

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

MISC. CIVIL APPLICATION NO.607 OF 2022
IN
FAMILY COURT APPEAL NO.175 OF 2014

Leeni w/o Chandrakant Sardar,
Nava Nakasha, Nagpur

-vs-

Chandrakant s/o Haridas Sardar,
Bezonbagh, Nagpur

Ms Leeni C. Sardar, applicant in person.
Smt Padma Chandekar, Advocate for non-applicant.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE : October 06, 2022

P.C.

By this application the applicant seeks review of the judgment dated 12/03/2020 passed in Family Court Appeal No.175/2014. By the said order the Family Court Appeal came to be dismissed thus upholding the judgment of the Family Court thereby dissolving the marriage between the applicant and non-applicant under Section 13(1) (i-a) of the Hindu Marriage Act, 1955.

In the application it has been stated that the judgment of this Court dated 12/03/2020 was challenged before the Honourable Supreme Court and the Special Leave Petition came to be dismissed on 18/11/2020. Notwithstanding such dismissal it has been stated that in view of the decision in *Kunhayammed vs. State of Kerala (2000) 6 SCC 359*, the review application was tenable. The grounds for review have been mentioned in the

application.

2. The applicant has placed on record her written notes in view of the liberty granted on 16/09/2022. The applicant has also sought to rely upon the judgment of Honourable Supreme Court in Civil Appeal No.1957/2006 (*Neelam Kumar vs. Dayarani*) dated 06/07/2010 and the judgment of the learned Single Judge at the Principal Seat in Writ Petition No.6276 (*Ariz Kohli vs. Tehzeeb Kohli*) dated 07/07/2022.

3. The order under review was challenged before the Honourable Supreme Court unsuccessfully. Despite this, since the Special Leave Petition was dismissed in limine the review application would be maintainable in view of the decision in *Khoday Distilleries Ltd. and ors. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd. Kollegal (Under Liquidation) Rep. By the Liquidator (2019) 4 SCC 376*. We have therefore perused the written notes of arguments as well as the documents filed alongwith it.

The learned counsel for the non-applicant opposed the review application.

4. It is urged that initially the non-applicant herein had sought the relief of restitution of conjugal rights. However, by amending his pleadings that prayer was given up and instead the relief of dissolution of marriage was

sought. The Family Court granted the relief of dissolution of marriage. In this regard the applicant has relied upon the judgment of learned Single Judge in *Ariz Kohli* (supra) where too amendment of the proceedings by substituting the relief of decree for restitution of marriage with the relief of dissolution of marriage was sought. It was held that the relief sought by way of amendment was completely extrinsic and alien to the relief initially sought in the proceedings. On that count the amendment granted by the learned Judge of the Family Court was disallowed by learned Single Judge. While doing so, it was held by learned Single Judge that the judgment of the Division Bench in *Uttara Praveen Thool vs. Praveen Bhanudas Thool 2014(2) Mh.L.J. 321* was held to fall within the spectrum of per incuriam and thus not a binding precedent.

5. For the sake of record we may state that respondent in *Ariz Kohli* (supra) challenged the judgment of learned Single Judge before the Honourable Supreme Court. In Special Leave Petition (Civil) No.14381/2022 (*Tehzeeb Kohli vs. Ariz Kohli*) the following order was passed on 29/08/2022 :

“ While we may have reservation on the reasoning given in the impugned judgment, we are not inclined to issue notice as the petitioner has liberty to file a fresh petition for divorce. Issuing notice may, in fact, cause delay in adjudication.

Recording the aforesaid, the petition for special leave to appeal is dismissed, leaving it open to the petitioner, if advised, to file a petition for

divorce. ”

6. Since the Honourable Supreme Court has expressed reservation on the reasoning of learned Single Judge in *Ariz Kohli* (supra), we would prefer to follow the judgment of the Division Bench in *Uttara Praveen Thool* (supra) on the permissibility of seeking leave to amend so as to claim an additional relief in the alternative in the same proceedings. Hence, the judgment of learned Single Judge in this backdrop cannot be relied upon.

7. We find that the applicant seeks to urge various grounds that would entail re-hearing of the appeal afresh. Such exercise would transgress review jurisdiction in absence of any error apparent on the face of record. We do not find any error apparent in the judgment under review dated 12/03/2020. The other decisions relied upon by the applicant also do not persuade us to exercise review jurisdiction. Hence for aforesaid reasons, the application stands dismissed with no order as to costs.

(Urmila Joshi-Phalke, J.)

(A. S. Chandurkar, J.)