

*Before Jitendra Chauhan, J.*

**DR. MANGLA DOGRA AND OTHERS,—Petitioners**

*versus*

**ANIL KUMAR MALHOTRA AND OTHERS,—Respondents**

CR No. 6337 of 2011

29th November, 2011

*Constitution of India - Art.226 - Civil Procedure Code, 1908 - O.7 Rl.11 - Indian Penal Code, 1860 - S.312 - Medical Termination of Pregnancy Act, 1971 - S.2(d), 3(2), 4, 5 & 8 - Medical Termination of Pregnancy Rules, 2003 - Rl.5 - Medical Termination of Pregnancy Rules, 1975 - Rl.8 - Wife getting pregnancy terminated without consent of husband - Husband filing civil suit for damages against wife, her brother, parents and doctors responsible for termination of pregnancy - Defendants in suit move applications under order 7 rule 11 CPC - Application dismissed by trial court - In revision before High Court, orders of trial Court set aside and applications under O.7 Rule 11 allowed holding that under section 3(4)(b) of MTP Act only consent of pregnant woman required - Suit filed - Dismissed.*

*Held,* That it is a personal right of a woman to give birth to a child, but it is not the right of a husband to compel her wife to give birth to a child for the husband. No doubt the judicial precedents are there, where the courts have considered the termination of pregnancy by the wife as mental cruelty and gave divorce to the husband on this ground, keeping in view the unique facts and circumstances of the case. But, in the case in hand, the parties have a son born on 14.02.1995. The relations of the parties became strained and in the year 1999 the wife started living separately from her husband at Chandigarh. At the time of the second conception the age of the son was about eight years, who is with the mother/wife. No body can interfere in the personal decision of the wife to carry on or abort her pregnancy which may be due to the reason that an effort to live together under one roof has failed and that their son was of eight years.

(Para 22)

*Further held,* That for the purpose of invoking the provisions of order 7 rule 11 of the Code for rejection of plaint, at the very outset, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the Court at this stage. It is to be seen at this stage as to whether any trial able cause of action is made out against the defendants or that the suit is prima facie, vexatious, malafide, filed with ulterior motive only to harass the defendants. It is to be seen from the pleadings of the plaint itself. Under order 7 Rule 11 of the Code, a Civil Suit can be dismissed without trial, if to the satisfaction of the Court no cause of action accrued to the plaintiff against the defendants or any of the defendants or some of the defendants.

(Para 26)

*Further held,* That the medical termination of pregnancy Act 1971 does not empower the husband, far less his relations, to prevent the concerned woman from causing abortion if her case is covered under section 3 of that Act. Under section 312 of the Indian Penal Code, 1860 causing miscarriage is a penal offence. Relevant civil law has since been embodied in the Act legalising termination of pregnancy under certain circumstances. Since law is liberal for effecting such termination, the Act does not lay down any provision on husband's consent in any situation.

(Para 27)

Alka Sarin, Advocate for the petitioners (for respondent Nos. 3 and 4 in C.R.No. 6017 Of 2011)

Sandeep Chhabra, Advocate for the petitioners, in C.R.No.6017 of 2011 and (for respondents No. 3 to 5, in C.R.No.6337 of 2011)

Ashwani Talwar, Advocate for respondent No.1

Seema Pasricha, Advocate for respondent No.2

**JITENDRA CHAUHAN, J.**

(1) This judgment of mine shall dispose of two Civil Revision Nos. 6337 of 2011 (titled “Dr. Mangla Dogra and Others v. Anil Kumar Malhotra and Others”); and 6017 of 2011, titled (“Ajay Kumar Pasricha and Others

v. Anil Kumar Malhotra and Others”) which have been directed against the order dated 20.8.2011, passed by Civil Judge (Junior Division) Chandigarh, vide which the application filed by the petitioners under Order 7 Rule 11 Civil Procedure Code was dismissed.

(2) The facts giving rise to these Civil Revisions originated from a matrimonial dispute between respondent No.1 Anil Kumar Malhotra and respondent No.2, Seema Malhotra. The marriage between the parties was solemnized on 17.4.1994. Out of the wedlock, a male child was born on 14.2.1995. The parties resided at Panipat. Due to the hostilities and strained relations between the parties, Seema Malhotra along with her minor son had been staying with her parents at Chandigarh since 1999. Respondents No. 5 is the brother of respondent No.2, whereas respondent Nos. 3 & 4 are her parents. Respondent No. 1, Seema Malhotra filed an application under section 125 Cr.P.C claiming maintenance from the husband, Anil Kumar Malhotra. On 9.11.2002, during the pendency of the application under section 125 Cr. P. C, with the efforts of the Lok Adalat, Chandigarh, she agreed to accompany the husband. As a consequence, the couple went to Panipat. On 2.1.2003, Anil Kumar Malhotra came to know that Seema Malhotra had conceived. The wife-Seema Malhotra did not want to continue with the pregnancy and she wanted to get the foetus aborted, as despite their living together, the differences between them persisted. It was the case of the husband-respondent No. 1 that on the pretext of getting herself medically examined, the wife went to Dr. (Mrs.) Ritu Prabhakar, Prabhakar Hospital, Panipat. However, she was adamant to get the foetus aborted but the husband refused. On 3.1.2003, she contacted her mother at Chandigarh. On the advice of her mother, she along with her husband and son came to Chandigarh. On 4.1.2003, they went to General Hospital, Sector 16, Chandigarh. The husband refused to sign the papers giving his consent to terminate the pregnancy. The husband filed a suit for mandatory injunction restraining the wife from getting the foetus aborted. That suit was withdrawn in September, 2003, as the respondent No.2 underwent MTP (Medical Termination of Pregnancy) at Nagpal Hospital, Sector 19, Chandigarh. The MTP was done by Dr. Mangla Dogra assisted by Dr. Sukhbir Grewal as Anesthetist. The husband-respondent No.1 filed a civil suit for the recovery of Rs. 30 lacs towards damages on account of mental pain, agony and harassment against the wife, Seema Malhotra, her parents, brother,

Dr. Mangla Dogra and Dr. Sukhbir Grewal for getting the pregnancy terminated illegally. The ground taken in the suit is that the specific consent of respondent No.1, being father of the yet to be born child, was not obtained and the MTP was done in connivance with respondents No. 2 to 6. All the respondents are jointly and severally responsible for conducting the illegal act of termination of pregnancy without any medical requirement. In para Nos. 15 and 16 of the plaint (Annexure P-1), the plaintiff-respondent No.1 averred as under:-

- “15. That the respondent No.1 is liable as she indulged in the illegal act of abortion and deprived the plaintiff the chance of having the child. The respondents No. 2, 3 and 4, actively connived with the respondent No.1 in carrying out the abortion without the consent of the plaintiff and without there being any medical requirement in this regard. The respondents No. 5 & 6 actually conducted the abortion when there was no such need and still further, no consent of the plaintiff, being father of the child was taken in this regard.
16. That the cause of action arose to the plaintiff on 4.1.2003, when the defendant underwent the abortion and got the foetus aborted at Nagpal Hospital, Sector 19-A, Chandigarh against the wishes of the plaintiff. Her parents and her brother fully supported her in her cruel, illegal and unethical Act causing great mental pain to the plaintiff.”

(3) On receipt of notices, the petitioners filed application under Order 7 Rule 11 C.P.C read with section 151 CPC for rejecting the plaint and dismissing the suit qua them. The allegations against defendants No. 5 & 6 contained in Para Nos. 12 and 13 of the plaint are as under:-

- “12. That despite the repeated requests, protests and blank refusal of the plaintiff, the respondent No.1, underwent abortion at Nagapal Hospital, Sector 19, Chandigarh on 4.1.2003 without the knowledge or consent of the plaintiff. The abortion was conducted by the respondent No.5, Dr. Mangla Dogra and respondent No.6, Dr. Sukhbir, the Anesthetist.

13. That in law, the foetus could not have been aborted unless it was essential in view of the health of the respondent. Still further, specific consent of the plaintiff, being father of the child is required. However, despite the fact that there was no medical problem and no consent of the plaintiff was taken, the respondents No. 5 & 6 in active connivance with respondents No. 2 to 4, conducted the abortion of the foetus of the respondent No.1 on 4.1.2003 at Nagpal Hospital, Sector-19, Chandigarh.

(4) The stand taken by respondents No. 5 & 6 is that Nagpal Nursing Home is an approved place for termination of pregnancy under the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as the Act). Section 4 of the Act lays down that no termination of pregnancy shall be made at any place other than one which is approved in accordance with the provisions of this Act. Rule 5 of the Medical Termination of Pregnancy Rules, 2003 deals with the approval of a place for the purpose of carrying out the termination of a pregnancy. Rule 5(6) of the Rules states that after considering the application and the recommendations of the Chief Medical Officer of the District the Committee may approve such place and issue a certificate of approval in Form B. Nagpal Nursing Home was duly granted such approval under the Rules, which is as under.

CHANDIGARH ADMINISTRATION  
HEALTH DEPARTMENT  
FORM B

(See Sub-Rule (6) of Rule 4)

The place described below is hereby approved for purpose of the Medical Termination of Pregnancy Act, 1971 (74 of 1971)

Name of Place	Address & Other Description	Name of the owner
1	2	3
Nagpal Nursing Home, H.No.5 Sector 19-A Chandigarh	Nagpal Nursing Home, H.No.5 Sector 19-A Chandigarh	Dr. Mangla Dogra

sd/-

Director Health Services  
Chandigarh Administration  
Chandigarh

(5) It was further stated that defendant No.5 is a registered medical practitioner as defined in Section 2(d) of the Act while defendant No.6 is a qualified Anesthetist. In the present case, the medical termination of pregnancy was conducted by a medical practitioner and at a place duly approved under the Rules. At the time of abortion, the defendant No.1 was having 6 weeks and 4 days of pregnancy. Explanation II to Section 3 (2) of the Act deals with the termination of pregnancies, which is as under:-

“Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.”

(6) Defendant No.1 informed the doctor that she did not want to continue with the pregnancy as this was an unwanted pregnancy and on examination by defendant No.5, it was found that pregnancy was less than 12 weeks old, the defendant No. 5 after getting due consent from defendant No.1, terminated the pregnancy . **Under Section 3(4)(b) of the Act, only the consent of the pregnant woman undergoing the termination of pregnancy is required. An unwanted pregnancy as per Explanation II to Section 3(2) of the Act is a grave injury to the physical or mental health of the woman.** The defendant No.5 and 6 have conducted the abortion strictly in accordance with the provisions of the Act and they have no connivance with defendant Nos. 2 to 4 in any manner, whatsoever, as alleged by the plaintiff-respondent No.1.

(7) It was pleaded by defendants No. 5 & 6 that the plaint did not disclose any cause of action against them and under Order 7 Rule 11 CPC, the plaint is liable to be rejected.

(8) Reply to the application under Order 7 Rule 11 CPC was filed by the husband, plaintiff-respondent No.1 on the ground that the defendant No.1 has undergone MTP with active connivance of defendants No. 5 and 6, so they are the necessary parties to the suit. It was further stated that the foetus could not have been aborted unless it was essential in view of the health of the woman. Further, specific consent of the father of yet to be born child is required, despite the fact that there was no medical problem

to the pregnant woman. When the consent of the father was not obtained, it amounts to cruelty on the father. No document has been placed on record showing that there was immediate need to do the MTP and that too with the consent of single parent, i.e mother only. It was alleged that the sole motive of defendants No. 5 & 6 was to mint money. 9. The Ld. Civil Judge, (Jr. Division) Chandigarh, after perusing the record, dismissed the application vide order dated 20.8.2011. Para Nos. 4 to 10 of the same reads as under:-

- “4. I have perused the plaint and have also perused the concerned Medical Termination of Pregnancy Act, 1971. The present suit is a suit for recovery of damages for mental agony and pain caused to the plaintiff/respondent by illegal termination of pregnancy undertaken by defendant No.1 with active connivance with defendants No. 2 to 6 and it is stated in para No. 13 of the plaint that the foetus could not have been aborted unless it was essential in law in view of the health of the respondent and further the consent of the father of the child was not taken and the applicants No. 5 & 6 in connivance with defendants No. 2 to 4 have conducted the abortion of foetus of respondent No. 1 on 4.1.2003. It is further in para No. 5 that the applicants No. 5 & 6 actually conducted the abortion when there was no such need and further no consent of plaintiff/respondent being father of the child was taken in this regard.
5. Section 3 of the Medical Termination of Pregnancy Act provides the situation under which the pregnancy may be terminated by a registered medical practitioner. It provides that the pregnancy may be terminated where the length of the pregnancy does not exceed 12 weeks and when such medical practitioner is of the opinion formed in good faith that continuance of the pregnancy would involve a great risk to the life of the pregnant woman or grave injury to her physical or mental health. Explanation No. 1 & 2 provides the nature of grave injury which is required to be there in case valid termination is to be done.
6. In the present case, the plea forwarded by the applicants No. 5 & 6 is that defendant No.1 duly consented to termination of her pregnancy and that foetus was less than 12 weeks old and

further defendant No.1 did not want to continue such pregnancy as it was unwanted pregnancy caused due to failure of contraceptive. But at this stage, the applicants/defendants No.5 & 6 have failed to produce on record any record of theirs by way of which they can, prima-facie, prove that the foetus which they operated was less than 12 weeks and they had formed the opinion that continuance of pregnancy is going to cause great risk to the life of pregnant woman and is going to cause injury to her physical or mental health. Further, there is no proof of the fact at this stage that the pregnancy was caused due to failure of any contraceptive etc.

7. The plaintiff/respondent in the present suit has directly leveled allegations against applicants No. 5 & 6 of having terminated the pregnancy of defendant No.1 in active connivance of other defendants without their being any requirement of such termination as per the Medical Termination of Pregnancy Act. The counsel for the applicant argued that there is protection of action taken in good faith by applicants No. 5 & 6 under the concerned Act. But in view of my aforesaid detailed discussion, the question whether the abortion was done by applicants No. 5 & 6 in good faith, can only be decided after the evidence is led upon that issue. Accordingly, the present application is without any basis at this stage and the same is hereby dismissed.
8. I have also heard the application under Order 7 Rule 11 CPC filed by defendants/applicants No. 2, 3 and 4 on the ground that no ground or cause of actio is made out against defendants No. 2,3 and 4 from the contents of the plaint and further keeping in view of the mental and physical state of mind of defendant No.1, the said act was done. It is further alleged by them that the plaintiff has also earlier filed a suit on the same cause of action but after framing of issues, he did not appear in the Court and the suit was dismissed.
9. In reply to this application, the counsel/respondent has denied the averments of the applicants No. 2,3 and 4. 10. The present application is almost on the same grounds as the application



moved by defendants No. 5 & 6 which has already been dismissed above and additional ground taken is that an earlier suit filed on the same cause of action was dismissed. But certified copies of plaint, written statement and issues of the earlier suit have not been placed on record by the applicants for determination of said fact at this stage. Accordingly, the said issue as to whether the present suit is barred under law cannot be determined at this stage. Further, the plaintiff has specifically pleaded in his plaint that defendants in connivance with each other caused termination of the pregnancy of defendant No.1 which resulted in alleged mental agony etc. to the plaintiff. Accordingly, there is a cause of action in favour of the plaintiff against the defendants at this stage. Accordingly, the present application filed under Order 7 Rule 11 CPC is hereby dismissed.”

(10) Aggrieved against the same, the petitioners have preferred these revisions.

(11) The learned counsel for the petitioners ( In C.R. No. 6337 of 2011) submitted that relations between respondent No.1 and respondent No.2 were not cordial. The respondent No.1 has been maltreating and harassing the respondent No.2- wife. The wife alongwith her minor son Hemant was staying with her parents at Chandigarh, since 1999. She has filed application under section 125 Cr. P.C claiming maintenance from the respondent No. 1. In 2002, during the pendency of that application and with the efforts of the Lok Adalat to get the matter compromised between the parties, the wife agreed to reside with the husband-respondent No.1 at Panipat. But the behaviour of the respondent No.1-husband did not change. He again maltreated the wife and even gave beatings to their minor son Hemant. During that interregnum, on the cohabitation of the parties, the wife became pregnant. She submitted that since the wife was not mentally and physically fit, she did not want to carry on with this unwanted pregnancy. She further stated that even the husband was not interested in the birth of the second child. They went to Dr. Ritu Prabhakar, Prabhakar Hospital, Panipat. The respondent No.1 suggested the respondent No.2-wife to go to Chandigarh as the facilities are better there. She alongwith her husband,

respondent No.1 and son came to Chandigarh on 3.1.2003. On 4.1.2003, she got the pregnancy terminated from Dr. Mangla Dogra, petitioner. In order to harass the wife, the husband filed suit No.2 on 7.1.2003, for ad-interim injunction. The said suit was dismissed as infructuous on 5.2.2011. She further submitted that as per Section 3(4)(b) of the Act, obtaining the consent of the pregnant woman is indeed an essential condition for proceeding with the termination of a pregnancy. The doctor, a registered practitioner has acted, in good faith, to terminate the pregnancy under the provisions of the Act, as the length of the foetus was six weeks. She further submitted that where the woman is minor or mentally ill and in the case, where the medical practitioner has to form an emergency opinion to save the life of the pregnant woman, the consent of the guardian is required. She elaborated that in the instant case, these provisions of Section 5(1) of the Act do not apply. Respondent No. 2 is well qualified, of sound mind, and is the mother of a grown up child and therefore, the consent of the husband was not required to be obtained.

(12) The learned counsel for the petitioners in C.R. No. 6017 of 2011 submitted that the petitioners are the brother and parents of the respondent No.2-Seema Malhotra, and they have no role in getting the medical termination of pregnancy conducted. It was the conscious decision of respondent No.1 and respondent No.2. He further submitted that the petitioners have been roped in the litigation by respondent No.1 only to humiliate and harass them. No cause of action arose to respondent No.1 by the act of the respondent No.2-wife, against the petitioners.

(13) On the other hand, the argument raised by the learned counsel for respondent No.1 is that the express consent of the husband respondent No. 1 was not obtained by the doctor before doing the MTP. He further submitted that there was no opinion of the doctor that the respondent No.2 is unable to carry the pregnancy due to ill health and hence the medical termination of pregnancy was required to be conducted. He stated that the act of wife amounts to mental cruelty to the husband, who has been rendered a mental wrack on account of the MTP done.

(14) I have heard the learned counsel for the parties and perused the record with their able assistance.

(15) In order to appreciate the rival submissions, a reading of the relevant provisions of The Medical Termination of Pregnancy Act, 1971 ( No. 34 of 1971 ) would be necessary.

- “3. When pregnancies may be terminated by registered medical practitioners. (1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of the Act.
- (2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,
- (a) Where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or
- (b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of opinion, formed in good faith, that
- (i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or
- (ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation I. Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation II. Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

- (3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in subsection (2), account may be taken of the pregnant woman actuals or reasonable foreseeable environment.
- (4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who having attained the age of eighteen years, is a (mentally ill person), shall be terminated except with the consent in writing of her guardian.
- (b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.

(16) The question arising for consideration in these revisions is “whether the express consent of the husband is required for unwanted pregnancy to be terminated by a wife ?”

(17) This is the most unfortunate case where a husband has brought privileged acts and conducts of husband and wife in the court. The relation between the husband and wife became sour in the year 1999, when the wife started residing with her parents at Chandigarh. It is an admitted fact that on 09.11.2002, during proceedings under section 125 of the Code of Criminal Procedure, with the efforts of the Lok Adalat, Chandigarh, the wife agreed to accompany the husband and started residing with her, under one roof. Naturally, they have cohabited as husband and wife while residing together. Besides love and affection, physical intimacy is one of the key elements of a happy matrimonial life. In the present case, the wife knew her conjugal duties towards her husband. Consequently, if the wife has consented to matrimonial sex and created sexual relations with her own husband, it does not mean that she has consented to conceive a child. It is the free will of the wife to give birth to a child or not. The husband can not compel her to conceive and give birth to his child. Mere consent to conjugal rights does not mean consent to give birth to a child for her husband. The wife did so in order to strength the matrimonial ties. On 02.01.2003, admittedly the husband and wife came to know that the wife was pregnant from her husband. She did not want to give birth to a child and showing unwillingness, got her pregnancy terminated in January, 2003, from the petitioners in Civil Revision No.6337 of 2011 who are authorized to do so under the Act.

(18) The argument of the Ld. counsel for the husband/ respondent has to be rejected in view of the medical termination of pregnancy Rules, 1975. Rule 8 provides as under:-

**“ 8. Form of Consent- The consent referred to in sub section (4) of Section 3 shall be given in Form C.”**

**Form C is prescribed as under:-**

FORM C

(see rule 8)

I.....daughter/wife of.....aged about.....years of .....(here state the permanent address)..... at present residing at.....do hereby give my consent of the termination of my pregnancy at.....

(State of name of place where the pregnancy is terminated)

.....

Signature

Place.....

Date.....

(19) This form is to be signed by the wife only, showing her willingness to have the pregnancy terminated or aborted. The Medical Termination of Pregnancy Act, 1971(34 of 1971), nowhere provides for the express or implied consent of the husband. The wife is the best judge and is to see whether she wants to continue the pregnancy or to get it aborted. The husband has unsuccessfully brought an action for perpetual injunction restraining the wife to get the pregnancy terminated, but the suit was dismissed as withdrawn.

(20) When the husband has no right to compel her wife not to get the pregnancy terminated, he has no right to sue her wife for compensation. The husband also has no cause of action against her wife on this account. Keeping in view the strained relations between the husband and wife, the decision of the wife to get the termination of unwanted foetus was right. It was not the act of termination of pregnancy, due to which relation became sour, but the relations between the husband and the wife were already strained. So, keeping in view the legal position, it is held that no express or implied consent of the husband is required for getting the pregnancy terminated under the Act.

(21) Now the next question arises for consideration is as to whether the husband has any cause of action or right to sue against the medical practitioners, for getting the pregnancy terminated under the Act. Section 8 of the Act provides as under:-

**“8. Protection of action taken in good faith- No suit or other legal proceeding shall lie against any registered medical practitioner for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.”**

(22) It is a personal right of a woman to give birth to a child, but it is not the right of a husband to compel her wife to give birth to a child for the husband. No doubt the judicial precedents are there, where the courts have considered the termination of pregnancy by the wife as mental cruelty and gave divorce to the husband on this ground, keeping in view the unique facts and circumstances of the case. But, in the case in hand, the parties have a son born on 14.02.1995. The relations of the parties became strained and in the year 1999 the wife started living separately from her husband at Chandigarh. At the time of the second conception the age of the son was about eight years, who is with the mother/wife. No body can interfere in the personal decision of the wife to carry on or abort her pregnancy which may be due to the reason that an effort to live together under one roof has failed and that their son was of eight years. She approached the petitioners, who are admittedly an authorized hospital to have the pregnancy terminated. A woman is not a machine in which raw material is put and a finished product comes out. She should be mentally

prepared to conceive, continue the same and give birth to a child. The unwanted pregnancy would naturally affect the mental health of the pregnant women. When the husband/ plaintiff, came to know that his wife was pregnant from his loins, it was his duty to convince his wife to continue with the pregnancy, but his coming to the court by filing a Civil Suit for permanent injunction restraining the wife from getting the pregnancy terminated was a shameful act on his part. Because in the mean time, the wife was successful in getting the pregnancy terminated from a duly authorized medical practitioner, so he had to withdraw the Civil Suit, the same having become infructuous. He does not pause there, but came to the court bringing an action by filing a Civil Suit, for recovery of Rs.30 lacs towards damages on account of alleged pain, agony and harassment undergone by the plaintiff on account of termination of pregnancy. The act of the medical practitioners (herein the Revision petitioners) was perfectly legal. No offence or tortuous act was committed by the medical practitioners. So it is held that the act of the medical practitioners Dr.Mangla Dogra and Dr.Sukhbir Grewal, in Civil Revision No.6337 of 2011 was legal and justified. The plaintiff/ husband has failed to bring any document on record to show that the act of the medical practitioners was illegal or unjustified and thus they are liable to pay the damages. The act of the medical practitioners can not be termed as unethical.

(23) Now, this Court is going to decide whether the impugned order dated 20.08.2011 **Annexure P-5**, whereby the application filed by the Revision petitioners under order 7 Rule 11 read with section 151 of the Code of Civil Procedure, for rejection of the plaint, qua the medical practitioners was illegal, erroneous, without jurisdiction, miscarriage of justice and that the court has not exercised its powers in rejecting the plaint qua them.

Order 7 Rule 11 of the CPC provides as under:-

**“1. Particulars to be contained in the plaint—** The plaint shall contain the following particulars-

(a) to (i) xx xx xx xx

**Rule 11. Rejection of plaint-** The plaint shall be rejected in the following cases:-

(a) Where it does not disclose a cause of action;

- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the court, fails to do so;
- © where the relief claimed is properly valued but the plaint 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 plaint to be barred by any law;

[ (e) (f) xx xx xx xx”

(24) In the case of **T. Arivandandam versus Staypal and another (1)**, it has been observed that “if on a meaningful not formal- reading of the plaint it is manifestly vexatious, and merit less in the sense of not disclosing a clear right to sue, the trial court should exercise its power under order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled...”.

(25) In **Liverpool and London S.P. & I Association Ltd. versus M.V. Sea Success I and another (2)**, in paras 132 and 133 it has been held as under:-

**“132. It is trite that a party should not be unnecessarily harassed in a suit. An order refusing to reject a plaint will finally determines his right in terms of order 7 rule 11 of the Code of Civil Procedure.**

**133. The idea underlying Order 7 Rule 11(a) is that when no cause of action is disclosed, the courts will not unnecessarily protract the hearing of a suit. Having regard to the changes in the legislative policy as adumbrated by the amendments carried out in the Code of Civil Procedure, the courts would interpret the provisions in such a manner so as to save expenses,**

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(1) AIR 1977 SC 2421

(2) 2004 (9) SCC 512



**achieve expedition and avoid the court's resources being used up on cases which will serve no useful purpose. A litigation which in the opinion of the court is doomed to fail would not further be allowed to be used as a device to harass a litigant.”**

(26) For the purpose of invoking the provisions of order 7 rule 11 of the Code for rejection of plaint, at the very outset, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the Court at this stage. It is to be seen at this stage as to whether any trial able cause of action is made out against the defendants or that the suit is prima facie, vexatious, malafide, filed with ulterior motive only to harass the defendants. It is to be seen from the pleadings of the plaint itself. Under order 7 Rule 11 of the Code, a Civil Suit can be dismissed without trial, if to the satisfaction of the Court no cause of action accrued to the plaintiff against the defendants or any of the defendants or some of the defendants.

(27) The medical termination of pregnancy Act 1971 does not empower the husband, far less his relations, to prevent the concerned woman from causing abortion if her case is covered under section 3 of that Act. Under section 312 of the Indian Penal Code, 1860 causing miscarriage is a penal offence. Relevant civil law has since been embodied in the Act legalising termination of pregnancy under certain circumstances. Since law is liberal for effecting such termination, the Act does not lay down any provision on husband's consent in any situation.

(28) Now, briefly advert to the Civil Revision No.6017 of 2011, Ms.Sheel Pasricha, petitioner No.2 is the mother, Sh.B.R.Pasricha, Petitioner No.3 is the father and Sh.Ajay Pasricha, Petitioner No.1 is the brother of Ms.Seema Malhotra, wife.

(29) The only allegations against these petitioners are that they after having connived with the medical practitioners and the wife, carried out the M.T.P on 4.1.2003. No details of connivance have been detailed in the plaint. Undisputedly the husband and the wife cohabited at Panipat after they joined each other with the intervention of the Lok Adalat. A perusal

of the plaint itself shows that the wife took decision to have the pregnancy aborted at Panipat and consulted Dr. Ms.Ritu Parbhakar, Parbhakar Hospital, Panipat. It was her own decision. There is no averment that before going to Panipat Hospital, the wife consulted with the petitioners i.e. the parents and the brother. Except the allegation of connivance, which is not supported by any document, no cause of action can be said to have accrued, against the present petitioners in Civil Revision No. 6017 of 2011. The respondent husband has deliberately filed the present litigation to humiliate and harass the petitioners, who happen to be the parents and brother of the wife after withdrawal of the suit in the year 2003. The tendency to rope in all the family members is on increase, but in this case, the doctors, who rendered medical help to the wife have been made to suffer for which they need to be compensated. So, it is held that no cause of action accrued to the plaintiff/husband to sue his in-laws family. The suit prima facie is vexatious, merit less qua the present petitioners also.

(30) Keeping in view the above discussion, it is held that no cause of action accrued to the plaintiff-husband against the present petitioners, in Civil Revision No.6337 of 2011 and No.6017 of 2011. They are not necessary and proper parties in the suit and the suit qua them appears to have been filed with ulterior motive best known to the husband/ plaintiff. The continuation of the Civil Suit against these petitioners would amount to the abuse of process of law and miscarriage of justice and this Court would not feel hesitate to come to the rescue of the petitioners.

(31) Consequently, Civil Revisions No.6337 of 2011 and No.6017 of 2011, are accepted; the impugned orders dated 20.08.2011, passed by Civil Judge(Jr. Division), Chandigarh, in Civil Suit titled as Anil Kumar Malhotra versus Smt. Seema Malhotra and Ors, are set aside and the plaint qua Dr.Mangla Dogra and Dr.Sukhbir Grewal, Ms.Sheel Pasricha, Sh.B.R.Pasricha and Sh.Ajay Pasricha, petitioners, are rejected under order 7 Rule 11 of Code of Civil Procedure. Accordingly, respondent No.1 Anil Kumar Malhotra is directed to pay the costs of Rs. 25,000/- to each of the petitioners in both the petitions.

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**P.S.B.**