

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.227 OF 2018

Maithili Manhar Siswawala.	]	
Adult, Hindu Indian Inhabitant,	]	
Residing at 4B, 4 th Floor, Horizon CHS,	]	
Pali Hill Road, Bandra (W),	]	
Mumbai - 400 050.	]	... Appellant

Versus

Praveen Kenneth Samuel James.	]	
Adult, Christian Indian Inhabitant,	]	
Residing at 7A, 7 th Floor, Horizon CHS,	]	
Pali Hill Road, Bandra (W),	]	
Mumbai - 400 050.	]	... Respondent

Ms. Mrunalini Deshmukh a/w Mr. Durgesh Kulkarni i/b Lex Firmus
for Appellant.

Mr. Jatin Pore a/w Ms. Ankita Agrawal i/b DSK Legal for Respondent.

CORAM :- INDRAJIT MAHANTY &
SARANG V. KOTWAL, JJ.
DATE :- 31 JANUARY, 2019

JUDGMENT (PER : SARANG V. KOTWAL, J.) :-

1. This is a Family Court Appeal preferred by the Appellant against the order dated 21/09/2018 passed by the learned Judge, Family Court No.6, Mumbai, in Petition No.B-57 of 2017. This

Petition was filed by the present Appellant initially, seeking declaration that the marriage between the Appellant and the Respondent solemnized on 28/05/1996 as null and void. By an amendment, the prayer was amended and the Appellant sought declaration in respect of legal character / status of the Appellant and the Respondent in respect of the said marriage. The Respondent had not opposed the Appellant's Petition, neither is he opposing her Appeal before this Court.

2. The learned Judge of the Family Court, however, rejected the Petition as per the provisions of Order VII Rule 11 of the CPC. The Appellant is challenging this order in the instant Appeal.

3. In her Petition before the Family Court, the Appellant had pleaded that she was Hindu and the Respondent was Christian. They got married on 28/05/1996 in the presence of family and friends at Gowalia Tank, Mumbai. The marriage was registered under The Bombay Registration of Marriages Act, 1953 on 25/07/1996.

4. After residing together for a considerable period, in or about October 2014, differences arose between them. They decided to part ways and find different paths. Since January 2016, they started residing separately. The Appellant filed her Petition on 09/08/2017 before the Family Court at Bandra. Initially, the Appellant sought declaration that the marriage solemnized on 28/05/1996 be declared as null and void. Subsequently, the prayer was amended and the Petitioner sought a declaration in respect of the legal character / status of the parties in respect of the said marriage. This amendment was carried out after the Court issued notice dated 04/06/2018 to the Appellant as to why the Petition ought not be rejected as per Order VII Rule 7 of the CPC. The amendment was sought by the Petitioner in consonance with Section 34 of the Specific Relief Act, 1963. The Respondent gave no objection for granting the relief to the Appellant as prayed by her.

5. The learned Judge observed that even after amendment, the Petition remained for the declaration that the marriage be declared as null and void. The learned Judge observed that as per Section 34 of the Specific Relief Act, the cause of action arose if one

party was denying any civil right of the other party. According to the learned Judge, no one was denying any civil right of the Petitioner and therefore, Section 34 of the said act was not applicable.

6. The learned Judge further relied on the case of **Niranjani Roshan Rao Vs. Rosan Mark Pinto reported in 2014 (6) Mh.L.J. 277.** According to him, the ratio in Niranjani Rao's case (*supra*) governs the fact of the Appellant's case. According to the learned Judge, in Niranjani Rao's case (*supra*), the order of rejection of plaint under Order VII Rule 11 of the CPC was upheld and therefore, in the instant case also, the plaint was liable to be rejected under the same provisions. The learned Judge rejected the Petitioner's submission that her case was governed by the ratio of the case of **Neha Bhatia D/o Rakesh Bhatia Vs. Ferzad Palia S/o Cyrus Palia reported in 2016 SC OnLine Bm 11319.**

7. The learned Judge further observed that the parties did not follow the law of the land when they got married. He further observed that the parties wanted to legalize the illegal act. According to the learned Judge, the parties had given false information to the

public authorities and therefore, they were not entitled for any equitable relief. Finally, the learned Judge rejected the Petition as per Order VII Rule 11 of the CPC.

8. Before discussing the matter any further, we may observe that the learned Judge was rather harsh in observing that the parties had done illegal thing by getting married in the manner in which they had performed their marriage. We also feel that the learned Judge's observation that the parties wanted to legalize the illegal act; was not appropriate. The parties had got married as per Hindu rites though one of the parties was not a Hindu but for that, labeling their act as 'illegal' is unwarranted.

9. In Niranjani Rao's case (*supra*) on which the learned Judge had placed reliance, one of the parties was not a Hindu and the marriage was performed according to the Hindu rites and rituals. The Petitioner who was a Hindu, had sought declaration that the marriage was null and void. Her Petition was rejected under Order VII Rule 11 of the CPC on the ground that no cause of action was disclosed and the jurisdiction of the Court was barred under the provisions of the

Hindu Marriage Act, 1955. In Niranjani Rao's case (*supra*), one of the parties was not a Hindu. This Court considered the provisions of Sections, 2, 5 and 11 of the Hindu Marriage Act, 1955. Section 5 provides conditions for a Hindu marriage. It starts with the premise that the marriage may be solemnized between any two Hindus if the conditions mentioned in Section 5 of the Hindu Marriage Act are fulfilled. Section 2 also provides that the Hindu Marriage Act applies to a person who was a Hindu by religion. These two sections were not satisfied when one of the parties to the marriage was not a Hindu and therefore, the marriage could not be performed. In that context, this Court held that the Petition did not disclose any cause of action because the prayer was for nullity of marriage. One more ground taken by the Appellant in that case that she was not aware that the husband was not a Hindu, was rejected by this Court as the parties knew each other from childhood and the surname of the husband would have shown that he was not a Hindu.

10. There is a vital difference between Niranjani's case (*supra*) and the instant case before us. The learned Judge overlooked the fact that the prayer in the Petition before him was amended. If the initial

prayer made by the Petitioner had been maintained, then the ratio of Niranjani's case (*supra*) was squarely applicable. The initial prayer in the Petition was for declaration that the marriage between the parties be declared null and void. This prayer was clearly similar to the prayer made by the Appellant in Niranjani's case (*supra*) and therefore, the learned trial Judge would have been right in rejecting the Petition under Order VII Rule 11 of the CPC. But after the Petition was amended, the prayer was changed and by the amended prayer, declaration was sought in respect of the legal character / status of the parties in respect of the said marriage. As observed by the learned trial Judge, this prayer was in respect of Section 34 of the Specific Relief Act, 1963. The learned trial Judge has observed that as per this Section, the cause of action arose only if either of the parties was denying any civil right of the other. In that behalf, the learned Judge is not right. Section 34 of the Specific Relief Act reads thus :-

“34. Discretion of Court as to declaration of status or right --- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief :

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further

relief than a mere declaration of title, omits to do so.

.....
.....”
.....

Thus, this Section deals not only with a civil right, but also deals with the declaration of 'any legal character'. Hence, the Appellant has rightly sought relief of declaration regarding status of the parties. In this context, the ratio laid down by this Court in the case of Neha Bhatia (*supra*) can be considered. In Neha Bhatia's (*supra*) case, one of the parties to the marriage was a Hindu and had sought a declaration of nullity of marriage against the Respondent under Section 34 of the Specific Relief Act. This Court took into consideration the Respondent's stand of supporting the Appellant. In that case also, the plaint was rejected under Order VII Rule 11 of the CPC. The order of rejection of plaint was set aside by this Court and the matter was remanded back to the trial Court in view of the provisions of Order XII Rule 6 of the CPC. The Division Bench of this Court took a view that though the Respondent was supporting the Appellant, the Judgment on admission was not a matter of right and it was a matter of discretion of the Court to be exercised judiciously depending upon the facts and circumstances of each case. After

considering all these aspects, the Division Bench of this Court, in that case, remanded the matter back to the Family Court with the observations that if the Family Court had not been satisfied, the Court ought to have framed proper issues and called upon the parties to give their evidence. It was further held that the observations made by the Family Court relating to the fact that the Appellant did not show any cause of action for filing the said Petition, were not convincing in view of the pleadings on record.

In our considered view, ratio of this Judgment is clearly applicable to the case before us and we are inclined to follow the same route as laid down in this Judgment. The learned Judge of the Family Court clearly erred in overlooking the ratio of this Judgment.

11. Section 7 of The Family Courts Act, 1984 provides for the jurisdiction and nature of proceedings which can be decided by the Family Court. Section 7 reads thus :

*“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 or 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'

.....”

Thus, as per Explanation (b) of sub-section (1) of Section 7 of the Act, the Appellant has a right to approach the Family Court for declaration as to her matrimonial status and such petition would be maintainable with reference to Section 34 of the Specific Relief Act. In the present case, after amendment in the prayer of the Petition, the Petition was maintainable before the Family Court.

12. Therefore, in view of the above discussion, the impugned order is required to be set aside. Hence, the following order.

ORDER

The impugned order dated 21/09/2018 passed by the learned Judge, Family Court No.6, Mumbai, in Petition No.B-57 of 2017 is set aside and the matter is remanded back to the trial Court for adjudication in accordance with law.

(SARANG V. KOTWAL, J.)

(INDRAJIT MAHANTY, J.)