

Rukiya Syed & Anr vs Danish Mushtaq Itoo on 29 November, 2024

Author: Javed Iqbal Wani

Bench: Javed Iqbal Wani

S. No. 104

Suppl. list

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) 715/2024

Rukiya Syed & Anr.

...Petitioner(s)

Through: Petitioners present in person with
Ms. Saba Gulzar, Advocate.
Vs.

Danish Mushtaq Itoo

...Respondent(s)

Through: Respondent present in person with
Mr Adil Nabi, Advocate

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE
ORDER

29.11.2024

1. The instant petition has been diarized and registered by the Registry as a petition under Section 528 of BNSS pursuant to order dated 20.11.2024 upon receipt of the original case file pending before the Court of Chief Judicial Magistrate Anantnag filed by the petitioners herein against the respondent herein for grant of maintenance in terms of provisions of Section 144 of BNSS having been filed on the premise that the petitioner 1 and respondent herein entered into wedlock in the year 2020 in accordance with Muslim Personal Law and Sharia, in which wedlock, the petitioner 2 herein came to be born in the year 2021 and during the subsistence of the marriage between petitioner 1 and respondent herein, the respondent herein a Private Software Engineer deserted the petitioners and choose the company of one girl namely Arooba Bhat D/O Bashir Ahmad Bhat R/O Kralgund Brah Shangus, and also neglected the petitioners and failed to provide them any maintenance compelling them to reside in the parental home of the petitioner 1 and that the respondent herein being a Software Engineer by profession makes a handsome earning of more than one lakh per month.

2. Upon coming of this petition for consideration today, the appearing counsel for the petitioners

namely Ms. Saba Gulzar, would contend that an amicable settlement has been arrived at between the petitioner and respondent herein notwithstanding that the respondent herein has gone for a second marriage with the above named girl Arooba Bhat which settlement is stated to have been arrived at in presence of the parents and brother of the petitioner 1 herein as also the father of the respondent herein namely Mushtaq Hussain Itoo.

3. The appearing counsel for the respondent herein as also the respondent therein admits the submissions of settlement made by the counsel for the petitioners.

4. During the course of the hearing and consideration of the instant matter, the appearing counsel for the parties prayed for further consideration of the matter in the chambers, in the interests of justice and in order to preserve and protect the privacy of parties, as a consequence whereof, after the court time was over, the instant matter came to be taken up for consideration in the chambers.

5. According to the petitioner 1 herein and respondent herein they would continue their matrimonial relations notwithstanding the second marriage performed by respondent herein with the above named girl Arooba Bhat, and in furtherance thereof the petitioner 1 along with the child petitioner 2 herein will resume the matrimonial relations/company of the respondent herein in the first week of December 2024 at the matrimonial home situated at Hardutoor, Anantnag,

6. The respondent herein has agreed and undertaken to pay a monthly maintenance to the petitioners herein to the tune of Rs. 40,000/- and 15,000/- respectively w.e.f. October 2024 and Rs. 20,000/- per month as arrears for the month of July, August and September 2024 forthwith within weeks time from today.

7. Besides the payment of aforesaid maintenance, the respondent herein has further agreed and undertaken to provide or construct a single storeyed residential house over a kanal of land in the name of petitioner 1 herein in and around the residence of his parents at Hardutoor Anantnag within a period of eight months commencing from today from his own resources without any financial involvement of the petitioner 1 herein in lieu whereof, the petitioner 1 has agreed to revert the parcel of land measuring 02 kanals to the father of the respondent herein having been gifted to the petitioner 1 herein by the father of the respondent herein in the first week of October 2024.

It is admitted by the respondent herein that a parcel of land measuring 02 kanals belonging to his father namely Mushtaq Hussain Itoo covered under Survey No. 380 khewat No. 17/12 khata No. 3 situated at Mouza Hardutoor District Anantnag Kashmir has already been orally gifted by his father in favour of the petitioner 1 herein and is under the possession, occupation and enjoyment of the petitioner 1 herein and the said land however, has to be returned back by the petitioner 1 to the father of the respondent after the respondent herein would provide the aforesaid independent residential house over a kanal of land in the name of the petitioner 1 herein.

8. It is also agreed and undertaken by the respondent herein that the golden jewellery/ornaments provided at the time of marriage to the petitioner 1 herein by him shall continue to be the exclusive property of the petitioner 1 herein without any right or claim thereon the said golden jewellery by

the respondent herein.

9. The respondent herein also undertakes to refrain from causing any kind of domestic violence upon the petitioner 1, once the petitioner 1 joins the matrimonial relations with the respondent herein as agreed above and, if any domestic violence is committed by respondent herein against the petitioner 1 herein, same shall entail taking and filing of appropriate proceedings against the respondent herein by the petitioner 1 herein.

10. The petitioner 1 and respondent herein state at bar to have agreed to the aforesaid terms and conditions voluntarily without any force compulsion undue influence fraud or misrepresentation.

11. It is significant to mention here the instant amicable settlement inter se the parties herein have been arrived at in presence of the mother and brother of the petitioner 1 namely Mrs Shameema and Nawaz Ahmad respectively present and Mr. Mushtaq Hussain Itoo, the father of the respondent herein.

12. Having regard to the aforesaid position obtaining in the matter, the instant petition shall stand disposed of.

13. A copy of this order shall be forwarded to the Court of Chief Judicial Magistrate, Anantnag for information and placing on record of the shadow file of the instant petition pending in the said Court having been filed initially before the said Court by the petitioners herein under Section 144 of BNSS.

(JAVED IQBAL WANI) JUDGE SRINAGAR 28.11.2024 Hilal Ahmad