



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATE: 17.09.2019
CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (MD) .No.1556 of 2019
and
C.M.P. (MD) .No.8256 of 2019

Tmt.S.Murshitha

... Petitioner/Defendant

-Vs-

M.Mohammed Abubucker Siddiq

... Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the impugned memo order dated 05.08.2019 made in O.S.No.7 of 2018 on the file of the Family Court, Tiruchirapalli.

For Petitioner	: Mr.C.Jeganathan for M/s.VEERA ASSOCIATES,
For Respondent	: Mr.M.Mohamed Athiff for M/s.AJMAL ASSOCIATES

O R D E R

The civil revision petition has been filed challenging the order passed by the Family Court, Tiruchirapalli in O.S.No.7 of 2018, dated 05.08.2019.

2. The Family Court, Tiruchirapalli, has accepted the Memo filed by the respondent/plaintiff and recorded the same, by order dated 05.08.2019, which reads as follows:

"Heard on perusal of the memo of the both side. The petitioner stated that he already issue Talak notice 3 times to the respondent and the same the proceeding in unnecessary and wants to the close the case. The counsel of the defendant, objected that the Talak notice is necessary to prove before the Court, until the marriage between the parties is not dissolved.

As the above contention, the plaintiff filed the suit and not willing to continue the case. Hence, either this court or the respondent to compel them to prosecute case. Hence, the memo filed by the plaintiff is accepted and recorded."



3. The Memo filed by the respondent/plaintiff is as follows:

MEMO SUBMITTED ON BEHALF OF THE PLAINTIFF

It is humbly submitted that the above suit has been filed by the plaintiff seeking to dissolve the marriage contracted by him with the defendant on 01.01.2017 by a decree of divorce.

During the pendency of the above suit, in the light of the judgment of the Honourable Apex Court in Shayara Bano vs. Union of India reported in (2009) IX SCC-1, the petitioner is advised to exercise his right to divorce as per the Talaq E Hasan Method as permissible under the Munslim Personal Law, if he intends to divorce the defendant.

In view of the same, the plaintiff had pronounced his 1st intention of Talak by a notice in the presence of independent witnesses on 16.05.2019, followed by the 2nd and 3rd notices on 15.06.2019 and 16.07.2019 respectively.

In view of such final pronouncement of Talaq as proved by the personal law governing the parties to the present suit, the marriage between the plaintiff and the defendant has thus been dissolved. Thus, the vinculum juris between the plaintiff and the defendant had been severed.

It is therefore prayed that this Honourable Court be pleased to record the memo and close the suit in O.S.No.7 of 2018 on the file of this Honourable Court in view of the above developments and dissolve the marriage under Personal Law and thus render justice.

4. For the said Memo, the revision petitioner/defendant has made strong objection, which runs as follows:

OBJECTION FILED BY THE DEFENDANT

1. The allegation except those that are herein after expressly admitted are all false and all are denied and he put to plaintiff to strictly proof thereof.

2. The allegation in unnumbered para-2 of memo are not true and they are misleading. Regarding the triple Talak the bill has been passed in the Parliament and it atrocity the penal offence. The Act is yet to be passed full pledged. This respondent will go through the Act to be passed with retrospective effect and till such time this divorce petition cannot be disposed of.

3. The allegation in unnumbered para 3 of memo are not true and they are misleading. To the Talak the 1st notice dated 16.05.2019 and 2nd Talak notice dated 15.06.2019 duly replied. As far as 3rd notice is concerned this respondent did not receive. Hence the triple Talak is not complete. In the main plaint the plaintiff has alleged that the



defendant having alleged affair with one Thahir. The plaintiff is bound to prove and its amounts to defamatory. With an intention to escape from clutches of law the plaintiff has filed this memo hurriedly.

4.The allegations in unnumbered para 4 of the memo not true and are misleading. The marriage between the plaintiff and the defendant has not been dissolved unless the Court gives the verdict.

5.The plaintiff has purposely filed this memo knowing well that no appeal can be filed on the order passed on memo. Hence, this memo has to be rejected in limini. The plaintiff has no right to ask for the relief of closer of suit in O.S.No.07/2018, unless the allegation set out in the main petition are proved. There is no merit or substance in the memo.

It is therefore prayed that this Hon'ble Court may be pleased to dismiss the memo and thus render justice.

4. Today, when the matter came up for hearing, the revision petitioner/defendant would contend that the Court below accepted the Memo filed by the respondent/plaintiff, without considering the objections made by the revision petitioner/defendant and allowing the Memo by the Court below will tantamount to allow the suit itself. The learned counsel for the revision petitioner would further contend that by virtue of this order of Court below will amount to dissolution of the marriage between the plaintiff and the defendant.

5. Further, the learned counsel for the revision petitioner would contend that the triple Talak notice was not received by the revision petitioner/defendant. The said fact was clearly narrated in the objection filed to the Memo filed by the respondent/plaintiff before the Court below. Without considering the objections filed by the revision petitioner, the Court below mechanically allowed the Memo and hence, the present Civil Revision Petition has been filed seeking to set aside the order of the Family Court, Tiruchirapalli, dated 05.08.2019.

6. On the other hand, the learned counsel appearing for the respondent/plaintiff strongly made an objection stating that the present civil revision petition is not at all maintainable and the order has been passed in the main suit. Therefore, the appeal is only maintainable. Further, he would contend that if at all the triple Talak notice not received, it is for the revision petitioner/defendant to approach the Court for appropriate relief challenging the dissolution of the marriage.

7. Heard the learned counsel for the parties and perused the documents placed on record.



8. The suit in O.S.No.7 of 2018 was filed by the respondent/plaintiff/ husband for the purpose of dissolution of the marriage between the petitioner and the respondent. However, subsequently, he filed a Memo stating that he has to withdraw the suit. The question for consideration of this Court is while withdrawing the suit, is it necessary to record for the Court about the justification of the plaintiff / husband with regard to the dissolution of the marriage, in view of the triple Talak, without any proper adjudication in the suit. The answer is definitely will be no, because whether he has issued triple Talak notice or not is required to be decided in the full-fledged trial and not by way of accepting the Memo of the plaintiff and recording the same, permitting him to withdraw the suit by the Court below would clearly amounts to decree the suit. Therefore, this Court is of the view that adoption such course by the Court below shall not be allowed.

9. Therefore, this Court is of the view that recording the memo by the Court below is nothing but passing the decree for the dissolution of the marriage by way of recognizing the tribble Talak said to have been issued by the respondent. Hence, the order of the Court below is liable to be set aside. Accordingly, the same is set aside. However, while setting aside the order of the Court below, this Court permits the respondent only to withdraw the suit in O.S.No.7 of 2018 and all other contentions raised by the plaintiff in the Memo dated 05.08.2019 is rejected. Accordingly, the Civil Revision Petition is disposed of and the suit in O.S.No.7 of 2018 is dismissed as withdrawn.

10. For maintaining the suit, since the Civil Revision Petition is preferred against the subsequential order passed on the Memo, it is not on the final order passed by the Court below on merits. Therefore, the order of the Court below cannot be challenged before this Court under Article 227 of the Constitution of India. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

To

The Family Court,
Tiruchirapalli.

+3 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-87459[F] dated 18/09/2019)

<https://hcservices.ecourts.gov.in/hcservices/>



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+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-87462[F] dated
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AKV

WILDCOPY
MK (16.10.2019) 5P 6C