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

% ***Reserved on: 17.08.2026***
Date of decision: 20.11.2026

\# **CNR No. DLHC010183952025**

\+ MAT.APP.(F.C.) 133/2025 & CM APPL. 19386/2025

.....Appellant

Through: Ms. Archana Gaur, DHCLSC with Ms. Ridhima Gaur, Mr. Deepu Kumar, Advs.

versus

.....Respondents

Through: Ms. Kamlakshi Singh, DHCLSC.

CORAM:
HON'BLE MR. JUSTICE VIVEK CHAUDHARY
HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

1. The present appeal assails order dated 31.08.2024 passed by the learned Principal Judge, Family Courts, North-West District, Rohini, Delhi in CS No. 55923/2016, whereby the appellant has been directed to appear along with the respondent no.2 for collection of samples for DNA analysis, to ascertain the paternity of the respondent no.2.

2. The brief facts necessary for adjudication of the present appeal are that the respondent no.1, a widow, claims to have married the appellant on 05.06.1997 and to have lived with him in Delhi and thereafter in Surat, Gujarat. It is her case that the appellant left her in 2009, and that after she came back to Delhi in search of him, the parties again lived together at Krishan Vihar, Delhi from November 2009 till 22.07.2010, the date on which

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the appellant left her. During this period she conceived the respondent no.2/child, who was born on 10.03.2011.The appellant denies the marriage, any relationship with the respondent no.1 and the paternity of the respondent no.2. According to him, he knew the respondent no.1 only as a widow residing in Budh Vihar, Delhi, where he worked as an electrician, and he has been married to since 09.03.1999, with two children from that marriage.

3. In the year 2010, the respondent no.1 filed petitions against the appellant under Section 9 of the Hindu Marriage Act, 1955 ("HMA") and Section 125 of the Cr.P.C. During their pendency, she moved an application dated 13.12.2010 seeking a DNA test of the appellant to determine the paternity of the child she was carrying. The appellant opposed it, but subsequently, on 13.04.2011, gave a handwritten statement that he was ready to undergo a DNA test, while maintaining that the child was not his, and on 24.05.2011 himself applied for the test. The said application was never decided. By judgment dated 24.04.2012, both the petitions were dismissed, holding that the respondent no.1 had failed to prove her marriage with the appellant.

4. The appeals preferred by the respondent no.1, being FAO Nos. 335/2012 and 336/2012, were dismissed by a Division Bench of this Court vide judgment dated 13.08.2012. This Court found that, at the highest, the documents relied upon by the respondent no.1 showed that the parties *"did live together for some time in Gujarat"*, which did not prove a marriage. On the appellant's refusal to undergo a DNA test, it found that *"The same, at best, may lead to the drawing of an adverse inference against the respondent [appellant herein] that he is the biological father of the baby girl. However,*

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that by itself does not establish the existence of a marriage between the parties."

5. Thereafter, the respondents instituted the present suit, pleading that the respondent no.2 has a right to know her biological father, and praying for a decree of mandatory injunction directing the appellant to undergo a DNA test, and for a declaration, upon receipt of the DNA report, that the appellant is the biological father of the respondent no.2. The appellant contested the suit, denying any relationship with the respondent no.1, and objected that the suit was not maintainable in view of the earlier judgments and because the earlier application for DNA test had been dismissed. The respondents denied that any application for DNA test had been dismissed. On completion of pleadings, issues were framed, including Issue No.3 as to whether the respondent no.2 is the daughter of the appellant.

6. By the impugned order dated 31.08.2024, the Family Court held that the question of marriage stood concluded against the respondent no.1 by the earlier judgments, but that no application for DNA test had ever been decided, and that the claim for determination of paternity was an independent cause of action. On the prayer for a DNA test, it held that the failure to prove the marriage was distinct from the question of paternity, that the testimony of PW-1 as to cohabitation at the time of conception was neither challenged in cross-examination nor rebutted, and that the earlier judgments contained no finding on paternity. It concluded that *"Plaintiff has shown that there was possibility of the defendant having access to her during the period when plaintiff no.2 was conceived and plaintiff no.2 has a right to know about her paternity"*, and directed the DNA test. Issue No.3 and the prayer for declaration have been deferred till receipt of the DNA report.

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7. Learned counsel for the appellant submits that the respondent no.1 failed to prove any marriage with him in the earlier proceedings, which has attained finality. It is submitted that appellant had no access to respondent no.1, and there exist no prima facie material to justify a DNA test. It is further submitted that the respondents want to defame the appellant. It is also submitted that a compelled DNA test infringes his right to privacy**.** Reliance is placed upon the judgment of the Supreme Court in ***Aparna Ajinkya Firodia v. Ajinkya Arun Firodia,*** (2024) 7 SCC 773, that the mere existence of a dispute as to paternity does not, by itself, justify a direction for a DNA test or any other scientific examination.

8. *Per contra*, learned counsel for the respondents supports the impugned order passed by the Family Court. Reliance is placed upon ***Narayan Dutt Tiwari v. Rohit Shekhar***, (2012) 12 SCC 554.

9. The principal question that arises for consideration is whether, the respondent no.1 having failed to prove her marriage with the appellant in the earlier proceedings, the Family Court was justified in directing the appellant to undergo a DNA test to ascertain the paternity of the respondent no.2.

10. As already noted above, the earlier proceedings were initiated by the respondent no.1 for restitution of conjugal rights and for her own maintenance, and the question therein was whether she was the wife of the appellant. The respondent no.2 was not a party to those proceedings, and no relief was claimed for her. This Court, in its judgment dated 13.08.2012, specifically noted that the respondent no.1 *"did not seek any maintenance for the baby girl and she only prayed for maintenance for herself"*. This cannot bind the respondent no.2 on the question of her paternity. Moreover, while dismissing the appeals, this Court noted that, at the highest, the documents

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relied upon by the respondent no.1 showed that the parties *"did live together for some time in Gujarat",* and that the refusal of the appellant to undergo a DNA test may, at best, lead to an adverse inference that he is the biological father of the baby girl. The earlier judgments, thus, decided the question of marriage and not the question of paternity and access. We, therefore, agree with the Family Court that the failure of the respondent no.1 to prove her marriage is distinct from the question whether the appellant is the biological father of the respondent no.2. The respondent no.1 has failed to prove any marriage with the appellant. There being no marriage, the presumption of legitimacy under Section 112 of the Indian Evidence Act, 1872 (now Section 116 of the Bharatiya Sakshya Adhiniyam, 2023) does not arise, and there is no legitimacy of the child which could be imperilled by the test. The suit has been filed on behalf of the respondent no.2 herself, to know who her biological father is. Her paternity is not a collateral question but the very issue in the suit, being Issue No.3.

11. The law on this subject is no longer *res integra.* The Supreme Court after relying upon ***Goutam Kundu v. State of W.B***., (1993) 3 SCC 418; ***Dipanwita Roy v. Ronobroto Roy***, (2015) 1 SCC 365; ***Aparna Ajinkya Firodia v. Ajinkya Arun Firodia*** (supra); ***Ivan Rathinam v. Milan Joseph***, 2025 SCC OnLine SC 175; recently in ***Chaturbhuj Pradhan v. Amar Pradhan & Anr***, 2026 SCC OnLine SC 994, held:-

> *"6. It is clear from the above judgments that when the Court is confronted with the question whether or not to order a DNA test, the only test to be satisfied is whether the result of the DNA test is directly in issue and whether any other evidence-on-record can substitute for the answer that may be arrived at through this scientific process. Also, whether it is in*

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the best interest of the parties and/or justice."

12. So far as reliance placed by the appellant upon ***Aparna Ajinkya Firodia*** (supra) is concerned, in that case, the husband sought a DNA test of the second child, born during the subsistence of the marriage, only to prove the adultery of the wife in divorce proceedings. It was in that context that the Supreme Court held that a DNA test of a minor child is not to be ordered routinely in matrimonial disputes, and in such facts, a DNA test need not be directed. The Supreme Court, noting several judgments that were subsequently also relied upon in ***Chaturbhuj Pradhan*** (supra), itself drew the distinction in the following words:-

> *"67. Another aspect that needs to be considered in the instant case is whether, for a just decision in the divorce proceedings, a DNA test is eminently necessary. This is not a case where a DNA test is the only route to the truth regarding the adultery of the mother.* ***If the paternity of the children is the issue in a proceeding, DNA test may be the only route to establish the truth****. However, in our view, it is not so in the present case. The evidence of DNA test to rebut the conclusive presumption available under Section 112 of the Evidence Act, can be allowed only when there is compelling circumstances linked with 'access', which cannot be liberally used as cautioned by this Court in Dipanwita Roy."*
>
> *(emphasis supplied)*

13. The present case falls squarely within the aforesaid distinction that the paternity of the respondent no.2 is the very issue in the suit and not the adultery of the mother, and the Family Court considered the evidence led before it before directing the DNA test. The respondent no.1 specifically deposed that she had lived with the appellant at Krishna Vihar, Delhi from

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November 2009 till 22.07.2010 and that respondent no.2 was conceived during this period. As noted above, this part of her testimony was neither challenged in cross-examination nor rebutted by any contrary evidence. The appellant, despite denying the relationship, did not enter the witness box and did not lead any evidence to disprove the said assertion. The Family Court also found that the appellant had admitted that he knew respondent no.1 and had worked as an electrician at Budh Vihar, Delhi, where she was also residing. There is no marriage, and no presumption under Section 112 of the Evidence Act to be rebutted. The test is not sought to cast a doubt upon the legitimacy of a child, but by the child herself, to know her father. Even as per paragraph 43.4 of the said judgment, the parties are first to lead evidence, and a DNA test may be directed where the Court finds it impossible to draw an inference on the basis of such evidence, or where the controversy cannot be resolved without it. That is precisely the course adopted in the present case. The Family Court directed the DNA test only after the parties had led their evidence, and the evidence already led cannot conclusively determine biological paternity. DNA testing may constitute the most reliable and determinative evidence for resolving the controversy, in the facts of the present. Therefore, ***Aparna Ajinkya Firodia*** (supra) does not help the appellant in the facts of the present case.

14. It is also material that the Family Court had earlier considered the question whether any application for DNA testing had already been disposed of and, after hearing the parties, found that no such application had in fact been decided in the earlier proceedings. Thus, the direction under challenge was not a reopening of an earlier adjudication on DNA testing.

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15. The appellant argues that an adverse inference from refusing a DNA test is enough, meaning no actual test is required. This was considered in ***Rohit Shekhar v. Narayan Dutt Tiwari,*** FAO(OS) No. 547/2011, decided on 27.04.2012, wherein a Division Bench of this Court held:-

> *"34. We may highlight that as per the dicta of the Supreme Court noticed by the learned Single Judge also, a direction for DNA testing can be issued only after the test of eminent need is satisfied…*
>
> *A legal fiction under Section 114 of the Evidence Act, as adverse inference is, is not reality but which the said provision requires the Court to accept as reality. The Court is not bound to or obliged to draw such adverse inferences (see* ***Emperor v. Sibnath Banerjee*** *AIR 1943 FC 75,* ***Dhanvantrai Balwantrai Desai v. State of Maharashtra*** *AIR 1964 SC 575 and* ***Fakir Mohd. (Dead) by LRs v. Sita Ram*** *AIR 2002 SC 433). A presumption is not in itself evidence but only makes a prima facie case for parties in whose favour it exists (see* ***Sodhi Transport Co. v. State of U.P.*** *(1986) 2 SCC 486). As far back as in* ***Damisetti Ramchendrudu v. Damisetti Janakiramanna*** *AIR 1920 PC 84 it was held that presumption cannot displace adequate evidence. The Supreme Court also in* ***Mohanlal Shamji Soni v. Union of India*** *1991 Supp (1) SCC 271 held that it is the rule of law in evidence that the best available evidence should be brought before the Court to prove a fact or the points in issue and the Court ought to take an active role in the proceedings in finding the truth and administering justice. Recently in* ***Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria*** *(Dead) 2012 (3) SCALE 550 it was reiterated that the truth is the guiding star and the quest in the judicial process and the voyage of trial. The trend world over of full disclosure by the parties and deployment of powers to ensure that the scope of factual controversy is minimized was noticed.* ***We are***

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> ***therefore of the opinion that adverse inference from non-compliance cannot be a substitute to the enforceability of a direction for DNA testing. The valuable right of the appellant under the said direction, to prove his paternity through such DNA testing cannot be taken away by asking the appellant to be satisfied with the comparatively weak 'adverse inference'****."*
>
> *(emphasis supplied)*

16. Against the said decision, a special leave petition, ***Narayan Dutt Tiwari v. Rohit Shekhar*** (supra), was dismissed by the Supreme Court, finding no need to interfere with the same. Only with regard to the confidentially of the matter, the blood sample was directed to be taken in confidentiality and the DNA report to be forwarded in a sealed cover.

17. We are therefore also of the opinion that adverse inference from non-compliance cannot be a substitute to the enforceability of a direction for DNA testing. Relying solely on an adverse inference instead of finding the scientific truth does not meet the ends of justice. Once a strong and eminent need is established, a child's right to know her parentage through the best available evidence cannot be denied by replacing scientific facts with a comparatively weak legal assumption.

18. With regard to compelling extraction for blood samples for DNA, in ***Selvi v. State of Karnataka***, (2010) 7 SCC 263, the Supreme Court held:

> ***"203.*** *This line of precedents shows that the compelled extraction of blood samples in the course of a medical examination does not amount to "conduct that shocks the conscience". There is also an endorsement of the view that the use of "force as may be reasonably necessary" is mandated by law and hence it meets the threshold of "procedure established by law".*"

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19. As regards to the Right to privacy, though it is a fundamental right, as held in ***K.S. Puttaswamy v. U.O.I***, (2017) 10 SCC 1, it is not absolute. It was also noted in ***Rohit Shekhar v. Narayan Dutt Tiwari*** (supra) that directing a person to undergo a DNA test does not violate his right to life or privacy, and that the right to privacy can be reasonably curtailed. The right of the appellant to privacy has to be balanced against the right of the respondent no.2 to know her origin, and in the facts of the present case, the balance tilts in favour of the latter. The apprehension of the appellant that the suit is aimed at defaming him can be taken care of by maintaining confidentiality, as was directed by the Supreme Court in ***Narayan Dutt Tiwari v. Rohit Shekhar*** (supra). Further, if the appellant is not the father of the respondent no.2, as he claims, the test will only put the matter beyond doubt in his favour. This Court also notes, as also noted in several judgments of the Supreme Court that Justice is best served by truth. Justice is not served by impeding the establishment of truth.

20. In view of the above, the test laid down by the Supreme Court, as noticed above, stands satisfied. We find no infirmity in the impugned order dated 31.08.2024 passed by the Family Court and same is upheld.

(i) The Family Court shall fix a date, as early as possible, for the appellant and the respondent no.2 to appear before the MS/HOD, Forensic Medicine, BSA Hospital, for collection of samples in terms of the impugned order.

(ii) The samples shall be collected in confidentiality, and the DNA report shall be forwarded in a sealed cover to the Family Court.

(iii) In case the appellant fails to appear, the Family Court shall be at liberty to take all steps necessary in accordance with law to secure compliance.

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21. Nothing stated herein shall be construed as an expression of opinion on Issue No.3 or on the prayer for declaration, which shall be decided by the Family Court on the basis of the DNA report and the evidence on record, in accordance with law.

22. The present appeal is dismissed. Pending application(s), if any, stand(s) disposed of in the above terms.

VIVEK CHAUDHARY
(JUDGE)

RENU BHATNAGAR
(JUDGE)

NOVEMBER 20, 2026
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