

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.392 of 2017

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Shams Tabrej, son of Atikur Rahman @ Javed, resident of Village- Belwa,
P.S.-Sathi, District-West Champaran, presently residing at & P.S. Sathi
District West Champaran.

... .. Appellant/s

Versus

Isarat Jahan, daughter of Sk. Mokhtar, resident of Village and P.O. - Bastha,
P.S.- Maintand, District- West Champaran.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Mahta Alam, Advocate
For the Respondent/s	:	Mr. Bashishtha Narayan Mishra, Advocate
		Mr. Avinash Raj, Advocate
		Mr. Braj Kishor Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
And
HONOURABLE MR. JUSTICE S. B. PD. SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 05 -05-2025

Heard the parties.

2. The present appeal has been filed under Section 19(1) of the Family Court Act, 1984 impugning the judgment and decree dated 28.02.2017 passed by learned Principal Judge, Family Court, West Champaran at Bettiah in Title Suit No. 198 of 2007 filed under Section 308 of the Muslim Law and under Sections 7(1)(A) of the Family Court's Act for declaration of divorce since 08.10.2007 on the basis of pronouncement made by the appellant to the



respondent, which was dismissed by the Family Court.

3. The case of the appellant as per petition filed before the Family Court is that the appellant-Shams Tabrej has filed a petition under Section 308 of the Muslim Law and 7(1)(A) of Family Court's Act against the respondent-Isarat Jahan on 29.10.2007 stating therein that both the parties were married on 12.1.2000 and they started leading peaceful conjugal life and two sons were born out of their wedlock. After some time, the respondent changed herself as a quarrelsome lady and always used to stay at her parental house. The appellant is a poor person working as a Salesman at a shoe shop and that was the reason, the respondent used to stay at her parents' house who were economically well. The appellant tried his best to pacify the matter, but all his efforts went in vein. Ultimately, the appellant filed a case before *Darul Qaza*, Bettiah for *Bidagari* of the respondent and *Darul Qaza* ordered the respondent to stay at her matrimonial house but after 15 days of stay at her *Sasural*, the respondent was taken back to her parental house by her brothers and since then, she is living at her parental house. The appellant had also filed Matrimonial Case No. 03 of



2007 under Section 281 of the Muslim Law but in spite of the direction of the Court below, the respondent went with her brothers to her parent's house and disobeyed the Court's order. There are several criminal cases pending between the parties. Hence, in the light of compelling circumstances, the appellant decided to take divorce from the respondent and pronounced three times "*Talaq*" on 08.10.2007 in presence of some witnesses, which was irrevocable and final. Now the matrimonial relationship between the parties is not existing since 08.10.2007. The appellant has paid the entire amount of "*Dain Mehar*" and expenses of "*Iddat*" to the respondent. Hence, he prays to declare three times "*Talaq*" pronounced on 08.10.2007 as valid, legal and operative one.

4. In response to the summon/notice issued by the Court, respondent appeared and filed her reply/written statement.

5. In her written statement/reply, the respondent has stated that most of the facts and allegations stated in the aforesaid petition are false and baseless and the case is not maintainable in the eye of law or on the basis of facts. She is still legally married wife of the appellant and she was never



divorced. She is still ready to lead peaceful conjugal life with the appellant, but it is the appellant who does not want to continue matrimonial relationship with the respondent. In Complaint Case No. 2948-C of 2007, the father of appellant introduced respondent as wife of Shams Tabrej (appellant) on 6.11.2008. This supports the statement of the respondent that she is still legally married wife of the appellant.

6. On the basis of the rival contentions of both the parties, following issues were framed in this case by the learned Trial Court :-

1. Whether the suit as framed is maintainable?

2. Whether the plaintiff-appellant has cause of action to file this case?

3. Whether the plaintiff gave divorce to the defendant/respondent on 08.10.2007 in presence of witnesses?

4. Whether the plaintiff-appellant had filed a case in Islamic Court Darul Kaza, Bettiah which order was not complied by this couple?

5. Whether the plaintiff-appellant is entitled to relief as claimed for?

6. Whether the plaintiff-appellant is



entitled to any other relief or reliefs?

7. During course of trial, altogether four witnesses have been produced on behalf of the appellant which are P.W.-1 Nasim Akhter, P.W.-2 Shamim Akhter, P.W.-3 Md. Arif and P.W.-4 Shams Tabrej (appellant), who have stated that respondent is divorced wife of the appellant who were married on 12.01.2000. Two sons namely Abdullah and Waliullah were born out of the wedlock. After some times, the behaviour of the respondent had changed and she started quarreling with her in-laws family members including the appellant. She always used to go at her parental house and stayed there for long period without consent of the appellant. When the appellant tried to pacify the matter, she flatly refused to come back to her *Sasural*. The appellant is a simple Salesman in a shoe shop earning Rs. 1200/- per month. Due to interference of respondent's brothers, the situation became so tensed and bitter that appellant decided to pronounce "*Talaq*" for three times to the respondent and finally on 08.10.2007, he pronounced three times "*Talaq*" and from that date, no matrimonial relationship between the parties exists. He has already paid Rs. 2100/- as "*Dain*



Mehar” and expenses of *“Iddat”* to the respondent.

8. On behalf of the respondent, altogether four witnesses were examined which are O.P.W.-1 Noorshed Alam, O.P.W.-2 Gulab Noor. O.P.W.-3 Shahnaz Begum and O.P.W.-4 Isarat Jahan (respondent) who have stated that respondent is legally married wife of the appellant who married on 12.01.2000. After marriage, she started living peaceful conjugal life with the appellant but after some time, the appellant and other in-laws family members started torturing the respondent for non-fulfillment of dowry demand and ultimately, she was ousted from her matrimonial house and since then she is living at her *Maike* with her two sons. She is still ready to perform her duty as wife, but it is the appellant who is not interested to continue his matrimonial obligation with the respondent. The appellant never pronounced any *“Talaq”* as stated by him on 08.10.2007 and she is still legally married wife of the appellant. The appellant never paid any amount meant for *“Dain Mehar”* and expense of *“Iddat”*.

9. After conclusion of the trial, the learned Principal Judge, Family Court has held that appellant has not



established his claim of pronouncement of three “*Talaq*” on 08.10.2007 properly. Accordingly, the Trial Court came to the conclusion that the appellant was not entitled for any relief filed under Section 308 of the Muslim Law and Section 7(1)(A) of the Family Court’s Act and the suit was accordingly dismissed.

10. Thereafter, being aggrieved and dissatisfied with the aforesaid judgment and decree passed by the learned Family Court, the present appeal has been filed by the appellant.

11. Learned counsel appearing on behalf of the appellant has submitted that the judgment and decree passed by the learned Court below is bad and appears to be mechanically passed without application of judicious mind. The Family Court has failed to appreciate the fact that on 08.10.2007 divorce was pronounced by the appellant in presence of the witnesses namely P.W.s 1, 2 and 3. The appellant has filed a case before *Darul Qaza (Shariat Court)*, Bettiah for *Bidai* of the respondent and respondent was directed to stay at her *Sasural* with her husband but after 15 days, she returned to her parent’s house. The



appellant has also filed Matrimonial Case No. 03 of 2007 under Section 281 of the Muslim Law but in spite of the direction of the Court, the respondent choose not to stay at her *Sasural*. All those facts were not considered by the learned Court below and straight away, the suit of the appellant was dismissed.

12. *Per contra*, learned counsel appearing on behalf of the respondent has submitted that the impugned judgment and decree is just legal and in accordance with law. The learned Trial Court has rightly appreciated the evidence adduced on behalf of both the parties in the right perspective and has correctly dismissed the suit filed on behalf of the appellant.

13. In view of the rival contentions, evidences and the arguments adduced on behalf of both the parties, the main points for determination in this appeal are as follows:-

(i) Whether the appellant is entitled to the relief sought for in his petition/appeal.

(ii) Whether the impugned judgment of Principal Judge, Family Court, is just, proper and sustainable/tenable in the eyes of law.

14. Before going into the merits of the case, this Court



has to examine whether the three “*Talaq*” pronounced by the appellant was properly given as per Mohammadan Law or not. The appellant claims that he had pronounced three “*Talaq*” on 08.10.2007 in presence of witnesses namely Nasim Akhtar (P.W. 1) Shamim Akhtar (P.W. 2) and Md. Arif (P.W. 3) but Nasim Akhtar (P.W. 1) had not clarified in his examination-in-chief that in his presence, so called three “*Talaq*” was pronounced. In para 12 of the plaint the appellant has stated that earlier he pronounced “*Talaq*” to the respondent and the expense of “*Iddat*” and amount of “*Dain Mehar*” was paid just after that, but after some period he re-married with the respondent but the date of that re-marriage has not been clarified by the appellant.

15. The Principles of Mohomedan Law clearly defines the remarriage of divorced couple. Section 336(5) of the Principles of Mohomedan Law reads as under:-

*“(5) Remarriage of divorced couple.-
(i) Where the husband has repudiated his wife by three pronouncements [311(2) and 311(3)(i)], it is not lawful for him to marry her again until she has married another man, and the latter has divorced or died*



after actual consummation of the marriage. The presumption of marriage arising from an acknowledgment of legitimacy (267) does not apply to a remarriage between divorced persons unless it is established that the bar to remarriage created by the divorce was removed by proving an intermediate marriage and a subsequent divorce after actual consummation. Even if a remarriage between the divorced persons is proved, the marriage is not valid unless it is established that the bar to remarriage was removed, the mere fact that the parties have remarried does not raise any presumption as to the fulfillment of the above conditions. A marriage without fulfillment of the above conditions is irregular, not void.

(ii) In all other cases, the divorced parties may remarry as if there had been no divorce either during the iddat or after its completion.

16. This procedure was not adopted by the appellant which suggests that a concocted story of three times “*Talaq*” and re-marriage was implanted in this case by the appellant. It is the admitted case of the appellant that both parties



married on 12.01.2000 and out of the wedlock, two sons were born. Thereafter, due to quarrel between husband and wife, at the spur of moment, the appellant pronounced three times "*Talaq*" on 08.10.2007 which is not allowed as per Mohammadan Law as some intermediate periods in between first, second and third "*Talaq*" have been set up in pronouncing three times "*Talaq*". Moreover, at the time of marriage dated 12.01.2000, the amount of "*Dain Mehar*" was Rs. 51,000/- but the appellant claims that he had paid Rs. 2100/- as "*Dain Mehar*" after "*Talaq*" which also makes the story of the appellant doubtful. Hence, the so called earlier pronouncement of three times "*Talaq*" has not been proved by the plaintiff through any cogent and reliable evidence and it seems that the whole story is hypothetical and so called previous pronouncement of "*Talaq*" has not been taken place properly as per law prevalent/in force at that time.

17. Considering the facts aforesaid, it is clear that the respondent has not established his claim of pronouncement of three times "*Talaq*" on 08.10.2007 properly.

18. Hence, we find no merit in the present appeal



warranting any interference in the impugned judgment. The Family Court has rightly dismissed the Title Suit No. 198 of 2007 filed on behalf of the appellant.

19. The present appeal is dismissed accordingly, affirming the impugned judgment.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

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