

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL REVISION APPLICATION NO. 351 of 2024

Versus

Appearance:

MR SATYAJIT S SONAGARA(12218) for the Applicant(s) No. 1

CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER

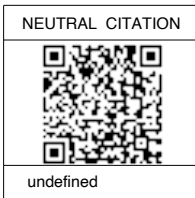
Date : 22/01/2025

ORAL ORDER

1. The present Civil Revision Application has been filed challenging the order passed by the learned Principal Judge, Family Court, Ahmedabad below Exh.16 in Family Suit No.271 of 2022 dated 05.10.2023.

2. For the sake of convenience, the parties herein are referred to as their original status referred to before the Family Court i.e. petitioner – husband and the respondent – wife, for the sake of convenience.

2.1 The facts leading to the filing of the present Revision Application are that petitioner has filed composite suit being Hindu Marriage Petition No. 271 of 2022 under the Hindu Marriage Act, 1955 i.e. petition under Section 12(1) and 13(1) (ia) of the Hindu Marriage Act, 1955 ('the Act', for short) for declaration of nullity of marriage and / or dissolution of marriage by a decree of divorce.

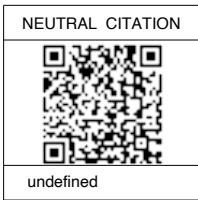


2.2 In the said proceedings, the respondent had filed appearance along with the application vide Exh.16 under the provisions of Order VII Rule 11 (1) (a) and (d) of the Code of Civil Procedure, 1908 ('the Code, 1908', for short) for rejection of the plaint. It was the case of the respondent in the said application that from the statement made in the petition, the petition is barred by law and that composite petition under Sections 12(1) and 13 (1) (ia) of 'the Act' are not permissible.

2.3 In the said application, the respondent has also given brief background of the dispute between the parties but the same is not required to be looked into as while deciding the application under Order VII Rule 11 of 'the Code, 1908', only the averments made in the plaint and the documents annexed with the plaint have to be examined.

2.4 Learned advocate for the applicant has argued that in the said application Exh.16, it has also been stated that under the provisions of 12(2)(a)(i) of 'the Act', the petition has to be presented within one year and, therefore, it is the case of the respondent in the application that the petition, qua the prayer of the nullity under Section 12 of 'the Act' is hopelessly time barred by law of Limitation.

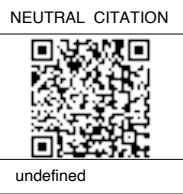
2.5 It is also the case of the respondent that as the petitioner had voluntarily left the respondent after 18 years of long married relationship, the petition for nullity under Section 12 of 'the Act' cannot be entertained on the ground of consent obtained by force



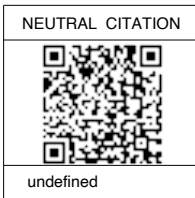
or fraud or as to the concealment of illness of the respondent. It is also the case of the respondent in the application under Order VII Rule of 'the Code, 1908' that no proper cause of action has been disclosed so as to entitle the petitioner to file composite petition of claiming nullity of marriage and in the alternative divorce under the provision of Section 13 of 'the Act'.

3. Learned advocate for the respondent – wife has argued that the respondent challenges the order dated 05.10.2023 passed by the learned Principal Judge, Family Court below Exh.16 application filed under Order VII Rule 11 of 'the Code, 1908' on the ground that the learned Family Court has not properly examined the petition and from the facts stated in the plaint, the suit is not maintainable. It has also been argued that composite petition for nullity of the marriage under Section 12 for divorce is not maintainable. Hence, the composite petition for nullity of marriage and dissolution of marriage by a decree of divorce is required to be rejected under the provisions of Order VII Rule 11 of 'the Code, 1908'.

4.1 Having heard learned advocate for the respondent, the question before this Court is that whether the composite suit filed for nullity under the provisions of Section 12 (1) and for divorce under Section 13(1)(a) of 'the Act' can be rejected under the provisions of Order VII Rule 11 of 'the Code, 1908'. The fact remains that looking at the petition, the petitioner husband has also sought relief for divorce on the ground of cruelty and has also shown instances as to how the petitioner is claiming that petitioner



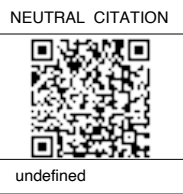
has suffered mental cruelty at the hands of the respondent. Some of the incidents that the petitioner has mentioned in the petition are with respect to denial of the respondent to perform physical marital obligation, petitioner has also stated in the petition that the respondent has also started brainwashing the children and has also alleged that the respondent used to say that the mother of the petitioner had performed some sort of '*Kala Jaadu*' on respondent wife and that there were continuous fights, mental torture by respondent. In the petition, it is also alleged that respondent is habituated to using extremely unparliamentary language in normal conversation and during fights and respondent has started abusing children verbally and physically. There are also allegations made in the petition about the petitioner having to sacrifice his dreams, to pursue career and there was physical violence done by the respondent on the petitioner. There are also instances mentioned in the petition that respondent has also threatened to kill the daughter by rushing with the knife towards the children room and caused extreme fear and mental agony to petitioner. In the petition, the petitioner has also mentioned that the respondent has approached the superior of the petitioner of Income Tax department and made allegations against the petitioner and that evidence of cruelty to which the petitioner was subjected to by the respondent was stated to have been mentioned in the petition. Therefore, the petitioner in the petition has narrated the facts with respect to the grounds on which he is claiming to be entitled for divorce under Section 13 of the Act.



4.2 With respect to provisions of Section 12(1) of the Act, the petitioner has also stated in the petition that owing to constant ill-health of respondent, there was no physical relationship and that neither respondent nor her parents had disclosed about actual physical condition of the respondent prior to marriage and, therefore, as alleged that marriage was obtained by fraud and concealment of illness and mental status of the respondent. Therefore, there are statements made in the petition with respect to grounds of mental cruelty.

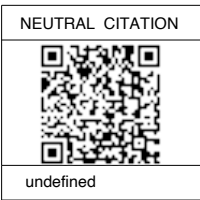
4.3 The fact remains that application of the respondent is mainly on the ground that is composite suit for nullity of marriage and dissolution of marriage by a decree of divorce, however, the composite suit is for nullity of marriage and / or dissolution of marriage by a decree of divorce and, therefore, in the present case, there are averments in respect of incidents of cruelty with an alternative prayer for nullity under Section 12 of the Act. The fact that the petitioner has stated in the said petition that he came to know about the said fraud / concealment only recently and therefore without leading evidence, the same cannot be decided while deciding the application under Order VII Rule 11 of 'the Code, 1908'.

4.4 The Law in deciding an application under Order VII Rule 11 of 'the Code, 1908' is very clear and the same is that the plaint and documents can only be looked into and not the defense of the



defendant. Moreover, whether the plaint discloses cause of action or not is essentially the question of fact, but whether it does or does not, must be found out from the reading of the plaint itself and for that purpose, averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averment made in the plaint are taken to be correct for its entirety, a decree would be passed. Moreover, while deciding whether the plaint reflects cause of action or not, the Family Court was not required to make an elaborate inquiry into doubtfulness or complicated question of law or facts but the Court is restricted to ascertain whether cause of action is shown. In the present case, the petitioner has elaborately stated about the instances of the incidents on the basis of which he claims that he is entitled for divorce on the ground of mental cruelty and has also stated that petitioner is also entitled for declaration of nullity of marriage as the actual facts were not in knowledge of the petitioner. It is only after leading the evidence, the Family Court can come to the conclusion that whether the petitioner was well within the knowledge, at the time of marriage or just after the marriage, as regards the grounds under which the petitioner is seeking declaration of nullity of marriage. However, the fact remains that prayer for divorce will always survive.

4.5 The petition for nullity of marriage is neither contrary nor inconsistent and the same can be entertained by the Court. The learned Family Court has rightly rejected the application on the ground that not permitting the petitioner husband to file composite



suit will lead to multiplicity of proceedings and hence prayer for divorce can be made alternatively. Therefore, there can not be any bar in joint petition under Sections 12 and 13 of the Hindu Marriage Act claiming relief in alternative.

4.6 Moreover, even on the basis of the application filed by the respondent, there are no grounds as to how the petition for divorce could not have been filed by the petitioner and as the fact remains that the said relief of seeking divorce will survive, the petitioner can be proceeded under the provisions of Section 13 of the Act, the petition cannot be rejected in part and the suit as a whole must proceed to try.

5. For the above discussion and the reasons recorded, the present Revision Application requires to be dismissed at the threshold and it is dismissed accordingly.

MISHRA AMIT V.

(SANJEEV J.THAKER,J)