

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE HIRDESH

FIRST APPEAL NO. 1199 of 2022

MOHAMMAD SHAH

Vs.

SMT. CHANDANI BEGUM

APPEARANCE:

Shri F.A. Shah – Advocate for the appellant.

Shri Nitin Agrawal – Advocate for the respondent.

JUDGMENT

{Delivered on 7th the Day of January, 2025 }

Per: Justice Anand Pathak

1. The instant first appeal under Section 19 of the Family Court Act, 1984 is preferred by the appellant being crestfallen by the order dated 18-05-2022 passed by the Principal Judge, Family Court, Datia whereby the suit for divorce preferred by the appellant has been dismissed on the ground of maintainability.
2. Precisely stated facts of the case are that marriage of appellant and respondent was solemnized on 19-10-2007 through Muslim rites and rituals. Out of the wedlock, couple was blessed with four children namely, Chahat Bano, Gudiya Bano, Kousar Bano and one son namely Sonu. Domestic incompatibility existed between the couple continued between the parties despite lapse of sufficient time

and even after blessed with four children. Since respondent/wife of appellant was of modern outlook lady since beginning and as alleged she had close relationship with one of her relatives namely Sharafat Shah who used to visit regularly the house of appellant, thereafter this was one of the reasons of domestic unrest.

3. On 17-01-2016 when appellant was out of his house, respondent eloped with the said person Sharafat Shah along with son Sonu and took Rs.1,85,000/- in cash as well as jewelry. Since then appellant is taking care of three daughters and respondent is living in adultery with Sharafat Shah. Out of the wedlock of respondent and Sharafat Shah, a child was born on 04-04-2017 at Shri Research Center and Hospital, Kanpur Road, Jhansi (U.P.). Therefore, appellant filed the case for divorce however same was dismissed on the ground of maintainability. According to trial Court, suit at the instance of a party seeking divorce under Muslim law is not maintainable. Therefore, challenging that order, present appeal is preferred.
4. Learned counsel for the appellant submits that the Family Court erred in dismissing the suit of divorce suit preferred by the appellant. The suit for divorce was very much maintainable in view of Section 7 of the Family Courts Act, 1984 (hereinafter referred to as “the Act of 1984”) as this provision deals with the jurisdiction of a Family Court and in the explanation clause, the nature of proceedings are classified. Section 7(1)(d) of the Act of 1984 provides that a suit or proceeding for an order and injunction in circumstances arising out of a marital relationship can be heard by the Family Court.
5. It is further submitted that rule 9 of the High Court of Madhya Pradesh Family Court Rules, 1988 (hereinafter referred to as “the

Rules of 1988”) provides power to the High Court to issue instruction in relation to registration of fresh suits or proceedings regarding suits or proceedings arising out of personal law applicable to muslims including the Muslim Personal Law (Shariat) Application Act, 1937 (hereinafter referred to as “the Shariat Act”) and Dissolution of Muslim Marriages Act, 1939 (hereinafter referred to as “the Act of 1939”). Thus, there is ample power entrusted upon the Family Court by the statutes to entertain the application for divorce of a muslim male.

6. According to learned counsel for the appellant, Section 2 of the Shariat Act covers all the aspect of the life of a Muslim male through the procedure established by law including dissolution of marriage by Talaq, Ila, Zihar, Lian, Khula and Mubaraat. Thus, the grave illegality is committed by the Family Court in not deciding the divorce application of the appellant. Section 2 of the Act of 1939 also provides a procedure for dissolution of marriage through judicial process providing several grounds to a muslim male. Thus, prayed for setting aside the impugned order passed by the Family Court.
7. Learned counsel for the respondent opposed the submissions raised by learned counsel for the appellant. He supported the impugned order passed by the Family Court, Datia and submitted that once the statute does not provide any mechanism for dissolution of marriage of a muslim male, then no direction in that regard can be issued by the Court. Thus, prayed for dismissal of this appeal.
8. Heard learned counsel for the parties at length and perused the documents appended thereto.
9. This is a case where a muslim male has sought dissolution of

marriage. As per Section 2 of the Act of 1939 a woman married under Muslim Law shall be entitled to obtain a decree for the dissolution of her marriage on any ground as enumerated in Section 2 of the Act of 1939. Here, it appears from perusal of the provisions as contained into the Act of 1939 that a male does not have any way to obtain the decree for dissolution of marriage. For that purpose, one has to take recourse to the Act of 1984. Section 7 of the Act of 1984 is worth reproduction in this regard:

“7. Jurisdiction.- (1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.- *The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-*

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity

of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

- 10.** Section 7 of the Act of 1984 falls under Chapter III which contemplates jurisdiction. Section 7(1)(Explanation)(d) of Act of 1984 contemplates that a suit proceeding which can be entertained by Family Court if the said suit or proceeding is for an order or injunction in circumstances arising out of a marital relationship. Since this provision does not distinguish on the basis of Caste and Community, therefore, it is all pervasive in nature. It is in line with the object of the Act of 1984 which reads as under:

“An Act to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith.”

11. Therefore, one has to take cue from the Act of 1984 and then has to look into the High Court of Madhya Pradesh Family Court Rules, 1988 (hereinafter referred to as “the Rule of 1988”) in which rule 9 is produced for ready reference:

9. Registration of fresh Suites or proceedings.- (1)The High Court may in relation to any fresh suit or fresh proceeding issue instructions in writing to Family Courts for registration of fresh suit or fresh proceeding.

(2) In particular and without prejudice to the generality of the foregoing power, the instructions to be issued by the High Court, may provide for inclusion for the purposes of the registration of suits or any proceedings of the nature referred to in Explanation to Sub-Section (1) of Section 7 of the Act and instituted or taken before a Family Court with reference to related provisions contained in following laws as amended from time to time viz.:-

(i) proceeding under chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

(ii) suit or proceeding under the Hindu Marriage Act, 1955 (25 of 1955):

(iii) suit or proceeding relating to maintenance under the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956):

(iv) Suit or proceedings in relation to the Guardianship

of the persons or the custody of or access to any minor under the Hindu Minority and Guardianship Act, 1956 (32 of 1956)

(v) proceedings under Dowry Prohibition Act, 1961 (28 of 1961), for an order for injunction in circumstances arising out of marital relationship.

(vi) proceedings in relation to Hindu Marriage (Validation of Proceedings) Act, 1960 (19 of 1960);

(vii) suits or proceedings arising out of personal law applicable to muslims including:

(a) Muslim Personal Law (Shariat) Application Act, 1937 (26 of 1937)

(b) Dissolution of Muslim Marriages Act, 1939 (8 of 1939)

(viii) suites or proceedings under the Parsi Marriage and Divorce Act, 1936 (3 of 1936), which can be instituted or taken out before the Parsi District Matrimonial Courts constituted under Sections (18 and 20) of the said Act;

(ix) suits or proceedings under the Indian Christian Marriage Act, 1872 (15 of 1872)

(x) suits or proceedings under the Special Marriage Act, 1954 (43 of 1954)

(xi) proceedings under the child Marriage Restraint Act, 1929 (19 of 1954).

(xii) proceedings in relation to Anand Marriage Act, 1909 (7 of 1909)

(xiii) proceedings in relation to Arya Marriage Validation Act, 1937 (19 of 1937).

(xiv) suits or proceedings arising out of Foreign Marriage Act, 1969 (19 of 1937).

(xv) suits or proceedings relating to the part B States Marriages Validating Act, 1952 (1 of 1952)

(xvi) suit or proceedings relating to the Muslim Women (Protection of Rights on Divorce) Act, 1986 (25 of 1986)

(xvii) suits or proceedings under the Guardians and Wards Act 1890 (8 of 1890).

(xviii) suits or proceedings relating to the Hindu Marriages (Validation of Proceedings) Act, 1960 (19 of 1960).

12. Rule 9(2)(vii) is framed in respect of suit or proceeding arising out of personal law applicable to Muslim including the Shariat Act and the Act of 1939. Perusal of these Acts and rules reveals that so far as Shariat Act is concerned for realization of the issue (like divorce in the present case) has to be regulated through procedure and procedure as prescribed in the Act of 1984 as well as High Court of Madhya Pradesh Family Court Rules. Therefore, the procedure established by law is clear that a Muslim male can sue a suit or proceeding for dissolution of marriage on the grounds as available to him.
13. Earlier the Division Bench of this Court in the case of **Aqeel Ahmed (Khan) Vs. Smt. Farzana Khatun in First Appeal No.1017 of 2022** vide order dated 14-10-2022 considered this aspect and relying upon the order dated 30-03-2021 passed by the Division Bench of Madras High Court in **C.M.A. No.2192 of 2017 (Settu Vs. Reshma Sulthana)** considered the question of maintainability as well as settlement reached between the parties and allowed the

appeal preferred by the parties on the basis of settlement reached between them. Therefore, it can be held that parties have additional forum of this Court also to get the decree for divorce/dissolution of marriage.

14. Even the Constitutional Morality and its Spirit also mandates that no person can be rendered remediless. If the reasoning of trial Court would have been accepted then a muslim male would have been denied the valuable right to access justice or judicial forum to ventilate his grievances. This could never have been the Constitutional spirit, morality and Constitutional Vision of Justice.
15. Therefore, in the considered opinion of this Court, trial Court erred in rejecting the application for dissolution of marriage on the ground of maintainability. Accordingly, the impugned judgment passed by the Family Court is hereby set aside and matter is remanded back to the Family Court for adjudication.
16. At the time of arguments, learned counsel for the appellant informs this Court that Rs.25,000/- was given to the respondent/wife and respondent/wife initially agreed to settle the matter and for giving divorce because she is living with some other person but later on she rescinded. If she is willing to give divorce then petitioner can move an appropriate application before the trial Court.
17. Since in the matter, judgment of the Family Court has already been set aside, therefore, parties are at liberty to appear before the trial Court because proceedings are found to be maintainable for dissolution of marriage. Parties are at liberty to move an appropriate application for dissolution of marriage and settlement before the trial Court.
18. Appeal stands **disposed of in above terms.**

- 19.** Copy of this order be circulated to all the Civil Courts/Family Courts through Registrar General of this Court.

Anil*

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE