

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **01.02.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD No.1488 of 2016
and
C.M.P.No.8174 of 2016

Ameena Ali Akbar

.. Petitioner

VS

B.Ali Akbar

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to struck off I.A.No.1347 of 2015 filed under Order 7 Rule 11 of CPC seeking to reject the plaint filed in a matrimonial suit bearing O.S.No.143 of 2014, pending on the file of the learned II Additional Judge, Family Court, Chennai and to consequently direct the said Court to hear and dispose of the suit.

For Petitioner : Mr.M.N.S.Mohamed Habeeb Raja

For Respondent : Mr.S.Parthasarathy
Senior Counsel for
Mr.N.Kishore Kumar

ORDER

The revision is filed by the wife in a matrimonial dispute.

2. The facts leading to filing of this revision petition would run thus:

(a) The revision petitioner, who is the wife, has filed the suit in O.S.No.143 of 2014 before the II Additional Family Court, to declare herself as a wife of the respondent/defendant-husband as per Islamic Shariate matrimonial law and for directing the defendant to restitute the conjugal rights with the plaintiff and for other reliefs.

(ii) The respondent/defendant-husband has filed the written statement. The defendant had also filed I.A.No.1347 of 2015 under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint. A counter also has been filed for the same by the petitioner/wife.

(iii) Thereafter, the petitioner/wife had filed an application under Section 7 of the Family Courts Act, 1984 to record her preliminary objection that the Family Court lacks jurisdiction to entertain an application filed under Order 7 Rule 11 CPC as it is in violation of the Family Court Acts, 1984 and prayed for dismissal of I.A.No.1347 of 2015, as not maintainable.

(iv) Pending the above said applications, the petitioner/wife has filed this revision, to struck off I.A.No.1347 of 2015 filed by the respondent/husband under Order 7 Rule 11 of CPC to reject the plaint.

3. Heard both sides.

4. The learned counsel for the petitioner would contend that the provisions of the Code of Civil Procedure are applicable to the Family Courts with regard to Section 10 of the Family Courts Act, 1984. It is also clear that the order passed by the Family Court has the effect of the decree and is executable in the

same manner as prescribed in the Code of Civil Procedure, which is clear from Sub Section(1) of Section 18 of the Family Courts Act, 1984.

5. Order 7 Rule 11 of Code of Civil Procedure lays down an independent remedy made available to the defendant to challenge the maintainability of the suit, which is irrespective of his right to contest the same on merits. A plaint can be rejected where the suit appears from the averments made in the plaint to be barred by any law. It is settled that in order to reject the plaint, the statement in the plaint without any addition or subtraction must show that it is barred by any law in force without any doubt upon dispute.

6. Sub Section 1 of Section 10 of the Family Court Act provides for the procedure to be followed by the Family Courts, which reads as under:

"10. **Procedure generally** - (1) Subject to the other provisions of this Act and the rules, the

provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (92 of 1974), before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a Civil Court and shall have all the powers of such Court."

As stated earlier, a conjunctive reading of Section 10 and Section 18(1) of the Family Courts Act, 1984 makes it clear that the Code of Civil Procedure is applicable to the suits or proceedings before the Family Court.

7. Having regard to Section 20 of the Family Court Acts, the provisions of the Family Court have an over riding effect. Section 20 states, " that the provisions of the Family Court Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act".

8. However, this provision is not applicable, because Section 10 of the Act itself states that Code of Civil Procedure is applicable to the suits and proceedings before the Family Court. Therefore, it is futile to contend that Order 7 Rule 11 CPC has no application to the proceedings before the Family Court.

9. The Family Courts Act itself was brought out to provide for the establishment of Family Courts with a view to promote conciliation and secure speedy settlement of the disputes relating to marriage and family affairs and for matters connected therewith by an approach radically different from that is adopted in an ordinary civil proceedings.

10. Section 7 of the Family Courts Act deals with jurisdiction. It is the settled principle that the jurisdiction of a Court created specially for resolution of disputes of certain kinds should be construed liberally. The restricted meaning, if ascribed to Section 7 Explanation (c) of the Act, would frustrate

the object wherefor the Family Courts have been set up.

11. On the other hand, the learned Senior counsel appearing for the respondent relied on the following decisions of this Court.

(i) Division Bench judgment of this Court in **CMA No.2033 of 2010 dated 17.09.2012 [Kavitha vs. C.Prabakar rep.by his Power of Attorney Dr.A.Chandrasekaran]** wherein this Court had held that the conduct of the suits and proceedings before the Family Court are governed by the provisions of the Family Courts Act and Rules framed thereunder. However, Sub-Section (1) of Section 10 of Family Courts Act makes a deeming provision of making the Family Court to be the Civil Court.

(ii) The judgment of this Court in **CRP (PD) No.712 of 2004 dated 02.12.2005 [A.Sreedevi vs. Vicharapu Ramakrishna Gowd]**.

12. Section 7 (1) (a) (b) of the Family Courts Act, confers the Family Court of all the jurisdiction exercisable by any District Court or Subordinate Civil Courts under any law for the time

being in force and for exercising such jurisdiction, it has to be treated as a District Court or Subordinate Court, as the case may be. Further the Family Court shall also have the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX of the Criminal Procedure Code.

13. Thus it is evident from the above discussion that the Family Courts are vested with the powers as that of the Civil Court and it is for the Family Court to decide any application filed under Code of Civil Procedure including the application filed under Order 7 Rule 11 CPC.

14. In view of the above, the objections raised by the petitioner under Article 227 of the Constitution of India to struck off the application filed by the respondent in I.A.No.1347 of 2015 is not maintainable. As the application filed under Order 7 Rule 11 CPC is maintainable, which is yet to be heard by the Family Court, the learned II Additional Judge, Family Court, Madras is directed to take up the application in I.A.No.1347 of 2015 and hear the matter on merits and pass appropriate orders, in

accordance with law, within six weeks from the date of receipt of a copy of this order.

15. With the above observation, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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vj2

Index: yes/No

Internet: yes

To

The II Additional Judge, Family Court, Chennai

PUSHPA SATHYANARAYANA,J.,

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