



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 4 OF 2024
WITH
CIVIL APPLICATION NO. 1111 OF 2024 IN AO/4/2024

1. Shaikh Sadiq s/o. Shaikh Rahim **... APPELLANT**

(Ori. Plaintiff)

VERSUS

1. Shabanabi w/o. Shaikh Sadiq,
@ Shabanabi d/o. Shaukat Ali

2. Smt. Tabassum Shaikh Sadiq (*deleted*)

... RESPONDENTS

(Ori. Respondent Nos.1 & 2)

...

Mr. Nasimoddin R. Shaikh – Advocate for Appellant

Mr. Rameez M. Shaikh – Advocate for Respondent No.1

....

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 29th August, 2024

ORDER :

1. Heard rival submissions finally at admission stage.

2. The present appellant who is original plaintiff in Regular Civil Suit No. 174 of 2004 has preferred this appeal from order dated 15.12.2023 passed by the learned District Judge-3, Bhusawal, Dist. Jalgaon (*hereinafter referred to as “the learned First Appellate Court”*) below Exhibit-1 in Regular Civil Appeal No. 98 of 2016 whereby the learned First Appellate Court framed three issues as mentioned therein and sent

the matter back to learned Ext. Jt. Civil Judge, Junior Division, Bhusawal, Dist. Jalgaon (*hereinafter referred to as “the learned Trial Court”*) for recording additional evidence and thereafter for recording findings on those issues, under Order 41 Rule 25 of Civil Procedure Code. The additional issues framed by the learned First Appellate Court are as under :

- (1) *Whether the plaintiff proves that he has given oral Talaq to the defendant No.2 with her consent on 25.06.2003 ?*
- (2) *Whether the plaintiff proves that he has given oral Talaq to the defendant No.2 as per the Muslim customs and traditions on 18.08.2003 ?*
- (3) *Whether the plaintiffs proves that he has made all attempts which are condition precedent before giving of Talaq ?*

3. The background facts of the case are as under :

The present appellant/husband had filed Regular Civil Suit No. 174 of 2004 against present respondent No.1 i.e. wife for getting decree of divorce. The learned Trial Court then conducted the trial and after recording of evidence decreed the suit of appellant/husband. However, the learned First Appellate Court in Regular Civil Appeal No. 98 of 2016 filed by respondent No.1/wife framed three additional issues and thereafter vide impugned order dated 15.12.2023 passed below Exhibit-1

directed the learned Trial Court for recording the additional evidence on those issues and to record the findings thereupon. Hence, this appeal.

4. Learned Counsel for appellant/husband submits that, the order of framing additional issues and calling for evidence upon them is totally illegal act of the learned First Appellate Court as even though the specific issues as framed by the learned First Appellate Court were not framed by the learned Trial Court, but in issue No.1 framed by the learned Trial Court, the entire discussion of the evidence in respect of legal provisions involving the aforesaid issues have already come on record. According to him, there was no application either of the parties before the learned First Appellate Court for framing such additional issues. He submitted that, the learned First Appellate Court could have decided the matter on the basis of evidence which is already on record, effectively and by considering the aforesaid issues. Thus, in short the learned Counsel for appellant/husband submitted the remand for adducing evidence and findings on the aforesaid additional issues was not necessary at all as proper issues were already framed and discussed in the light of evidence by the learned Trial Court. As such, he prayed for allowing the appeal by setting aside the impugned order.

5. On the contrary, learned Counsel for respondent No.1/wife strongly opposed the submissions made on behalf of appellant/husband

and supported the impugned order.

6. On perusal of the impugned order the learned First Appellate Court appears to have frame aforementioned three additional issues and for adducing evidence thereon the matter is remanded back to the learned Trial Court and also for giving findings thereon. On perusal of the impugned order it appears that, the learned First Appellate Court has given opportunity to the parties to lead evidence on the aforesaid issues, since the parties were not put to the notice specific issues for leading evidence. However, on going through the judgment and order passed by the learned Trial Court, the evidence as well as legal positions in respect of first two issues are already discussed by the learned Trial Court in the light of legal provisions and thereafter only, the learned Trial Court appears to have come to the conclusion that, the appellant/husband had proved the oral Talaq to the respondent No.1/wife as per Muslim customs and traditions on 25.06.2003 and 18.08.2003. Not only this but the learned Trial Court appears to have discussed the form of Talaq–Ul–Biddat in the light of observation of this Court in the case of **Dagadu Chotu Pathan Vs. Rahimbi Dagadu Pathan and Others** reported in *2002 (3) Mh. L. J. 602*, in detail and finally come to the conclusion that, the appellant/husband had resorted the pre–conditions mentioned in the aforesaid case for Talaq–Ul–Biddat.

7. It is extremely important to note that, there was no application filed by either of the parties for framing additional issues and on perusal of the judgment of the learned Trial Court it is evident that, the original suit was hotly contested and voluminous evidence was also adduced, which has been properly discussed by the learned Trial Court. As such, when such evidence is on record with legal findings thereon by the learned Trial Court, there was absolutely no necessity to adduce the evidence on the additional issues framed by the learned First Appellate Court. On the contrary, it appears that the learned First Appellate Court could have decided the appeal itself on merit by considering the evidence on record in the light of aforesaid issues which are only offshoots of main issue No.1 framed by the learned Trial Court. Therefore, act of framing such additional issues and remanding the matter back to the learned Trial Court, would be a wastage of time. Under such circumstances the impugned order needs to be set aside.

8. Thus, considering all these facts order dated 15.12.2023 passed by the learned District Judge – 3, Bhusawal, Dist. Jalgaon below Exhibit–1 in Regular Civil Appeal No. 98 of 2016 is hereby set aside and the learned First Appellate Court is directed to decide the said appeal on its own merit and on the basis of evidence on record by calling record and proceedings from the learned Trial Court, if sent.

9. The learned First Appellate Court shall make an endeavor to dispose the aforesaid appeal as early as possible.

10. The Appeal from Order is accordingly disposed of alongwith pending Civil Application No. 1111 of 2024.

[SANDIPKUMAR C. MORE]
JUDGE