

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 360 OF 2018
IN
FAMILY COURT APPEAL (ST) NO. 28300 OF 2018
AND
FAMILY COURT APPEAL (ST) NO. 28300 OF 2018**

Amit B. Veer .. Applicant/Appellant
VS.
Sonali S. Sakharakar .. Respondent.

Mr. Prashant Pandey a/w. Mr. Pradeep Singh for the Applicant/
Appellant.
Mr. A.R. Kori a/w. Mr. Anil Jaiswar for the Respondent.
Dr. F.R. Shaikh, APP for the State.

**CORAM : B.P.DHARMADHIKARI,
CHIEF JUSTICE &
N.R.BORKAR, J.**

DATE OF RESERVED : 28.2.2020
DATE OF PRONOUNCEMENT : 21.4.2020

ORDER (PER N.R. BORKAR,J.)

CIVIL APPLICATION NO. 360 OF 2018

1] For the reasons stated in the Civil Application, Civil Application is allowed in terms of prayer clause (a).

FAMILY COURT APPEAL (ST) NO. 28300 OF 2018

2] This appeal challenges the judgment and order dated 16.11.2017 passed by the Family Court Thane in Petition No.- A/151/2017.

3] The appellant herein had filed aforementioned petition for declaration. The appellant had averred that he met the respondent in the year 2016. At the relevant time, both were working with Fun and Fit Gym. After initial interaction, they fell in love with each other. The appellant stated that they wanted to get married however, they were aware that their respective families will not accept their marriage as they were belonging to different caste. The appellant stated that hence they decided to obtain marriage certificate and then disclosed about it to their respective families.

4] The appellant has further stated that with the said understanding, they obtained a certificate from Samrat Ashok Tarun Mandal stating that they got married on 28.7.2016. It is stated that on the strength of the said certificate dated 28.7.2016, they obtained marriage certificate from Thane Municipal Corporation dated 29.9.2016. The appellant has stated that after obtaining the marriage certificate, they informed their parents about their purported marriage. It is stated that the parents of the respondent got annoyed and made her to lodge a complaint against the appellant and his

family members with the police alleging that she was abducted and was forced to sign the documents of marriage. It is stated that on the basis of the said report lodged by the respondent, Rajaram Police Station registered the crime against the appellant and his family members vide C.R.No. 9 of 2017 for the offence punishable under sections 342, 366, 367,420,464,465 and 506 of I.P.C.

5] The appellant has stated that thereafter they settled the dispute amicably and filed Criminal Writ Petition NO. 275 of 2017 for quashing of first information report by consent. The appellant stated that the marriage was never performed or solemnized on 28.7.2016 and only certificate from Samrat Ashok Tarun Mandal was obtained. It is stated that on the basis of said certificate marriage was registered and marriage certificate dated 28.9.2016 was obtained. The appellant on the basis of above averments has sought declaration that he is unmarried. The appellant has sought further declaration that the marriage certificate dated 28.9.2016 is null and void.

6] The respondent, in her written statement, admitted that on 28.7.2016 only certificate of marriage was obtained and no marriage as per law was solemnized on that date.

7] The learned Family Court after hearing the parties dismissed the petition by impugned judgment and order on the ground that it lacks jurisdiction to entertain the petition. The learned Family Court has observed that the jurisdiction of Family Court can be invoked if someone is married as per law.

8] We have heard learned advocate for the appellant and learned advocate for the respondent. The earlier Division Bench of this Court has, on 17.3.2017 in Criminal Writ Petition No.275 of 2017, passed the following order:-

“1. Heard learned counsel appearing for the Petitioners and the learned Additional Public Prosecutor for the first Respondent as well as the learned counsel appearing for the second Respondent.

2. Considering the controversy involved in this Petition, at this stage, same cannot be finally disposed of. We, therefore, propose to keep the Petition for final disposal at the admission stage.

3. The facts of this Petition are peculiar. The prayer in this Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 is for quashing First Information Report (FIR)

registered at the instance of the second Respondent for the offences punishable under Sections 366, 367, 342, 420, 464, 465 and 506 read with 34 of the Indian Penal Code. The impugned FIR was registered on 9th January 2017. The case of the second Respondent is that she lost her father at the age of 7 years and thereafter, her maternal uncle has taken her care. In fact, her maternal uncle ensured that she completes her education. Her case is that from December 2015, she got an employment as a Receptionist in Fun & Fit Gym in which the first Petitioner was employed as a fitness trainer. She has stated that she developed friendship with the first Petitioner. She stated that she came in contact with parents of the first Petitioner. According to her case, the first Petitioner proposed her for marriage when she disclosed that she has already decided to marry with another person. She stated that their friendship will continue.

4. It is alleged that even though the second Respondent gave up the job of Receptionist and was staying in the house of her maternal uncle, the first Petitioner always used to contact her by sending messages though she tried to discourage him to do so. It is further alleged that on 3rd September 2016, the first Petitioner forced her to sign an application and thereafter, the first Petitioner and the second Respondent were brought by the first Petitioner's father to his house. The second Petitioner is the father of the first Petitioner and the third Petitioner is the mother of the first Petitioner. She alleged that a phone call was made by Rajapur Police on cell phone number of the first Petitioner. It is alleged that the third Petitioner who answered the call falsely informed the Police that the first Petitioner and the second Respondent had gone away to Beed. It is alleged that the first petitioner took the second Respondent on 7th October 2016 to Oras in Sindhudurg to the house of a Jail official. It is alleged that she was kept in the said house till the morning of 10th October 2016. It is stated that thereafter, she was taken by the said Jail official and the first Petitioner to the office of an Advocate wherein she was forced to sign on a bond paper. It is fur-

ther alleged that the said Jail official, the Advocate, another Jail official and the first Petitioner took the second Respondent to Rajapur Police Station when the advocate forced her to sign a letter stating that she has married with the first Petitioner as per her own wishes and that the missing complaint filed by her maternal uncle was out of anger which should not be considered. The second Respondent alleged that thereafter, a Xylo Car of white colour came. A person sitting in the Car called upon her to occupy a seat in the Car. The allegations have been made as regards what transpired in the car. It is alleged that she was taken to Paradise Hotel at Kalyan. She was threatened and told not to contact her family members. Thereafter, on 5th September 2016, she was taken to the house of the first Petitioner.

5. As regards the alleged marriage, the second Respondent claimed that she was taken by the second Petitioner on 6th September 2016 to a place near the Court premises at Kalyan. She stated that one typed document was kept ready and she was forced to sign the said document. It is alleged that it was mentioned in the said document that her marriage with the first Petitioner was solemnized on 28th July 2016.

6. The prayer for quashing is sought on the basis of the settlement/consent. Reliance is placed on the affidavit of the second Respondent which is annexed on Page 21A of the Petition. The case of the Petitioner is that the marriage between the first Petitioner and the second Respondent was solemnized at Kalyan on 28th July 2016 which was registered on 28th September 2016 by the Registrar of Marriages at Thane.

7. As there was some doubt created whether the second Respondent has really settled the dispute between the first Petitioner and herself, we had called the parties in chamber on 7th February 2017. After having a detailed discussion with the second Respondent, we were satisfied that the second Respondent was not desirous of staying with the first Petitioner. She was not willing to keep any contact with the first Petitioner. On that day,

she proceeded with her mother and maternal uncle to the place of the maternal uncle and till today, she is admittedly residing with her maternal uncle.

8. *The subsequent orders passed by this Court from time to time and affidavits filed on record show that the Petitioners and in particular the first Petitioner accepted that the case made out by the Petitioners that the marriage between the first Petitioner and the second Respondent was solemnized on 28th July 2016 is false. In fact, an affidavit to that effect has been filed by the first Petitioner. However, the first Petitioner maintained that there was a marriage solemnized between him and the second Respondent on 6th September 2016. There is a report submitted on 14th February 2017 by the Assistant Inspector of Police of Rajapur Police Station on the aspect of alleged marriage on 6th September 2016. We may note here that FIR has been registered against the Petitioners vide C.R. No.59 of 2017 at Mahatma Phule Chowk Police Station, Kalyan for the offences punishable under Sections 464, 465, 466, 468, 471 read with 34 of the Indian Penal Code as well as for the offence punishable under the Maharashtra Regulations of Marriage Bureau and Registration Act, 1998.*

9. *On 15th March 2017, again the first Petitioner and the second Respondent were heard in chamber. The second Respondent stated that she does not wish to have any contact or any relationship with the first Petitioner whatsoever and she is happily residing with her maternal uncle. She maintained that she wants to get married with another person.*

10. *The first Petitioner has filed an affidavit dated 17th March 2017 in which he has undertaken to file appropriate proceedings before Civil Court within a period of three weeks from today for claiming declaration that the award dated 6th September 2016 is null and void. There is an affidavit of today's date filed by the second Respondent in which she has stated that she is happily residing with her maternal uncle since 7th February 2016*

till date, and she has no contact with the first Petitioner since then.

11. We accept the statements made by the first Petitioner and the second Respondent in their respective affidavits.

12. In normal course, considering the conduct of the first Petitioner and to some extent the conduct of the second Respondent, this Court would not have entertained this Petition for quashing on the ground of settlement as the case made out about the solemnization of marriage on 28th July 2016 is found to be false. In fact, the documents annexed to the Petition show that even the second Respondent has taken up the said stand in her affidavit executed before the learned Executive Magistrate. We are entertaining this Petition only with a view to ensure that a final solution is found to the dispute. In light of the statement made by the first Petitioner that he will seek appropriate declaration from the appropriate Court, the Petition will have to be kept pending. We accept the statement made by the first Petitioner that necessary proceedings will be filed within a period of three weeks from today.

13. Place the Petition under the caption of "Final Disposal at the Admission Stage" on 19th June 2017.

14. By way of ad-interim relief, we direct that though investigation on the basis of the impugned First Information Report shall continue, chargesheet shall not be filed without leave of the Court. As the first Petitioner and the second Respondent are trying to bring to an end about their entire dispute, we direct that investigation on the basis of C.R. No.59 of 2017 filed with the Mahatma Phule Chowk Police Station shall continue, but chargesheet shall not be filed till the next date without leave of the Court."

9] Today, we have allowed and disposed of said Writ Petition No. 275 of 2017 along with connected matter, i.e., Writ Petition No. 527 of 2020 between these parties and in relation to this controversy, by the separate orders.

10] The present challenge needs consideration in this backdrop. Section 7 of the Family Court Act, 1984 (for short “the Act”) which deals with the jurisdiction of the Family Court reads thus:

“Section 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 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 11974); and*
- (b) *such other jurisdiction as may be conferred on it by any other enactment.*

11] Section 8 of the Act which deals with exclusion of jurisdiction of other court where Family Court is established reads thus:

“Section 8. – Exclusion of jurisdiction and pending proceedings.

Where a Family Court has been established for any area,-

- (a) *no district court or any subordinate civil court referred to in sub-section (1) of section 7 shall, in rela-*

tion to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section;

(b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

(c) every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974),-

(i) which is pending immediately before the establishment of such Family Court before any district court or subordinate court referred to in that sub-section or, as the case may be, before any magistrate under the said Code; and

(ii) which would have been required to be instituted or taken before such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established, shall stand transferred to such Family Court on the date on which it is established."

12] Conjoint reading of sections 7 and 8 of the Act makes it clear that the jurisdictions covered under section 7 of the Act are excluded from the purview of jurisdiction of civil court. Under section 7(1) Explanation (b)- a suit or proceeding for declaration as to validity of a marriage or as to matrimonial status of any person is within the exclusive jurisdiction of the Family Court. The appellant in his petition before the Family

Court has sought a declaration about his matrimonial status that he is unmarried. Thus, the clause (b) of the said Explanation covers his claim. The respondent woman has not disputed these facts. She is not opposing the prayers made before the Family Court at all. In view of this, learned Family Court was not justified in dismissing the petition filed by the appellant on the ground of lack of jurisdiction. The impugned judgment and order passed by the learned Family Court therefore will have to be set aside.

13] In the result, following order is passed:

- (a) Appeal is allowed;
- (b) The impugned judgment and order is set aside. The petition filed by the appellant before the Family Court is allowed. The declaration as sought by the appellant is granted.

(N.R. BORKAR, J.)

(CHIEF JUSTICE)