages Act, 1939, is the governing statute for Muslim women seeking dissolution of their marriages, whereas the Muslim Women (Protection of Rights on Divorce) Act, 1986, was enacted to safeguard the financial and proprietary rights of Muslim women who have already been divorced. The respondent-wife had sought dissolution of her subsisting marriage, which necessarily and exclusively fell within the ambit of the 1939 Act, rendering the citation of the 1986 legislation fundamentally misconceived.

The learned counsel for the appellant mounted his challenge upon the foundational premise that the Family Court had committed a glaring discrepancy in entertaining a plaint founded upon a non-existent statute and had compounded this error by repeatedly incorporating the same mistaken reference throughout its final judgment. The appellant contended that a judgment which systematically invokes and ultimately grants relief under a statute that does not exist in law is inherently vitiated and cannot withstand appellate scrutiny. The respondent-wife, having obtained a favorable decree from the trial court, naturally sought to defend the impugned order. While the specific arguments advanced by her counsel are not elaborately recorded in the appellate judgment, the underlying position was that the Family Court's decree of divorce ought to be sustained. The error, as it transpired, originated from the plaint itself, where the wrong legislative enactment was cited, and was subsequently magnified by the trial judge's failure to identify and rectify this fundamental mistake.

The High Court, in its analytical exposition, commenced by acknowledging a well-established juridical principle: that the mere citation of an incorrect provision or statute in a plaint does not, by itself, render the final judgment invalid, provided that the trial court possessed the requisite jurisdiction under an existing law and correctly identified and applied that existing law in its ultimate decision. This principle, grounded in the pragmatic recognition that pleadings may occasionally contain clerical or drafting imperfections, serves to prevent technical objections from defeating substantive justice. However, the Division Bench was quick to distinguish the present factual matrix from the general application of this doctrine. In the instant case, the error was not confined to the pleadings filed by the parties; rather, the learned Trial Court itself, in its judicial capacity, repeatedly referred to and relied upon the non-existent "Muslim Women Marriage Dissolution Act, 1986" in the operative portions of its judgment. The High Court noted that this erroneous citation appeared in paragraph 8.4, paragraph 9, and various other passages of the impugned order wherever the governing law required reference. The most unfortunate and fatal manifestation of this error occurred in paragraph 10 of the judgment, where the learned Principal Judge recorded that the respondent-wife's case was liable to be allowed in part as per the relevant provisions of the Muslim Women Marriage Dissolution Act, 1986. This constituted not merely a passing reference but the actual juridical foundation upon which relief was granted.

The High Court emphasized that had the erroneous reference been a typographical error appearing in an innocuous or peripheral portion of the order, the appellate court might have been inclined to overlook the same. However, the systematic and repetitive invocation of a non-existent statute, culminating in the grant of substantive relief under that phantom legislation, rendered the judgment fundamentally bad in law. The Division Bench expressed particular concern regarding the casual

approach demonstrated by the learned Trial Court, which was presided over by a judicial officer of the rank of Senior District Judge. The Court observed that it is the solemn duty of every judicial forum to ensure that the statutes it refers to and relies upon actually exist in the corpus juris, and that the repetition of an error originating from the pleadings does not absolve the court of its responsibility to apply the correct law. The learned Principal Judge's failure to discern that the statute repeatedly cited throughout the judgment had no legislative existence betrayed a concerning lack of diligence and attention to the basic prerequisites of judicial writing.

The analytical framework adopted by the High Court highlights the distinction between errors that are merely technical or peripheral and those that strike at the very jurisdictional or legal foundation of a judicial order. When a court grants relief under a statute that does not exist, it effectively purports to exercise authority derived from a non-existent source, thereby rendering its decision ultra vires in a fundamental sense. The judgment in Hafij v. Parveen Khatoon serves as a stark reminder that judicial orders must be anchored in real, extant legal provisions, and that the responsibility for ensuring such anchorage rests squarely upon the presiding judicial officer, irrespective of the errors that may have crept into the pleadings filed by the parties.

Upon careful consideration of the aforesaid aspects, the Division Bench allowed the appeal filed by Hafij and set aside the impugned order dated January 28, 2026, passed by the Principal Judge, Family Court, Banda. However, the High Court declined to foreclose the respondent-wife's substantive claim for dissolution of marriage. Instead, the matter was remanded to the learned Family Court with a clear and specific mandate to pass a fresh judgment by correctly identifying and applying the appropriate provisions of law. The appellate court explicitly clarified that it was not directing a de novo trial, and that the Family Court was entitled to rely upon the entire body of material and evidence already available on the record. The Family Court was further empowered to call for additional evidence only if it formed a firm opinion that such additional evidence was necessary for the proper adjudication of the matter. In the interests of expeditious justice, the High Court directed the learned Family Court to dispose of the proceedings preferably within a period of three months from the date of communication of the appellate judgment.

The decision in Hafij v. Parveen Khatoon carries significant implications for matrimonial jurisprudence and judicial practice generally. It reinforces the non-negotiable principle that courts must verify the existence and applicability of statutes before incorporating them into judicial orders, particularly when such statutes form the juridical basis for granting or denying substantive relief. The case also highlights the critical importance of accurate pleading and the duty of trial courts to correct manifest errors in statutory citations rather than perpetuating them. For the legal fraternity, this judgment serves as a cautionary tale regarding the consequences of casual drafting and the even more serious consequences of judicial failure to scrutinize such drafting.

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