2000 Y L R 1905

[Shariat Court (AJ&K)]

Before Syed Hussain Mazhar Kaleem, J

Mst. YASMIN---Appellant

versus

GHULAM HUSSAIN ---Respondent

Shariat Appeal No. 48 of 1999, decided on 27th April, 2000.

Azad Jammu and Kashmir Family Courts Act, 1993

--S.7(2)-- Application for summoning witnesses and production of documentary evidence was dismissed by Family Court with observation that number of witnesses to be produced in support of plaint, their names and addresses and brief summary of facts to which they would depose, was required by law to be submitted alongwith the plaint and that law did not empower Family Court to allow parties to produce any evidence or introduce any other witness at any later stage---Validity---Plaint, no doubt was required to contain brief summary of the facts and names and addresses of the witnesses to be produced in support of plaint, but S.7(2) of West Pakistan Family Courts Act, 1964 did not place any embargo on the power of Family Court to allow parties to produce any evidence at any later stage---Proviso to S. 7(2), West Pakistan Family Courts Act, 1964 had given ample powers to the Court to summon any document or to call any witness at any stage on the application of either party, if in the opinion of the Court same was expedient in the interest of justice--Observation by Family Court while dismissing application for summoning witnesses and production of document was incorrect--Family Court, while

deciding the application had not applied its mind to the merits of the application, whereas it was the duty of the Court to decide same on merits---Order of Family Court was set aside.

Miss Balqees Rashid Minhas for Petitioner.

Hazoor Imam Kazmi for Non-Petitioner.

ORDER

This appeal is directed against the order of learned Judge Family Court, Muzaffarabad, dated 20-8-1999.

The brief facts forming the background of the present appeal are that the appellant filed a suit before the learned Judge in the Family Court, Muzaffarabad against the respondent on 27-8-1999. She moved an application before the said Court to summon Barkatullah S/o Hidayatullah, Abdur Rashid S/o Hamidullah, Muhammad Roshan S/o Barkatullah and Mir Muhammad as witnesses in the case. She further requested the Court that she may be allowed to produce documentary evidence.

This application was dismissed by the Trial Court through the impugned order, dated 20-8-1999, the legality and correctness of which has been challenged through this appeal.

I have heard the learned counsel for the parties and gone through the record of the case.

The Trial Court dismissed the application by observing that the number of the witnesses intended to be produced in support of the plaint, their names and addresses and brief summary of the facts to which they would depose, was required by law to be submitted alongwith the plaint and that the law does not empower the Family Court to allow the parties to produce any evidence or introduce any other witness at any later stage.

Subsection (2) of section 7 of the Family Court Act deals with the subject-matter of the application. This subsection is as under: ---

> "The plaint shall contain all facts relating to the dispute and shall contain a schedule giving the number of witness intended to be produced in support of the plaint, the names and addresses of the witnesses and brief summary of the case to which they would depose:
>
> Provided that the parties may, with the permission of the Court, call any witness at any later stage, if the Court considers such evidence expedient in the interest of justice."

There is no doubt that a pliant is required to contain a brief summary of the facts and the names and addresses of the witnesses to be produced in support of the plaint, but at the same time, this section does riot place any embargo on the powers of the Family Court to allow the parties to produce any evidence at any later stage. The proviso under the said subsection is clear on the point and it gives ample powers to the Court to summon any document or to call any witness at any stage, on the application of either party, if the same is, in the opinion of the Court, expedient in the interest of justice. Therefore, the observation made by the Trial Court in the case, while dismissing the application, is not correct and the same is set aside.

The Trial Court, while deciding the application, has not applied its mind to the merits of the application, whereas it was the duty of the Court to decide the asme on merits. In my view, it will not be proper for me to decide the application on merits, therefore, the case is remanded back to the Trial Court to decide the application filed by the petitioner on merits.

In the terms indicated above, the appeal is accepted.

H.B.T./16/Sh.C.(AJ&K)

Appeal accepted.