

2021 M L D 420

[Balochistan]

Before Naeem Akhtar Afghan and Rozi Khan Barrech, JJ

NASEER AHMED----Petitioner

Versus

SUMEYYA and another----Respondents

Constitutional Petition No.1447 of 2019, decided on 27th August, 2020.

(a) Family Courts Act (XXXV of 1964)---

---S.5, Sched.---Suit for dissolution of marriage---Amendment in pleadings---Scope---Petitioner assailed order passed by Trial Court whereby an application of the respondent seeking amendment in her suit in the title, body and likewise in the prayer clause by seeking dissolution of marriage on the basis of khula instead of dissolution on the basis of cruelty was allowed---Validity---Family Court, by allowing the amendment, had not exceeded its jurisdiction and the order was passed in the best interest of both the parties to avoid another round of litigation between themselves---Trial Court had not committed any illegality or irregularity warranting interference by the High Court in its constitutional jurisdiction---Constitutional petition was dismissed, in circumstances.

(b) Family Courts Act (XXXV of 1964)---

---S.5, Sched.---Suit for dissolution of marriage---Procedure---Scope---Family Court is competent to regulate its own proceedings for expeditious disposal of matrimonial disputes as the Family Courts Act, 1964, does not make provisions for every conceivable eventuality or unforeseen circumstances.

Akhtar Ali Said Beha v. Mst. Naheed Bibi PLD 2003 Pesh. 630 ref.

None present for Petitioner.

None present for Respondent.

Date of hearing: 20th August, 2020.

ORDER

ROZI KHAN BARRECH, J.---Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner calls in question the validity of the impugned order dated 26.11.2019 passed by the learned Family Judge-I,

Quetta, (hereinafter "the trial Court") whereby the application filed by the plaintiff/respondent for amendment in the prayer clause was accepted the same and the parties were directed to appear before the Court for reconciliation.

2. Brief facts of the case are that the respondent No.1/plaintiff filed a suit for dissolution of marriage on the basis of cruelty, recovery of dower amount and dowry articles and maintenance before the learned Family Judge-I, Quetta, with the following prayer:-

- "a) To dissolve the marriage tie on the basis of cruelty.
- b) To direct the defendant to pay the Haq Mehr amount of Rs.10,00,000/- outstanding against him.
- c) To direct the defendant to return all the dowry articles (as per annexed list) to the plaintiff lying at his house, or in alternate thereto pay its amount.
- d) To also direct the defendant to pay Rs.10,000/- per month as maintenance to the plaintiff since marriage tie till Iddat period.
- e) Any other relief which this Hon'ble Court deems fit and proper may also be awarded, in the interest of justice, equity and fair play".

3. The suit was resisted by the petitioner being a defendant on legal as well as factual grounds.

4. After filing the written statement the reconciliation proceedings were conducted by the learned trial Court and the same were failed and the learned trial Court directed the parties to produce their respective evidence.

5. During proceedings the plaintiff/respondent filed an application for amendment with the pray that the plaintiff/respondent intends to amend her suit in the title, body, and likewise in the prayer clause by seeking 'dissolution of marriage on the basis of Khula' instead of 'dissolution on the basis of cruelty' The application was contested by the petitioner/defendant on legal as well as factual grounds by means of filing a rejoinder.

6. After hearing the argument of both the learned counsel for the parties, the learned trial Court directed the plaintiff/respondent to amend the plaint to the extent of title and prayer clause of the suit and the parties were also directed to appear before the Court for reconciliation on 26.11.2019.

Being aggrieved from the order dated 26.11.2019 the petitioner/defendant filed the instant petition.

7. On 20.08.2020 despite service and repeated calls, counsel for the petitioner was not in attendance. Same was the position on 22.07.2020, 24.06.2020, 12.05.2020, 16.04.2020, 16.03.2020 and 25.02.2020.

Learned counsel for the petitioner has not appeared on the date after filing the instant

petition on 18.12.2019.

Consequent to the above, we are left with no other option but to decide the petition being at katcha peshi stage on the basis of available record.

8. A perusal of record reveals that the plaintiff/respondent filed a suit for dissolution of marriage on the basis of cruelty, recovery of dower amount and dowry articles and maintenance and during course of the proceedings she filed an application for amending her suit in the title, body, and likewise in the payer clause by seeking 'dissolution of marriage on the basis of Khula' instead of 'dissolution on the basis of cruelty'.

9. The Act was enforced for the purpose of conferring exclusive jurisdiction on Family Courts for expeditious settlement and disposal of the dispute relating to the marriage and other family affairs connected therewith and thus the Family Court has the exclusive jurisdiction to entertain, hear and adjudicate upon the matters specified in the schedule. Thus, it is clear that by allowing the amendment, called in question by the petitioner in this writ petition, the Family Court has not exceeded its jurisdiction and the order was passed in the best interest of both the parties to avoid another round of litigation between them. Even otherwise, in the absence of any prohibition in law the Family Court was justified to pass any order in the interest of justice and for the expeditious disposal of any, a dispute relating to marriage which was within its exclusive jurisdiction. Even otherwise, it is a settled proposition of law that Judge Family Court is competent to regulate its own proceedings for expeditious disposal of matrimonial disputes as the Act does not make provisions for every conceivable eventuality or unforeseen circumstances. Reliance is placed on a case reported as *Akhtar Ali Said Beha v. Mst. Naheed Bibi* (PLD 2003 Pesh 630).

10. The learned trial Court after allowing the application of the plaintiff/respondent also directed the parties to appear before the Court for reconciliation which was also called in question by the petitioner/defendant in this writ petition. The object of the Act is to make out efforts of compromise and speedily settle family disputes. Even after evidence under section 12 of the Act the Court before passing a judgment has to make one more effort of reconciliation as it was attempted at the pretrial stage. The emphasis on compromise both before the trial and even after the trial is concluded in a legal sense reflects on the sensitivity of the disputes between man and wife and its adverse effect on the society. The family disputes are not limited to the four walls of a home and between two persons. It disrupts the mental fabric of both the parties and therefore its fallout is always dangerous for those who are not even party to it directly. The worst hit by these issues is the children or the parents of the parties. Therefore the powers of Family Court in terms of sections 10(2) and (3) read with section 17 of the Act are not limited to a particular stage of proceedings for the settlement of any 'ascertained issue' between the parties. The mere use of the word 'pretrial' would not mean trial has not started. Interestingly enough in section 10 of the Act, the 'pretrial' stage is after the written statement is filed by the defendant. The Act is designed for speedy settlement of family disputes to save not only the parties from delay in disposal of their issues but also to control the damage to the society which generally is natural on the disintegration of families.

11. In the case in hand, at first plaintiff/respondent claimed dissolution of marriage on the basis of cruelty and during trial she filed an application and prayed that now the plaintiff/respondent "seeking dissolution of marriage on the basis of Khula" instead of "dissolution on the basis of cruelty" and the learned trial Court again called the parties for reconciliation. The ground taken by the petitioner/defendant in this petition is neither reasonable nor plausible, as such, while passing the impugned order the learned trial Court has not committed any illegality or irregularity warranting interference by this Court in its constitutional jurisdiction.

Resultantly, this petition being without any substance is dismissed in limine.

SA/230/Bal.

Petition dismissed.