$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 07.11.2024

\+ MAT.APP.(F.C.) 37/2023

.....Appellant

Through: Mr.Aman Usman, Adv. alongwith the appellant in person.

versus

.....Respondent

Through: Mr.Chinmaya Sejwal, Adv. alongwith the respondent in person.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

1. The present appeal under Section 19 of the Family Courts Act, 1984 (the Act) seeks to assail the judgment dated 19.11.2022 passed by the learned Family Court in M.L. No. 11 of 2022. Vide the impugned judgment, the learned Family Court has dismissed the joint petition filed by the appellant and the respondent seeking a decree of dissolution of their marriage in terms of the declaration made by the parties on 24.01.2020 by way of the joint affidavit filed by them as also their prayer for a decree of declaration to the effect that the agreement/declaration dated 24.01.2020 was binding on the parties.

Signature Not Verified
Digitally Signed
By:GARIMA MADAN
Signing Date:11.11.2024
17:05:05

2. As per the brief factual matrix emerging from the record, the marriage between the appellant and the respondent was solemnized on 10.07.1997 at Jamia Nagar, New Delhi as per Muslim Rites and Ceremonies. A *Nikahnama* (marriage contract) was, accordingly, issued by the Al-Qazi, Betul Qazi, with the *meher* (dowry) amount fixed at ₹51,000/-. After the marriage, the parties cohabited at A-1, Press Enclave, Saket, New Delhi and were blessed with two daughters, who are now both major and are residing with the appellant wife.

3. That subsequently, on account of some temperamental differences between the parties, the parties parted ways and started living separately since April, 2016. After efforts for mediation failed, the respondent husband, with the consent of the appellant, pronounced *Talaq* on 24.01.2020, on which date, the parties issued a joint declaration by way of an affidavit. It is the case of both parties that even though their marriage stood dissolved as per the Islamic Law after the pronouncement of *Talaq* by the respondent on 24.01.2020, since there was no public record of this dissolution, they filed a joint petition under para (b) and (d) of explanation to Section 7 of the Act.

4. This petition has been rejected by the learned Family Court, by holding that the petition as filed was not maintainable in its present form. Being aggrieved, the appellant has approached this Court. Upon notice being issued in the appeal on 07.02.2023, the respondent has entered appearance and joins the appellant in praying that the impugned judgment be

Signature Not Verified
Digitally Signed
By:GARIMA MADAN
Signing Date:11.11.2024
17:05:05

set aside and it be declared that the marriage between the parties stood dissolved on 24.01.2020.

5. Learned counsel for the appellant submits that while dismissing the petition, the learned Family Court has failed to appreciate that under the Muslim Personal Law currently applicable in India, besides the provision for dissolution of marriage by the Court under Section 2 of the Dissolution of Muslim Marriages Act, 1939, commonly known as the 'judicial divorce', the concept of extra-judicial divorce under the Muslim Personal Law is also recognised under Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937. He submits that the appellant's marriage with the respondent was dissolved as per *Mubaraat,* which is one of the modes of divorce recognised under the Muslim Personal Law (Shariat) Application Act, 1937 and consequently, the parties had upon dissolution of their marriage through *Mubaraat* executed a *Muabaraat* agreement dated 24.01.2020.

6. He further submits that since except for the *Mubaraat* agreement dated 24.01.2020, the parties do not possess any document issued by any public authority or any Court, they were compelled to approach the Court under Section 7 of the Family Courts Act to seek an official declaration of their marriage having been dissolved. He contends that once the factum of dissolution of marriage of the parties by consent through by *Mubaraat* stood proved by execution of the *Mubaraat* agreement on 24.01.2020, no further enquiry was required to be made by the learned Family Court and, consequently, a declaration to the effect of the marriage having been

Signature Not Verified
Digitally Signed
By:GARIMA MADAN
Signing Date:11.11.2024
17:05:05

dissolved, ought to have been granted under Section 7(b) of the Family Courts Act.

7. By placing reliance on the decision of the Apex Court in ***Shayara Bano v. Union of India & Ors.*** **2017 (9) SCC 1**, he contends that the Apex Court, after considering the concept of divorce under the Muslim Personal Law and the dissolution of marriage under the Muslim Personal Law (Shariat) Application Act, 1937 as also the Dissolution of Muslim Marriages Act, 1939, has categorically held that *Mubaraat* is a form of divorce by consent of both parties and is duly recognised under the Muslim Personal Law.

8. In support of his plea, he also seeks to place reliance on the decisions of the Kerala High Court in ***ASBI.K.N v. HASHIM.M.U,*** **2021 SCC OnLine Ker 3945** and of the Karnataka High Court in ***Shabnam Parveen Ahmad v. Mohammed Saliya Shaikh***, **2024 SCC OnLine Kar 39**. He, therefore, prays that the impugned judgment and order be set aside and a declaration be issued that the marriage between the parties stood dissolved on 24.01.2020. Further, he prays that appropriate guidelines to be followed by the Family Courts while dealing with such petitions filed under Section 7 of the Family Courts Act be issued so that declaration of dissolution of marriage in case, of extra judicial divorce under the Muslim Personal Law is expeditiously issued by the Family Court itself.

9. As noted hereinabove, the respondents who had filed a joint petition before the learned Family Court is supporting the appellant. Consequently,

Signature Not Verified
Digitally Signed
By:GARIMA MADAN
Signing Date:11.11.2024
17:05:05

learned counsel for the respondent has also prayed that it be declared that the marriage between the parties stands dissolved on 24.01.2020.

10. Having considered the submissions of learned counsel for the parties and perused the record, we may begin by noting clauses 'b' & 'd' of explanation of Section 7(1) of the Family Courts Act under which the petition seeking declaration regarding dissolution of their marriage was filed by the parties. The same read as under:-

> *"Section 7(1) in The Family Courts Act, 1984*
>
> * * * *
>
> *Explanation.-*
>
> *The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-*
>
> ***(b)a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;***
>
> * * * *
>
> ***(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;"***

11. From a bare perusal of the aforesaid clause 'b', it is evident that the learned Family Court is competent to entertain a suit seeking declaration regarding the validity of a marriage as also regarding the matrimonial status of any person. This would necessarily imply that the learned Family Court is empowered to declare not only as to whether the parties are lawfully married but also as to whether their marriage stands dissolved by any process

Signature Not Verified
Digitally Signed
By:GARIMA MADAN
Signing Date:11.11.2024
17:05:05

envisaged under the law. This declaration would, therefore, include a declaration regarding dissolution of marriage between the parties by way of an extra-judicial divorce by any of the methods prescribed under the Muslim Personal Law.

12. In the present case, we find that both parties had filed a joint petition before the leaned Family Court seeking a declaration that their marriage stood dissolved through *Mubaraat* on 24.01.2020 as per the Muslim Personal Law (Shariat) Application Act, 1937. In support of their plea, the parties have relied on the *Mubaraat* agreement dated 24.01.2020 wherein it had been specifically recorded that the marriage between the parties stood dissolved by the mode of *Mubaraat* which is one of the accepted modes of divorce under the Muslim Personal Law. The fact that *Mubaraat,* wherein the marriage is dissolved with the consent of the parties is a recognised mode of dissolution of marriage under the Muslim Personal Law (Shariat) Application Act, 1937, was duly noted by the Apex Court in paragraph nos.3 & 4 of its majority decision in ***Shayara Bano (supra).*** The said paragraphs read as under:-

> *"3. The Muslim Personal Law (Shariat) Application Act, 1937 (hereinafter referred to as "the 1937 Act") was enacted to put an end to the unholy, oppressive and discriminatory customs and usages in the Muslim community. ["Statement of Objects and ReasonsFor several years past it has been the cherished desire of the Muslims of British India that customary law should in no case take the place of Muslim Personal Law. The matter has been repeatedly agitated in the press as well as on the platform. The Jamiat-ul-Ulema-i-Hind, the greatest Moslem religious body has supported the demand and invited the*

Signature Not Verified
Digitally Signed
By:GARIMA MADAN
Signing Date:11.11.2024
17:05:05

attention of all concerned to the urgent necessity of introducing a measure to this effect. Customary law is a misnomer inasmuch as it has not any sound basis to stand upon and is very much liable to frequent changes and cannot be expected to attain at any time in the future that certainty and definiteness which must be the characteristic of all laws. The status of Muslim women under the so-called customary law is simply disgraceful. All the Muslim Women Organisations have therefore condemned the customary law as it adversely affects their rights. They demand that the Muslim Personal Law (Shariat) should be made applicable to them. The introduction of Muslim Personal Law will automatically raise them to the position to which they are naturally entitled. In addition to this present measure, if enacted, would have very salutary effect on society because it would ensure certainty and definiteness in the mutual rights and obligations of the public. Muslim Personal Law (Shariat) exists in the form of a veritable code and is too well known to admit of any doubt or to entail any great labour in the shape of research, which is the chief feature of customary law."(emphasis supplied)] Section 2 is most relevant in the face of the present controversy:

> *"2. Application of Personal Law to Muslims.— Notwithstanding any customs or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be Muslim Personal Law (Shariat)."*

Signature Not Verified
Digitally Signed
By:GARIMA MADAN
Signing Date:11.11.2024
17:05:05

> *4. After the 1937 Act, in respect of the enumerated subjects under Section 2 regarding "marriage, dissolution of marriage, including talaq", the law that is applicable to Muslims shall be only their Personal Law, namely, Shariat. Nothing more, nothing less. It is not a legislation regulating talaq. In contradistinction, the Dissolution of Muslim Marriages Act, 1939 provides for the grounds for dissolution of marriage. So is the case with the Hindu Marriage Act, 1955. The 1937 Act simply makes Shariat applicable as the rule of decision in the matters enumerated in Section 2. Therefore, while talaq is governed by Shariat, the specific grounds and procedure for talaq have not been codified in the 1937 Act."*

13. In the light of the aforesaid, what emerges is that the parties are correct in urging that the dissolution of marriage by way of *Mubaraat* under the Muslim Personal Law is duly recognised as one of the modes of extra-judicial divorce. It is also evident that after the marriage between the parties is dissolved by way of *Mubaraat*, it is open for them to enter into an agreement referred to as the '*Mubaraat* Agreement' to record the factum of dissolution of their marriage through the mode of *Mubaraat*. However, this agreement is only a private agreement between the parties and therefore, in case, the parties desire the factum of the dissolution of their marriage to be recorded in a public document, it is always open to them to seek a declaration regarding the status of their marriage under Section 7(b) of the Family Courts Act.

14. The learned Family Court has, therefore in our view, erred in holding that no such declaration could be granted to the parties despite both parties having categorically stated that their marriage stood dissolved by mutual consent through *Mubaraat* which factum was also recorded in the *Mubaraat*

Signature Not Verified
Digitally Signed
By:GARIMA MADAN
Signing Date:11.11.2024
17:05:05

agreement executed on the said date i.e. 24.01.2020. In our opinion, once the parties approached the learned Family Court by way of a joint petition and the execution of the *Mubaraat* agreement was duly proved before the said learned Family Court, the prayer of the parties for declaring that their marriage stood dissolved through *Mubaraat* ought to have been accepted by granting a declaration that the marriage of the parties stood dissolved.

15. At this stage, we may note that both the parties are present in Court and are duly identified by their respective counsel. The identity proofs of both the parties are also taken on record. They jointly submit that the *Mubaraat* Agreement dated 24.01.2020 was entered into by them without any coercion and after their marriage was dissolved by the mode of *Mubaraat* as per Muslim Personal Law.

16. We have also considered the decisions of the Kerala High Court in ***ASBI.K.N.*** **(supra)** as also of the Karnataka High Court in ***Shabnam Parveen Ahmad (supra)*** and find that a similar course of action was adopted by the aforesaid two High Courts as well. It would, therefore, be apposite to refer to paragraph no.9 of ***Shabnam Parveen Ahmad (supra)*** wherein the Karnataka High Court held as under:-

> *"9. Having considered the contentions advanced and in view of the decisions which are relied on by the learned counsel appearing for the appellants we are of the opinion that the finding of the Family Court that the Family Court is not empowered to consider the application for Divorce by mutual consent when the parties are Muslims cannot said to be the correct proposition. In view of the fact that the parties have entered into Mubarat agreement and have decided to dissolve the marriage entered into between them*

Signature Not Verified
Digitally Signed
By:GARIMA MADAN
Signing Date:11.11.2024
17:05:05

by the said agreement, we are of the opinion that the prayer sought for by the parties i.e., for a declaration as to the dissolution of marriage ought to have been granted by the Family Court."

17. We may also refer to the following extracts from paragraph no.5 of the decision in ***ASBI.K.N.* (supra)**, which reads as under:-

"5. The unilateral extrajudicial divorce under Muslim Personal law is complete when either of the spouse pronounce/declare talaq, talaq-e-tafweez or khula, as the case may be, in accordance with Muslim Personal Law. So also extrajudicial divorce by mubaarat mode is complete as and when both spouses enter into mutual agreement. The seal of the Court is not necessary to the validity of any of these modes of extra judicial divorce. The endorsement of extrajudicial divorce and consequential declaration of the status of the parties by the Family Court invoking S.7(d) of the Act is contemplated only to have a public record of the extrajudicial divorce. Hence, detailed enquiry is neither essential nor desirable in a proceeding initiated by either of the parties to endorse an extrajudicial divorce and to declare the marital status. The Family Court has to simply ascertain whether a valid pronouncement/declaration of talaq or khula was made and it was preceded by effective attempt of conciliation. In the case of khula, it has to be further ascertained whether there was an offer by the wife to return the "dower". It could be ascertained by perusal of the recitals in talaq nama/khula nama or its communication (if it is in writing) or by recording the statement of the parties. No further enquiry as in the case of an adversarial litigation like chief examination and cross-examination of the parties are not at all contemplated in such a proceedings. If the Court is prima facie satisfied that there was valid pronouncement of talaq/khula/talaq-e-tafweez, it shall endorse the same and declare the status of the parties. In the case of mubaarat, if the Court is prima facie satisfied

Signature Not Verified
Digitally Signed
By:GARIMA MADAN
Signing Date:11.11.2024
17:05:05

that mubaarat agreement has been executed and signed by both parties, it shall endorse the same and declare the status of the parties. The Court shall pass formal order declaring the marital status without any delay. If any of the parties want to challenge the extrajudicial divorce by talaq, khula, mubaarat or talaq-etafweez mode, he/she is free to challenge the same in accordance with law in appropriate forum. The declaration granted by the Family Court u/s 7(d) endorsing the extrajudicial divorce shall be subject to the final outcome of such proceedings, if any. We consider it desirable to formulate the following guidelines to be followed by the Family Court in a petition filed u/s 7(d) of the Act to endorse an extrajudicial divorce under Muslim Personal Law and to declare the marital status of the parties to the marriage.

(i) On receipt of the petition, the Family Court shall issue notice to the respondent.
(ii) After service of summons or appearance of the respondent, as the case may be, the Family Court shall formally record the statement of both parties. The parties shall also be directed to produce talaq nama/khula nama (if pronouncement/declaration is in writing)/mubaarat agreement.

(iii) The Family Court shall thereafter on perusal of the recitals in talaq nama/khula nama/ communication of talaq, khula or talaq-e-tafweez (if available) and the statement of the parties, ascertain whether there was valid pronouncement of talaq/khula/talaq-e-tafweez. In the case of mubaarat, the Family Court shall ascertain whether the parties have executed and signed mubaarat agreement.

(iv) On prima facie satisfaction that there was valid pronouncement of talaq, khula, talaq-e-tafweez, as the case may be, or valid execution of mubaarat agreement, the Family Court shall proceed to pass order endorsing the extrajudicial divorce and declaring the status of the parties without any further enquiry.

Signature Not Verified
Digitally Signed
By:GARIMA MADAN
Signing Date:11.11.2024
17:05:05

(v) The enquiry to be conducted by the Family Court shall be summary in nature treating it as an uncontested matter.

(vi) The Family Court shall dispose of the petition within one month of the appearance of the respondent. The period can be extended for valid reasons.

(vii) If any of the parties is unable to appear at the Court personally, the Family Court shall conduct enquiry using video conferencing facility."

18. For the aforesaid reasons, we allow the appeal by setting aside the impugned judgment and declaring that the marriage between the parties stood dissolved by *Mubaraat* on 24.01.2020. However, as it has been pointed out by learned counsel for the appellant that similar petitions are being routinely rejected by the learned Family Court, therefore, we deem it appropriate to issue the following directions for guidance of the Family Court while dealing with any petition filed under Section 7 of the Family Courts Act for seeking declaration of dissolution of marriage through extra-judicial divorce under the Muslim Personal Law.

i. The Family Court, after issuing notice to the respondent, will record the statements of both parties.

ii. In case, the terms of the divorce are recorded in an agreement i.e., *Talaq Nama*, *Khula Nama* or *Mubaraat* agreement, the said original agreement will be produced before the Court. After satisfaction of the execution of the said agreement, the Court shall issue an order declaring that their marriage stands dissolved.

19. The appeal is, accordingly, disposed of in the aforesaid terms.

Signature Not Verified
Digitally Signed
By:GARIMA MADAN
Signing Date:11.11.2024
17:05:05

20. A copy of this order be forwarded to all the Family Court Judges in Delhi for information.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

NOVEMBER 7, 2024
kk/sy

Signature Not Verified
Digitally Signed
By:GARIMA MADAN
Signing Date:11.11.2024
17:05:05