IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 22nd OF APRIL, 2026

CIVIL REVISION No. 773 of 2024

SMT. RUBINA KAVI
Versus
RIZWAN ALI

WITH

MISC. PETITION No. 5464 of 2024

SMT RUBINA QUAVI
Versus
RIZVAN ALI

Appearance:

Shri Mukhtar Ahmad- Advocate for the petitioner.

Shri Devendra Kumar Gangrade- Advocate for the respondent.

ORDER

Both these petitions have been filed on identical ground and arising from the same suit, but from different stages therefore, they are being decided by this common order.

2. C. R. No. 773 of 2024, has has been filed challenging the impugned order dated 23.08.2024 passed by the family court, whereby the family court has rejected application of the petitioner/defendant under Order 7 Rule 11 CPC. Earlier, the said suit was pending before the civil court, and similar application was filed before the civil court also prior to it being transferred to family court. The civil court has also rejected the same application, though on different grounds, vide order dated 22.03.2018, and

Signature Not Verified
Signed by: ARVIND KUMAR MISHRA
Signing time: 22-04-2026 18:04:55

MP No. 5464 of 2021 has been filed challenging the aforesaid order.

3. The necessary facts for the disposal of present petition are that the respondent husband has filed a suit for declaration of divorce and permanent injunction against the petitioner/wife. The parties are Muslims and in the plaint it has been argued that the petitioner wife was indulging in mental cruelty against the husband, and therefore, the husband had been trying to give opportunity to the wife to change herself, but since all the efforts went in vain, hence on 14.01.2015, the husband pronounced triple talaq to the wife in presence of two witnesses, and has orally divorced his wife in front of the witnesses, and he also executed a talaqnama in writing dated 14.01.2015, and has sent the talaqnama by post to the wife. The plaintiff has prayed for a decree of declaration that the defendant was divorced orally on 14.01.2015 in presence of two witnesses, by pronouncement of oral talaq, and talaq has been effected from the date of pronouncement, and also the pronouncement of talaq was given in writing by executing a talaqnama dated 14.01.2015.

4. The aforesaid suit was filed in the year 2015, and during peneency of the suit the judgment of the Hon'ble Supreme Court in the celebrated case of **Shayara Bano Vs. Union of India and others reported in (2017) 9 SCC,1,** was pronounced in the year 2017 and the practice of triple talaq was declared unconstitutional and illegal. After the aforesaid judgment was pronounced by the Hon'ble Supreme Court in the year 2017, the petitioner had filed an application before the civil court as the said suit was then pending before the civil court. The civil court had rejected the said application under Order 7

Signature Not Verified
Signed by: ARVIND KUMAR MISHRA
Signing time: 21-04-2026 18:04:55

Rule 11 CPC for rejection of plaint vide order dated 22.03.2018 on the ground that the judgment of the Constitution Bench in the case of ***Shayara Bano(supra)*** is not retrospective but is prospective in nature, and since the triple talaq in the present case had been pronounced prior to pronouncement of judgment in the case of ***Shayara Bano (supra)*** by the Constitutional Bench, the judgment of the Hon'ble Supreme Court would take effect from prospective date from 22-8-2017 and then rejected the application for rejection of plaint which was filed under Order 7 Rule 11 CPC.

5. At a later stage, the suit got transferred to family court and before the family court also, the petitioner filed an application stating that the suit is barred by law as no declaration of triple talaq can be sought by the husband because the practice of triple talaq has been declared unconstitutional and illegal by the Constitutional Bench of Hon'ble Supreme Court, and also that interpretation of law by the Supreme Court or any other court of law is always retrospective in nature unless declared by the said court to be prospective in nature and therefore, the judgment in the case of **Shayara Bano (supra)** is to be construed as retrospective in nature.

6. Faced with the said application, this time the respondent husband filed an application for amendment in the plaint and by way of amendment in the plaint, he inserted new pleadings that the talaq was in fact not triple talaq pronounced on 14-1-2015 but it was pronounced at three different times. Firstly on 25-11-2013, then on 28-05-2014 and then the divorce came to force from 28-5-2014 itself but the respondent husband had not disclosed the

Signature Not Verified
Signed by: ARVIND KUMAR MISHRA
Signing time: 22-04-2026 18:04:55

fact of divorce to any person in the hope that the conduct of the wife would improve.

7. The learned counsel for the respondent/husband before this court had vehemently tried to wriggle out of judgment in the case of **Shayara Bano** (supra) by pointing out to amendment in the plaint whereby it has been averred that it was not triple talaq pronounced in a single go but it was firstly pronounced on 25-11-2013 and second and lastly on 28-05-2014 and therefore it is argued that in view of amendment in the plaint which was sought in the year 2023 and later allowed by the Family Court, the suit remains maintainable as now it is not a case of triple talaq.

8. Upon considering the aforesaid assertions, it is seen by this court that the plaint as it is filed does not speak about any previous talaq given firstly in the year 2013 and secondly and lastly in the year 2014 but there is a simple averment that the triple talaq was pronounced on 14-01-2015.

9. The relief that has been sought in the suit is firstly declaration of oral divorce on 14.01.2015 which has been written down in writing in the talaqnama of the same date and secondly to restrain the defendant to reside at the matrimonial home.

10. The suit therefore essentially revolves around the talaqnama and the prayer clause in the suit has not been amended which is for declaration of oral divorce dated 14-1-2015 and also in view of the talaqnama of the same date. The talaqnama is also on the record as per which there is clear averment that the wife is constantly harassing the husband since the year 2013 and when all attempts to reform the wife have failed, then on 14-8-2015 in

Signature Not Verified
Signed by: ARVIND KUMAR MISHRA
Signing time: 21-04-2026 18:04:55

presence of two witnesses a triple talaq has been pronounced which is being reduced in writing in the talaqnama.

11. The talaqnama in question also does not speak anything about any previous occurrences of divorce in the year 2013 and 2014 which have now been inserted by the amendment and that amendment is nothing but an attempt to wriggle out of the judgment of the constitution Bench in the case of **Shayara Bano (supra)**.

12. So far as the question of retrospectivity and prospectively of the aforesaid judgment is concerned, it is settled in law that the pronouncement of law or interpretation of law by the constitutional court is always retrospective, unless specifically declared by the court pronouncing the judgment that it will apply prospectively. The issue of retrospectivity of the judgment in the case of **Shayara Bano (supra)** was raised before a division Bench of this court in a case which arose from a suit filed prior to the aforesaid judgment in the case of **Shayara Bano** and triple talaq having been pronounced prior to the said date, and the division Bench held as under:-

> *"7. We are not inclined to accept the arguments advanced by the learned counsel for the appellant. The appellant sought a decree of declaration that the marriage solemnized between the appellant and the respondent be dissolved and it be declared that the appellant and respondent are no more husband and wife, on the basis of Tehrir in which he pleaded that he had given triple talaq to the respondent. The Talaqnama is Ex. P-8 dated 01.08.2012. It is mentioned in the aforesaid Talaqnama that the appellant had given divorce to the respondent by saying divorce divorce divorce (three times) and amount of Mehar has also been given to the appellant in view ofdemand draft.*
>
> *8. It is a fact that the Talaqnama is of dated 01.08.2012, however, the appellant wants a decree from the Civil Court on the basis of aforesaid Talaqnama on declaration that the appellant and respondent are no more, as husband and wife. The Hon'ble Supreme Court in the case of Shayara Bano Vs. Union of India and others reported in (2017) 9 SCC 02 has held that the form of talaq saying three times-talaq talaq talaq is arbitrary and this form of talaq is also violative of Fundamental Rights contained in Article 14 of the Constitution of*

Signature Not Verified
Signed by: ARVIND KUMAR MISHRA
Signing time: 21-04-2026 18:04:55

India. The Hon'ble Apex Court has held as under:-

> *"104. Given the fact that Triple Talaq is instant and irrevocable, it is obvious that any attempt at reconciliation between the husband and wife by two arbiters from their families, which is essential to save the marital tie, cannot ever take place. Also, as understood by the Privy Council in Rashid Ahmad (supra), such Triple Talaq is valid even if it is not for any reasonable cause, which view of the law no longer holds good after Shamim Ara (supra). This being the case, it is clear that this form of Talaq is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it. This form of Talaq must, therefore, be held to be violative of the fundamental right contained under Article 14 of the Constitution of India. In our opinion, therefore, the 1937 Act, insofar as it seeks to recognize and enforce Triple Talaq, is within the meaning of the expression "laws in force" in Article 13(1) and must be struck down as being void to the extent that it recognizes and enforces Triple Talaq. Since we have declared Section 2 of the 1937 Act to be void to the extent indicated above on the narrower ground of it being manifestly arbitrary, we do not find the need to go into the ground of discrimination in these cases, as was argued by the learned Attorney General and those supporting him."*

9. The appellant sought a declaration from the Court on the basis of Tehrir. The Hon'ble Supreme Court has declared the triple talaq unlawful and arbitrary and violative of Article 14 of the Constitution of India. In such circumstances, in our opinion trial Court has rightly held that a decree of declaration in favour of the appellant could not be granted in view of the judgment pronounced by the Hon'ble Supreme Court. In our opinion there is no question of retrospective application of the judgment of the Hon'ble Supreme Court because the appellant sought a declaration from the Court on the basis of an Act which was declared illegal by the Hon'ble Apex Court. Hence, the Court has rightly refused to grant a decree of declaration in favour of the appellant in view of the judgment passed by the Hon'ble Supreme Court. In such circumstances, in our opinion, the trial Court has rightly allowed the application filed by the respondent under Order 7 rule 11 of the CPC.

10. The trial court further rejected the application filed by the appellant under Order 6 rule 17 of the Civil Procedure Code to amend the plaint in which the appellant made pleadings of cruelty.

11. Learned counsel for the appellant has submitted that the suit of the appellant is maintainable for grant of divorce on other grounds.

12. According to Mulla, in Mohammdan Law there are different modes of talaq. If any other remedy is available to the appellant for divorce (talaq), the appellant may avail the aforesaid remedy. The present suit filed by the appellant for a decree of declaration on the ground that he had divorced the respondent by way of triple talaq. The appellant had not sought any decree of divorce declaring the marriage solemnized between the appellant and the respondent dissolved on the basis of other forms of talaq. Order 6 Rule 17

Signature Not Verified
Signed by: ARVIND KUMAR MISHRA
Signing time: 21-04-2026 18:04:55

of C.P.C. reads as under:-

> *"17. Amendment of pleadings- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*
> *Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."*

13. From the aforesaid provision, it is clear that amendment in the plaint is available to amend the pleadings, which are necessary for determining the legal questions in controversy between the parties. However, by way of amendment the parties is not permitted to change the nature of suit and introduce new cause of action.

For the aforesaid purpose, the parties is always at liberty to institute fresh proceedings.
14. On the basis of the above discussion and in our opinion there is no merit in this appeal. It is hereby dismissed. No order as to costs. However, the appellant is at liberty to take the recourse of divorce in accordance with law/acts on other grounds. He has also at liberty to seek appropriate legal remedy in this regard."

13. The suit in the present case is a suit for declaration oon the basis of triple talaq and no such declaration can be given in view of the judgment in the case of **Shayara Bano (Supra)**. The talaqnama as well as the pleadings in the plaint point only in that direction and later on attempt has been made in the year 2023 after judgment in the case of **Shayara Bano (Supra)** to insert the pleadings that there was previous pronouncement of first talaq in the year 2013 and second and third in the year 2014 and divorce has been perfected in the year 2014 itself, which is contrary to the initial pleadings made in the suit. Even the declaration as sought in the relief clause is in respect of pronouncement of triple talaq on 14.01.2015 and nothing else. It is settled in law that jurisdiction under Order 7 Rule 11 CPC can be exercised to bring to an end an an vexatious and frivolous piece of

Signature Not Verified
Signed by: ARVIND KUMAR MISHRA
Signing time: 21-04-2026 18:04:55

litigation. The suit in question is also vexatious and frivolous piece of litigation seeking declaration on the basis of oral triple talaq and no such declaration can be granted as per law.

14. It is a fit case where the relief sought in the plaint being barred by law, jurisdiction under Order 7 Rule 11 CPC ought to have been exercised by the family court and the trial court.

15. Consequently, the petitions deserve to be and hereby succeed. The plaint filed by the respondent-husband stands rejected.

16. However, liberty is reserved to the respondent/husband to seek divorce in accordance with the law on any other grounds that may be available to him under the law.

17. With the aforesaid observation, the petition are allowed.

(VIVEK JAIN)
JUDGE

MISHRA

Signature Not Verified
Signed by: ARVIND KUMAR MISHRA
Signing time: 2?-04-2026 18:04:55