THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

CIVIL REVISION PETITION No.2477 of 2019

ORDER:

The defendant before the learned trial Court filed this civil revision petition under Article 227 of the Constitution of India questioning the correctness of order dated 01.07.2019 of learned Principal Junior Civil Judge, Chilakaluripet in I.A.No.1607 of 2017 in O.S.No.195 of 2016. The respondent herein is the plaintiff before the learned trial Court.

2. The revision petitioner is wife and respondent is her husband. The respondent-husband filed O.S.No.195 of 2016 for declaration that the marriage between them was dissolved. The wife filed an application under Order VII Rule 11 and Section 151 C.P.C. seeking for rejection of the plaint and the learned trial Court declined it. Therefore, the wife is aggrieved and has come up with this revision.

3. Sri Shiak Dariyavali is husband, Smt. Shaik Jareena is wife and they were married on 04.11.1999 and were blessed with two sons and a daughter and they are governed by Mohammedan Law and belong to Sunnisect. These facts are not in dispute. Nearly 17 years after marriage, the husband had filed the suit before the learned Principal Junior Civil

Judge, Chilakaluripet in O.S.No.195 of 2016. The substance of his claim is that wife left him in the year 2012 and his attempts to bring reconciliation utilizing arbiters one from him, one from the wife did not materialize and his efforts to bring reconciliation through Anjuman Committee, Chilakaluripet did not materialize. As directed by the Anjuman Committee, he paid an amount of Rs.70,000/- to his wife and at some point of time, on 22.07.2015 having received that amount of Rs.70,000/- wife joined the matrimonial home, but there was no change in her behaviour and her neglect caused distress and she never followed Muslim Rites and Customs and threatened to commit suicide and she was questioning giving away of their one of their sons in adoption to her husband's brother and pestering her husband to bring back the child. Then it narrated about the another round of effort on part of the husband at Anjuman Committee during August, 2015 to get back his wife and then during February, 2016 the wife lodging a criminal case in Chilakaluripet Police Station against her husband. It is then stated that husband eventually pronounced Talaq thrice on 08.04.2016 and informed the same to the wife through a letter dated 08.04.2016, which was served on the wife on 18.04.2016

and he also sent a cheque dated 07.04.2016 for an amount of Rs.9,000/- towards iddat amount and on 20.07.2016 he informed the pronouncement of Talaqnama to the Anjuman Committee and served a copy of it on that Committee on 22.07.2016 and that the wife after a slumber of six months, issued a reply notice on 06.10.2016 to which the husband issued another rejoinder on 15.10.2016. It is on these averments he made the following prayer in the suit:

> "(a) The plaintiff therefore prays that the Hon'ble Court may be pleased to pass a decree in favour of the plaintiff and against the defendant for declaration of the dissolution of the marriage in between the plaintiff and the defendant
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> (b) Costs
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> (c) And such other relief as the Hon'ble Court deems fit and proper under the circumstances of the case."

4. As against that, the wife filed her written statement denying all the allegations and averred about the attitude of her husband and his actions which are against Islamic Law when he gave away one of their sons in adoption, since adoption was never permitted by Islamic Law and which adoption was made without the consent of the wife and the attitude of the husband in not allowing the wife to have conversation with her own child

and it mentioned about various other actions on part of the husband and questioned the correctness of alleged Talaq and called it as illegal as per Muslim Law and finally, she sought for dismissal of the suit with costs.

5. It was thereafter the wife had come up with I.A.No.1607 of 2017 under Order VII Rule 11 and Section 151 C.P.C. stating that without reasonable cause and violating the principles of Islam, the respondent-husband sent a letter that he pronounced Talaq thrice which is called as Talaq-E-Biddat allegedly done on 08.04.2016 and the Hon'ble Supreme Court of India by judgment dated 22.08.2017 in Writ Petition (civil) No.288 of 2016 declared such Triple Talaq as void abinitio since such a Talaq is violative of fundamental rights under Article 14 of Constitution of India and against the Muslim Personal Law (Shariat) Application Act, 1937 (for short, 'Act, 1937') and Section 2 of it was declared as void. Since the husband filed the suit basing on Triple Talaq, which is against law as per the said judgment, the suit is not maintainable. It is for these reasons, she sought for rejection of the plaint.

6. Husband filed a counter stating that at the time of filing written statement, she did not file such an application and only

when the suit was coming up for cross-examination of husband/PW.1 after delaying the matter without cross-examining him, she has come up with this petition and this petition is only to protract the litigation. It is then stated that he followed Muslim Personal Law and pronounced Talaq as referred in the plaint and that the wife received iddat amount and suppressing those facts this petition is filed. Whether he followed Muslim Law and procedure is to be decided at the trial and not in this petition. For these reasons, he sought for dismissal of the petition.

7. Learned Principal Junior Civil Judge, Chilakaluripet having heard arguments comprehensively on both sides, dismissed the petition on the following premises:

That the alleged Talaq was pronounced on 08.04.2016 and thereafter, the suit was filed on 04.11.2016 and the judgment of the Hon'ble Supreme Court of India was pronounced on 22.08.2017 in ***Shayara Banu v. Union of India***[1]. Thus, by the time of pronouncement by the Hon'ble Supreme Court of India, the suit was pending for more than a

[1] (2017) 9 SCC 1

year. It then stated that while the law laid down by the Hon'ble Supreme Court of India is the 'Law of Land' but since the plaint disclosed cause of action by the time the suit was filed, it could not be stated that plaint is barred by any law as prescribed in Order VII Rule 11 (d) C.P.C. Thus, on the ground that there was no express bar created by law for filing the suit of the present nature as on the date of the suit and presentation of plaint it thought it fit to conduct the trial of the suit and decide the matter. It also narrated para No.200 from the judgment of the Hon'ble Supreme Court of India that from the time of that ruling how for six months their Lordships injuncted Muslim husbands from resorting to Talaq-E-Biddat/Triple Talaq and how their Lordships alluded to the legislative intervention etc. Learned trial Court also mentioned in its order that the Hon'ble Supreme Court of India declared Triple Talaq as violative of fundamental rights. However, it took the view that the trial should proceed as per the law that was in force by the time of presentation of the plaint and by then there was no express bar and therefore, it refused to reject the plaint. Aggrieved of it, the wife has come up with this revision stating that the petition before the trial Court was not only filed under Order VII Rule 11 C.P.C. but also

filed under Section 151 C.P.C. and the learned trial Court ought to have exercised its inherent jurisdiction under Section 151 C.P.C. to meet the ends of justice and it ought not to have dismissed the petition. The suit was filed by the husband for declaration that the Triple Talaq pronounced by him is valid. Since the judgment of the Hon'ble Supreme Court of India held such Triple Talaq is violative of fundamental rights leading to declaration that Section 2 of Act, 1937 is void, the Triple Talaq pronounced by husband in this case is void and therefore, there is nothing more that remained for determination in the suit. The approach of the learned trial Court in narrating Para No.200 of the Hon'ble Supreme Court of India is incorrect since that was only a minority view. The suit should not be continued as it runs against the judgment of the Hon'ble Supreme Court of India. For these reasons, she sought to upset the impugned order.

8. Learned counsel for respondent submits that the validity of claim of the husband for the prayer in the suit is a matter for determination in the suit and there was no occasion to reject the plaint while the suit is part-heard and the applicability of the judgment of the Hon'ble Supreme Court of India could also

be considered after the trial in the suit and the reasoning of the trial Court is in accordance with law and cannot be called as one that resulted in miscarriage of justice. Therefore, learned counsel seeks for dismissal of the petition.

9. Learned counsel on both sides submitted oral arguments.

10. The point that falls for consideration is:

"Whether the impugned order in refusing to reject a plaint resulted in miscarriage of justice?"

11. **Point**:

The respondent/husband filed his plaint before the trial Court on 04.11.2016. The pleaded case is that he pronounced Talaq thrice on 08.04.2016 and informed his wife/revision petitioner on the same day by way of a letter which he received on 18.04.2016 and that he intimated his Talaqnama to Anjuman Committee, Chilakaluripet and served it upon them on 22.07.2016. He mentioned that he pronounced his Talaqnama as per Muslim Personal Law on 08.04.2016. The wife sought for rejection of this plaint and the learned trial Court refused to reject the plaint and thereby indicated that it would conduct trial of the suit.

12. The material referred above would indicate that it is a case of Triple Talaq pronounced on the same day and the pleaded case indicates that it is out of a provision made in the Personal Laws of Muslims such Triple Talaq was pronounced. At this juncture, it is relevant to mention here about application of Personal Law to Muslims as provided in Section 2 of Act, 1937:

> "**2. Application of Personal Law to Muslims**.— Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal properly inherited or obtained under contract or gift or any other provision of Personal Law, marriage, **dissolution of marriage**, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)."

Thus the object of this Act is to rule out custom and usage and apply Muslim Personal Law.

13. Triple Talaq or Talaq-E-Biddat or any other similar form of Talaq having the effect of instantaneous and irrevocable

divorce pronounced by Muslim husband is dealt with in Section 2(c) of the Muslim Women (Protection of Rights on Marriage) Act, 2019 (for short, 'the Act'). This enactment made a provision under Section 3 of the Act, which is extracted here:

> "**3. Talaq to be void and illegal**.-
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> 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."

14. By virtue of Section 1(3) of the Act, the said Act came into force on 19.09.2018. The prayer in the suit is for declaration of his status that by virtue of the Triple Talaq the husband pronounced the marriage of him with the wife stand dissolved. Section 34 of the Specific Relief Act is the law that governs suits concerning declaration of status.

15. On the point of Triple Talaq the Hon'ble Supreme Court of India laid law on 22.08.2017 in ***Shayara Banu***'s case (supra 1). In this judgment their Lordships held that Triple Talaq is declared illegal and unconstitutional. Their Lordships while referring to Act, 1937 held Section 2 of the said Act is unconstitutional to the extent of dissolution of marriage by way

of Triple Talaq. In ***P.V.George v. State of Kerala***[2], the Hon'ble Supreme Court of India stated that the law declared by the Supreme Court of India will have retrospective effect unless contrary is indicated in the judgment. A perusal of ***Shayara Banu***'s case (2017) (supra 1) shows that there is no indication in this judgment that the principles laid down therein would operate prospectively. Therefore, by virtue of the principle laid down in ***P.V.George***'s case (2007) (supra 2), the ratio in ***Shayara Banu***'s case(supra 1) should be understood as one that is retrospective in nature. Thus, the principle that emerges for comprehension is that the Triple Talaq has not been in accordance with law.

16. On the question that ***Shayara Banu***'s case(supra 1) cannot be applied retrospectively and a Triple Talaq that was given long prior to that judgment and a suit filed in terms of the Triple Talaq much prior to the said judgment is maintainable and a plaint in such cases cannot be rejected fell for direct consideration of a Division Bench of the Hon'ble Madhya Pradesh High Court. In ***Mirza Fahim Beg v. Kahkasha***

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[2] (2007) 3 SCC 557

Anjum in First Appeal No.322 of 2018, a Division Bench of that High Court by its judgment dated 09.05.2018 ruled that Triple Talaq that was given on 01.08.2012 was in litigation by way of a suit and the decision as to maintainability of such a plaint came up in an application under Order VII Rule 11 C.P.C. where the Court held that by virtue of judgment in ***Shayara Banu***'s case (supra 1) Triple Talaq being unlawful, arbitrary and violative of Article 14 of the Constitution of India, the declaration that the divorce by Triple Talaq given by husband cannot be considered by a civil Court and a plaint in such cases is liable to be rejected. It was also pointed out that a declaration sought by a Muslim husband to the effect that the divorce he gave to his wife by way of Triple Talaq is hinged on his personal laws contained in the Act and in such a case even without considering the question as to prospective or retrospective operation of ratio in ***Shayara Banu***'s case (supra 1) the view that has to be taken is that since the Act to the extent of dissolution of marriage by Triple Talaq became unconstitutional, the plaint cannot be processed for trial. The same view was reiterated by a Single Judge of Madhya Pradesh

High Court in ***Smt. Kahkashan Anjum v. Union of India*** in W.P.No.7894 of 2016 decided on 09.08.2018.

17. Similar view was taken by Jammu & Kashmir and Ladakh High Court in ***Showkat Hussain v. Nazia Jeelani***[3]. Article 13(3)(a) of the Constitution of India mandates that an order is law where the order has force of law. Article 141 of the Constitution of India mandates that the law declared by the Supreme Court of India shall be binding on all Courts within the territory of India. Article 144 of the Constitution of India mandates all authorities, civil and judicial, in the territory of India to act in aid of the Supreme Court. Order VII Rule 11(d) C.P.C. mandates the Court to reject a plaint where the suit appears from the statement in the plaint to be barred by any law.

18. The above principles would show that where on a reading of the entire plaint if the Court finds that the facts on which a right is claimed and a relief is prayed if barred by law such a plaint cannot be put for trial and it has to be rejected. Law declared by the Hon'ble Supreme Court of India is law and it

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[3] 2019 SCC Online J&K 892

binds on all the Courts. Triple Talaq is held against law and is considered to be unconstitutional and the statutory base for application of persona laws, which allow Triple Talaq, were held unconstitutional. Such declaration of law being retrospective in nature applies to the plaint in the present case where the Triple Talaq was claimed to have been pronounced by the husband on 08.04.2016. In such an event, allowing such plaint to undergo the process of trial is incorrect. On assuming that every fact that is averred in the plaint is correct, by the time the trial judge intends to pronounce a judgment on such established facts would it be within the power of the trial Court to hold that divorce by the Triple Talaq is valid. By the time the judgment is proposed to be rendered on such a plaint, the law available for the Court would be that there was no Triple Talaq. Therefore, the view of the trial Court that the ratio in ***Shayara Banu***'s case (supra 1) is not applicable retrospectively is incorrect in the light of the principles referred earlier in this judgment. The order of the trial Court, which is challenged in this revision, has to be held unsupportable and against law leading to miscarriage of justice. It is in these circumstances, the claim of the wife in this revision has to be accepted and the revision is to be

allowed. The point is answered in favour of the revision petitioner.

19. In the result, this Civil Revision Petition is allowed. The impugned order dated 01.07.2019 of learned Principal Junior Civil Judge, Chilakaluripet in I.A.No.1607 of 2017 in O.S.No.195 of 2016 is set aside. As a consequence, I.A.No.1607 of 2017 stands allowed and the plaint in O.S.No.195 of 2016 stands rejected in terms of Order VII Rule 11 C.P.C. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Dr. V.R.K.KRUPA SAGAR, J

Date: 05.01.2023
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