



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 15109 OF 2023

**SONAL SHRIKANT BHUJBAL
VERSUS
SHRIKANT RAMESH BHUJBAL AND ANOTHER**

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Advocate for Petitioner : Mr. A.D. Khot h/f Mr. Sarwade Vinay A.

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CORAM : SHAILESH P. BRAHME, J.

DATE : 12th DECEMBER 2023.

Per Court :

. Heard the learned Counsel for the petitioner.

1. The petitioner is challenging common order below Exhibit-61 and 63 dated 17.10.2023 in petition no. A-207/2018 passed by the Principal Judge, Family Court, Aurangabad. The petitioner is the original opponent, whereas the respondent is the original petitioner who has filed proceeding for dissolution of marriage under the Hindu Marriage Act.

2. Initially the proceedings were filed under the provision of Hindu Marriage Act. After recording the evidence of respondent, it revealed that the proceedings should not have been filed under the Hindu Marriage Act because the marriage was solemnized under the provision of Special Marriage Act. Therefore an order was passed on 18.07.2023 below Exhibit-1, suo moto, learned Judge of the Family Court, recorded that the proceedings would not be tenable under the Hindu Marriage

Act, treated them as the proceedings under the Special Marriage Act. The respondent was permitted to amend the petition accordingly.

3. The petitioner filed application at Exhibit-63, seeking recall of the order dated 18.07.2023 passed below Exhibit-1. Independently, the petitioner filed application at Exhibit-61 under Order 7 Rule 11(d) of the Civil Procedure Code for rejection of the plaint. It was contended that the proceedings which were filed under the Hindu Marriage Act, cannot be continued or converted into the proceedings under the provision of Special Marriage Act. Both the applications at Exhibit- 61 and 63 are rejected by common order dated 17.10.2023.

4. Learned Counsel for the petitioner submits that the learned Judge committed error of jurisdiction by suo moto passing the order for treating the proceedings under altogether different Act. Such a type of proceedings are not tenable. According to learned Counsel, therefore application at Exhibit-63 ought to have been allowed. There is apparent error on record to recall the order below Exhibit-1. Learned Counsel submits that the Presiding Officer adopted very casual approach. A grave prejudice is caused to the petitioner because of this type of indulgence by the trial Judge.

5. Learned Counsel submits that the proceedings could not have been continued. The proper remedy would be to file the separate proceedings by terminating the earlier proceedings under the provision of the Special Marriage Act.

6. The respondent has filed proceedings for dissolution of marriage on the ground of cruelty. The ground of cruelty for dissolution of marriage is available under Special Marriage Act as well as Hindu Marriage Act. The matter has proceeded further and evidence by one party has also been recorded. The learned Counsel for the petitioner is unable to point out that there is any special procedure contemplated by the provision of Special Marriage Act. Nor there is any different form, forum or stages prescribed for dealing with the dissolution of marriage under the Special Marriage Act.

7. Just because the learned Judge has suo moto exercised the powers and directed to convert the proceedings for the same relief, but under different statute does not cause any prejudice to the respondent. The nature of the evidence and the manner in which the evidence is to be led is also common. Learned Judge is justified in not terminating the earlier proceedings and continuing them. I do not find any merit in pressing into service an application for rejection of plaint under Order 7 Rule 11(D) of CPC. No provision is cited to reject the plaint. It is permissible for the respondent to raise any objection or grievance at the stage of hearing of the matter.

8. Learned Counsel has referred to provision of Section 40B of the Special Marriage Act. These are the special provisions for trial and disposal of the proceedings. Section 40B does not prescribe any different forum. It's purport is to decide the matters expeditiously. I am of the considered view that the purport of Section 40B can be best

achieved by continuing the proceedings from the stage, it has been converted. No fault can be found in the impugned order.

9. The learned Judge of the Family Court is empowered under Section 10 (3) of the Family Court Act to adopt its own procedure to arrive at the truth from the facts alleged by one party and denied by another party in view of the enabling provision. I am of the view that the learned Judge is justified in rejecting the applications. There is no merit in petition. It is dismissed.

[SHAILESH P. BRAHME, J.]

Najeeb.