

HONOURABLE SRI JUSTICE R.SUBHASH REDDY

AND

HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

F.C.A.No.48 of 2006

JUDGMENT (Per Hon'ble Dr.Justice B.Siva Sankara Rao)

Impugning the decree and judgment dated 02.12.2005 in O.S.No.88 of 2004 a suit for maintenance on the file of the Judge, Family Court, Hyderabad filed under Section 7 of the Family Court's Act by the plaintiff-wife Firdous Ara against the defendant/husband by name Syed Mudassir Rafiq, for granting maintenance of Rs.1,00,000/- to her from the date of suit and during pendency of the suit and beyond the iddat period by the defendant-husband, the defendant-husband filed the present appeal.

2. The contentions in the grounds of appeal mainly as well as oral submissions during the course of hearing that the decree and judgment of the trial Court is contrary to law, weight of evidence, probabilities of the case and wholly unsustainable for suit itself not maintainable and contrary to the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986(for short, 'the MW Act'), that the trial Court should have dismissed the suit on maintainability for the reasons of there is no consummation of marriage, so no iddat and therefrom no maintenance and other rights will arise under Muslim personal law and the trial Court ought not to have granted Rs.1,00,000/- in favour of the plaintiff even referring to the expressions of the Apex Court in **Danial Latifi Vs. Union of India** for no iddat herein and thereby sought for allowing the appeal by setting aside the trial Court's decree and by dismissing the suit claim.

3. Whereas, it is the contention of the learned counsel for the plaintiff/husband to the appeal that the trial Court's decree no way requires interference being supported by reasons and as such the appeal is liable to be dismissed with costs.

4. Heard both sides at length and perused the material on record. The parties herein are referred to as they were arrayed before the trial Court.

5. Now the points that arise for consideration are that:

1. Whether the respondent-plaintiff(wife) is not entitled for maintenance under the Muslim personal law as contended by the appellant-defendant(husband), if so, the judgment and decree dated 02.12.2005 impugned herein passed by the trial Court granting maintenance to the respondent-plaintiff(wife) is unsustainable and requires interference by this Court while sitting in appeal, if so with what observations?

2. To what relief?

Point No.1:

6. There is no dispute from the pleadings and evidence on record covered by the P.Ws. 1 to 4 and D.W.1, Exs.A.1 to A.18 and Exs.B.1 to B.3 that the marriage of the plaintiff with defendant was performed at Hyderabad on 09.10.2003 as per Muslim Personal law and custom. The plaintiff pleaded that her parents at the time of marriage given Rs.3,25,000/- dowry with gold ornaments besides articles and furniture and immediately after the marriage the plaintiff accompanied her husband/defendant to their family house and on the very first night there was a demand by the defendant/husband, his mother and sister for dowry of Rs.5,00,000/- since paid Rs.3,25,000/- still Rs.1,75,000/- due and therefrom they started harassing including by kept her in confinement in a room without providing food properly to meet said demand and even on the volima dinner dated 12.10.2003, the parents of the plaintiff were also demanded by the defendant, his mother and sister to meet that additional amount and sent the plaintiff with her parents to come with that amount and the marriage therefrom not consummated, that the defendant is having own house at road No.5, Banjara Hills, leased out groundfloor portion to various tenants for purposes of doing software and computers business and he is getting more than Rs.25,000/- per month by way of rent and also earning Rs.20,000/- by doing business in computers and internet in portion of the premises, thus, in all Rs.50,000/- per month, and the plaintiff has no means to maintain herself and stated that there is a case pending against the defendant and his family members in Cr.N.478 of 2003 of women Police Station DDCCS, Hyderabad, for the offences u/Secs. 498-A and 406 of I.P.C. and Sections 4 and 6 of the Dowry Prohibition Act, filed by her, on the file of the XXII of Metropolitan Magistrate-cum-Mahila Court, Hyderabad. The defendant contested that after the marriage, that was admittedly not consummated, only from her non-cooperation saying a medical problem and at the volima dinner, there were exchange of words between the family members of the couple, for the defendant and his family members questioned the plaintiff and his family members

about medical problem and therefrom she laid a complaint against the defendant, his mother and sister and he was remanded to judicial custody and later got bail and even the plaintiff refused to join him. Under these circumstances, he pronounced triple talak on 20.07.2004 in the presence of Khazi and two witnesses Muqueet Patel and Arif Ahmed Khan, and also deposited mehar amount in the office of Khazi, at Golkonda and addressed a legal notice dated 26.07.2004 informing that he pronounced talak on 20.07.2004 and she got liberty to collect her articles from his house and having received she did not even come to collect, and got issued reply with false allegations and the so called incomes got from business or from rents is untrue and since the marriage was not consummated before pronouncing talak by him, he has to pay half of the mehar amount fixed of Rs.25,000/- and Rs.12,500/-, that was received by the plaintiff on 30.02.2004 shows entitled to divorce.

7. It is from the above, the fact that the marriage is not consummated is not in dispute. He pronounced triple talak on 20.07.2004 is also not in dispute. Undisputedly, when the talak, once pronounced instead of thrice in the three lunar months with opportunity for introspection, for any possibility of reconciliation and withdrawal before the 3rd and last pronouncement, to say triple talak, comes into force only after three lunar months from the date of so called pronouncement before Khazi 20.07.2004 and communicated by notice dated 26.07.2004 that was served subsequently to say even three months period and commencement from the date of communication is between Exs.A.6 legal notice, dated 26.07.2004 and A.7 reply dated 10.08.2004 the service and knowledge is at least from said reply. The maintenance suit filed was on 28.06.2004. No doubt after pronouncement of talak and its coming to force she becomes a divorced woman and there is a special protection for maintenance claim to the divorced Muslim woman under the Act 25 of 1986 and the constitutional validity was also upheld by the Apex Court in the expression of **Danial Latifi**(supra). In fact, the constitution Bench in **Danial Latifi**(supra) categorically held that '*reasonable and fair provision for maintenance u/sec.3(1)(a) is not limited for the iddat period but it extends for the entire life of divorced Muslim wife unless she gets married for the second time*'. It is now for such entitlement of the reasonable and fair provision for maintenance for whole of remaining life, the suit proceedings can continue or remedy is to file an application before the Magistrate under the Act,1986 is the question. The Family Court's Act is of the year 1984 and the MW Act is of the year 1986. Both are the central

legislations. The Apex Court in *Danial Latifi*(supra) left open the question to answer by respective Benches as not covered by the reference to answer the Allahabad High Court in **Amjum Hasan Siddiqui Vs. Salma B.**, held that Magistrate concerned, under Section 3 of the Act 1986 alone got jurisdiction, after divorce came into force for the claim by divorced woman towards provision for maintenance and mehar or dower but not the Family Court under Section 7 of the Family Court's Act, to say that Act 1986 can prevail. The expression of the Orissa High Court in **Sk.Allauddin Vs. Shamima Akhtari** is also with same conclusion so also by the other Division Bench expression of the Bombay High Court in **Noor Jamaal Habib Momin Vs. Haseena, Noor Jammal**. Apart from it, the Apex Court in **Shamim Ara Vs. State of U.P.** held that Section 125 of Cr.P.C. proceedings for maintenance filed by the Muslim woman is not seized its force from the contention of the pronouncement of talak by the husband in the written statement or affidavit and some other proceedings, unless it is known and communicated and in case of dispute unless proved by the evidence before the Court to go into and decide validity of the pronouncement of the talak and for that conclusion, referred several expressions more particularly of **Mohd.Haneefa Vs. Pathummal Beevi** that placed reliance upon the earlier expression of Justice V.R.Krishna Iyer in **A.Yousuf Rawther Vs. Sowramma** and **Bai Tahira Vs. Ali Hussain Fidaalli Chothia**. In fact, the divorce pronouncement and its communication including by notice under Ex.A.6 dated 26.07.2004, not in dispute and the claim of triple talak pronounced and its communication thereby comes into effect only after 3 lunar months. It is to say therefrom that the plaintiff herein pursuant to the proposition in *Shamema Akthari*(supra) entitled to the maintenance in the proceedings covered by the suit lis for at least 4 months from the date of suit till coming into effect of the triple talak. Thereafter her remedy as a divorced Muslim women is pursuant to the provisions of Section 3 of the Act 1986 and as such one lakh amount awarded by the trial Court towards maintenance for that period of 4 months supra is excessive to reduce to Rs.60,000/- as what he declared of his earnings in the marriage contract of about Rs.25,000/- per month and what she claimed of his earnings at about 50,000/- per month. Therefore, it is just and reasonable for the 4 months to award Rs.60,000/-; without prejudice to her further right to proceed for the mehar amount and Jahaj articles and such other claims and also for maintenance for whole of the remaining life as a reasonable provision that he has to pay during the iddat period in addition to what he claimed paid to decide in such proceedings on own merits. Accordingly,

point No.1 is answered.

Point No.2:

7. In the result, the appeal is partly allowed reducing the amount awarded for maintenance from Rs.1,00,000/- to Rs.60,000/- without prejudice to the remedy of the respondent to proceed under Section 3 of the MW Act,1986 for whatever other claims due for that remedy available. There is no order as to costs. Consequently, miscellaneous petitions, if any, pending in this appeal, shall stand closed.

JUSTICE R.SUBHASH REDDY

Dr. JUSTICE B. SIVA SANKARA RAO

Date:17-04-2015

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