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C.R.P.(PD).No.440 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.440 of 2024

N.Abrar Ahamed

...

Petitioner

Vs.

A.K.Fathima Shamila

...

Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed by the II Additional Family Court, Chennai in I.A.No.2 of 2023 in O.S.No.200 of 2021.

For Petitioner : Mr.Rahul Jagannathan

For Respondent : Mr.R.Ramanlaal

ORDER

This civil revision petition arises against the order of the learned II Additional Principal Family Court at Chennai, in I.A.No.02 of 2023 in O.S.No.200 of 2021, dated 26.09.2023.



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2.O.S.No.200 of 2021 is a suit to declare that the marriage entered into between the civil revision petitioner and the respondent on 19.07.2018 stood dissolved by virtue of the pronouncement of “Talaq” by the civil revision petitioner on 23.11.2020.

3. There is no dispute in the relationship between the parties. The civil revision petitioner married the respondent on 19.07.2018. The wedlock produced a male child on 01.07.2019. Due to the disputes and differences, the parties got separated. Therefore, on 25.07.2020, the civil revision petitioner/husband requested the Masjid-e-Muhammadia to mediate the dispute between the civil revision petitioner and the respondent. On 30.07.2020, the civil revision petitioner called upon the respondent to appear before the Jamath. The Jamaath followed it up with a letter dated 10.08.2020. Since the attempts of mediation had failed, the husband alleges that he pronounced his first Talaq on 28.08.2020. He states he followed this with a second Talaq notice on 01.10.2020 and on being returned, issued another notice on 13.10.2020. He asserts that the third and final Talaq was



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issued on 23.11.2020. Hence, the suit for a declaration that the marriage stood dissolved by the pronouncement of three Talaqs on three separate sittings.

4.On summons being served, the wife entered appearance and filed a detailed written statement running into several pages. According to her, the Talaq notices were never received by her. Infact, she alleges that on 01.07.2020, the birthday of the child was celebrated at the house of the civil revision petitioner. She added that on 28.08.2020, the civil revision petitioner requested the respondent not to issue a reply on the assurance that he will take her back. Apart from that, she pleaded that the first notice itself is defective since there was no express intention regarding the Talaqs said to have been pronounced by the civil revision petitioner.

5.With respect to the second notice, she alleged that the acknowledgment card had been manipulated, taking the help of one Y.Illiyas Sahib, a retired postal employee and since the second Talaq notice was not



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served, it is improper. Insofar as the third Talaq notice dated 23.11.2020 is concerned, she pleaded that she has no knowledge of the same and it was not served on her. She did not receive the third Talaq notice sent by the civil revision petitioner in any of the modes that is alleged to have been dispatched by the husband. Apart from denying the case of the husband, she sought for a counter claim to declare that the Talaq notices sent on 28.08.2020, 01.10.2020 and 23.10.2020 are null and void and for a judgment and decree for restitution of conjugal rights.

6. Pending the litigation, she took out an application for grant of interim maintenance taking the assistance of Section 151 of the Code of Civil Procedure (C.P.C.). She sought for Rs.35,000/- per month for herself and Rs.15,000/- per month for the child and also to reimburse a sum of Rs.49,900/- paid as school fees and further a sum of Rs.10,000/- towards litigation expenses. Notice was issued in the said application and a counter was received from the husband. The husband pleaded that he is getting a monthly salary of Rs.69,791/- and that since he had pronounced Talaq, the



wife is not entitled for any maintenance.

7.The learned Judge, taking into consideration the affidavit of assets and liabilities filed by the husband and wife, came to a conclusion that the wife will be entitled to Rs.12,500/- per month as interim maintenance and Rs.7,500/- for the child from 04.11.2022. The husband was further directed to pay a sum of Rs.44,900/- towards the school fees and Rs.20,000/- towards the litigation expenses. Aggrieved by the same, the husband is on revision.

8.Heard Mr.Rahul Jagannathan for the civil revision petitioner and Mr.Ramanlaal for the respondent.

9.Mr.Rahul Jagannathan inviting my attention to the Muslim Women (Protection of Rights on Divorce) Act, 1986, argued that in terms of Section 4 all that the wife is entitled to seek for maintenance under the said provisions and her application for maintenance before the family Court is



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not maintainable. He further argues that the amount of maintenance ordered by the Court is excessive and requires interference.

10.Mr.Ramanlaal, appearing for the respondent wife pleads that the wife is an Architect, who completed her education from Aalim Muhammed Salegh of Architecture, Avadi, Chennai. He states that the wife has gained a reputation as an Architect and on account of the matrimonial disputes has lost her imperative career. He points out that the husband was working with HCL Technologies and has now shifted the job to Cognizant Technologies Solutions and therefore, the amount of maintenance granted cannot be said to be excessive or arbitrary.

11.I have carefully considered the arguments of both sides.

12.In C.R.P.(PD) No.2660 of 2024, dated 02.09.2024, I have taken a view that if a proceeding is initiated by a wife seeking for divorce in terms of the dissolution of the Muslim Marriage Act, 1939, she is entitled to claim



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maintenance invoking Section 151 C.P.C. Mr.Rahul Jagannathan inviting me to several paragraphs of the said judgment argues that I have not considered the scope of the Muslim Women (Protection of Rights on Divorce) Act, 1986 and therefore, the said judgment is not applicable to the facts of the case.

13.He points out that in terms of Section 4 (1), the wife has to approach the learned Magistrate invoking the said provision and is not entitled to claim maintenance by invoking Section 151 C.P.C. He states that if section 4 (1) is applied, she has to make a claim against her relatives and not against the husband. Apart from that, in case there are no relatives, he points out under Section 4 (2) the relief is as against the Tamil Nadu Waqf Board and by no stretch of imagination is the wife entitled to claim as against the divorced husband.

14.Though this argument is extremely tantalizing, on a closer scrutiny, I do not find that it has legs to stand on. This is because Section 4 (1) will apply only when the status of the wife as a “Divorced Wife” attains a finality. This is clear from the definition under Section 2 (a) which defines



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as to who is a divorced wife. According to the said section, divorced woman means a Muslim women who was married according to the Muslim Law and has been divorced or has obtained divorce, from her husband, in accordance with the Muslim law. Therefore, unless and until the status of divorce is clearly and finally concluded by a decree of the Court or where there is no dispute on the status of the wife, only then Section 4 of the said Act will apply.

15.I have pointed out above that the wife has disputed the alleged Talaq said to have been pronounced by the husband. On account of the fact that the issue of Talaq has been denied and since the wife has asserted her status, the husband has approached the Court seeking for a declaration. Unless and until the Court grants a declaration that the husband requires in terms of Section 34 of the Specific Relief Act, I cannot come to a conclusion that the relationship of the husband and wife was snapped and the wife attained the status of a divorced wife.

16.Furthermore, the wife has sought for a counter claim seeking for



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restitution of conjugal rights. This implies that she has not agreed to the plea of the husband that he had divorced her and wants an order of the Court that he restored her in the matrimonial home. Therefore, the plea of Mr.Rahul Jagannathan that the wife is now a divorced wife is not acceptable. Infact, it is only on account of the fact that there is a doubt in the mind of the husband that he has approached the Court seeking for a declaration. Therefore, as the respondent does not satisfy the requirement of being a “divorced wife” within the meaning of Section 2 (a) of the legislation, she cannot held to be covered under Section 4 (1) or 4 (2) of the said Act.

17.Having put that point behind me, I have to see whether the quantum fixed by the Court is excessive. The husband is working in a Multi National Company, namely, Cognizant Technologies Solutions. The wife is a highly educated women, holding the degree of Bachelor of Architecture. At the time of fixing the maintenance, the Court is duty bound to take into consideration the status of the parties. The Court should also consider that



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the amount that the husband would have spent on the wife in case the relationship between them had continued. Applying the aforesaid tests to the facts of this case, I am sure that had the wife and child continued to stay along with the civil revision petitioner, he would have certainly spent more than Rs.20,000/- which the learned Judge had directed the husband to pay. Infact, the learned Judge has taken a conservative view and has fixed a lesser amount than what the wife is actually entitled to. Since the wife has not preferred a revision challenging the order and as she is satisfied with the said amount, I am not inclined to go as to what is the actual amount that the wife would be entitled to taking into consideration the salary of the husband.

18.In my view, the attempt of Mr.Rahul Jagannathan to distinguish the judgment in *X Vs Y in C.R.P.(PD) No.2660 of 2024, dated 02.09.2024* is untenable. I conclude that as long as the status of the respondent as a “divorced wife” is in jeopardy, she is entitled to take out an application before the Family Court invoking Section 151 CPC.

19.In the light of the above discussions, the Civil Revision Petition Stands dismissed. No costs.



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20.At this stage, I enquired with both the counsel as to whether there is any possibility of settlement through Mediation. Both the counsel agreed that referring the matter to mediation before the Family Court might not bear fruit as the said exercise had been carried out twice before. They plead that in this revision itself the matter had been referred to mediation, but unfortunately, it did not take off on account of the fact that both the Mediators appointed by the Court were otherwise engaged. Hence, considering the request of both the counsels, I am inclined to appoint Mrs.Badr Sayeed as Mediator to mediate between the parties.

21.The parties shall appear before Mrs.Badr Sayeed/Mediator appointed by this Court to settle the issues that have arisen between the parties. The parties shall appear on 25.10.2024 at 4 p.m. before the Mediation Centre attached to this Court. Since the date is fixed by consent, the Mediation Centre need not issue a separate notice to the parties for their appearance.



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Internet: Yes

Index: Yes/No

Speaking/Non speaking order

NCC: Yes/No

To:

II Additional Family Court,
Chennai.

V.LAKSHMINARAYANAN,J.



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