
(2008) 03 RAJ CK 0044
In the Rajasthan High Court

Seema Nasib

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-03-2008

Acts Referred:

Specific Relief Act, 1963 — Section 34

Citation : (2009) 120 FLR 404 : (2009) 5 RCR(Civil) 359 : (2008) 4 RLW 3477

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.B. Majmudar, J.—Since a common point of law is involved in this bunch of writ petitions, these writ petitions are being disposed of by this common order. The common point involved in these matters is as to whether a divorced Muslim lady, who has been given divorce by her husband, on the basis of "talaknama", is required to go to civil Court for declaratory decree for the purpose of making application for appointment.

2. The issue in question is squarely covered by the judgment of this Court in the case of Smt. Shahanaj Khan v. State of Raj. and Ors. S.B. Civil Writ Petition No. 176/2007 decided on 18.2.2008 : 2008(3) RLW 2390 wherein this Court has directed the respondents to consider the claim of the petitioner in the category of divorced woman on the basis of "Talaknama" produced on record. However, the respondents were given liberty to verify whether the "Talaknama" is genuine or not.

3. Learned Advocate-General, Mr. Agarwal, who is appearing on behalf of respondents submitted that on some additional points, which he is arguing in these writ petitions, the matter requires reconsideration and therefore, all these matters may be referred to the Larger Bench. Learned Advocate-General submitted that since in the advertisement, decree of divorce is called for from all the applicants which include the candidates of other communities such as Hindus

or Christians, as such this requirement is also insisted even upon Muslim divorced ladies in order to maintain uniform practice in this behalf. However, it is required to be noted that so far as Muslim divorced lady is concerned, there is no requirement in personal law that her husband should go to the Court and obtain a decree for divorce unlike in the case of Hindu divorced lady or Christian divorced lady. Since under the Muslim Personal Law, the husband is not required to go to the Court for obtaining divorce and can give divorce by way of Talak and if a Muslim lady is given Talak, naturally she cannot produce the decree of divorce in case she is subjected to Talak by her husband as per. Muslim Personal Law.

4. Learned Advocate-General further submitted that under the Dissolution of Muslim Marriage Act, 1939 (for short, "the Act of 1939"), a married Muslim woman can approach the Court for decree of divorce u/s 2. He, therefore; submitted that decree for divorce should be produced. However, it is required to be noted that under the Act of 1939, the Muslim married woman is required to go to the Court for obtaining decree of divorce on the specific grounds, but so far as Muslim Personal law is concerned, a husband can give Talaknama to his wife and he is not required to go to the Court for obtaining decree in this behalf. Section 2 of the Muslim Personal Law is reproduced as under:

Application of Personal Law to Muslims.- Notwithstanding any customs or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females; including personal property inherited or Obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat).

5. Section 2 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 provides as under:

2. Definitions.- In this act, unless the context otherwise requires.-

(a) "divorced woman" means a Muslim woman who was married according to Muslim law, and has been divorced by, or has obtained divorce from, her husband in accordance with Muslim law;

(b)....

(i)....

(ii)....

(iii)....

(c)....

6. Therefore, if a Muslim lady is subjected to divorce by her husband by giving her Talak as per the procedure prescribed in Shariyat, naturally she is not required to produce any decree of the Court at the time of making application for appointment and therefore, her case is required to be considered in the category of divorced woman. Considering the aforesaid aspect, I see no reason to accept the request of learned Advocate-General for reconsidering the decision given by this Court in the earlier case. The learned Advocate-General has also submitted that it is not his argument that in a given case, a husband and wife may produce such document only with a view to obtain an appointment even if there may not be genuine Talak. He submitted that such insistence to produce the decree of divorce is required only in order to maintain parity with the applicants of other communities to produce the decree of divorce. However, as discussed earlier, if in a particular Marriage Act of a particular community, there is a requirement of obtaining decree of divorce, then naturally the applicant is required to produce such decree alongwith her application, but that should not be applied even in the ease of the divorced ladies where there is no requirement of obtaining decree of divorce as per the law applicable to such candidates. Learned Advocate-General further submitted that u/s 34 of the Specific Relief Act, there is provision of obtaining declaration of status or right from the Court. In this connection, it is required to be noted that in a given case, if somebody disputes the status of a person, then naturally a person in such case may go to the Court u/s 34 and obtain declaratory decree; but here in the instant case, the status of a divorced lady is not under challenge by anyone, and therefore, such lady is not required to go to the Court for obtaining declaratory decree. In a given case, if the status of a person is doubted by someone, then certainly such person may go to the Court and obtain declaration u/s 34 of the Act. That is not the position in the present case as it is not even the argument of learned Advocate General that said Talaknama is not genuine or is obtained with a view of obtain appointment in service as his argument is restricted only in connection with the uniform treatment required to be given to all the applicants.

7. Considering the said aspect of the matter, I do not find any substance in the argument of learned Advocate-General that the. decision given in the earlier case is required to be reconsidered and that the matter is required to be referred to the Larger Bench.

8. If the State Government is of the opinion that by virtue of this decision as well as in view of the decision given in the earlier case referred above, a fresh advertisement is required to be given deleting such Clause from the advertisement regarding Muslim divorced lady, it is for the State to give such fresh advertisement if the State so deems fit.

9. In view of what is stated above, all these petitions are allowed and the directions given by this Court in S.B. Civil Writ Petition No. 176/2007 shall be made applicable to the present petitioners also and the applications given by each of the petitioners of these writ petitions are to be processed and to be dealt

with as per the directions given in the aforesaid Writ Petition No. 176/2007.