



C.R.P.(MD)No.2073 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 20.12.2024

PRONOUNCED ON: 08.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2073 of 2023

and

C.M.P.(MD)No.10365 of 2023

Syed Nisar : Petitioner/Defendant

Vs.

Nisha : Respondent/Plaintiff

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India to struck off the suit in O.S.No.28 of 2023, on the file of the Special Judge for Family Court, Madurai.

For Petitioner : Mr.A.Haja Mohideen Gisthi

For Respondent : Mr.D.S.Haroon Rasheed



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ORDER

The Civil Revision Petition has been filed invoking Article 227 of the Constitution of India seeking orders to strike off the plaint in O.S.No. 28 of 2023, on the file of the Family Court, Madurai.

2. The revision petitioner is the defendant. The respondent as plaintiff has filed the above suit claiming declaration that the Talaq notices issued by the defendant dated 05.09.2018 and 04.10.2018 as against the plaintiff are illegal and void and to pass a decree for restitution of conjugal rights in favour of the plaintiff against the defendant.

3. It is not in dispute that the plaintiff and the defendant got married on 16.04.2006 at Faiz Mahal, Egmore, Chennai and that due to their wedlock, they were blessed with one female child and two male children. It is pertinent to note that the plaintiff and the defendant as usual in the matrimonial matters have been raising allegations and counter allegations against each other.



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4. The case of the plaintiff is that the defendant and her in-laws had demanded more dowry and causing harassment since her marriage, that the defendant having an eye over the property of the plaintiff's mother, had assaulted the plaintiff brutally on several occasions causing injuries both physically and mentally, that the plaintiff was driven out of matrimonial home along with her children, that the plaintiff came to Madurai along with her children in 2018, that the defendant had sent a legal notice dated 18.06.2018 for reunion by making false averments and that the plaintiff had immediately sent a reply notice dated 03.07.2018 narrating the real facts.

5. It is the further case of the plaintiff that the defendant without any reasonable cause and by suppressing the real facts, had sent two Talaq notices on 05.09.2018 and 04.10.2018 respectively, that the plaintiff after the receipt of the first Talaq notice, sent a reply specifically indicating that the Talaq was invalid and void, that the defendant had forcibly taken away the second male child from Madurai in the absence of the plaintiff and went to Chennai, that the plaintiff, after coming to know about the incident and since the defendant refused to hand over the child, preferred a complaint before the All Women Police Station,



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Harbour on 13.01.2019 and that since the defendant had refused to hand over the child, the police officials advised both the parties to work out their remedy before the Court, that the defendant in the Talaq notices have stated that some of the mediation and conciliation process were held in the presence of jamath people ie., Asad, Hussain, Syed Nizam and Hafizuddin, that the plaintiff is not aware of the above said persons, that the defendant with an intention to contract second marriage, issued the above said two Talaq notices and that the talaq notices issued without any reasonable cause and without having any attempts for mediation and conciliation between the parties are invalid and void and that therefore, the plaintiff was constrained to file the above suit.

6. The petitioner/defendant, after receiving the suit summons, has approached this Court with the above revision directly for striking out the plaintiff under Article 227 of the Constitution of India.

7. The case of the petitioner/defendant is that the plaintiff alone had deserted the defendant without any justifiable cause and refused to live with him, that the defendant had attempted several mediation and reconciliation efforts, but the same was rejected by her through her reply



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dated 03.07.2018, that the defendant had sent a rejoinder to the reply notice dated 03.07.2018, that the plaintiff due to ill advise and malafide intention preferred complaints against the defendant in All Women Police Station, Madurai and after appearance before the police personnel, the defendant was let off, that thereafter, the defendant was constrained to issue first Talaq notice on 05.09.2018, second Talaq notice on 04.10.2018 and the third Talaq notice on 06.11.2018, that the plaintiff had returned the Demand Draft dated 04.09.2018 for Rs.6,000/- sent to her along with first Talaq notice dated 05.09.2018 and along with undated reply in October 2018, that the defendant had then sent second Talaq notice on 04.10.2018, that the defendant was constrained to resend the Demand Draft dated 04.09.2018 for Rs.6,000/- to the plaintiff along with the third Talaq notice sent on 06.11.2018, that in the meanwhile, the plaintiff has filed the above suit to declare the Talaq notices dated 05.09.2018 and 04.10.2018 alone are illegal and void and prayed for restitution of conjugal rights, suppressing the fact that she received the third Talaq notice dated 06.11.2018 along with the Demand Draft for Rs.6,000/-, that the defendant had already sent all the materials belonging to the plaintiff including furniture, cloths, utensils etc., on 04.01.2019, that the petitioner during enquiry before the All Women Police Station, Madurai



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has produced a file containing three Talaq notices with proof of service and that the defendant's residential house was attacked by rowdies, henchmen and hooligans sent by the respondent/plaintiff in January 2019.

8. The main contention of the revision petitioner/defendant is that he issued three Talaq notices dated 05.09.2018, 04.10.2018 and 06.11.2018, but the plaintiff having received all the three Talaq notices, has chosen to challenge the two Talaq notices before the Family Court as null and void by suppressing the real facts and with unclean hands and that since the suit filed after the lapse of five years since the issuance of three Talaq notices, is barred by limitation, as the third notice was received by the plaintiff as early as on 06.11.2018. According to the defendant, since the summons to appear in the suit was issued to the defendant on 22.05.2023, he had no other option, but to approach this Court with the present revision to struck off the suit. But according to the plaintiff, she has received only two Talaq notices and third Talaq notice alleged to have been sent by the revision petitioner has not been received by her and that since the first two Talaq notices were itself



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issued without any reasonable cause and without attempting any process of reconciliation, the same are invalid and void.

9. Before entering into other factual aspects further, as already pointed out, the revision petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India. Any defendant can seek rejection of plaint on showing any of the grounds as contemplated under Order 7 Rule 11 C.P.C., and can also seek striking off the plaint before the High Court under Article 227 of the Constitution of India for the grounds not contemplated under Order 7 Rule 11 C.P.C. It is pertinent to note that when a defendant invokes Article 227 of the Constitution of India, the requirement to struck off the plaint is more than what is required to reject the plaint under Order 7 Rule 11 C.P.C. If filing of the suit itself is a clear abuse of process based on the plaint averments and the admitted facts of the plaintiffs, this Court can very well invoke Article 227 of the Constitution of India to strike off the plaint. If it is established that the suit has been filed as an abuse of process of Court, in order to prevent the abuse of process of Court and to avoid miscarriage of justice, this Court has to necessarily order strike off the plaint. It is pertinent to note that when there is abuse of process of



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Court or filing the suit itself is contrary to justice and against public policy, this Court can very well exercise its power under Article 227 of the Constitution of India. If the suit is frivolous or vexatious, as per the pleadings of the plaintiff and the Court process is being wasted, then this Court can intervene under the said Article. It is also settled law that the jurisdiction under the Article 227 of the Constitution of India should be exercised sparingly and the plaintiff could be struck off only in the rarest cases when there is clear abuse of process of law and the Court and the Hon'ble Supreme Court in ***K.K.Modi Vs. K.N.Modi and others*** reported in ***1998(3) SCC 573***, has specifically held that the petition filed under Article 227 of the Constitution of India has to be allowed to prevent abuse of process of law and to meet the ends of justice.

10. Bearing the above legal position in mind, let us consider the case on hand.

11. The learned Counsel for the revision petitioner would mainly contend that the plaintiff has laid the suit challenging the first two Talaq notices by suppressing the receipt of the third Talaq notice and that since the suit was filed after the lapse of five years since the issuance of three



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Talaq notices, the suit is hopelessly barred by limitation. But the learned Counsel for the respondent would submit that the plaintiff has taken a specific stand that she has received only two Talaq notices and not the third Talaq notice, that even assuming for arguments sake, the plaintiff has suppressed the issuance of the third Talaq notice and the receipt of the same, that by itself is not a ground to quash the plaint, that whether the defendant has issued the third notice or not and the plaintiff has received the same or not are matters to be decided at the trial and that the plea of limitation which is also connected with the issuance of the third notice can only be decided at the trial.

12. The learned Counsel for the plaintiff has relied on a judgment of the Hon'ble Supreme Court in *Shamim Ara Vs. State of U.P., and another* reported in *2002 AIR (SC) 3551* and a decision of the Division Bench of this Court in *A.S.Parveen Akthar Vs. the Union of India (UOI) and Tamil Nadu Advocates Meelad Forum* passed in W.P.No.744 of 1992, which deals with Talaqs and the relevation portions in the decision of the Division Bench are extracted hereunder:

“30. The Division Bench in the case *Zeenat Fatema Rashid, 1993 (2) Crimes 853* after referring to the relevant verses in



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the Holy Quran held that, "The Quran discourages divorce and it permits only in extreme cases after pre-divorce conference. Therefore, a Mahomedan husband, cannot divorce his wife at his whim and caprice. The question then is, - whether, if divorce by talak is made arbitrarily, it should be treated as spiritual offence only? ...Marriage is the basis for social organisation and foundation of legal rights and obligations. Under [Section 7](#) of the Family Court Act, 1984, cases relating the matrimonial status of any person are within the jurisdiction of the Family Court. The Family Court aims at reconciliation and persuasion of parties to arrive at a settlement. For these reasons, if a Mahomedan husband divorces his wife at his whim and caprice, it would not only be a spiritual offence, but it would also affect the divorce. In the above view of the matter, a Mahomedan husband cannot divorce his wife at his whim and caprice, that is, divorce must be for a reasonable cause, and it must be preceded by a pre-divorce conference to arrive at a settlement....."

31. Counsel then referred to the decision of a learned single Judge of this Court Sidickk, J., in the case of [Saleem Basha vs. Mumtaz Begam](#), 1998 Cri. L.J. 4782, wherein the learned Judge considered the question as to whether talaq that had been pleaded [in that case](#) was valid in Mohammedan law. After finding that no attempt at reconciliation had preceded the triple talaq, such talaq having been pronounced after the wife had brought a claim for maintenance, after quoting with



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approval the observations of Justice Beharul Islam of the Gauhati High Court in the case of Jiauddin Ahmed vs. Anwara Begum, (1981) 1 GLR 358, the learned Judge held that divorce under Muslim law can be held to have been duly effected only when it does not violate the injunctions of Quran. The learned Judge quoted with approval the observations of Baharul Islam, that, "In my view the correct law of talaq as ordained by the Holy Quran is that talaq must be for a reasonable cause and be preceded by attempts at reconciliation by two relations, one each of the parties, is an essential condition precedent to talaq. It is fallacy that a Muslim male enjoys, under the Quranic law, unbridled authority to liquidate the marriage. The Holy Quran expressly forbids a man to seek pretext for divorcing his wife, so long as she remains faithful and obedient to him."

44. The correct law of talaq as ordained by the Holy Quran is that talaq must be for a reasonable cause and be proceeded by attempts at reconciliation between the husband and the wife by two arbiters - one from the wife's family and the other from the husband's; if the attempts fail, talaq may be effected (Para 13). In Rukia Khatun's case, the Division Bench stated that the correct law of talaq, as ordained by Holy Quran, is : (i) that 'talaq' must be for a reasonable cause; and (ii) that it must be proceeded by an attempt of reconciliation between the husband and the wife by two arbiters, one chosen by the wife from her family and the other



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by the husband from his. If their attempts fail, 'talaq' may be effected. The Division Bench expressly recorded its dissent from the Calcutta and Bombay view which, in their opinion, did not lay down the correct law."

13. But whatever it is, whether the defendant has issued three Talaq notices as claimed by him, whether the plaintiff has received the third Talaq notice and whether the Talaq notices issued by the defendant are legally valid are the aspects that cannot be gone into, at the present stage and are matters for trial. Since the very issuance of the third Talaq notice and the receipt of the same was disputed by the plaintiff, the plea of limitation which is connected with the issuance of the third Talaq notice cannot also be gone into now and being a mixed question of fact and law, is also a matter for trial.

14. As already pointed out by the learned Counsel for the respondent, the revision petitioner has not even chosen to raise any grounds for rejecting the plaint nor any other strong grounds to strike off the plaint from the file. The revision petitioner has nowhere whispered that the plaintiff has abused the process of law / Court by filing the present suit. The revision, since the defendant has sought for striking of



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the plaint, without raising any ground or reason whatsoever, is legally not maintainable.

15. The revision petitioner, even without entering into appearance before the trial Court, has approached this Court by invoking Article 227 of the Constitution of India and as already pointed out, without any grounds whatsoever. On considering the entire facts and circumstances, this Court is constrained to say that the very filing of the present revision to struck off the plaint, is a clear abuse of process of law. Hence, this Court concludes that the Civil Revision Petition is liable to be dismissed with costs.

16. In the result, the Civil Revision Petition is dismissed with costs of Rs.10,000/-(Rupees Ten Thousand only) payable by the revision petitioner / defendant to the Legal Services Authority, attached to this Bench, within a period of 15 days from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is also dismissed.



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17. Post the matter after four weeks for reporting compliance.

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08.03.2024

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
SSL

To

1. The Family Court, Madurai.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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