

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram,	Court's or Judge's orders.
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CRA NO. 79 OF 2014

SAYYED ASIF SAYYED ABBAS AND OTHERS
VERSUS
MEHRUNISSA MOHAMMED BADSHAH SAYYED AND
ANOTHER

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Advocate for Petitioners : Mr. Pathan Zafar M
Advocate for Respondent Nos.1 and 2: Mr. M.B.W.Khan.

CORAM: T. V. NALAWADE, J.
DATED: 30th NOVEMBER, 2015.

PER COURT:

1. The revision is filed to challenge the order made by learned Civil Judge, Junior Division, Jamkhed in R.C.S. No.55 of 2010. Both the sides are heard.
2. The order is made on preliminary issue framed by the Court on the basis of application given by the husband, present petitioner. He had requested the trial Court to frame preliminary issue regarding tenability of the suit. Accordingly, the issue was framed and that issue came to be decided against the husband.
3. The suit is filed for maintenance by present

respondent. The parties are Muslim. The husband has taken the defence that he has given *Talaq* to the wife and so the suit is not tenable. Another defence is taken that in view of the provisions of Muslim Law the wife has no right in the property of the husband and so she cannot claim creation of charge in respect of right to maintenance on the property.

4. It appears that in the trial Court there was no specific issue with regard to contention of the husband that, whether the husband proves that he has taken legal and valid *Talaq*. That point is still open. This Court holds that, that point needs to be decided during trial, in view of the rival contentions it will unnecessarily prolong the final decision of the matter.

5. It appears that some properties of the father of the husband and brother of the husband are included and the wife has requested to create charge of maintenance on these properties. Trial Court to consider the respective claim on merit and the Muslim Law in that regard. However, if there are some properties owned by the husband, the charge on the properties, to protect the right of the wife can be created. With these

observations, this Court holds that it is not possible to interfere in the order made by the trial Court. All points are kept open. Revision stands dismissed.

[T.V. NALAWADE, J.]

Dt.30/11/2015
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