

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 1731 of 2019
Date of decision: 13.3.2019

Vineeta

.. Petitioner

v.

Dharmendra

.. Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Kartar Singh, Advocate for the petitioner.

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AVNEESH JHINGAN, J. (Oral)

The present civil revision petition has been filed being aggrieved of the order dated 6.2.2019 passed by the Additional Principal Judge, Family Court, Faridabad dismissing the application filed by the petitioner under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short, 'CPC').

The facts in brief are that marriage of the parties was solemnised on 30.6.1998. They were blessed with two sons. On 28.8.2015, the respondent moved a petition for divorce under Section 13 of the Hindu Marriage Act, 1955 alleging cruelty and desertion. On completion of pleadings, the matter was fixed for petitioner's evidence, the same was partly undertaken. During the pendency, an application dated 3.1.2019 under Order VII Rule 11 CPC was filed stating that no cause of action has been mentioned in the petition and the same is liable to be dismissed. The

revision petition.

Learned counsel for the petitioner argues that no specific dates have been mentioned in the petition for instances of cruelty and misbehaviour of the petitioner-wife. He further argues that during the evidence of the respondent, specific question was put to him regarding dates and he stated that he does not remember the exact dates. It is argued that the application under Order VII Rule 11 CPC should be allowed and the petition filed for divorce by the respondent should be dismissed.

The contention raised by learned counsel for the petitioner is not well-founded. The law is well settled that for dealing with the application under Order VII Rule 11 CPC, only the contents of the plaint are to be relied upon and not the evidence. Reference in this regard be made to the decision of the Supreme Court in **Urvashiben and another v. Krishnakant Manuprasad Trivedi**, 2019 (1) R.C.R. (Civil) 366, in which it has been held as under:

“15. By applying the aforesaid principles in the judgments relied on by Sri Dushyant Dave, learned senior counsel appearing for the respondent, we are of the considered view that merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under O. VII R. 11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. Even assuming that there is inordinate

delay and laches on the part of the plaintiff, same cannot be a ground for rejection of plaint under O. VII R. 11(d) of CPC.”

Specific allegations of cruelty are pleaded in the petition. It is a question of fact and the same shall be decided on the basis of evidence adduced. The divorce petition cannot be dismissed at this stage relying upon the contents of the cross-examination of the respondent-husband.

No interference is called for.

Dismissed.

(AVNEESH JHINGAN)
JUDGE

13.3.2019
mk

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No