

WEB COPY



C.R.P.(PD)(MD).No.1745 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.R.P.(PD)(MD)No.1745 of 2025

Ameerkhan

... Petitioner

Vs.

Anisha

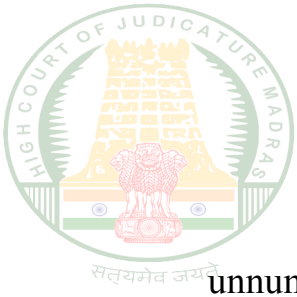
... Respondent

PRAYER: Civil Revision Petition - filed under Article 227 of Constitution of India, to set aside the returned docket order dated 24.04.2025 passed by the Family Court, Pudukottai in unnumbered O.S.No.... of 2025 and to direct the Family Court, Pudukottai to number the said suit.

For Petitioner : Mr.T.Leninkumar
For Respondent : Mr.M.Ajmal Khan
Additional Advocate General

ORDER

The present Civil Revision Petition is filed challenging the returned docket order dated 24.04.2025 passed by the Family Court, Pudukottai in



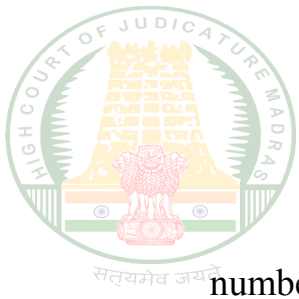
C.R.P.(PD)(MD).No.1745 of 2025

WEB COPY

unnumbered O.S.No.... of 2025 and to direct the Family Court, Pudukottai to number the suit.

2.The petitioner and the respondent are husband and wife. The marriage between them was solemnized on 01.09.2013 as per the Muslim rights and customs and they were blessed with two children. Thereafter, there was a matrimonial dispute between them. Hence, the petitioner filed a divorce petition before the Family Court, Pudukottai. However, the said petition was returned directing the petitioner to file a suit before the competent civil Court. Aggrieved by the same, the present Civil Revision Petition is filed.

3.The learned counsel for the petitioner submits that the issue arises in this petition is no longer *res integra* in view of the judgment of this Court made in C.M.A.No.2192 of 2017 in the case of **Settu vs. Reshma Sulthana**, wherein this Court has held that every Family Court has vested with the jurisdiction to decide the family dispute under the Family Courts Act for dissolution of marriage. Hence, he submits that in view of the order passed by the Hon'ble Division Bench, this Court may direct the trial Court to



C.R.P.(PD)(MD).No.1745 of 2025

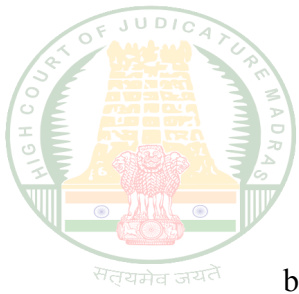
WEB COPY

number the Civil Revision Petition and proceed with the matter in accordance with law.

4.This Court has perused the order passed by the Hon'ble Division Bench of this Court reported in **2021 (5) CTC 527** in the case of **Settu vs. Reshma Sulthana**, wherein this Court has held as follows:

“11.As the Family Court dismissed the case on the ground that the husband cannot invoke the Act, it is appropriate to consider the object of the Act. The object of Dissolution of Muslim Marriages Act, 1939 is usefully extracted hereunder:-

"Statement of Objects and Reasons.-There is no proviso in the Hanafi Code of Muslim law enabling a married Muslim woman to obtain a decree from the Court dissolving her marriage in case the husband neglects to maintain her, makes her life miserable by deserting or persistently maltreating her or absconds leaving her unprovided for and under certain other circumstances. The absence of such a provision has entailed <https://www.mhc.tn.gov.in/judis/> unspeakable misery to innumerable Muslim women in British India. The Hanafi Jurists, however, have clearly laid down that in cases in which the application of Hanafi law causes hardship, it is permissible to apply the provisions of the "Maliki, Shafi's or Hambali law". Acting on this principle the Ulemas have issued fatwas to the effect that in cases enumerated in clause 3, Part A of this Bill a married Muslim woman may obtain a decree dissolving her marriage. A lucid exposition of this principle can be found in the book called "Heelatum Najeza" published by Maulana Ashraf Ali Sahib who has made an exhaustive study of the provisions of Maliki law which under the circumstances prevailing in India may



C.R.P.(PD)(MD).No.1745 of 2025

WEB COPY

be applied to such cases. This has been approved by a large number of Ulemas who have put their seals of approval on the book."

British Regime passed "the Dissolution of Muslim Marriages Act, 1939" only to give relief to muslim women who are all undergoing untold misery and harassment in the hands of the Husband. As there was no other Act available for them, the above Act was passed. From the object of the Act, it is very clear that it is only intended for muslim women.

12.However, the instant case on hand would show as to how the Husband is being harassed by wife not only by her conduct but also by non-participation in the case. Inspite of following the Muslim religious practices/methods by the appellant by giving Ex.P.3/Khazi Notice, Ex.P.5/First talaq Notice dated 05.05.2016, Ex.P.7/Second talaq Notice dated 04.06.2016 and Ex.P.8/Third talaq Notice dated 12.07.2016, the respondent/wife never bothered to appear before the Khazi. Thereafter only, Ex.P.9/talaq certificate was issued by the Government Khazi, Dharmapuri on 15.09.2016.

13.Considering the present position of law that the certificate issued by the Government Khazi is only an opinion as held by the Hon'ble Apex Court in the decisions reported in (2014) 10 Supreme Court Cases 736, Juveria Abdul Majid Patni v. Atif Iqbal Mansoori and Another; (2014) 7 Supreme Court Cases 707, Vishwa Lochan Madan v. Union of India and others and he cannot assume the role of the Court, the appellant approached the Family Court at Dharmapuri. However, the Family Court, Dharmapuri dismissed the said petition on the ground that the provisions under the Dissolution of Muslim Marriages Act, 1939 cannot be invoked by



WEB COPY

the Husband. No doubt as per Dissolution of Muslim Marriages Act, 1939 the Husband cannot invoke the provisions, but the facts of the case would reveal that inspite of making all sincere efforts to get the marriage dissolved, the same has failed only due to the absence of any provisions under the Act. Even if no provision is available under the Act, the Family Court should have decided the matter and granted the decree of Divorce by invoking Section 7(1)(b) of the Family Courts Act. Section 7 of the Family Courts Act, 1984 is usefully extracted hereunder:-

"Jurisdiction.- (1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any district Court or any subordinate civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate civil Court for the area to which the jurisdiction of the Family Court extends.

Explanation.-The suits and proceedings referred to in this sub- section are suits and proceedings of the following nature, namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;



WEB COPY

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1972 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment.

From the above, it is very clear that the Family Courts shall have jurisdiction for the purposes of exercising such jurisdiction under such law, to be a district Court or subordinate civil Court to which the jurisdiction of the Family Court extends. The suits and proceedings referred to under sub-section 7(1)(a)(b) includes all the suit or proceeding between the parties to a marriage for a decree of nullity of marriage or restitution of conjugal rights or judicial separation or dissolution of marriage. Explanation (a) to Section 7(1)(b) of the Family Courts Act categorically states that all cases seeking dissolution of marriages can be decided by the Family Courts Act. Therefore, the Family Court, Dharmapuri should have decided the matter under the Family Courts Act, 1984 especially in the light of Explanation to Section 7(1)(b) of the Act.

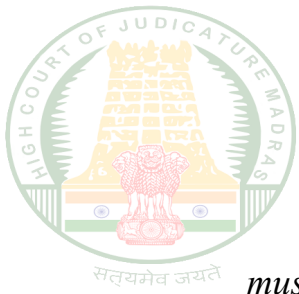


WEB COPY

14.Mere absence of any provision in the Dissolution of Muslim Marriages Act, 1939 cannot dis-entitle the appellant from seeking dissolution of marriage under the common law or under the Special Act namely, The Family Courts Act, 1984.

15.Having failed in his attempt to give talaq by following the procedures as per the muslim religious practices, the appellant rightly approached the Family Court. No doubt, the above Act cannot be invoked by the Husband. However, when the husband is left with no other option except to approach the Family court, the Court should have invoked and granted relief to the appellant in the light of Explanation to Section 7(1)(b) of the The Family Courts Act, 1984. No persons should go without any relief merely because the subject Act does not provide for seeking divorce by a Muslim husband though he is otherwise entitled to under personal laws for the very same reason. In those circumstances, only the provisions of the Family Courts Act, 1984 have to be invoked. The Family Court should have held that the Husband cannot invoke the provisions of Dissolution of Muslim Marriages Act, 1939 and further the Family Court should have considered the case of the appellant based on evidence under Section 7(1)(b) of the Family Courts Act, 1984.

16.In this case, the appellant sought talaq for reasonable cause and he made genuine attempt through Government Khazi, Dharmapuri by issuing notice calling for the respondent for counseling. As the efforts failed, three talaq notices were issued as per the time prescribed under the

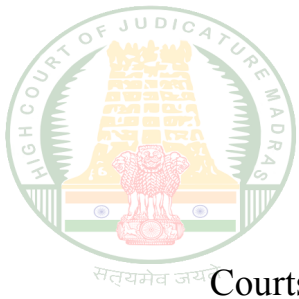


C.R.P.(PD)(MD).No.1745 of 2025

WEB COPY

muslim religious practices and as the same did not evoke any response, the appellant had rightly approached the Family Court at Dharmapuri. From the facts of the case, it is very clear that the appellant is entitled for dissolution of marriage with the respondent because of the immoral lifestyle of the respondent which has not been countered by her when it has been pointed out clearly in Ex.P.3/Khazi Notice and other notices. Furthermore, even the talaq pronounced by the appellant is in consonance with the provisions of the Muslim Women (Protection of Rights on Marriage) Ordinance, 2018, as the appellant has pronounced the talaq at right intervals after issuing notices, whereas only the pronouncement of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband is barred by law. Hence, the dismissal of divorce petition by the Family Court is set aside and the decree of dissolution of marriage is granted as prayed for by the Appellant.

5.In the above judgment, this Court clearly held that if any muslim man wants to get a decree of divorce or dissolution of marriage by coming to the Court, he should have the support of the statute and he is entitled to approach the Family Court. There is no absolute bar to any muslim man to approach the Family Court for dissolution of marriage under the relevant Act. In the absence of any provision in the Dissolution of Muslim Marriages Act, 1939, the Family Court cannot dis-entitle the petitioner from seeking dissolution of marriage under the common law or under the Special Act namely, The Family



C.R.P.(PD)(MD).No.1745 of 2025

WEB COPY

Courts Act, 1984. In view of the above, returning the divorce petition filed by the petitioner before the Family Court is not sustainable.

6. Accordingly, this Civil Revision Petition is **allowed** and the docket order passed by the trial Court is set aside. The trial Court is directed to number the plaint filed by the petitioner as per the procedure contemplated under the Family Courts Act. No costs.

25.06.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ta

Note: Registry is directed to return the original plaint, if enclosed, after retaining a copy of the same in the Court record.

To

1. The Family Court, Pudukottai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

9/10



WEB COPY



C.R.P.(PD)(MD).No.1745 of 2025

M.DHANDAPANI,J.

ta

C.R.P.(PD)(MD)No.1745 of 2025

25.06.2025