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FA-1389-2023

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 14th OF OCTOBER, 2025

FIRST APPEAL No. 1389 of 2023

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Appearance:

Shri Rizwan Nizam - Advocate for the appellant.

Shri Padmnabh Saxena - Advocate for respondent.

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ORDER

Per. Justice Vivek Rusia

This appeal is filed under Section 19(1) of Family Courts Act, 1984 read with Section 96 of Code of Civil Procedure, 1908 against the order dated 02/05/2023 passed in RCSA No.17/2023 by Principal Judge, Family Court, Jhabua, whereby the suit has been dismissed under Order VII Rule 11 of the CPC with an observation that divorce between the parties has already been taken placed.

2. The marriage between the appellant and respondent was solemnized on 06/06/1976 as per Muslim rituals and customs. During survival of this marriage, the respondent / husband has performed second marriage on 12/01/1987. The respondent / husband filed a suit seeking divorce from the first wife / appellant on the ground that he had sent the notice of divorce to



the appellant. After notice the appellant / defendant appeared through advocate before the Family Court.

3. The suit was came up for hearing on 02/05/2023. Learned Family Judge *suo moto* taken up the matter under Order VII Rule 11 of CPC and held that although the notice of divorce was not received by the appellant / defendant, but now she has got information of such divorce *vide* notice annexed with this plaint, hence divorce has come into effect. The learned family Judge has dismissed the suit as the marriage stands dissolved by way of divorce, not to be taken divorce from the Court. Although the suit is dismissed under Order VII Rule 11 of CPC, but this appeal filed by the appellant / wife challenging declaration of divorce / dissolution of marriage at the instance of respondent / husband.

4. After getting such declaration of divorce from the Family Court the respondent / husband is now treating the appellant as divorced wife and he has filed an application in the Department to change her nomination as wife in the service records, which has resulted in filing of Writ Petition No.20063/2023.

5. We are surprise and shocked the way the Family Court has taken the matter under Order VII Rule 11 of CPC and gave a relief to respondent / plaintiff, which was liable to be given only after framing issue and recording the evidence. The purpose of filing of the suit has been served by getting a declaration of divorce, therefore, even after dismissal of the suit, the respondent / husband has not come in the appeal to get the decree of divorce. This order is unsustainable in law and is accordingly quashed. The



respondent cannot be permitted to take undue advantage of appearance of the wife in the Court and receiving the copy of plaint. Had she not appeared apprehending receiving the notice of divorce she would have been proceeded *ex parte*. The unjust benefit has been given by the learned Judge to the respondent husband by treating the notice of divorced as served.

6. Resultantly, the RCSA No.17/2023 is hereby restored and same be decided as per law. Since both the parties are appearing before this Court, therefore, they are directed to appear before the Family Court, Jhabua on 04/11/2025.

7. Let record be sent back to the concerned Court below immediately.

(VIVEK RUSIA)
JUDGE

(BINOD KUMAR DWIVEDI)
JUDGE

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