



2026:DHC:9199-DB



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

Date of decision: 06th OCTOBER, 2026

IN THE MATTER OF:

CNR No. DLHC010481162026

+ **MAT.APP.(F.C.) 380/2026**

ANIL SARIN

.....Appellant

Through: **Mr. Ranjit Singh Juneja, Advocate.**

versus

REKHA SARIN

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MS. JUSTICE RENU BHATNAGAR

JUDGMENT (ORAL)

CM APPL. 69327/2026 (Exemption)

Allowed, subject to all just exceptions.

MAT.APP.(F.C.) 380/2026 & CM APPL. 69326/2026

1. The present Appeal under Section 19 of the Family Courts Act, 1984 has been filed by the Appellant/Husband against the Order dated 20.08.2026 passed by the Ld. Judge Family Court-02, Shahdara District, Karkardooma Court, Delhi [**'Family Court'**] in HMA No.523/2022, whereby the application filed by the Appellant under Order VII Rule 11 of CPC seeking rejection of the Petition filed by the Respondent/Wife under Section 9 of the Hindu Marriage Act, 1955 [**'HMA'**] has been dismissed.

2. The averments made in the Appeal which are germane for consideration are that the marriage between the Appellant and the



Respondent was solemnized on 30.01.1992 as per Hindu Rites and Customs. Out of the said wedlock two male children were born, one born on 12.02.1993 and the other born on 20.01.1995. The children are now adults aged about 33 and 31 years respectively. Matrimonial disputes arose between the Appellant and the Respondent.

3. It is stated that on 22.12.1994, an *ex-parte* decree of divorce was passed in favour of the Appellant, however, the said decree was subsequently set aside on the application of the Respondent. Thereafter, it is stated that in the year 1996, the Respondent lodged an FIR bearing No.150/1996 under Sections 498-A/406/34 of IPC at P.S. Vivek Vihar against the Appellant and his family members. It was only in 1997 that the matrimonial disputes were settled for a short while as the parties entered into a settlement and in view thereof, the Respondent was taken back to the matrimonial home by the Appellant.

4. It is stated that the Respondent left the company of the Appellant and since 2005, the Appellant and the Respondent are living separately. Thereafter, the Respondent instituted a petition being HMA No.1322/2006 under Section 9 of the HMA which was withdrawn by the Respondent owing to the compromise entered into between the Appellant and the Respondent before the Family Court, Karkardooma Courts, Delhi in the year 2015. As per the compromise, it was agreed between the Appellant and the Respondent that they would take steps to dissolve the marriage, however, the divorce proceedings did not go through.

5. The facts of the case reveal that in the year 2022, the Respondent instituted a fresh petition being HMA No.523/2022 under Section 9 of the HMA seeking restitution of conjugal rights. In the said Petition, the



Appellant filed an application under Order VII Rule 11 of CPC seeking rejection of the said Petition on the ground that it is barred by law.

6. In the said application filed by the Appellant under Order VII Rule 11 of CPC, the Appellant averred that the petition under Section 9 of the HMA has been filed by the Respondent with an ulterior motive to harass the Appellant since the Parties have not been living together for the last 17 years and it is only after about 17 years, the said Petition has been filed by the Respondent for restitution of conjugal rights just to harass the Appellant. In view of the same, it was averred by the Appellant that the Petition filed by the Respondent under Section 9 of the HMA is not maintainable as the same is barred by limitation under Section 23(1)(d) of the HMA since there exists long and unexplained delay.

7. Ld. Family Court *vide* the Impugned Order dated 20.08.2026 has dismissed the application filed by the Appellant under Order VII Rule 11 of CPC by holding that the law with respect to Order VII Rule 11 of CPC is well settled that the Courts should not consider the written statement or allegations of the opposite party while deciding the maintainability of the Petition. It was further recorded that reading of the Petition filed by the Petitioner/Respondent herein under Section 9 indicates that it is maintainable.

8. In the instant Appeal, the learned Counsel appearing for the Appellant states that the Petition filed by the Respondent under Section 9 of the HMA is belated and the same should be dismissed as it is barred by time in terms of Section 23(1)(d) of the Hindu Marriage Act, 1955.

9. Heard the learned Counsel for the Appellant and perused the material on record.



10. The law relating to rejection of a Petition/Plaint under Order VII Rule 11 of the CPC is crystallized through various judgments of the Apex Court. The Apex Court in the case of Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I & Anr., (2004) 9 SCC 512 held as under:

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.

Cause of action

140. A cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For the aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence.

141. Order 7 Rule 14 of the Code of Civil Procedure provides as follows:

“14. Production of document on which plaintiff sues or relies.—(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) Where a document or a copy thereof is not filed with the plaint under this rule, it shall not be allowed to be



received in evidence on behalf of the plaintiff at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.”

11. The Apex Court in the case of Vinod Infra Developers Ltd. V.Mahaveer Lunia and Ors., **2025 SCC OnLine SC 1208** held as under:-

“8. The position of law is that rejection of a plaint under Order VII Rule 11 CPC is permissible only when the plaint, on its face and without considering the defence, fails to disclose a cause of action, is barred by any law, is undervalued, or is insufficiently stamped. At this preliminary stage, the court is required to confine its examination strictly to the averments made in the plaint and not venture into the merits or veracity of the claims. If any triable issues arise from the pleadings, the suit cannot be summarily rejected. Keeping in mind this settled principle of law, we proceed to examine whether the High Court was justified in rejecting the plaint under Order VII Rule 11 CPC.”

12. It is now well settled that while deciding the application filed under Order VII Rule 11 of CPC, only the averment in the Plaint along with documents can be seen by the Court and the defence is an irrelevant consideration to decide the application filed under Order VII Rule 11 of the CPC.

13. A perusal of the contents of the Petition filed by the Respondent under Section 9 reveals that the marriage between the Appellant and the Respondent is still subsisting as the *ex parte* divorce decree was set aside by the Family Court. The children are grown up. The compromise entered into between the Parties has failed and the wife therefore seeks to save her marital life and hence has filed the Petition under Section 9 of the HMA.



14. The fact as to whether the petition is barred by laches or not is something which can be ascertained only during the trial. The issue of limitation is a mixed question of fact. The further issue as to whether the Respondent is taking advantage of her own wrong by leaving the matrimonial home and, thereafter, turning around and claiming the restitution of conjugal rights is justified or not cannot be decided at this stage and the same can be only decided after leading evidence.

15. In the opinion of this Court, the Impugned Order dated 20.08.2026 passed by the Ld. Family Court does not require any interference.

16. However, the Ld. Family Court *vide* the Impugned Order dated 20.08.2026 has also directed the Appellant to pay *ad interim* maintenance of Rs.10,000/- to the Respondent w.e.f. 01.08.2026 on the 7th day of every month. To prevent the Respondent-Wife from being left into a state of penury, this Court at this juncture is not inclined to interfere with the said direction. Needless to state that any amount paid by the Appellant to the Respondent as *ad interim* maintenance would be a relevant consideration while fixing the maintenance under Section 24 of the HMA.

17. With these observations, the present Appeal is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

RENU BHATNAGAR, J

OCTOBER 6, 2026

S. Zakir