

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FAMILY COURT APPEAL NO. 41 OF 2015

Iqbal Ahmed s/o Jamil Ahmed,
Aged 43 years, Occu: Primary Teacher,
R/o Mominpura, Near Gafuran Masjid,
Tah. Balapur, Dist. Akola.

..... **APPELLANT**

..V E R S U S..

Shahana Anjum W/o Iqbal Ahmed,
Aged 33 years, Occu: Home-maker,
R/o C/o Azizul Haq, Miyanjan Aksa
Apartment, Near Kalal Chawl, Akola, Dist. Akola.

... **RESPONDENT**

Shri U.J. Deshpande, advocate for the appellant.
Shri C.A. Joshi, advocate for the respondent.

CORAM: Z.A. HAQ AND S.M. MODAK, JJ.
DATED : 13/01/2020.

ORAL JUDGMENT : (Per Z.A. Haq,J.)

Heard.

2. The respondent (wife) had filed petition before the Family Court praying for decree for declaration that the notice issued by the present appellant (husband) on 23.10.2012, declaring that the appellant (husband) had given Talaq to the respondent (wife), be

declared null and void and not binding on her. The claim of the respondent (wife) is decreed by the impugned judgment. The Family Court has declared that the notice issued by the appellant (husband) on 23.10.2012, declaring that the appellant (husband) had given Talaq to the respondent (wife), is null and void.

The Family Court has relied on the judgment given by the Hon'ble Supreme Court in the case of *Shamim Ara V/s State of U.P. and another* reported in 2003 ALL MR (Cri) 344 (S.C.) to uphold the claim of the respondent (wife). The Family Court has recorded that the Talaq as given by the appellant (husband) cannot be considered as legal and valid, as it is not preceded by attempt of reconciliation between the appellant and respondent.

3. With the assistance of learned Advocates for the respective parties, we have examined the documents placed on record and have gone through the evidence of the appellant (husband), respondent (wife) and respondent's witness (father of wife).

4. After considering the submissions, we find that the following point arises for consideration :-

i] Whether the act of the appellant (husband) of giving Talaq to the respondent (wife) by notice dated 23.10.2012 can be said to be legal and valid ?

5. We find that the learned trial Judge has referred to the judgment given by the Hon'ble Supreme Court in the case of *Shamim Ara (supra)*, overlooking the facts and evidence in the present case. Admittedly, the appellant (husband) had issued notices dated 25.06.2012, 16.07.2012, 03.09.2012 and 01.10.2012 calling upon the respondent (wife) to resume cohabitation. The contents of the notices show that the husband had been repeatedly making attempts to bring the respondent (wife) back from her parental house.

According to the respondent (wife), the contents of the notices are not correct and the appellant (husband) had not made any such attempts. Though such submission is made on behalf of the respondent (wife), in the cross-examination, father of the respondent (wife) has admitted that a meeting was arranged on 26.08.2012 at the house of Abdul Hafij Abdul Rauf at Balapur to find out a solution, and father of the respondent (wife) could not attend the meeting, as the child of respondent was not well. The father of the respondent (wife) has further admitted that the appellant (husband) had made three attempts

for the settlement.

This witness has volunteered that they were also ready for settlement. This evidence shows that repeated attempts were made for reconciliation. After examining the matter in the light of this evidence, it can be said that the act of the appellant (husband) is in consonance with the basic tenets of Muslim Law. The judgment given by the Hon'ble Supreme Court in the case of *Shamim Ara* (supra) does not assist the respondent (wife).

6. The issuance of notice dated 23.10.2012 by the appellant (husband) is not in dispute. The notice dated 23.10.2012 (Talaqnama) is executed in presence of two witnesses as required under the Muslim Law. The intention of the appellant (husband) to give Talaq to the respondent (wife) is clear and there is no ambiguity in the stand of the appellant (husband) that he has given Talaq to the respondent (wife) on 22.10.2012. Though the Talaq is oral, it is communicated by the notice dated 23.10.2012.

We find that the Talaq is effected by the appellant (husband) in consonance with the requirements of Muslim Law and the learned trial Judge has failed to consider the evidence in the right perspective. Hence, the impugned judgment cannot sustain the scrutiny of law.

Therefore, the following order:-

- i] The impugned judgment and decree is set aside.
- ii] The B-Petition no. 01/2013 filed by the respondent (wife) is dismissed.

The appeal is **allowed** in the above terms.

In the circumstances, the parties to bear their own costs.

JUDGE

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