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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: 16.04.2019
PRONOUNCED ON: 18.09.2019

CORAM

THE HONOURABLE MRS. JUSTICE NISHA BANU

SECOND APPEAL (MD) No.158 of 2016

and

C.M.P.(MD).No.2651 of 2016

Nazyeema

... Appellant /
Respondent / Plaintiff

Vs.

Mydeen Batcha

... Respondent/
Appellant / Defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 30.11.2015, passed in A.S.No.5 of 2015 by the Additional District and Sessions Judge, Theni at Periyakulam, reversing the judgment and decree, dated 16.12.2014, passed in O.S.No.147 of 2010 by the Subordinate Court, Theni.

For appellant

... Mr.M.A.M.Raja

For respondent

... Mr.A.Haja Mohideen

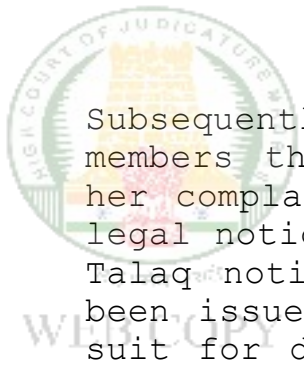
JUDGMENT

This second appeal has been filed by the appellant/plaintiff challenging the judgment and decree passed by the first appellate Court in A.S.No.5 of 2015, whereby and whereunder the first appellate Court reversed the judgment and decree passed by the trial Court, thereby dismissed the suit.

2. For better appreciation and understanding, the parties are referred to as per their in rank in the suit.

3. The brief facts of the case of the plaintiff/wife are as follows:

The marriage between the plaintiff and the defendant was solemnized on 28.10.2007. At the time of marriage, 35 sovereigns of gold, Rs.40,000/- cash and household articles were given to the defendant. After marriage, they were blessed with a male child. Unable to bear the torture made by the defendant and his family members demanding dowry, the plaintiff lodged a complaint under Sections 498-A, 406 and 506(i) IPC and the same was taken on file in C.C.No.3 of 2002 by the learned Judicial Magistrate, Bodi.



Subsequently, on the assurance of the defendant and his family members that they would not commit any harassment, she withdrew her complaint. While so, on 08.04.2010 the defendant has sent a legal notice alleging that the defendant has already sent a Triple Talaq notice dated 08.03.2010. The Talaq notice ought to have been issued only after mediation. Hence, the plaintiff filed the suit for declaration of Muthalak Notice dated 08.04.2010 as null and void.

4. The brief facts of the case of the defendant are as follow:

The defendant admitted the marriage but denied the receipt of jewels, cash and household articles. He also denied the harassment alleged to have been made by him and also his family members demanding dowry. The complaint lodged by the plaintiff has already closed as action dropped. During the pendency of anticipatory bail petition before the High Court, the matter was referred to mediation, but no compromise effected. On 08.03.2010 the defendant sent Triple Talaq notice to the plaintiff for annulment of marriage. The plaintiff, after receipt of said notice, did not sent any objection to the same. In order to confirm the said Triple Talaq, the defendant has sent the lawyer notice dated 08.04.2010. The defendant, thereafter, filed G.W.O.P. seeking the custody of the child and the same is still pending.

5. On the side of the plaintiff, the plaintiff herself was examined as PW1 and the other witnesses were examined as PWs.2 to 6 and Exs.P1 to P17 were marked. On the side of the defendant, the defendant himself was examined as DW1 and another witness was examined as DW2 and Exs.D1 to D16 were marked.

6. The trial Court, after trial, has decreed the suit as prayed for. Aggrieved by the same, the defendant filed an appeal in A.S.No.5 of 2015. The first appellate Court, after re-appreciation of evidence, has allowed the appeal, thereby set aside the judgment and decree passed by the trial Court only on the ground that the plaintiff challenged only lawyer notice and not Triple Talaq notice. Aggrieved by the judgment and decree passed by the first appellate Court, the plaintiff has filed this appeal.

7. At the time of admission, the following questions of law were framed for consideration :

"a) Whether the finding of the trial Court as Triple Talaq as null and void based on the evidence is wrong as per the findings of the first appellate Court?

b) Whether the findings of the trial Court as Triple Talaq as null and void based on the no



reason for said Talaq is wrong as per the finding of the first appellate Court?"

8. The learned counsel appearing for the plaintiff submitted that the lawyer notice dated 08.04.2010 issued by the defendant is none other than the legal term of Triple Talaq letter dated 04.03.2010. If the marriage was dissolved after the issuance of Triple Talaq letter dated 04.03.2010, there is no necessity for the defendant to issue another Triple Talaq notice dated 08.04.2010. Further, in the notice dated 08.04.2010 (Ex.A4), the date of the Triple Talaq letter (Ex.A9) was mentioned as 08.03.2010, instead 04.03.2010. He would further submit that though in the alleged Triple Talaq letter dated 04.03.2010 (Ex.B6) the residential address of the plaintiff is mentioned, in the acknowledgment card - Ex.B7 the address of the school where the plaintiff was working is mentioned. He would further submit that the defendant had not taken any steps to settle the matrimonial dispute before the pronouncement of Talaq as per Mohammedan Law. The mahar was not given at the time of issuance of Triple Talaq letter dated 04.03.2010. The maintenance amount for the period of iddtha was not sent with the alleged Triple Talaq letter dated 04.03.2010, but the iddtha amount of Rs.1,500/- was sent only on 08.04.2010 along with Triple Talaq legal notice dated 08.04.2010 and therefore, it is clear that 08.04.2010 is the complete Triple Talaq notice. The trial Court, after considering the above aspects, has rightly decreed the suit as prayed for. But, the first appellate Court, without properly considering the above aspects, has erroneously set aside the judgment and decree passed by the trial Court only on technical ground that the plaintiff has not challenged the Triple Talaq letter dated 04.03.2010,

9. The learned counsel appearing for the defendant submitted that the plaintiff ought to have challenged the Triple Talaq letter dated 04.03.2010, instead of challenging the legal notice dated 08.04.2010 and though the same has been brought to the knowledge of the plaintiff through the written statement, she has not amended her plaint and she has chosen to proceed the case under the same prayer till the conclusion of the case and therefore, the first appellate Court has rightly reversed the finding of the trial Court and the same does not warrant interference of this Court. Thus, he prayed to dismiss this second appeal.

10. Heard the learned counsel for both sides and perused the materials available on record.

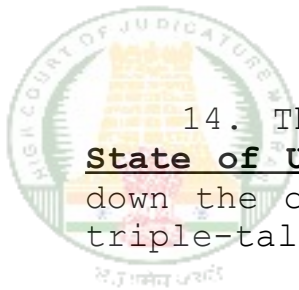
11. The first appellate Court has reversed the finding of the trial Court only on the ground that the Advocate notice dated 08.04.2010 is not a Triple Talaq notice and the plaintiff has



failed to challenge the Triple Talaq letter dated 04.03.2010. It is seen that in the reply notice dated 17.05.2010 and in the plaint, the plaintiff has only stated that the notice sent by the defendant alleging that the Triple Talaq letter has already been issued to the plaintiff, is not legally valid. Nowhere the plaintiff has admitted the receipt of Triple Talaq letter dated 04.03.2010. In fact, the plaintiff has denied the receipt of Triple Talaq letter in her cross examination.

12. According to the defendant, the plaintiff has received the Triple Talaq letter (Ex.B6) dated 04.03.2010 on 08.03.2010 and in support of the said contention, the defendant produced - Ex.B7 - Acknowledgment Card. It is relevant to note that in Ex.B6 - Triple Talaq letter the residential address of the plaintiff has been mentioned as if it has been sent to her residential address. But, in Ex.B7- Acknowledgment Card, the address of the school where the plaintiff was working is mentioned. More over, the defendant (DW1) has also admitted in his cross examination that he has not produced the acknowledgment card, through which Ex.B6 served to the residential address of the plaintiff. Further, in Ex.B7 - Acknowledgment Card, it is unusually written as if it is a "Triple Talaq letter". Therefore, it cannot be concluded that through Ex.B7 - Acknowledgment Card only Triple Talaq letter, dated 04.03.2010, has been served to the plaintiff. As the Triple Talaq letter has not been properly served to the plaintiff, she has not given any reply to the same and therefore, it cannot be concluded that the plaintiff had no objection, as she has not sent any reply to the letter dated 04.03.2010.

13. Even assuming that Ex.B6 - Triple Talaq letter dated 04.03.2010 has been served to the plaintiff with delay on 08.03.2010 and Talaq has been effected, it is not properly explained to the Court as to why the defendant has sent the legal notice dated 08.04.2010 to the plaintiff. In the written statement, the defendant has stated in one place that the Talaq has already been effected by issuing notice dated 04.03.2010 (wrongly stated as 08.03.2010), but in the other place, he said in order to confirm the Talaq, he has sent legal notice dated 08.04.2010. It is seen that as the defendant has omitted to mention about grant of mahar and return of articles and iddtha amount in the Triple Talaq letter dated 04.03.2010, in order to revive the alleged Triple Talaq letter dated 04.03.2010, the defendant has issued legal notice dated 08.04.2010 to the plaintiff. As the plaintiff has not received the Triple Talaq notice dated 04.03.2010, she has sought to declare the legal notice dated 08.04.2010 as null and void. Therefore, this Court is of the view that the plaintiff has rightly sought for the declaration of the legal notice dated 08.04.2010 as null and void.



14. The Hon'ble Supreme Court in the case of **Shamim Ara vs. State of U.P. & Another**, reported in **2002 AIR SCW 4162**, has laid down the conditions to be followed for the purpose of proving the triple-talaq. The relevant observation reads as under:

"The correct law of talaq as ordained by the Holy Quran is that talaq must be for a reasonable cause and be preceded by attempts at reconciliation between the husband and the wife by two arbiters — one from the wife's family and the other from the husband's; if the attempts fail, talaq may be effected. (Para 13). In Rukia Khatun's case, the Division Bench stated that the correct law of talaq, as ordained by Holy Quran, is: (i) that 'talaq' must be for a reasonable cause; and (ii) that it must be preceded by an attempt of reconciliation between the husband and the wife by two arbiters, one chosen by the wife from her family and the other by the husband from his. If their attempts fail, 'talaq' may be effected. The Division Bench expressly recorded its dissent from the Calcutta and Bombay view which, in their opinion, did not lay down the correct law."

15. From the above decision, it is clear that the correct law of Talaq as ordained by the Holy Quran is that Talaq must be for a reasonable cause and be preceded by attempts to reconciliation between the husband and the wife by two arbiters - one from the wife's family and the other from the husband's and if the attempts fail, the Talaq may be effected. Therefore, the pronouncement of Talaq should be effective by establishing the above materials.

16. Going by the prerequisites conditions to effect Talaq, the evidence available before this Court do not show that there is valid Talaq made either through Ex.B6 - the alleged Triple Talaq letter dated 04.03.2010 or through Ex.Ex.A5 - legal notice dated 08.04.2010. Neither there is an evidence to show that there had been a reasonable cause nor there is evident to show that Talaq is preceded by attempt for reconciliation. The first appellate Court also concurred with the above view. Hence, this Court has no hesitation to hold that through Ex.A5 - legal notice dated 08.04.2010, Talaq has not been legally pronounced. Thus, the finding of the first appellate Court that the plaintiff ought to have been challenged only Triple Talaq notice dated 04.03.2010 and not the legal notice dated 08.04.2010, is liable to be set aside. The questions of law are accordingly answered in favour of the plaintiff.



17. In the result, this second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

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To

1.The Additional District and Sessions Judge,
Theni at Periyakulam.

2.The Subordinate Judge,
Theni.

3.The Record Keeper,-2 copies
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.HAJA MOHIDEEN, Advocate (SR-87337[F] dated
18/09/2019)

Judgment made in
S.A. (MD) No.158 of 2016
18.09.2019

KM/(10.10.2019) 6P 6C