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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 20th September, 2023***

+ **MAT.APP. (F.C.) 134/2023**

SHAHID AHMAD Appellant
Through: Mr. Deepak Kohli & Md. Shariq,
Advocates.

versus

TAHAJIVA Respondent
Through: Ms. Zeba Khair, Advocate & Ms.
Ananya Garg, Amicus Curiae.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. **The Appeal under Section 19 of the Family Courts Act, 1984** has been preferred against the impugned Order/Judgment dated 18.04.2023 of the learned Judge, Family Courts dismissing the petition filed seeking the following relief:

“Pass a Decree of declaration thereby declaring the Divorce in between the petitioners by way of Mubarat (Mutual Consent) in terms of Section 2(ix) of the Dissolution of the Muslim Marriage Act, 1939 thereby dissolving the marriage between the petitioners”.

2. The appellant and the respondent herein have filed a petition for dissolution of marriage under Section 2(ix) of the Dissolution of Muslim



Marriage Act, 1939 by way of *Mubarat* (Mutual Consent). It is stated in the petition that the marriage between the parties was solemnized on 19.06.2019 according to Muslim rites and customs and no child was born from their wedlock. Due to the temperamental differences, disputes arose between the parties and they have been living separately since April, 2020. It is stated that the respondent had filed a FIR bearing No. 97/2021 under Sections 498A/406/34 IPC at P.S.Geeta Colony against the appellant and his family members. With the intervention of the family, friends and respectable members of the society, they have arrived at a settlement on 20.02.2023 wherein, they have agreed to various terms and conditions of settlement including dissolution of their marriage in accordance with *Shariat* Law i.e. mutually through *Mubarat*. Consequently, the appellant had given her the divorce which was accepted by the respondent. It was further agreed that they would file a petition before the Court for declaring that they have taken divorce by *Mubarat* (Mutual Consent). In addition, the appellant paid Rs.2,90,000/- for settlement of all the claims towards stridhan and permanent alimony, maintenance past, present and future, Mehar etc. Rs.1,00,000/- was to be paid at the time of grant of divorce while the balance fund of Rs.1,90,000/- was agreed to be paid by the appellant-husband to the respondent-wife at the time of quashing of FIR registered against the appellant and his family members.

3. The appellant and the respondent pursuant to the settlement dated 20.02.2023 filed a petition before the learned Judge, Family Court for Declaration.

4. The learned Judge, Family Court relied upon the judgment titled as X and Ors. Vs. Y and Ors. passed by the High Court of Kerala, wherein, it was



stated that the Family Court can endorse an extra judicial divorce to declare a marital status of a person in the matters of *Talaq*, *Khula*, *Mubarat* and *Talaq-e-Tafwiz*. It was held that the Family Courts shall entertain such applications moved by either of the party or both parties to declare the marital status of such parties and in the matter of unilateral dissolution of marriage invoking *Khula and Talaq*, the scope of inquiry before the Family Courts is limited. In such proceedings, the Court shall record the *Khula or Talaq* to declare the marital status of the parties after due notice to each other. The Family Court shall refrain from adjudicating upon such extra-judicial divorce unless it is called upon to decide its validity in appropriate manner and it shall make an endeavour to dispose of the case treating it an uncontested matter without any delay by passing a formal order deciding the marital status.

5. Learned Judge, Family Court relying upon the said judgment, held that in the entire petition, it was nowhere mentioned by both the parties that their marriage already stood dissolved by mutual consent i.e. by way of *Mubarat* as per MoU filed with the petition. In view of the date of divorce having not been specified, declaration of marital status could not be given. Consequently, the petition was dismissed by the learned Judge, Family Court.

6. **Aggrieved, the present Appeal has been preferred by the appellant.**

7. During the course of arguments, it has been pointed out that at the time of settlement on 20.02.2023, the divorce was granted by the appellant which was accepted by the respondent and this fact finds mention in the Settlement Deed itself. Since the divorce already stands taken place, the



only prayer to the Court was for declaring their marriage to be dissolved by way of *Mubarat*.

8. In view of the submissions made by the parties that the divorce already stood taken by Mutual Consent/*Mubarat* as recorded in the settlement and in the interest of welfare of both the parties, we hereby dispose of the present Appeal holding that marriage between the parties already stands dissolved by way of *Mubarat* as per Muslim Law while taking on record their undertaking that they shall remain bound by the said Settlement.

9. Appeal is accordingly disposed of.

10. The pending applications, if any, also stand disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 20, 2023

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