NEUTRAL CITATION
2026:GUJHC:36438-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 768 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA Sd/-

and
HONOURABLE MR. JUSTICE R. T. VACHHANI Sd/-

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Approved for Reporting	Yes	No
	Yes	

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SHAHNAWAZ SIRAJUDDIN SIDDIQUI
Versus
MARUFA D/O MOHAMMEDAMIN HAKIM W/O. SHAHNAWAZ SIRAJUDDIN SIDDIQUI

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Appearance:
DHRUVIK K PATEL(7769) for the Appellant(s) No. 1
MR GA KADRI(1876) for the Appellant(s) No. 1
MR MUSAIB I SHAIKH(10565) for the Defendant(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 16/06/2026

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. This appeal, under Section 19 of the Family Courts Act, 1984, by the husband, is against the judgment and decree dated 21.12.2024, passed by the learned Judge, Family Court, Ahmedabad in Family Suit No.1899 of 2024, whereby the Family Court rejected the suit under Order 7 Rule 11 CPC, mainly on the ground that the suit does not disclose a cause of action.

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2. The brief facts giving rise to file present appeal are that the parties, by caste, are Muslim. They got married on 21.02.2015 at Ahmedabad as per the Islamic Shariyat. Admittedly, due to differences, it has become impossible to live together, as a result, according to Muslim Shariyat, the Talaaq was given and notarized divorce deed dated 15.07.2024 in presence of two witnesses came to be executed and before execution of the divorce deed, the parties had also executed deed of understanding dated 11.03.2024, whereby they settled their issue regarding articles and belonging of respondent wife who had waived her right of maintenance. The son Kabir, as agreed required to be permanently remained with the respondent wife. The appellant husband had given Rs.25 lakhs towards permanent alimony/future eduction expenditure. In such circumstances, in order to obtain a decree of declaration regarding marital status, suit under Section 7 of the Family Courts Act was filed. The respondent wife admitted the suit by way of pursis before the Family Court.

3. In such circumstances, after hearing the parties, the Family Judge, Ahmedabad raising the issue of maintainability of the suit held and observed that the plaintiff has not disclosed the cause of action for filing the suit. It is further observed that the Muslim Law provides dissolution of the marriage in different ways and it can be legally dissolved by way of Talaaq under Shariyat Law without approaching the Court. However, the Family Court has also observed that the one party can always approach to the Court for declaration of his/her marital status, if she/he is having cause of action and defendant denied such marital status. The Family Judge, Ahmedabad while dismissing

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the suit under Order 7 Rule 11 CPC, held that the Family Court cannot be approached just to get affirmation in the form of declaratory decree with respect to Talaaq legally executed under Muslim Law and therefore, when a legal character has not been denied to the plaintiff, then plaintiff has no cause of action to file a suit for declaration.

4. Aggrieved by the aforesaid observations made by the Family Court, the husband appellant has preferred this appeal, for setting aside the impugned judgment and decree.

5. We have heard learned counsel Mr. D.K. Patel with Mr. G.A. Kadri and Mr. Musaib Shaikh for the respective parties.

6. Mr. D.K. Patel, learned counsel assailing the impugned judgment and decree, urged the following submissions:

(A) That the Family Court has gravely erred in rejecting the plaint under Order 7 Rule 11 CPC, despite the undisputed and unequivocal admission on record by the respondent wife which squarely attracted the provisions of Order 12 Rule 6 CPC. Once the respondent entered appearance and filed written pursis expressly admitting the execution of the divorce deed, as well as the validity of the Talaaq pronounced in according with Muslim Shariyat, nothing further remains for adjudication except passing the decree on clear and categorical admission. The law is well settled that where the foundational facts are admitted, the Court ought to have passed a decree on admission so as to avoid unnecessary trial.

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(B) That the Family Court himself has misdirected by holding that the plaint does not disclose a cause of action. In the present case, the cause of action arises from the appellant's legal right to obtain a formal declaration regarding his matrimonial status under Explanation (b) to Section 7 of the Family Courts Act, 1984. The appellant approached the Family Court seeking declaration of legal effect of divorce already effected under the Muslim Personal Law which is distinct and valid cause under the substantive as well as procedural law and therefore, the requirement of denial by the opposite party as a condition precedent for cause of action under Section 34 of the Specific Relief Act does not apply to matrimonial declaration sought under the special jurisdiction conferred upon the Family Court. The Family Court failed to appreciate the legislative intent of Explanation (b) to Section 7 of the Family Courts Act which provides a judicial mechanism for a declaration as to the validity of the marriage or to the matrimonial status of any person.

(C) That the Family Court overlooked that in a cases governed by Muslim Personal Law, the dissolution of marriage by Talaaq or through mutual acts such as Khula or Mubara'at is extrajudicial in nature. In case of such dissolution, the parties often required a formal judicial declaration for purpose of government records, future marriage, custody, passport, visa or change of marital status in official documents and this need for judicial certification itself gives rise to cause of action, even without any dispute between the parties for filing the suit.

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7. In such circumstances, it is submitted that the rejection of plaint has therefore resulted in denial of statutory remedy to the parties and has cause great prejudice and hardship to the appellant and respondents and therefore, it is prayed that the judgment and decree of dismissal of the suit passed under Order 7 Rule 11 CPC be set aside and by allowing the suit, declared the dissolution of marriage already dissolved between the parties as per personal law.

8. Mr. Musaib I. Shaikh, learned counsel appearing for and on behalf of the respondent wife while adopting the contentions advanced by counsel appearing for the appellant, has submitted that the findings of the Family Court on the aspect of cause of action is erroneous and contrary to the scope and ambit of Section 7 of the Family Courts Act and therefore, it requires interference.

9. Having regard to the peculiar facts and circumstances of the present case, the issue falls for our consideration as to whether the Family Court, has committed any error while dismissing the Family Suit exercising suo-motu power under Order 7 Rule 11 of the C.P.C.?

10. In the facts of the present case, the parties belonged to Muslim community and as per Shariyat Law, vide agreement dated 15.07.2024, by consent marriage dated 21.02.2015 was dissolved. The respondent wife has accepted and admitted the Talaaq and Rs.25 lakhs being received from the husband as a permanent alimony. Since then, the parties are residing separately. It is relevant to note that under the provision of Dissolution of Muslim Marriage Act, 1937 and Muslim

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Personal Law (Shariat), Application Act 1939, divorce took place by mutual consent by appellant husband and respondent wife. There are four major forms of dissolution of marriage, as recognized under Islamic Law and protected under the Shariat Act, they are – (i) Talaq-i-tafweez;, (ii) Khula;, (iii) Mubara'at; and (iv) Faskh. In the present case, the mode of dissolution of marriage – Mubara'at would be applicable, because, there was consent of both the parties. The word 'Mubara'at' is a form of extra-judicial divorce based on mutual consent and same is valid as it remains untouched by the Dissolution of Muslim Marriage Act. Thus, the only prayer in the suit is to the effect that under explanation (b) of Section 7(1) of Family Courts Act, to declare that, the marriage solemnized is dissolved in terms of MOU dated 15.07.2024.

11. In such circumstances, we find some force in the submission of the learned counsel appearing for the appellant as well as respondent for the reasons that, when the marriage between two persons, who are governed by the Shariat Law, is dissolved by Mubara'at Agreement, the Family Courts are duty bound to accept the agreement of the parties and to declare the dissolution of the marriage as agreed between the parties. The High Court of Karnataka and other High Courts (Shabnam Parveen Ahmad vs. Mohammed Saliya Shaikh (Miscellaneous First Appeal No.4711 of 2022 dtd 26.03.2024), (Mohamed Saif Pasha vs. Madiha Arif (2021 SCC OnLine Madras 16570), on the identical issue, held and observed that, the Family Courts are duty bound to accept the agreements of the parties and declare the dissolution of the marriage as agreed.

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12. Having considered the submissions advanced and in view of the settled position of law, we are of the opinion that, the findings of the Family Court that, the defendant should have denied the factum of divorce as required under Section 34 of The Specific Relief Act. It is the misconception on the part of the Family Court that under explanation (b) of Section 7(1) of The Family Courts Act, the parties cannot approach before the Family Court to get affirmation in the form of declaratory decree with regard to Talaaq executed under the Islamic Law. The explanation (b) of Section 7(1) of the Family Courts Act authorize the Family Court to pass any decree for a declaration as to the validity of the marriage or as to the matrimonial status of any person. In the facts of the present case, the plaintiff-appellant has neither prayed to adjudicate, nor called upon to dissolve the marriage by decree of divorce. The prayer is to declare the marital status by endorsing the "Mubara'at" invoking jurisdiction under Section 7 of The Family Courts Act. The respondent-wife by way of pursis, admitted the pleadings and other things with respect to divorce. Thus, the requirement of denial of the opposite party as a condition precedent for cause of action under Section 34 of The Specific Relief Act, does not apply to matrimonial declaration sought under the special jurisdiction conferred under The Family Courts Act. Thus, in our opinion, the Family Court erred in dismissing the suit under Order 7 Rule 11 of the CPC.

13. For the discussion made hereinabove, the judgment and decree dated 21.12.2024 rejecting the plaint is set aside.

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14. Accordingly, the present appeal is allowed. The marriage between the appellant and the respondent which already dissolved by "Mubara'at" agreement, is declared to be dissolved from the date of agreement. Registry is directed to draw the necessary decree. Direct service is permitted.

Sd/-
(ILESH J. VORA,J)

Sd/-
(R. T. VACHHANI, J)

TAUSIF SAIYED