



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF MARCH, 2024

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

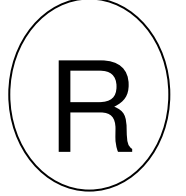
THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

MISCELLANEOUS FIRST APPEAL NO. 4711 OF 2022 (SMA)

BETWEEN:

1. SHABNAM PARVEEN AHMAD

2. MOHAMMED SALIYA SHAIKH



...APPELLANTS

(BY SMT. SUZANNE MARIA VAZ, ADVOCATE FOR
SHRI. AZHAR MEER, ADVOCATE)

AND:

1. NIL

...RESPONDENT

THIS MFA IS FILED U/S.39 OF SPECIAL MARRIAGE ACT,
PRAYING TO ALLOW THIS APPEAL AND SET ASIDE THE ORDER
DT.21.04.2022 PASSED IN O.S.NO.184/2021 ON THE FILE OF THE III
ADDITIONAL FAMILY JUDGE, FAMILY COURT, BENGALURU,



DISMISSING THE PETITION FILED U/S.13(1)(ia)(ib) OF HINDU MARRIAGE ACT, 1955.

THIS MFA, COMING ON FOR ORDERS, THIS DAY, **ANU SIVARAMAN J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is preferred against the judgment dated 21.04.2022 of the Principal Judge, Family Court, Bengaluru in O.S.No.184/2021.

2. The parties had approached the Court seeking a declaration of the marriage dated 07.04.2019 solemnized between the parties at Nand Garden, Karbala, Allahabad, Uttar Pradesh as per Mohammedan rites and customs is dissolved vide the Deed of Mubarat dated 03.04.2021.

3. The Family Court however had held that the dissolution of the marriage through Mubarat is one of the mode of dissolution of the marriage but the mutual consent petitions for the dissolution of the Mohamadan marriage is not contemplated under the provisions of the Dissolution of Muslim Marriages Act, 1937. Therefore, the suit was found to be not maintainable and the same was dismissed.



4. Smt. Suzanne Maria Vaz, learned counsel appearing for the appellants submits that the parties are Sunni Muslims and they have entered into Mubarat agreement with their free consent, knowing fully well the consequences thereof. It is submitted that under the provisions of the Dissolution of Muslim Marriages Act, 1937 and Muslim Personal Law (Shariat) Application Act, 1939 read with Section 7 of the Family Courts Act, 1984, the Mubarat Agreement entered into between the parties dissolving their marriage with their full consent and knowledge is liable to be accepted by the Family Court and the declaration thereof was liable to be granted by the Family Court. It is submitted that the finding of the Family Court that the mutual consent petitions are not contemplated and that the suit for declaration of the status of the parties on the basis of the Mubarat Agreement was not maintainable is totally erroneous.

5. The learned counsel appearing for the appellants placed reliance on the decision of the Apex Court in



Shayara Bano v. Union of India and others¹ in the decision of the Kerala High Court in ***Raseena Pareekunju v. Muhammed Asif***² as well as the decision of this Court in ***Asif Iqbal v. Smt. Rafiah @ Feenaz***³.

6. It is submitted by the learned counsel appearing for the appellants that Mubarat is a form of Divorce, which is specifically recognized by the Shariat Law and that there is absolutely no impediment to dissolution of a marriage by Mubarat between the parties. It is contended that the Muslim Personal Law specifically recognizes Mubarat Divorce and in case where both parties find it impossible to continue the marriage, which is in the nature of contract under Mohammedan law, there is absolutely no impediment to ending the marriage by Mubarat. It is submitted that the parties have entered into Mubarat agreement since they are perfectly willing to end the marriage between them. It is submitted that the decisions relied on are authority on

¹ (2017) 9 SCC 1

² AIR 2021 KERALA 124

³ MFA No.101928 of 2021 (decided on 15.03.2022)



the point that Mubarat is an accepted form of Divorce under Muslim Personal Law and there is no impediment in the Family Courts recognizing the same and declaring the status of the parties.

7. Section 7 of the Family Courts Act, 1984 provides that the Family Courts shall consider the suits and proceedings of the nature including a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be *null* and *void* or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage. The Family Court is empowered also to consider a suit or proceedings for a declaration as to the validity of a marriage or as to the matrimonial status of any person. In the instant case, what was before the Family Court was a suit seeking a declaration of the status of the parties on the basis of the Mubarat Agreement entered into between them.



8. The Apex Court in ***Shayara Bano***'s case (supra), has considered the concept of Divorce in Muslim Personal Law and its relationship to the Dissolution of Muslim Marriages under the enactments of 1937 and 1939. Referring extensively to the Surahs of the Quran and the authoritative text on personal law, the Apex Court held that Mubarat is a form of Divorce by consent of both the parties which is well recognized in Muslim Personal Law. The High Court of Kerala while considering the similar writ petition in ***"X" vs. "Y"*** in ***Mat. Appeal No.89/2020*** held that Mubarat is a form of Divorce by mutual consent which is recognized by Muslim Personal Law (Shariat) and when the marriage between two persons, who are governed by the Shariat Law is dissolved by Mubarat agreement, the Family Courts are duty bound to accept the agreement of the parties and to declare the dissolution of the marriage as agreed between the parties. The Division Bench of this Court in ***Asif Iqbal***'s case (supra), has also followed the said Judgment and has held that Mubarat literally means



obtained release from each other and is a form of Divorce, which is recognized by the Muslim Personal Law.

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 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.

10. The parties are present before us and we have also interacted with them. They have specifically stated that they had entered into Mubarat agreement with full



knowledge and consent and that they are not in any way willing to continue the marital relationship.

11. In view of the fact that the Mubarat agreement has been duly entered on 03.04.2021, we are of the opinion that the Family Court erred in dismissing the suit as not maintainable. Hence, we are of the opinion that the appeal has to be allowed.

12. Accordingly, the following:

ORDER

- (i) The appeal is ***allowed***.
- (ii) The marriage between the parties which shall dissolved by the Mubarat agreement is declared to be dissolved as well.

**Sd/-
JUDGE**

**Sd/-
JUDGE**