



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.07.2021
CORAM
THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**CRP(MD) .No.1040 of 2021 and
CMP(MD) .No.6061 of 2021**

WEB COPY

S. Thamees Banu

... Petitioner

Vs.

S.N. Syed Mohammed Abuthahir @
S.N. Syed Afzal

... Respondent

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India to direct the Judge of the Family Court, Dindigul to number the application in un-numbered I.A.No.... 2021 in O.S.No.5 of 2021 and to take the application on file.

For Petitioner : Mrs.S. Mahalakshmi

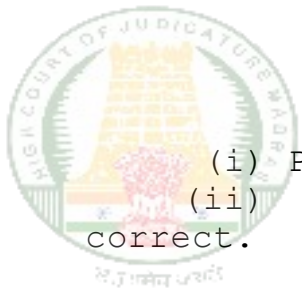
ORDER

The revision is directed against the order of return made in un numbered I.A.No.... 2021 in O.S.No.5 of 2021 and for direction to the learned Judge of the Family Court, Dindigul to take the petition filed under Order 7 Rule 11 CPC on file.

2. The revision petitioner is the defendant. Admittedly, the petitioner is the wife of the respondent / plaintiff. The respondent / plaintiff has filed the suit in O.S.No.5 of 2021 claiming the relief to declare the dissolution of marriage solemnized between the petitioner and the respondent on 17.03.2019 at Pon-saravana Marriage Hall, Pudukkottai by granting a decree of divorce on mutual consent and that the same is pending on the file of the Family Court, Dindigul. The revision petitioner, after entering into appearance, has filed the petition under Order 7 Rule 11 CPC to reject the plaint and the learned Judge has passed an order returning the petition. Aggrieved by the said order of return, the defendant has come forward with the present revision.

3. The defendant, in the petition filed for rejection of the plaint, has raised two grounds:

<https://hcservices.mca.gov.in/hcservices/>



- (i) Plaintiff does not disclose any cause of action
- (ii) Valuation of the suit and payment of the Court fee is incorrect.

4. The plaintiff, by alleging that the defendant has caused mental harassment, that he was assaulted by the brothers of the defendant, that the defendant had refused to live with the plaintiff and that thereafter, the plaintiff has communicated with the defendant personally his Talaq expressing his inability to resume the marital relationship with the defendant, filed the above suit for declaring the dissolution of marriage. But according to the defendant, there was no such communication of Talaq, that the defendant has not consented for filing any such case for divorce on mutual consent, that the plaintiff has absolutely no cause of action for filing the plaint and that he has wrongly valued the suit under Section 27(c) of the Tamil Nadu Court Fees and Suit Valuation Act.

5. It is necessary to refer the order of return made by the learned Judge hereunder:

"1) The facts pleaded in para 4 and 5 will not be going to be relied upon by the petitioner for the Rejection of the plaint. So the para 4 and 5 to be removed.

2) The petitioner has stated in para 8 that the plaintiff pronounced Talaq on 13.01.2021 and 13.02.2021 and 13.03.2021 in the affidavit filed by her.

3) It is the duty of the Court before admitting the Plaint that was there any pronouncement of Talaq pleaded in the plaint. The petitioner himself stated that there is a pleading as to the pronouncement of Talaq in para 23 of the plaint. The plaint allegation to be been before admitting the plaint. The defence set up not to be considered for rejection of the plaint.

4. The Court cannot reject the plaint without giving sufficient time for when the plaint is not stamped sufficiently.

5. The petitioner relies for his claim both the question of law and facts. The question of facts to the rejection of plaint can be decided after recording evidence. So it is returned for the reason as how the Court can entertain the petition at this stage."



6. As rightly contended by the learned counsel for the petitioner, the learned trial Judge has passed the order practically rejecting / dismissing the petition but under the caption of "return". No doubt, it is settled law that the Court can reject the plaint at any point of time even before the registration of the suit or after issuance of the summon or at any time before the pronouncement of Judgment. No doubt, as rightly pointed out the learned trial Judge, in the order of return, that the plaint allegations are only to be taken into account for deciding as to whether the plaint is liable for rejection and the defence pleaded by the other side should not be considered. But, in the case on hand, admittedly, the plaintiff is very much available and the defendant, after giving notice to the learned counsel for the plaintiff, has filed the above petition under Order 7 Rule 11 CPC before the Family Court, but the learned Judge without taking the petition on file, has gone into merits of the case itself and returned the petition.

7. No doubt, as per the Order 7 Rule 11(b) CPC if the plaint is under valued, the same cannot be rejected straight away without giving time to correct the valuation. Similarly, Order 7 Rule 11(c) CPC contemplates that the plaint is liable to be rejected that has been written upon paper, which has not been duly stamped. But at the same time the Court is bound to give some time to supply the deficit Court fee.

8. In the case on hand, the learned Judge has observed that the Court cannot reject the plaint without giving sufficient time when the plaint is not stamped sufficiently. As rightly contended by the learned counsel for the petitioner, it is not their case that they have sought for rejection of the plaint straight away without deciding the valuation of the suit and Court fee and without giving any time for correcting the same. As rightly argued by the learned counsel for the petitioner, the trial Court ought to have taken the petition on file and decide the same in accordance with law, but without adopting such a course, the learned trial Judge has straight away returned the petition practically rejecting the petition itself. Since the numbering of the petition is an issue between the Court and the petitioner, issuance of notice to the other side is unnecessary.

9. Considering the above, this Court is of the view that the learned Judge is to be directed to take the petition on file, if it is otherwise in order, conduct enquiry and pass orders in accordance with law and if such a course is adopted, no prejudice will be caused to the parties to the lis.

<https://hcservices.ecourts.gov.in/hcservices/> 10. In the result, the Civil Revision revision Petition



is allowed and the learned Judge, Family Court, Dindigul is directed to take the petition on file under Order 7 Rule 11 CPC, if it is otherwise in order, and then to conduct enquiry and pass orders on merits and in accordance with law. No costs. Consequently, the connected Miscellaneous Petition is closed.

WEB COPY

11. Registry is directed to return the original petition filed along with this revision to the learned counsel for the revision petitioner, enabling them to represent the same before the concerned Court, after taking copies of the same.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TRP

To

The Judge Family Court, Dindigul

Copy to:-

The Section Officer,
V.R Section, Madurai Bench of Madras High Court,
Madurai (2 Copies)

**CRP(MD) .No.1040 of 2021 and
CMP(MD) .No.6061 of 2021**

30.07.2021

CN(11.08.2021) 4P 4C