

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION NO. 7219 OF 2008

Geeta Sudhir Rajgor

.. Petitioner

Vs.

Narbheram Jethalal Rajgor & Anr.

.. Respondents

Mr. Amey Patil a/w. Ms. Tanya Goveas & Ms. Reema Joshi i/b Vivek Kantawala & Co. for the Petitioner.

CORAM : M.S.SONAK, J.

DATE : 10th DECEMBER, 2015.

P.C.

1. This petition takes exception to the order dated 24.10.2007 made by the Principal Judge, Family Court, Mumbai in Petition No. A-52 of 2005. By the impugned order, the Family Court has rejected the petitioner's application at Exhibit 12 and declared that the proceedings have abated consequent upon the demise of Sudhir Rajgor, the husband of the petitioner.

2. The petition before the Family Court was essentially for divorce, maintenance, return of Stridhan, return of certain documents relating to investments amongst other reliefs. Upon the demise of Sudhir Rajgor, the petitioner applied for impleadment of her parents-in-laws i.e. parents of late Sudhir Rajgor and consequently sought for relief to pursue the petition in respect of at least some of the reliefs which arose out of the marital relationship. The application at Exhibit 12 made by the petitioner was however rejected by the impugned order and it was held that the entire petition stands abated. Hence the present petition.

3. Mr. Amey Patil, learned Counsel for the petitioner, has submitted that the Family Court has failed to exercise jurisdiction, though the

jurisdiction was vested in it in terms of provisions contained in Section 7 of the Family Courts Act, 1984. In this regard, the learned Counsel placed reliance upon the decision of the Kerala High Court in the case of **Shyni Vs. George & Ors. [1997 FLC 536]** as well as **Suprabha Vs. Sivaraman K. K., AIR 2006 KERALA 187.**

4. In the present case, it is to be noted that the suit was initially instituted by the petitioner against her husband and there was accordingly no doubt with regard to the maintainability of such a suit. Consequent upon the demise of the husband, it cannot be said that in every case such a suit abates. Obviously, certain reliefs, which are personal to the petitioner's husband cannot be granted and to that extent the Family Court may be right in invoking the doctrine of abatement. However, if the reliefs prayed for in the original petition are perused, it is clear that there were certain reliefs which were not personal to her late husband. For example, the petitioner had applied for the return of her stridhan or investments enumerated in the petition. In the facts and circumstances of this case, it cannot be said that the petition in its entirety stood abated. Under Section 7 of the Family Courts Act, 1984, a suit or proceeding for an order for injunction in circumstances arising out of marital relationship is maintainable, particularly considering the provisions contained in Explanation (d) to Section 7 of the Family Courts Act, 1984. The cause of action, at least in so far as some of the reliefs prayed for in the main petition, relates to circumstances arising out of marital relationship. Inasmuch as this aspect has not been considered, the impugned order is liable to be set aside.

5. The Division Bench of the Kerala High Court in the case of **Suprabha** (supra) has held that the suit filed by the wife for return of value of gold ornaments, cash paid and other valuables given at the time of the

marriage even against relations of the husband, who had since expired, was very much maintainable in view of the provisions contained in Section 7, Explanation (d) to the Family Courts Act. The observations contained in para 7 of the said judgment are apposite and the same read thus:

7. *In this case, as already noticed, the suit is for return of value of the gold ornaments, cash paid and other valuables given at the time of marriage of Suprabha with Santhosh. Since Santhosh is not alive, we have already found that S. 7(c) is not attracted as the suit or proceeding is not between the parties to the marriage. But if the suit or proceeding arises out of marital relationship, the jurisdiction of the family Court is not ousted. The Supreme Court in Abdul Jaleel's case 2003(2) KLT 403 (SC) : (AIR 2003 SC 2525), held that the words "disputes relating to marriage and family affairs and for matters connected therewith" must be given a broad construction and the statement of objects and reasons would go to show that the jurisdiction of the Family Court extends, inter alia, in relation to properties of spouses or of either of them which would clearly mean that the properties claimed by the parties thereto as a spouse of other; irrespective of the claim whether property is claimed during the subsistence of a marriage or otherwise. It was probably because what was provided under S.7, Explanation (c), was not sufficient to bring all disputes arising of marital relationship and there may be cases where either the husband or wife was not alive at the time of filing the suit that the legislature thought of adding clause (d). As per the practice, at the time of marriage, gold ornaments are given to the bride by her parents. Whether those ornaments were taken by the parents of the husband or not and whether there was payment of cash and other movables etc. are matters to be proved in evidence at the time or trial of the case. But the claim for return of the value of these items can be said to be a claim in the circumstances arising out of marital relationship. If a restricted interpretation is to be given to these words, it may relate only to legitimacy of a person, maintenance or guardianship for which separate clauses are inserted in S. 7(1)(e) to (g) and, therefore, the legislature must have in contemplation other cases not covered by clauses (e) to (g) and we are inclined to give a liberal interpretation to Explanation (d) in S. 7(1). It is true that as held by Justice Pareed Pillay, as His Lordship then was, in Kamalasanan v. Valsala, (1994 (1) KLT 737) (1995 AIHC 617), all matters not covered by S. 7 of the Act would come within the Civil Court's jurisdiction. In that case, the suit was for a declaration that*

the revision-petitioner was bound to conduct the marriage of his daughter and also for a mandatory injunction to provide her necessary funds. It was found that the same would not come under any of the provisions contained in S.7 of the Act. In this case, the claim is based in connection with the amounts and ornaments alleged to have been given at the time of marriage and is clearly associated with the marital relationship. The object of the Family Courts Act was to establish Family Courts with a view to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith. The Law Commission in its 59th report stressed the need for adopting an approach different from that adopted from ordinary civil proceedings and reasonable efforts and settlement before the commencement of the trial should be made. In the setting in which clause (d) of Explanation to S.7 of the Family Courts Act is placed, we are of opinion that a petition for return of the gold ornaments and other cash paid at the time of marriage will also come within the jurisdiction of the Family Courts though one of the spouses is not alive at the time the case was filed. We are of opinion that the Family Court was not correct in returning the plaint for presentation before proper Court and we direct the Family Court, Thiruvalla, to take back the plaint and proceed with the trial in accordance with law. The order under challenge is set aside and the appeal is allowed without any order as to costs. The Registry will return the original of the petition filed before the Family Court to the counsel for the appellant to enable the appellant to represent the same before the Family Court.

6. The Hon'ble Supreme Court, in the case of **Abdul Jaleel Vs. T. A. Shahida**, AIR 2003 SC 2525, has held that words "*dispute relating to marriage and family affairs and the matters connected therewith*" must be given a broad construction and the statement of objects and reasons would go to show that the jurisdiction of the Family Court extends, inter alia, in relation to properties of spouses or of either of them which would clearly mean that the properties claimed by a spouse of the other, irrespective of whether property is claimed during the subsistence of the marriage or otherwise. It was probably because what was provided under Section 7, Explanation (c), was not sufficient to bring all disputes arising out of marital

relationship and there may be cases where either the husband or wife was not alive at the time of filing the suit that the legislature thought of adding Clause (d). As per the practice, at the time of marriage, gold ornaments are given to the bride by her parents. Whether those ornaments are taken by the parents of the husband or not and whether there is payment of cash and other movables are to be proved in evidence at the time of trial of the case. But the claim for return of the value of these items can be said to be a claim in the circumstances arising out of marital relationship.

7. In view of the aforesaid legal position, the impugned order dated 24.10.2007 is required to be set aside and hereby set aside. Petition No. A-52 of 2005 is restored to file of the Principal Judge, Family Court at Bandra who is directed to dispose of the same on its own merits and in accordance with law as expeditiously as possible and in any case within the period of 8 months from today.

8. Rule is made absolute to the aforesaid extent only. It is clarified that all the reliefs prayed for in the application at Exhibit 12 are not adjudicated or granted. However, upon the restoration of the petition, the petitioner shall be at liberty to either amend the petition or otherwise apply for the said reliefs. The Family Court to consider such application, as and when made, in accordance with law and on its own merit.

9. The petitioner to appear before the Family Court on 22.12.2015 at 11. a.m. and produce the authenticated copy of this order.

10. All concerned to act upon the authenticated copy of this order.

(M.S.SONAK, J.)