

ORDER BELOW EX. 12
(Passed On 24th January 2025)

1. This is an application under Order 7 Rule 11 of Civil Procedure Code, 1908 for rejection of petition preferred by respondent.

2. Perused the applications and has read the reply. I have heard Mr. K.H. Ovhal learned counsel for petitioner and Mr. S.S. Tambe learned counsel for respondent at length.

3. Mr. Tambe learned counsel for respondent submitted that petitioner have filed present petition for restitution of conjugal rights against respondent. Mr. Tambe submitted that petitioner has pleaded that marriage was solemnized on 01-08-2018 before the Special Marriage Officer under Section 13 of The Special Marriage Act, 1954. Mr. Tambe submitted that there is no provision of solemnization of marriage under Section 13 of The Hindu Marriage Act, 1955 but however the said marriage was solemnized under the provisions of The Special Marriage Act, 1954. Mr. Tambe invited my attention towards petition more particularly The Certificate of Marriage filed on record to substantiate his submissions. Mr. Tambe submitted the relief sought by petitioner is not maintainable before this Court hence, the petition as framed and filed is not maintainable. Mr. Tambe submitted that petitioner has filed present petition to cause mental, physical and financial harassment to respondent and to grab extra money from respondent. Mr. Tambe submitted that present petition is maintainable before Hon'ble District Court as marriage is solemnized under the provisions of The Special Marriage Act, 1954. Mr. Tambe submitted that cause of action as depicted in petition is imaginary and just depicted to put false story and to take cause of action for instituting present petition

against respondent. Mr. Tambe submitted that present petition is false, vexatious and if such petition is allowed to be continued it would be nothing but abuse of process of law. Mr. Tambe submitted that in such circumstances it is necessary to reject the plaint out rightly by bare reading of petition. Mr. Tambe submitted in consonance to his application and prayed to allow the instant application.

4. Mr. Ovhal learned counsel for petitioner vehemently opposed the instant application and submitted that the instant application as framed and filed is not maintainable. Mr. Ovhal submitted respondent has not mentioned exactly on what provisions of Order 7 Rule 11 of C.P.C the petition needs to be rejected and under which provision of law it is hit and it is barred. Mr. Ovhal submitted petition has to be read as whole and on perusal of complete petition the cause of action and grounds for filing petition are properly and distinctly stated. Mr. Ovhal submitted and at this stage present application is also not maintainable and filed just to harass petitioner and to prolong the instant matter. Mr. Ovhal submitted in consonance to his reply and prayed to out rightly reject it with heavy cost.

5. It would be profitable to refer to the case of **Shakti Bhog Food Industries Ltd. Vs. Central Bank of India, (2020) 17 SCC 260 = 2020 SCC Online SC 482 = AIR 2020 SC 2721** Hon'ble Supreme Court has held that *Order 7 Rule 11 of CPC gives ample power to the court to reject the plaint, if from averments in the plaint, it is evident that the suit is barred by any law including the law of limitation. The relevant facts which need to be looked into for deciding an application under Rule 11 are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should visit the plaint. Order 7 Rule 11 (d) makes it*

clear that if the plaint does not contain necessary averments relating to limitation, the same is liable to be rejected. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is the bounden duty of the court to examine the plaint as a whole and not selected averments therein. The question as to whether the suit is barred by any law, will always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 can be exercised.

The Hon'ble Supreme Court also held that keeping in mind the above legal position, the averments in the plaint had to be read as a whole and analysed to discern whether it was a fit case for rejection of plaint under Order 7 Rule 11 (d) of CPC. The cause of action for filing the suit will consist of bundle of facts. Further the factum of the suit being barred by limitation, ordinarily would be a mixed question of fact and law. Whether this plea taken by the appellant is genuine and legitimate, would be a mixed question of fact and law, depending on the response of the respondents.

6. On going through the instant application in the light of pleadings of both parties and arguments canvased before me it is seen that both petitioner and respondent are at logger heads. On perusal of petition with eagle eyes it reveals that present petition is filed by petitioner for restitution of conjugal rights against defendant under Section 9 of The Hindu Marriage Act,

1955. On perusal of petition it reveals that petitioner is Buddhist whereas respondent is Hindu by religion hence, marriage is solemnized under the provisions of The Hindu Marriage Act, 1955. The respondent has not filed any document to show that respondent is not Hindu, Buddhist, Sikh or Jain by religion. Moreover respondent concedes that he is Hindu and govern by Hindu customs. The petitioner has pleaded that inter caste marriage was solemnized between the parties. Thus on perusal of petition with eagle eyes it reveals that both parties are Hindu hence, provisions of The Hindu Marriage Act, 1955 are applicable. Besides this in the Certificate of Marriage only Section 13 is mentioned and The Special Marriage Act, 1954 is not mentioned. Though the marriage is registered but Certificate of Marriage does not depict the Act under which it is registered.

7. It is pertinent to mention that though Section 13 of The Special Marriage Act, 1954 deals with Certificate of Marriage but however as per Section 2 of The Hindu Marriage Act, 1955 the parties are governed by provisions of The Hindu Marriage Act, 1955 irrespective of Act under which their marriage is registered. The petitioner has pleaded and has filed petition under Section 9 of The Hindu Marriage Act, 1955 for restitution of conjugal rights but however respondent in spite of availing sufficient opportunity has miserably failed to file his Written Statement on record. This itself reveals the conduct and bonafides of petitioner as well as respondents. It seems from record that respondent is deliberately trying to prolong the matter for one reason or the other by resorting to technicalities.

7. The pleadings of petitioner by reading the whole petition clearly depicts the factual position for instituting petition against respondent. It is pertinent to mention that the facts with regards to petition can be adjudicated by parties leading their evidence.

It is canon of settled legal principle that petition cannot be rejected out rightly at the first instance. The contention of respondent can be decided by framing issues. The respondent have vital tool of cross examination and he can also adduce evidence. On perusal of plaint with eagly eyes it transpires that petitioner has pleaded in detail about the cause of action and other factors which led them to institute present petition against respondent. It is pertinent to mention that petition has to be decided on merits rather than dismissing it on technical grounds. The upshot of aforesaid discussions and applying the ratio of case cited supra, I concur with submissions of Mr. Ovhal learned counsel for petitioner that petition cannot be rejected out rightly at this initial stage and at this juncture. In the result, I am inclined to pass the following order.

ORDER

1. The application at Ex. 12 stands rejected.
2. Matter to proceed further.

Place:- Kallam

Date:- 24/01/2025

(N. A Ingley)
Civil Judge Senior Division
Kallam

CERTIFICATE

I affirm that, the contents of this P.D.F. file Judgment / order are same, word to word, as per the original Judgment / order.

Name of Stenographer	-	S.R. Kale Stenographer (Grade-II)
Court	-	Civil Court, Senior Division, Kallam.
Date	-	24-01-2025
Order signed by the Presiding Officer on	-	24-01-2025
Order uploaded on	-	31-01-2025