

2019 (0) AIJEL-HC 241692

GUJARAT HIGH COURT

Hon'ble Judges: J.B.Pardiwala and V.B.Mayani JJ.

Faruq Ibrahimkhani Mulla Versus Karishmabanu Faruqkhani Mulla D/o Anwar Hussain Qureshi

FIRST APPEAL No. 1563 of 2016 ;
APPEAL FROM ORDER No. 350 of 2016 ; *J.Date :- DECEMBER 27, 2019

- DISSOLUTION OF MUSLIM MARRIAGES ACT, 1939 Section - 2

Equivalent Citation(s):

2019 JX(Guj) 1268 : 2019 AIJEL_HC 241692

JUDGMENT :-

J.B.PARDIWALA, J.

1 This First Appeal is at the instance of the original respondent [husband] of a family suit instituted by the respondent herein [original plaintiff] in the family Court at Ahmedabad and is directed against the judgment and decree passed by the Family Court No.3, Ahmedabad dated 14/06/2016 in the Family Suit No.840 of 2014.

2 It appears from the materials on record that the respondent herein was married to the appellant herein. The marriage between the parties was solemnized on 17th March 2007 in accordance with the Muslim rites and rituals. As the matrimonial problems cropped up, the wife thought fit to prefer an application in the Family Court at Ahmedabad seeking decree of divorce under section-2 of the Dissolution of Muslim Marriages Act, 1939 [for short The Act, 1939].

3 In the family suit referred to above, the Family Court framed the following issues:-

- (1) Whether the petitioner proves that after solemnization of the marriage, the respondent treated the petitioner with cruelty as alleged in the petition?
- (2) Whether the petitioner is entitled to get a decree of dissolution of marriage on the above ground?
- (3) What order and decree?

4 The issues framed by the Family Court referred to above came to be answered as under:-

(1) In the affirmative.

(2) In the affirmative.

(3) As per final order.

5 Ultimately, the wife succeeded in obtaining a decree of divorce on the ground of cruelty. The operative part of the order passed by the Family Court reads thus:-

:: ORDER ::

This petition is partly allowed. It is ordered that the marriage solemnized between the petitioner and the respondent to this petition is hereby dissolved on the ground of cruelty with effect from the date of the decree under Sub-Clause (a) of Clause (viii) of Section-2 of the Dissolution of Muslim Marriage Act, 1939.

The respondent shall pay Rs.10,000/- (Rupees Ten Thousand only) as costs of this petition to the petitioner and bear his own costs. The decree shall follow accordingly.

6 Being dissatisfied with the judgment and decree passed by the Family Court, the husband is here before this Court with the present appeal.

7 It also appears that the husband had instituted the proceedings before the Court below seeking a decree of restitution of conjugal rights. A decree for restitution of conjugal rights was passed by the Court, against which, the wife preferred an appeal and she succeeded in the appeal and the matter came to be remanded to the Court below. Against such order, the husband has preferred the Appeal from Order, which has also been notified today alongwith the First Appeal.

8 It appears that during the interregnum period i.e.during the pendency of this litigation before this Court, few developments have taken place. As the nature would have it, the husband is suffering from cancer as on date. He is a Doctor by profession. In the wedlock, a son was born. The son is in custody of his mother i.e. the respondent herein. The appellant is desirous of putting an end to all the litigations, at his instance. He has realized having regard to his ailment that no useful purpose is going to be served in pursuing this litigation. In such circumstances, he does not want to press this appeal as well as the Appeal from Order. However, it is his earnest wish and desire that the allegations of cruelty as believed and accepted by the Family Court may not be misused by the otherside. In short, he is bold enough to tell this Court that he does not want to live with such black dot in his life.

9 Mr. Buch, the learned counsel appearing for the appellant in such circumstances prays that this Court may make suitable observations, by which, the apprehension expressed rather the desire of the husband is taken care of. The respondent as on date is living her own life peacefully alongwith her son.

10 Mr. Syed, the learned senior counsel appearing with Mr. Ansari for the wife would submit that the wife has no inclination of initiating any other proceedings against the appellant. Mr. Syed would submit that the allegation of cruelty will not be used as a weapon in future for any other purpose.

11 In such circumstances referred to above and more particularly, when the husband wants to put to an end this litigation peacefully, we permit the appellant to withdraw this First Appeal alongwith the Appeal from Order. The First Appeal as well as the Appeal from Order are disposed of as not pressed with the above observations. We request the parties to live a peaceful life without creating any further bitterness or ill feelings for each other.