

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.248 OF 2016.

Shri P Giridhar, Through Shri P.
Panduranga Rao, Major in age,
married, R/o 12-13-325, Street No.
10, Taranaka, Secunderabad 500017 Petitioner

Versus

- 1 State of Goa, Government of
Goa, Chief Secretary Porvorim,
Bardez Goa.
- 2 Smt. Usha Radhika, Service,
major, married, R/o 75/III/3,
MPT Quarters, Vasco-Da-Gama,
Goa. Respondents.

Ms. A. Desai, Advocate for the petitioner.

Mr. D. Lawande, Government Advocate for the respondents.

Coram:-F. M. REIS,
NUTAN D. SARDESSAI, JJ.

Date: 7th April, 2016.

ORAL JUDGMENT (Per F. M. REIS, J)

Heard Ms. A. Desai, learned Counsel appearing for
the petitioner and Mr. D. Lawande, learned Government
Advocate appearing for the respondents.

2. Rule.

3. Heard forthwith with the consent of the learned Counsel appearing for the respective parties. Mr. D. Lawande, learned Government Advocate waives notice on behalf of the respondents.

4. The above petition seeks for a direction to establish Family Court in the State of Goa.

5. Ms. Desai, learned Counsel appearing for the petitioner submits that the petitioner has filed proceeding for divorce under Hindu Marriage Act which is pending before the Civil Judge Senior Division at Vasco-da-Gama and in such proceedings the petitioner has filed an application to recall the witnesses and as such, the matter is unnecessarily being delayed. The learned Counsel further points out that the petitioner cannot examine the witnesses as they are not found to record evidence, and as such, the matter is being delayed by the learned Judge. The learned Counsel further submits that the matter is also being delayed as some documents are sought to be produced in such proceedings. The learned Counsel further submits that the Family Court Act has been introduced by the Central Government to ensure that there are expeditious disposal of the matter before the Family Court. The learned Counsel further points out that though such Act was brought into force, nevertheless the same has not been implemented by

the State Government and it would be appropriate to issue direction to the State Government to establish Family Court in the State of Goa. The learned Counsel has also filed additional affidavit inter alia stating that there 12480 Family Court matters are pending before different Court and as such, it would be appropriate to establish Family Court in the State of Goa.

6. On the other hand, Mr. D. Lawande, learned Government Advocate points out that under Section 3 of the Family Court Act, it is the for the State Government to constitute a family Court whenever they find it appropriate. The learned Government Advocate further points out that as par the stand of the State Government there is no requirement of establishment of a Family Court at this stage. The learned Government Advocate further submits that the matrimonial matter which arise in the State of Goa are being examined under the matrimonial laws which are in force and, as such, there is no need for the establishment of a Family court in the State of Goa. The learned Government Advocate further point out that the Division Bench of this Court while disposing of the Writ Petition No. 73/2005 by the judgment dated 23.10.2008 in the Case of ***Dr. Ashutosh Govind Prabhu Vs State of Goa and another*** has refused to issue any Writ of mandamus against the State Government to establish a Family Court. The learned Counsel further submits that an identical issue has been

answered in the said Writ Petition, and, as such, petition be rejected.

7. We have considered the submission of the learned Counsel and we have also gone through the records.

8. Section 3 of the Family Court Act, 1984 reads thus:-

“Establishment of Family Courts.-

- (1) For the purpose of exercising the jurisdiction and powers conferred on a Family Court by this Act, the State Government, after consultation with the High Court, and by notification,-
 - (a) shall, as soon as may be after the commencement of this Act, established for every area in the State comprising city or town whose population exceeds one million, a Family Court;
 - (b) may establish Family Courts for such other areas in the State as it may deem necessary.
- (2) The State Government shall, after consultation with the High Court, specify, by notification, the local limits of the area to which the jurisdiction of a Family Court shall extend and may, at any time, increase, reduce or alter such limits”.

9. Section 3(1)(a) obliges the State Government to establish for every area in the State comprising city or town where the population exceeds one million. The establishment of Family Court would be required in cases where there is population of 1 million in a particular area of the State. There is no material on record to point out that the population of any city in the State of Goa is more than one million, and as such,

the question of directing the State Government to constitute a Family Court in terms of Section 3(1) of the Family Court Act would not be justified. As per Section 3(1)(b) it is for the State Government to constitute a Family Court in case, the conditions therein are satisfied.

10. In the present case, though it is contended in the additional affidavit that more than 12,480 matrimonial petitions are pending in the different Courts, a perusal of the figure stated therein would show that the number works out to less than 1000 only and not the figure of 12,480 as stated in the affidavit. Apart from that establishment of Family Court would cause grave and irreparable difficulties to the litigants as they would have to travel from remote areas of Canacona to one specific place to get their matrimonial petition adjudicated, constituting such Court for pendency of only above 1000 cases would prima facie not be justified.

11. Hence, we find that no case is made out to issue directions as there is no material on record to take a view that there is absolute need to constitute a Family Court in the State of Goa. Merely because some documents are yet to be produced or witnesses are to be examined would not be a ground to constitute a Family Court in the State of Goa.

12. Apart from that with regard to the contention of Ms. A. Desai, the learned Counsel that a Family Court constituted by the State Government can help to workout the matrimonial dispute by the process of conciliation and counseling in association with medical and social welfare agencies and other experts in matrimonial matter as learned Civil Judge are burden with different charge, we find that even under the provision of CPC conciliation of Matrimonial Petition are referred for conciliation and there are experts in the field who has been trained to carry out such exercise.

13. In such circumstances, we find that there is no case made out to exercise our extra ordinary jurisdiction under Article 226 of the Constitution of India to issue directions as prayed for. Nevertheless, it is always open to the State Government to constitute a Family Court, if they find it expedient in accordance with law.

14. Petition stands disposed of accordingly.

NUTAN D. SARDESSAI J.

F. M. REIS, J.

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