

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 04.11.2020]

[PRONOUNCED ON : 19.01.2021]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P. PD.No.1486 of 2020

and

C.M.P.No.8440 of 2020

V.K.Uzair Ahmed

... Petitioner/Defendant

.. Vs ..

N.Fathima Chandini @ N.Fathima Anbareen

... Respondent/Plaintiff

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 06.02.2020, passed in I.A.No.4 of 2020 in O.S.No.33 of 2018, by the IV Additional Family Court at Chennai.

For Petitioner : Mr.Shaikh Mehrunisa

For Respondent : Mr.Ashfaq Rafi

ORDER

This Civil Revision Petition is filed by the revision petitioner under Article 227 of the Constitution of India, against the order dated 06.02.2020, passed by the learned IV Additional Principal Judge, Family Court, Chennai, in I.A.No.4 of 2020 in O.S.No.33 of 2018.

2a) The husband, who is the defendant in O.S.No.33 of 2018, is the revision petitioner herein. The respondent herein/wife has filed a suit in O.S.No.33 of 2018 before the Family Court at Chennai, seeking declaration that to declare the Talaq dated 13.01.2018 and 17.02.2018 in respect of the marriage dated 24.09.2011 between the respondent herein/plaintiff and the revision petitioner herein/defendant as null and void.

b) Pending the said suit, the revision petitioner/defendant has filed written statement and the matter is taken up and the evidence on the side of the respondent/plaintiff was completed. Defendant was examined as D.W.1. Part of the cross-examination is over and at that juncture, the defendant/husband has filed an Interlocutory Application in I.A.No.4 of

2020 under Order VII Rule 1 of CPC r/w. Section 151 of CPC praying to dismiss the suit in O.S.No.33 of 2018 filed by the plaintiff/wife as not maintainable for want of cause of action.

c) The said application was dismissed by the learned IV Additional Principal Judge, Family Court, Chennai, and hence, the present Civil Revision Petition is filed by the husband.

3. Heard Mr.Shaikh Mehrunisa, learned counsel for the revision petitioner/husband and Mr.Ashfaq Rafi, learned counsel appearing for the respondent/wife.

4 (a). The sum and substance of the contention of the learned counsel for the revision petitioner/husband is that the respondent herein/wife has rushed to the Court on 05.02.2018 immediately after the first pronouncement on 13.01.2018. The second pronouncement was on 17.02.2018 which was subsequently seen incorporated in the plaint prayer portion as well as in the list of documents and also claimed maintenance in the year 2017 itself and hence contended that the suit is premature and prayed for rejection of plaint on that ground.

(b). The suit has been filed without incorporating Section 26 (institution of suits) and Section 7 of the Family Court Act (inherent powers). The respondent herein/wife has filed the above suit under Order VII Rule 1 of CPC. Order VII deals with plaints generally and Rule 1 deals with the particulars to be contained in the plaint and thus, the plaint suffers from non mentioning of necessary provision of Law as per Family Court Act.

5. The learned counsel for the respondent/wife would submit that the revision petitioner/husband declared Talaq to the wife on 13.01.2018, and subsequent to the filing of the suit, another Talaq was pronounced on 17.02.2018 and after appearance and filing of the written statement third one on 23.06.2018 and as the suit was filed challenging the validity of the pronouncement of the Talaq, the first Talaq pronounced at the first instance gives rise to cause of action and hence, contended the suit is maintainable.

6.a) The civil revision petitioner filed the point before the trial Court to dismiss the suit and to grant of premature by way of rejection of plaint.

6.b) The core issue involved in the suit viz lis between the parties is as to the nature of the Talaq, alleged to have been pronounced by the husband.

7.a) Admittedly, the respondent/wife has filed the suit declaring that the Talaq pronounced by the husband on 13.01.2018 and 17.02.2018 as null and void in respect of the marriage solemnized between them.

b) It is relevant to state regarding Section 311(5) of the Mohammedan Law. There are 11 forms of Talaq (divorce) as per muslim law and the Apex Court has laid guidelines with respect to the pronouncement of Talaq Ahsan (triple talak) and single pronouncement of Talaq as per Section 311(i) of Mohammedan Law. Wherein the condition is that there must be an attempt of reconciliation between the husband and the wife by two arbiters, one chosen by the wife from her family and the other from the husband's family.

c) The second form of Talaq, as per the above said Section, is Talaq Hasan as per Section 311(ii) of Mohammedan Law, wherein, three

pronouncements made during successive tuhr, no intercourse taking place during any of the 3 tuhr. The pronouncement of Talaq Hasan should be made during a tuhr, the second during the next tuhr and third during the succeeding tuhr. Hence, the Talaq hasan becomes complete only after the third pronouncement and it becomes irrevocable under Section 312(2) of Mohammedan Law.

d) Only in Talaq-e-Ahsan, the Hon'ble Supreme Court has laid down guidelines with regard to an attempt of reconciliation between the husband and the wife by two arbiters, one chosen by the wife from her family and the other from the husband's family and not in Talaq-e-Hasan, no where in Talaq-e-Hasan, it is the procedure or guidelines that there should be possibilities for negotiation and re-union if opted by the wife.

8. According to the learned counsel for the revision petitioner/husband, the plaint filed before the IV Additional Family Court, Chennai, does not incorporate Section 26 and 7 of the Family Court Act. Mere omission to mention the provision of law is not fatal to the proceedings as the same is curable defect and does not call for rejection of plaint on the said ground.

9. The next contention is that in the prayer column of the plaint, the date of the next Talaq was mentioned in ink and however it appears that it is a correction made with the permission of the Court.

10.a) The fact that whether on the facts and circumstances of this case as projected by the respondent/wife in the plaint and by the husband in the written statement, whether the alleged Talaq said to have been pronounced on 13.01.2018 falls under "Talaq-e-Ahsan" or "Talaq-e-hasan" is to be determined from the evidence let in by the parties. Admittedly, the trial has already commenced. In fact, more than half part of the trial is over. The evidence on the side of the plaintiff has already been completed. The evidence on the side of the defendant has been recorded. Part of the cross-examination of D.W.1 is also over and hence, I find that it would be appropriate for this Court to relegate the parties to the Family Court, to complete the trial.

10b). Taking note of stage of trial, viz at the cross examination of D.W.1, to meet the ends of justice, the parties are relegated to go before

the Trial Court to complete the trial and the learned IV Additional Principal Judge, Family Court, Chennai, with direction to Family Court to take into consideration the point of consideration viz whether the suit is premature as contended by the defendant/husband as one point for determination.

11. Accordingly, this Civil Revision Petition is disposed of with a direction to the learned IV Additional Principal Judge, Family Court, Chennai, to complete the trial within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

19.01.2021

Index : Yes
Internet : Yes
Jrl

To

The IV Additional Principal Judge,
Family Court, Chennai.

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RMT.TEEKAA RAMAN, J.

JRL



Order made in
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