

MHYA150011442024



ORDER BELOW EXH. 14 IN R. C. S. NO. 48/2024
(Passed on 06.02.2026)

This application is moved by the defendant under Order 7 Rule 11 of the Civil Procedure Code for rejection of the plaint.

2. The defendant stated that, the suit filed for declaration that defendant is divorce wife of the plaintiff and also sought the permanent injunction. The plaintiff pronounced the Talaq-A-Hasan on 03.08.2024 in present of two witness and thereafter, communicated to the defendant by sending notice that 'he has pronounced his talaq and if within three month there is no reunion, talaq will become effective.' On the basis of such pleading the plaintiff seeking the declaration. It is submitted that, the suit is barred by section 3 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 as well as Muslim Personal law because there is no such type of divorce procedure are available in the personal law. The suit is not maintainable. Hence, the plaint is liable to be rejected.

3. The plaintiff filed say and opposed the application on the grounds that, the suit is filed under section 34 of the Specific Relief Act for declaration of legal status. In view of Muslim Personal Law the plaintiff seeking the legal status of his divorce wife. There is no bar under section 3 of the Muslim Women (Protection of Rights on Marriage) Act, 2019. Hence, the plaintiff

prayed to reject the application.

4. Heard both sides at sufficient length.

5. Considering the pleadings of the parties and contents of the application following points arose for my determination and I answer the same with reasons as under -

SR.NO.	<u>P O I N T S</u>	<u>F I N D I N G S</u>
1.	Whether the plaint is liable to be rejected under Order VII Rule 11(d) CPC on the ground that the suit is barred by section 3 of the Muslim Women (Protection of Rights on Marriage) Act, 2019, or under any other provision of law ?	No.
2.	What Order ?	As per final Order.

R E A S O N S

As to point No. 1 :-

6. I have read the provisions under order 7 Rule 11 of the Code of Civil Procedure wherein it is provided the plaint shall be rejected in the following cases-

- (a) whether it does not disclose a cause of action;
- (b) where the relief claimed is under-valued, and plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

- (c) where the relief claimed is properly valued, but the plaintiff is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaintiff to be barred by any law
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9:

7. At the outset it is worthwhile to discuss here that, the settled principle of law that, "the application of rejection of the plaintiff shall be decided within the four corners of the plaintiff" it means that the court should only consider the statements and facts contained within the plaintiff itself when making a decision on it, particularly in the context of an application for rejection of the plaintiff under Order VII Rule 11 of the Civil Procedure Code.

8. On perusal of record, it appears the plaintiff filed the present suit seeking a declaration that the defendant is his divorced wife. It is the case of the plaintiff that the marriage between the parties has been dissolved by him by way of Talaq-e-Hasan, which according to Muslim Personal Law is a recognized and valid mode of divorce.

9. The defendant has appeared and filed her written statement at Exh.10 denying the factum as well as the legality of the alleged divorce. The defendant has also filed the present application under Order VII Rule 11 of the Code of Civil Procedure, contending that the alleged talaq is void in law and that the suit is barred under section 3 of the Muslim Women (Protection of Rights on Marriage) Act, 2019. It is further contended that the plaint does not disclose any cause of action.

10. The plaintiff has filed say to the said application and opposed the same by contending that section 3 of the Act of 2019 applies only to Talaq-e-Biddat (instant triple talaq) and not to Talaq-e-Hasan. It is submitted that Talaq-e-Hasan is a recognized form of divorce and therefore there is no statutory bar to the present suit.

11. It is worthwhile to discuss the term ‘Talaq-e-Hasan’, the definition of ‘Talaq’ under of the Muslim Women (Protection of Rights on Marriage) Act, 2019 and section 3 of the Muslim Women (Protection of Rights on Marriage) Act, 2019.

Section 2(c) of the above Act defined the term Talaq “talaq” means talaq-e-biddat or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband

Section 3 of the above Act stated that, Talaq to be void and illegal.—Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner

whatsoever, shall be void and illegal

Talaq-e-Hasan :-

12. Talaq-e-Hasan is a form of divorce recognized under Muslim law in which the husband pronounces talaq once a month over three menstrual cycles, giving the wife opportunity for reconciliation during the interim period. The divorce becomes final and irrevocable only after the third pronouncement. The essential features of Talaq-e-Hasan are that it is gradual, revocable during the waiting period (iddat), and allows attempts at conciliation before it becomes final.

13. On plaint reading of the section 3 of the Muslim Women (Protection of Rights on Marriage) Act, 2019, it appears that the provision of said section declares void and illegal only such talaq which is Talaq-e-Biddat or any other similar form having the effect of instantaneous and irrevocable divorce. From the plain reading of the provision of section 3 of the Muslim Women (Protection of Rights on Marriage) Act, 2019. It is clear that the bar applies only to instant triple talaq or equivalent forms of instantaneous divorce and does not cover other recognized modes of divorce.

14. Talaq-e-Hasan is not instantaneous, is revocable during the interval, and allows for reconciliation before the divorce becomes final. Therefore, Talaq-e-Hasan does not fall within the prohibition of section 3 of the Muslim Women (Protection of Rights on Marriage) Act, 2019.

15. In the case of Shayara Bano vs Union Of India And Ors. Ministry Of Women, AIR 2017 SUPREME COURT 4609, AIR 2018 SC (CIVIL) 1169, decided on 22 August, 2017. The Hon'ble Apex Court specifically held that only Talaq-e-Biddat is unconstitutional, whereas other forms such as Talaq-e-Hasan and Talaq-e-Ahsan remain valid under Muslim law.

16. The present suit based on Talaq-e-Hasan cannot be said to be barred under section 3 of the Muslim Women (Protection of Rights on Marriage) Act, 2019. Whether the plaintiff has validly executed Talaq-e-Hasan is a question of fact and evidence to be adjudicated at trial and cannot be rejected at the threshold under Order VII Rule 11 of the Code of Civil procedure.

17. The plaintiff has sought a declaration regarding the marital status of the parties. Such a declaration is permissible under section 34 of the Specific Relief Act, 1963, when the legal status of a person is denied or disputed. There is no express or implied bar under the Act of 2019 prohibiting a civil court from adjudicating a dispute relating to the validity of Talaq-e-Hasan.

18. In the light of aforesaid discussion and considering nature of the suit and above provisions, I do not found there are any grounds to reject the plaint and the suit is barred by section 3 of the Muslim Women (Protection of Rights on Marriage) Act, 2019, or under any other provision of law. Hence, I answer point No. 1 in the 'negative.'

As to point No. 2 :-

19. In the light of my findings to point No.1 the plaint is not liable to be rejected. In answer to point No.2, I pass the following order.

ORDER

The application at Exh.14 is hereby rejected.

(Order pronounced in the open Court.)

Ner,
Date : 06.02.2026.

(G. C. Fulzalke)
Civil Judge Junior Division,
Ner, Dist. Yavatmal.

CERTIFICATE

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

Name of Stenographer	:-	Ku. B. N. Nare (Grade-III)
Court	:-	Civil Judge Jr. Dn., Ner.
Date	:-	06/02/2026
Order signed by	:-	07/02/2026
the Presiding Officer on		
Order uploaded on	:-	07/02/2026