

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12952 OF 2017

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|---|--|---|
| 1 | Quaid Johar Maqbul Hussain Miyajiwala, |] |
| | Yasmeen Villa, 1 st Floor, 6 th Waroda Road, |] |
| | Veronica Road, Bandra (West), |] |
| | Mumbai-400050. |] |
| 2 | Issar Moinuddin Khan, |] |
| | Shri Hatkesh Apartment, Acchole Road, |] |
| | Nalasopara East, Thane-401 209 |] |
| 3 | Baddrudin Kapasi |] |
| 4 | Fakruddin Kanchwala, |] |
| | Both Petitioner Nos.3 and 4 having |] |
| | address at Next to ICICI Bank, Opp. |] |
| | Aakansha Commercial Complex, |] |
| | Chandan Naka, Achole Road, |] |
| | Nalasopara (East), Dist. Thane. |] |

... Petitioners

Versus

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|---|--|---|
| 1 | Bismilla Ali Asgar Bhanpurwala, |] |
| | 04/1, A-Wing, Ground Floor, Samrat CHS |] |
| | Ltd., Opp. City Hospital, Sonapur Lane, |] |
| | Kurla (West), Mumbai 400 070. |] |
| 2 | Minhaj Siraj Ahmed, |] |
| | Flat No.24, New Kamal Kunj CHS, 33 rd |] |
| | Road, TPS-3, Plot No.417-a, Bandra |] |
| | (West), Mumbai-400 050. |] |
| 3 | Nikhil Prakash Surve, |] |
| | C/001, Krishna Shanti Van, |] |
| | Borivali East, Mumbai – 400 066. |] |
| 4 | Abid Bhanpurwala, |] |
| | (Father-in-law of Respondent No.1) |] |
| 5 | Nafisa Abid Bhanpurwala (Mother-in-law |] |
| | of Respondent No.1) |] |
| 6 | Fatma Ali Asgar Bhanpurwala (First wife |] |
| | of husband of Respondent No.1) |] |

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| 7 | Khushay Ali Asgar Bhanpurwala (monor
child of husband of Respondent No.1) |]
] | |
| 8 | Burhan Ali Asgar Bhanpurwala (minor
child of husband of Respondent No..1) |]
] | |
| 9 | Prashant Mittal,
Respondent Nos.2 to 8 having address at
306, Linkway Estate, New Link Road,
Malad (West), Mumbai. |]
]
]
]
] |

<u>... Respondents.</u> |

- Mr.A.V. Anturkar, Senior Advocate a/w. Mr.Amardev J. Uniyal for the Petitioners.
- Mr.Nitin Dalvi i/b. Ms.Ameeta Kuttikrishnan for Respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 31st JANUARY, 2018.

ORAL JUDGMENT :

1] Rule. Rule made returnable forthwith. Heard finally with consent of learned counsel for the Petitioners and Respondent No.1.

2] By this Writ Petition filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 6th October 2017 passed by City Civil Court Mumbai in Notice of Motion No.3049 of 2017 in S.C. Suit No.1295 of 2017.

3] The said Notice of Motion was preferred by the Petitioners, who are appearing in the trial Court as Defendant Nos.1 to 3, 5 and 6

for framing framing of preliminary issue under Section 9A of Code of Civil Procedure, on the ground that, the City Civil Court has no jurisdiction over the subject matter of the suit and the subject matter of the suit stands covered under the provisions of Section 7(1)(b) Explanation (d) of the Family Courts Act, 1984.

4] It is submitted by learned Counsel for the Petitioners that the present suit is filed by the Respondent No.1 herein seeking the relief of declaration that she is a legally wedded wife of deceased Ali Asgar Bhanpurwala and she is also one of the legal heir. She has also sought the relief of direction, injunction and partition. Her entire claim is based on her marital status, as the wife of deceased Ali Asgar Bhanpurwala and, in such situation, having regard to the relief of declaration claimed by her and also the other reliefs of declaration, injunction and partition which she has sought, only the Family Court can have the jurisdiction to decide the suit. However, as the suit is filed in the City Civil Court, the City Civil Court cannot have the jurisdiction over the subject matter of the suit.

5] The trial Court vide its impugned order framed preliminary issue of jurisdiction and held that as the suit is not regarding the dispute between the husband and wife, it cannot be said

that it is falling outside the jurisdiction of the Civil Court. It was further held that the Family Court cannot have jurisdiction over the subject matter, which is agitated in this suit and hence, the trial Court has answered the issue of jurisdiction in affirmative, holding that it has jurisdiction to decide the suit.

6] When the Writ Petition came before this Court on 16th January 2018, learned Counsel for Respondent No.1/Original Plaintiff has made submission at bar that the Plaintiff would be deleting prayer Clause (a) in the plaint, which pertains to the declaration that she is legally wedded wife of late Ali Asgar Bhanpurwala and which reads as follows:

“(a) This Hon’ble Court be pleased to declare that Plaintiff is legally wedded wife of late Shri Ali Asgar Bhanpurwala and she is also one of the legal heir of the said late Shri Ali Asgar Bhanpurwala.”

7] As a result thereof, now the suit before the trial Court stands confined to remaining prayer Clauses, which are reproduced as follows:

“(b) This Hon’ble Court be pleased to direct the Defendant no.1 to 7 & 12 to provide all information & documents as sought and as contained in clause no.7 of this suit and also to declare the current financial status of operations of above companies by filing affidavit along with all documents.

(b) This Hon’ble Court be pleased to direct the Defendant

no.1 to 7 not to sell, transfer, create third party rights & deal with assets of the company except running normal business as required to run the company and maintain Status Quo in respect of assets including share etc. till this suit is finally decided.

- (c) This Hon'ble Court be pleased to restrain the Defendants from transferring, dealing, selling, creating any third party rights either themselves or through their agents on all the properties belonging to late Shri Ali Asgar Bhanpurwala till this suit is finally decided.*
- (d) This Hon'ble Court be pleased to direct Defendant no.1 to 7 to pay Rs.50,000/- p.m. to Plaintiff till this Suit is finally heard which can then be adjusted from the overall amount eligible to be paid to Plaintiff.*
- (e) This Hon'ble Court be pleased to restrain Defendants not to deal with property except with consent of the Plaintiff to the extent of her share and also to pay amount as ascertained after submission of account by them.*
- (f) This Hon'ble Court be pleased to grant partition of the properties between Defendant no.8 to 11, as ascertained after receipt of information as prayer (b) and after appointing Chartered Valuer to value the same in accordance with Shia (Bori) islamic Law.*
- (g) This Court be pleased to appoint special auditor to conduct audit of all transactions in all companies and ascertain diversion, siphoning of assets, funds to personal use of Defendants or to any outside party/parties.*
- (h) This Hon'ble Court be pleased to appoint independent Director of high integrity to over see the operations of the Companies where late Shri Ali Asgar was shareholder and/or Director till suit is finally decided.*
- (i) Any other suitable relief as may be granted to impart complete justice in the matter."*

8] The submission of learned Senior Counsel for the Petitioners is that, even as regards these remaining prayer Clauses, which pertain to the declaration, injunction etc., the subject matter of

the suit lies within the jurisdiction of the Family Court, in view of the provisions of Section 7 (1)(b) Explanation (d) of the Family Courts Act, 1984, as the dispute or proceeding is for an order or injunction in circumstances arising out of a marital relationship. It is urged that this Explanation (d) does not specify that such dispute or proceeding for an order or injunction should be between the spouses or parties to the marriage. According to him, Clause (a) of Explanation to Section 7(1)(b) of the Family Courts Act, 1984, specifically contains the words “a suit or proceedings between the parties to a marriage”. However, these words are conspicuously absent in Clause (d) of the Explanation and therefore, a suit or proceeding for an order or injunction, in circumstances arising out of a marital relationship, is required to be filed before the Family Court.

9] According to learned Senior Counsel for the Petitioners, in this case, the entire suit of Respondent No.1 /Plaintiff is based on her claim to be the legally wedded wife of late Ali Asgar Bhanpurwala and therefore, it is arising out of a marital relationship and, hence, this Court has to hold that the jurisdiction lies with the Family Court and not with the City Civil Court.

10] In support of his submission, learned Senior Counsel for

the Petitioners has relied upon the judgment of the Kerala High Court in the case of *Janaki Amma & Ors. Vs. Renuka Sadanandan & Ors.*, *AIR 2016 Kerala 75*, where the provisions of Section 7(1) Explanation (d) of Family Courts Act, 1984, were considered and it was held that these words, “in circumstances arising out of a marital relationship” are required to be interpreted in proper and wider sense, in the light of the judgment of the Hon'ble Supreme Court in the case of *Abdul Jaleel Vs. Shahida*, *AIR 2003 SC 2525*.

11] Per contra, learned counsel for the Respondent has supported the order of the trial Court by submitting that the subject matter of the present suit is totally out of the purview of the jurisdiction of the Family Court, as the dispute is neither between the spouses, nor between the parties related through marriage, nor has anything to do with the marriage. Subject matter of the suit is the partnership business between late husband of Respondent No.1 and the present Petitioners, therefore Civil Court alone has jurisdiction to decide such suit.

12] In my considered opinion, in order to appreciate these rival submissions advanced at bar by learned counsel for both the parties, it would be necessary to refer to the provisions of Section 7

of the Family Courts Act, 1984, along with relevant Explanation.

These provisions are reproduced as follows:

“7. Jurisdiction.—

(1) Subject to the other provisions of this Act, a Family Court shall—

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.— The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:—

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstance arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise—

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for

maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and
(b) such other jurisdiction as may be conferred on it by any other enactment.”

13] For the purpose of interpretation of these provisions, this Court has to keep in mind the very object of enactment of the Family Courts Act, 1984. The preamble of the said Act states that, “this Act was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith”. The 'Statement of Objects and Reasons' of the Act further provide as follows:

“Several associations of women, other organisations and individuals have urged, from time to time, that Family Courts be set up for settlement of family disputes, where emphasis should be laid on conciliation and achieving socially desirable results and adherence to rigid rules of procedure and evidence should be eliminated. The Law Commission in its 59th Report (1974) had also stressed that in dealing with disputes concerning the family the Court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. The Code of Civil Procedure, 1908 was amended in 1976 to provide for a special procedure to be adopted in suits or proceedings relating to

matters concerning the family. However, not much use has been made by the Courts in adopting this conciliatory procedure and the Courts continue to deal with family disputes in the same manner as other civil matters and the same adversary approach prevails. The need was, therefore, felt, in the public interest, to establish Family Courts for speedy settlement of family disputes.”

14] Thus, the Objects and Reasons of the Family Courts Act, 1984, makes it clear that it was enacted for speedy settlement of family disputes by way of conciliation and amicable settlement. Hence, it necessary follows that the dispute between the parties must be a family dispute and it should be arising out of marital relationship. In the present case, it is neither a family dispute, nor it is arising out of marital relationship nor parties to the dispute are connected through marriage.

15] In the case of *Abdul Jaleel Vs. Shahida (supra)*, the Objects and Reasons of this Act were considered and it was observed that, on perusal of the statement of Objects and Reasons, it appears that the Family Courts Act, 1984, *inter alia* seeks to exclusively provide within the jurisdiction of the Family Courts, all the matters relating to property of the spouses or either of them. It was further held that the jurisdiction of the Family Court extends *inter alia* in relation to

properties of spouses or either of them, which would clearly mean that all the property claims of the parties as a spouse, irrespective of whether the claim is made during subsistence of a marriage or otherwise, would fall within its ambit. The important words here in are the “claims of the parties as a spouse”. Here in the case, the claim of Respondent No.1 is based on her being the legal heir of late Ali Asgar Bhanpurwala and not necessarily as a spouse against him or his relatives, the Petitioners are totally third persons having nothing to do with her marriage.

16] In the case of *Janaki Amma vs. Renuka Sadanandan (supra)*, also on which reliance is placed by learned Senior Counsel for the Petitioner, the suit was between the daughter-in-law and mother-in-law and the transaction took place between them only because of matrimonial relationship as daughter-in-law and mother-in-law, hence it was held that the dispute lies within the jurisdiction of the Family Court.

17] If the entire tenor of the present suit is considered, it goes to show that, except for stating that she being the wife of deceased Ali Asgar Bhanpurwala, she is having the right in the property, there is no other marital dispute involved in the case for the Family Court to

decide. The Petitioners herein are also not in any way connected with her in the marital relationship or with her husband but it is a dispute pertaining to the business, of which her husband was a partner and therefore, she is claiming certain rights on the share of her husband in that business.

18] If at all the Petitioners, herein who are the Defendants before the trial Court want to challenge the same, the burden will be upon them to show that she is not legally wedded wife of Ali Asgar Bhanpurwala, but that does not mean that the Civil Court has no jurisdiction to decide the suit. The averments made in the plaint are required to be considered for deciding the jurisdiction of the Court and even a cursory glance to the averments made in the present case is more than sufficient to show that the dispute does not pertain between the parties to the marital relationship nor it is arising on the count of any marital relationship but it is arising out of the business relations between late Ali Asgar Bhanpurwala and the present Petitioners. Therefore, in no case Clause (d) of Explanation to Section 7 of the Family Courts Act can be interpreted in such a wider way to hold that whenever any person is claiming a right in the share of the late husband in the business with third party, such dispute will lie in the jurisdiction of the Family Court. Neither the Objects and Reasons of

the Act, nor the judgment relied upon by learned counsel for the Petitioners supports such proposition, which is too wide to be accepted.

19] In my considered opinion, therefore, the trial Court has rightly decided the preliminary issue of jurisdiction and held that the Civil Court has jurisdiction over the subject matter of the suit. The impugned order passed by the trial Court, therefore, being just, legal and correct; no interference is warranted therein.

20] Writ Petition stands dismissed.

21] Rule discharged.

22] Ad-interim relief, if any, stands vacated.

23] The parties to act on the basis of the authenticated copy of this order.

[DR.SHALINI PHANSALKAR-JOSHI, J.]