



1

MP-2816-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE AMIT SETH

MISC. PETITION No. 2816 of 2024*Versus*

.....
Appearance:

*Shri Shashank Sharma - Advocate with Shri Haush Sharma and Shri
Atif - Advocates for petitioner/Husband.*

Shri Madan Mohan Shrivastava - Advocate for the respondent.

.....

Reserved on : 18/09/2026

Delivered on : 23/09/2026

.....
ORDER

With the consent of parties, the matter is finally heard.

2. The present miscellaneous petition, filed under Article 227 of the
Constitution of India, seeks following reliefs:

*"7 (i) To quash the proceedings arising out of application
No.848/2023 filed under Section 9 Hindu Marriage Act, 1955
before the learned Family Court, Gwalior by the respondent on
account abuse of process of law;*

*(ii) That, the cost of the petition be awarded or any other order or
direction deemed fit in the circumstances of the case be issued in
the favour of the petitioners."*

3. Learned counsel appearing for the petitioner/husband submits that the
instant petition filed under Article 227 of the Constitution of India though does
not challenge any particular order passed by the subordinate court. However, the



present petition is being filed seeking quashment of the application filed under Section 9 of the Hindu Marriage Act, 1955 [hereinafter referred to as "HM Act"), bearing Case No.848A/2023 by the respondent before the Family Court, Gwalior.

4. The quashment is *inter alia* sought on the ground that the filing of the proceedings under Section 9 of the HM Act by the respondent is nothing but a gross abuse of process of law and the said proceedings have been instituted for the sheer purpose of harassing the petitioner/husband. It is further argued that in the year 2018, an application was filed by the petitioner/husband under Section 9 of the HM Act, wherein the respondent/wife categorically refused to reside with him. However, present proceedings instituted by the respondent/wife are nothing but a counter-blast to the petition for divorce filed by the petitioner/husband on account of alleged separation between the parties since the month of March, 2007.

5. During the course of arguments, learned counsel appearing for the respondent, at the very outset, raised a preliminary objection as regards the maintainability of the instant petition filed under Article 227 of the Constitution of India, 1950 seeking quashment of the proceedings under Section 9 of the HM Act instituted before the Family Court. It is argued by the learned counsel appearing for the respondent/wife that the power of superintendence vested on this Court under Article 227 of the Constitution of India is supervisory in nature and is meant to ensure that the subordinate courts act within their jurisdiction. The power under Article 227 of the Constitution of India cannot be invoked to supplant the original jurisdiction of the subordinate court or to bypass statutory remedies.

6. Learned counsel appearing for the respondent/wife further submits that earlier, a Bench of this Court *vide* order dated 18.06.2025 allowed the present petition; however, on a review application filed by the respondent bearing R.P.No.



1254/2025, the aforesaid order dated 18.06.2025 has been recalled by a Coordinate Bench vide order dated 13.08.2025 by placing reliance on the judgment by the Apex Court in the case of *K. Valarmathi and Others v. Kumaresan, 2025 INSC 606*. It is argued by the learned counsel appearing for the respondent/wife that the order passed in R.P. No.1254/2025 between the same parties was passed taking into consideration the merits of the objection of maintainability being raised by the respondent, and not on the ground that the earlier order dated 18.06.2025 suffered from any inadvertent error apparent on the face of record. The arguments which are now sought to be canvassed by the petitioner's counsel already stood considered and rejected in order dated 13.08.2025 passed in R.P.No.1254/2025, which has attained finality *inter se* between the parties. The petition, therefore, deserves to be dismissed.

7. In rejoinder arguments, learned counsel appearing for the petitioner places reliance upon the judgment by the High Court of Kerala at Ernakulam passed in *Rinju v. Santosh, Mat. Appeal No.989 of 2015, decided on 13.07.2016*, the judgment by the Apex Court in case of *Surya Dev Rai v. Ram Chander Rai and Others, (AIR 2003 SC 3044)*, and the order passed by the High Court of Madras in *K.Sivakumar vs. Anita Udayakumar, CRP No.2904 of 2026, decided on 03.08.2026*. Written arguments in support of the case of the petitioner have also been uploaded on ERP portal by the petitioner's counsel.

8. Heard the learned counsel appearing for the parties and considered the written arguments uploaded by the petitioner on ERP.

9. The principal issue arising for consideration before this Court in the present miscellaneous petition filed under Article 227 of the Constitution of India is as to whether Article 227 of the Constitution of India can be invoked/exercised for the quashment of the proceedings filed under Section 9 of the HM Act or



whether the same could be exercised to reject a plaint filed in a court of civil jurisdiction.

10. Section 10 of the Family Courts Act, 1984 makes the provisions of Code of Civil Procedure, 1908 applicable to the proceedings initiated before a Family Court, and so a Family Court is deemed to be a civil court for such purposes. Section 9 of the HM Act empowers the court to pass a decree of restitution of conjugal rights. In terms of Section 28 of the HM Act, all decrees and orders passed by the Family Court are appealable on both facts and law. It can, therefore, be safely said that the proceedings under Section 9 of the HM Act are civil proceedings *qua* which the Court is competent to pass a decree of restitution of conjugal rights.

11. The Apex Court in the case of *Jacky v. Tiny Alias Antony and Others, 2014 (6) SCC 508* considered the question as to whether the High Court, while exercising power under Articles 226 and 227 of the Constitution of India, is competent to set aside a claim in a civil/private dispute. In para 15 of the said judgment, it has been held that even if a suit is not maintainable, while it is well within the jurisdiction of the High Court to decide the same in appropriate jurisdiction, but in no case powers under Article 226 and 227 of the Constitution of India can be exercised to question a plaint. the relevant paras of the judgment by the Apex Court in the case of *Jacky (supra)* reads as under:

"14. The question whether the one or other order procured by the appellant against the 2nd respondent was with the intention to harass the 1st respondent is a question of fact which can be determined on the basis of evidence. There is no such issue framed nor any evidence brought on record to suggest Exts. P-2 and P-3 the orders obtained by the appellant against the 2nd respondent with intention to misuse the same and harass the 1st respondent. If the 1st respondent was aggrieved against the orders contained in Exts. P-2 and P-3 which were passed by the courts in



one or the other suit against a third party (the 2nd respondent) and to which the 1st respondent was not a party, he was not remediless and could have challenged the same before an appropriate forum.

15. A petition under Article 226 or Article 227 of the Constitution of India can neither be entertained to decide the landlord-tenant dispute nor is it maintainable against a private individual to determine an intense dispute including the question whether one party is harassing the other party. The High Court under Article 227 has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them within the bounds of their authority but it was not the case of the 1st respondent that the order passed by the Munsif Court was without any jurisdiction or was so exercised exceeding its jurisdiction. If a suit is not maintainable it was well within the jurisdiction of the High Court to decide the same in appropriate proceedings but in no case power under Articles 226 and 227 of the Constitution of India can be exercised to question a plaint.

[Emphasis Supplied]

12. A similar issue again came up for consideration before the Apex Court in the case of *K. Valarmathi and Others (supra)*, relied upon by the respondent's counsel. The Apex Court, reiterating the proposition laid down earlier in *Jacky (supra)*, held as under:-

"12. We are conscious appellate remedy against rejection of plaint is not available if the High Court had in its revisional jurisdiction reversed the order of trial court and rejected the plaint. In Frost (International) Ltd. v. Milan Developers⁷, this Court observed as follows:—

“31. No doubt rejection of a plaint is a decree within the meaning of Section 2(2) CPC and an appeal lies from every decree passed by any court exercising original jurisdiction to the court authorised to hear appeals from a decision of such court. However, it must be borne in mind that when a Revisional Court rejects a plaint, in substance, an application filed under Order 7 Rule 11 is being allowed. Under such circumstances, the remedy by way of a writ petition under Article 227 of the Constitution could be availed and Respondent 1/the plaintiff has resorted to the said remedy in the instant case; although if the plaint had been rejected by the trial court i.e. court of original



jurisdiction, it would have resulted in a right of appeal under Section 96 CPC.”

13. These observations in Frost (supra) are not relevant for the matter in issue as the High Court in the present case had not exercised its supervisory power to correct a jurisdictional error of the trial court but usurped its original jurisdiction to reject the plaint.

14. Procedural law provides the necessary legal infrastructure on which edifice of rule of law is built. Short-circuiting of procedure to reach hasty outcomes is an undesirable propensity of an overburdened judiciary. Such impulses rendering procedural safeguards and substantive rights otiose, subvert certainty and consistency in law and need to be discouraged.

15. Similar issue fell for decision in Jacky v. Tiny @ Antony when a tenant (non-party to the suit) prayed for rejection of an alleged collusive suit between the legal heirs of his erstwhile landlord and the new purchaser under Article 226/227. Deprecating invocation of constitutional powers in a landlord-tenant dispute, the Court observed:—

“15. ...If a suit is not maintainable it was well within the jurisdiction of the High Court to decide the same in appropriate proceedings but in no case power under Articles 226 and 227 of the Constitution of India can be exercised to question a plaint.”

16. In light of the aforesaid discussion, we set aside the impugned judgment dated 11.07.2024 passed by the High Court and allow the appeal. We make it clear that we have not expressed any opinion regarding merits of the plea of the respondent for rejection of plaint and give liberty to seek necessary relief before the trial court in accordance with law, if so advised.”

[Emphasis Supplied]

13. When the facts of the case in hand are examined in light of law as expounded by the Apex Court in the cases of *Jacky (supra)* and *K. Valarmathi and Others (supra)*, the plea made by the petitioner that he had earlier moved an application under Section 9 of the HM Act before the Court and the respondent declined to reside with him, or that the subsequent proceedings instituted by the respondent under Section 9 of the HM Act are by way of a counter-blast and an attempt to cause harassment to the petitioner, are assertions of fact which are



required to be established by leading evidence. The correctness or merits of the same cannot be gone into by this Court in the present proceedings.

14. In view of the aforesaid preposition as expounded by the Apex Court, this Court is of the considered opinion that the present miscellaneous petition filed by the petitioner under Article 227 of the Constitution of India seeking quashment of the proceedings instituted by the respondent under Section 9 of HM Act before the Family Court, Gwalior, is not maintainable. The issue framed is thus, answered against the petitioner.

15. The judgment relied upon by the petitioner's counsel in the case of *Rinju (supra)* by the High Court of Kerala at Ernakulam and in the case of *K. Shivakumar (supra)* passed by the High Court of Madras are of no assistance to the petitioner as the law propounded by the Apex Court hereinabove is directly on the point and covers the legal question raised by the petitioner. Though the petitioner filed the present petition under Article 227 of the Constitution of India, however in the written argument uploaded on ERP, a question has been proposed by the petitioner as to whether the power under Article 226 of the Constitution of India could be invoked to quash proceedings arising out of Section 9 of the HM Act, and in support thereof, the judgment by the Apex Court in the case of *Surya Dev Rai (supra)* has been relied upon. The ground raised by the petitioner in the written argument deserves rejection on two counts -

(i) That, the instant petition has been filed under Article 227 of the Constitution of India invoking supervisory jurisdiction, and

(ii) the judgment by the Apex Court in the case of *Surya Dev Rai (supra)* stands partly overruled by the subsequent judgment of the Apex Court in the case of *Radhey Shyam and Another v. Chhabi Nath and Others, 2015 (5) SCC 423*, wherein it has been held that judicial orders of a civil Court are not amenable



to the writ jurisdiction under Article 226 of the Constitution of India. The jurisdiction under Article 227 of the Constitution of India is distinct from jurisdiction under Article 226 of the Constitution of India.

16. That apart, it is a matter of record that the earlier order dated 18.06.2025 passed by the Bench of this Court allowing the present petition has been recalled vide order dated 13.08.2025 passed in R.P.No.1254/2025. The operative paras of the said order read as under:

"5. Having heard the learned counsel for the parties, this Court finds force in the submissions advanced on behalf of the petitioner. The scope of Article 227 is supervisory in nature and is to be exercised sparingly to ensure that subordinate courts act within their jurisdiction. This power is meant to rectify errors apparent on the face of the record and to prevent grave injustice. However, it cannot be invoked to supplant the original jurisdiction of the subordinate court or to override statutory remedies available under procedural law.

6. As rightly observed by the Apex Court in the matter of K.K. Valarmathi (Valarmathi (supra supra)), CPC provides a comprehensive mechanism for adjudication and rejection of complaints through Order VII Rule 11, and any such rejection is deemed to be a decree, which is appealable. The statutory scheme under the CPC cannot be bypassed by resorting to Article 227 jurisdiction.

7. In the present case, though an application under Section 9 of the Hindu Marriage Act is not a plaint in the strict sense, it operates in a similar fashion, seeking specific legal relief, and results in a decree. Therefore, the quashment of proceedings under Article 227 was not proper and resulted in the petitioner losing the right to adjudication and appellate remedy, which warrants review."

The aforesaid reasoning and finding rendered by a Court of Competent Jurisdiction (the Coordinate Bench of this Court) *inter se* between the parties, i.e., the petitioner and the respondent, has been allowed to attain finality and is therefore, binding *inter se* between the parties.



17. In view of the aforesaid discussions and considerations, the present miscellaneous petition stands dismissed on the ground of maintainability. Liberty is reserved in favour of the petitioner to seek remedy as may be permissible in law.

18. With the aforesaid, the petition stand **dismissed**.

19. Pending application (s), if any, shall stand closed.

(AMIT SETH)
JUDGE

AK/-