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CR-503-2026

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 3rd OF AUGUST, 2026CIVIL REVISION No. 503 of 2026*DR SHAZIYA NAWAZ KHAN**Versus**SYED SAMI ALI*

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Appearance:

*Shri Imtiaz Husain - Senior Advocate with Ms Afshan Ahmad -
Advocate for the petitioner.*

*Shri Sankalp Kochar - Advocate with Shri Pramendra Singh Thakur -
Advocate for respondent No.1.*

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ORDER

The present revision has been filed challenging the order dated 11.04.2026 passed by the Family Court thereby rejecting the application under Order 7 Rule 11 CPC. The application was filed for rejecting the petition filed for declaration of divorce before the Family Court.

2. Learned counsel for the applicant-wife has submitted that the respondent-husband has filed a suit before the Family Court whereby declaration of divorce has been sought on the assertion that there is a Fatwa issued by Darul-Ifta Masajid Committee, Bhopal on 22.10.2024 and in terms of the aforesaid Fatwa the declaration of dissolution of marriage be granted. It is argued that such Darul dafa Masjid Committee Bhopal has no authority to grant divorce and therefore no declaration can be granted on such Fatwa



of the said seminary. By relying on the aforesaid Fatwa (Annexure P-4) it is argued that the said Fatwa only mentions from Islamic texts that in what circumstances divorce can be sought and this Fatwa only mentions what the Islamic scriptures provide in such situation and this is not a divorce granted by the said seminary and no declaration can be sought on the basis of such Fatwa.

3. *Per contra*, learned counsel for the respondent has vehemently argued that the suit is maintainable and also that there is a prayer made in the plaint of declaration of divorce and otherwise also a divorce petition is maintainable.

4. This Court has heard learned counsel for the rival parties at length.

5. In the application filed before the Family Court under Order 7 Rule 11 CPC something different has been stated by the present applicant-wife and it has been stated therein that the suit has been filed under Dissolution of Muslim Marriages Act, 1939 and under the said provision only females have a right to seek divorce and Muslim men have no right to seek divorce. However, at the time of hearing of the present revision a different point has been argued that the suit for declaration of divorce is not maintainable.

6. This Court has gone through the plaint and in the plaint indeed it is found that suit has been filed for declaration of divorce and relief has been sought that on the basis of Fatwa dated 29.10.2024, the decree of declaration of divorce be granted.

7. This Court has gone through the said Fatwa and the said Fatwa nowhere mentions divorce to be granted and indeed any seminary cannot



grant any divorce to a Muslim male. The said Fatwa only mentions the provisions in the Islamic scriptures which give guidance in such situation when there is cruel conduct of the wife which was queried by the present applicant to the Darul-dafa Masajid Committee, Bhopal.

8. So far as the maintainability of suit for divorce is concerned, the question is no longer *res integra*. It has been held by a Division Bench of this Court in F.A. No.1199 of 2022 that the divorce petitions are maintainable and by interpretation of Dissolution of Muslim Marriages Act, 1939, it cannot be said that Muslim men cannot file petitions for divorce. The Division Bench in the aforesaid case has interpreted Section 7(d) of Family Courts Act, 1984. The Division Bench held as under:

"10. Section 7 of the Act of 1984 falls under Chapter III which contemplates jurisdiction. Section 7(1)(Explanation)(d) of Act of 1984 contemplates that a suit proceeding which can be entertained by Family Court if the said suit or proceeding is for an order or injunction in circumstances arising out of a marital relationship. Since this provision does not distinguish on the basis of Caste and Community, therefore, it is all pervasive in nature. It is in line with the object of the Act of 1984 which reads as under:

"An Act to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith."

11. Therefore, one has to take cue from the Act of 1984 and then has to look into the High Court of Madhya Pradesh Family Court Rules, 1988 (hereinafter referred to as "the Rule of 1988") in which rule 9 is produced for ready reference:

9. Registration of fresh Suites or proceedings. - (1)The



High Court may in relation to any fresh suit or fresh proceeding issue instructions in writing to Family Courts for registration of fresh suit or fresh proceeding.

(2) In particular and without prejudice to the generality of the foregoing power, the instructions to be issued by the High Court, may provide for inclusion for the purposes of the registration of suits or any proceedings of the nature referred to in Explanation to Sub-Section (1) of Section 7 of the Act and instituted or taken before a Family Court with reference to related provisions contained in following laws as amended from time to time viz.:-

(i) proceeding under chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

(ii) suit or proceeding under the Hindu Marriage Act, 1955 (25 of 1955):

(iii) suit or proceeding relating to maintenance under the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956):

(iv) Suit or proceedings in relation to the Guardianship of the persons or the custody of or access to any minor under the Hindu Minority and Guardianship Act, 1956 (32 of 1956)

(v) proceedings under Dowry Prohibition Act, 1961 (28 of 1961), for an order for injunction in circumstances arising out of marital relationship.

(vi) proceedings in relation to Hindu Marriage (Validation of Proceedings) Act, 1960 (19 of 1960);

(vii) suits or proceedings arising out of personal law applicable to muslims including:

(a) Muslim Personal Law (Shariat) Application Act, 1937 (26 of 1937)

(b) Dissolution of Muslim Marriages Act, 1939 (8 of



1939)

(viii) suites or proceedings under the Parsi Marriage and Divorce Act, 1936 (3 of 1936), which can be instituted or taken out before the Parsi District Matrimonial Courts constituted under Sections (18 and 20) of the said Act; (ix) suits or proceedings under the Indian Christian Marriage Act, 1872 (15 of 1872)

(x) suits or proceedings under the Special Marriage Act, 1954 (43 of 1954) (xi) proceedings under the child Marriage Restraint Act, 1929 (19 of 1954). (xii) proceedings in relation to Anand Marriage Act, 1909 (7 of 1909)

(xiii) proceedings in relation to Arya Marriage Validation Act, 1937 (19 of 1937).

(xiv) suits or proceedings arising out of Foreign Marriage Act, 1969 (19 of 1937).

(xv) suits or proceedings relating to the part B States Marriages Validating Act, 1952 (1 of 1952)

(xvi) suit or proceedings relating to the Muslim Women (Protection of Rights on Divorce) Act, 1986 (25 of 1986)

(xvii) suits or proceedings under the Guardians and Wards Act 1890 (8 of 1890).

(xviii) suits or proceedings relating to the Hindu Marriages (Validation of Proceedings) Act, 1960 (19 of 1960).

12. Rule 9(2)(vii) is framed in respect of suit or proceeding arising out of personal law applicable to Muslim including the Shariat Act and the Act of 1939. Perusal of these Acts and rules reveals that so far as Shariat Act is concerned for realization of the issue (like divorce in the present case) has to be regulated through procedure and procedure as prescribed in the Act of 1984 as well as High Court of Madhya Pradesh Family Court Rules. Therefore, the



procedure established by law is clear that a Muslim male can sue a suit or proceeding for dissolution of marriage on the grounds as available to him.

13. Earlier the Division Bench of this Court in the case of Aqeel Ahmed (Khan) Vs. Smt. Farzana Khatun in First Appeal No.1017 of 2022 vide order dated 14-10-2022 considered this aspect and relying upon the order dated 30-03-2021 passed by the Division Bench of Madras High Court in C.M.A. No.2192 of 2017 (Settu Vs. Reshma Sulthana) considered the question of maintainability as well as settlement reached between the parties and allowed the appeal preferred by the parties on the basis of settlement reached between them. Therefore, it can be held that parties have additional forum of this Court also to get the decree for divorce/dissolution of marriage.

14. Even the Constitutional Morality and its Spirit also mandates that no person can be rendered remediless. If the reasoning of trial Court would have been accepted then a muslim male would have been denied the valuable right to access justice or judicial forum to ventilate his grievances. This could never have been the Constitutional spirit, morality and Constitutional Vision of Justice.

15. Therefore, in the considered opinion of this Court, trial Court erred in rejecting the application for dissolution of marriage on the ground of maintainability. Accordingly, the impugned judgment passed by the Family Court is here by set aside and matter is remanded back to the Family Court for adjudication."

9. The respondent-husband seems to have filed a suit for declaration under a misconception that suit seeking divorce is not maintainable and therefore he sought declaration of divorce. Point. However, suit seeking divorce is maintainable and no declaration of divorce can be given on the



basis of Fatwa dated 29.10.2024.

10. Therefore, the suit seeking declaration of divorce does not reveal any valid or legal cause of action and therefore, in the considered opinion of this Court, the plaint deserves to be rejected by exercising powers under Order 7 Rule 11 CPC.

11. Hence, the revision is allowed. The plaint is rejected under Order 7 Rule 11 CPC as it does not disclose any valid cause of action having been filed to seek declaration of divorce on the basis of Fatwa dated 29.10.2024. However, it is made clear that this order would not affect the right of the respondent-husband to file a newly constituted divorce petition before the Family Court and he would be having liberty to file such a divorce petition as per law.

12. In above terms, the revision succeeds and stands **allowed**. The plaint filed by the respondent-husband stands rejected with aforesaid liberty.

(VIVEK JAIN)
JUDGE

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