
Mohd. Nadim Vs Taliya Fatima @ Shama Parveen

Civil Miscellaneous Writ Petition No. 12408 of 2010

Court: Allahabad High Court

Date of Decision: July 6, 2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 125, 128#Family Courts Act, 1984 " Section 20, 7, 7(1), 7(2), 8#Muslim Women (Protection of Rights on Divorce) Act, 1986 " Section 3, 3(2), 4, 5#Uttar Pradesh Family Court Rules, 2006 " Rule 6#Waqf Act, 1954 " Section 9

Citation: AIR 2012 All 37 : (2011) 1 DMC 162

Hon'ble Judges: V.K. Shukla, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

V.K. Shukla, J.

Present writ petition in question has been filed questioning the validity of the decision dated 19.1.2010 wherein orders

have been passed on the objection moved on behalf of Petitioner that matter should be transferred to the Family Judge as Magistrate has no

competence or jurisdiction to try the same.

2. Brief background of the case as is reflected that Smt. Taliya Fatima @ Shama Parveen has filed case No. 2230 of 2008 under Sections 3/4 of

the Muslim Women (Protection of Rights on Divorce) Act, 1986. On presentation of the aforesaid case in question objection had been filed on

behalf of Petitioner contending therein that proceedings before Magistrate were not at all competent and maintainable and matter should be

transferred to Family Judge. Said application in question has been considered and rejected. At this juncture present writ petition has been filed.

Pleadings inter se parties have been exchanged and thereafter present writ petition has been taken up for final hearing and disposal with the consent

of the parties.

3. Mr. Vijay Prakash Pandey, Advocate appearing with Bimal Prasad, Advocate on behalf of Petitioner contended with vehemence that entire

proceedings so undertaken before concerned Court are altogether void and with jurisdiction by Magistrate and in term of provision as contained

under Sections 7, 8 and 20 of the Family Courts Act, 1984 it is only the Family Court which is entitled to adjudicate the matter as such usurpation

of the jurisdiction by Magistrate is unjustifiable, as such proceedings are liable to be transferred to the Family Judge.

Countering the said submission Mr. Ashish Kumar Dwivedi, Advocate on the other hand contended that proceedings under Muslim Women

(Protection of Rights on Divorce) Act, 1986 are not at all cognizable by Family Judge as they do not fall within the scope and ambit of Sections 7,

8 and 20 of the Family Courts Act, 1984, as such writ petition as it has been framed and drawn is liable to be dismissed.

4. In order to appreciate controversy which has been sought to be raised the provision of Sections 7, 8 and 20 of the Family Courts Act, 1984 are

being looked into:

Section 7. Jurisdiction--(1) Subject to the other provisions of this Act, a Family Court shall--

(a) have and exercise all the jurisdiction exercisable by any district Court or any subordinate civil Court under any law for the time being in force in

respect of suits and proceedings of the nature referred to in the explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a District Court or, as the case may be, such subordinate civil

Court for the area to which the jurisdiction of the Family Court extends.

Explanation--The suits and proceedings referred to in this Sub-section are suits and proceedings of the following nature, namely:

(a) 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;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a Suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise--

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of

the Code of Criminal Procedure, 1973 (2 of 1974);

(b) such other jurisdiction as may be conferred on it by any other enactment.

The Section consists of two parts. The first relates to civil jurisdiction and the other to the criminal jurisdiction but this too is limited to Chapter IX

of Code of Criminal Procedure Besides this u/s 7(2)(b) a provision has been made for conferment of jurisdiction on the Family Court by any other

enactment also. According to the Respondent her case would be covered by Explanation (c) of Section 7(1) of the Act. The contention must

unhesitatingly be rejected.

Section 8. Exclusion of jurisdiction and pending proceedings--Where a Family Court has been established for any area-

(a) no district Court or any subordinate civil Court referred to in Sub-section (1) of Section 7 shall, in relation to such area have or exercise any

jurisdiction in respect of any suit or proceeding of the nature referred to in Explanation to that Sub-section.

(b) no Magistrate shall, in relation to such area have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure,

1973:

(c) every suit or proceeding of the nature referred to in the Explanation to Sub-section (1) of Section 7 and every proceeding under Chapter IX of

the Code of Criminal Procedure, 1973--

(i) which is pending immediately before the establishment of such Family Court before any Magistrate under the said Code, and

(ii) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding

was instituted or taken, this Act had come into force and such Family Court had been established. shall stand transferred to such Family Court on

the date on which it is established.

Section 20. Act to have overriding effect--The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in

any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Provision of Sections 3 and 4 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 are also looked into.

Section 3: Mahr or other properties of Muslim woman to be given to her at the time of divorce--(1) Notwithstanding anything contained in any

other law for the time being in force, a divorced woman shall be entitled to--

(a) a reasonable and fair provision and maintenance to be made and paid to her within the Iddat period by her former husband;

(b) where she herself maintains the children born to before or after he divorce, a reasonable and fair provision and maintenance to be made and

paid by her former husband for a period of two years from the respective date of birth of such children;

(c) an amount equal to the sum of mahr or dower agreed to be paid to her at the time or her marriage or at any time thereafter according to Muslim

Law; and

(d) all the properties given to her before or at the time or marriage or after the marriage by her relatives or friends or the husband or any relatives

of the husband or his friends.

(2) Where a reasonable and fair provision and maintenance or the amount of Mahr or dower due had not been made or paid or the properties

referred to in Clause (d) of Sub-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her

may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, mahr or dower or the

delivery of properties, as the case may be.

(3) Where an application has been made under Sub-section (2) by a divorced woman, the Magistrate may, if he is satisfied that--

(a) her husband having sufficient means, has failed or neglected to make or pay her within the Iddat period a reasonable and fair provisions and

maintenance for her and the children; or

(b) the amount equal to the sum of Mahr or dower has not been paid or that the properties referred to in Clause (d) of Sub-section (1) have not

been paid or that the properties referred to in Clause (d) of Sub-section (1) have not been delivered to her, make an order, within one month of

the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced

woman as he may determine as fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her

marriage and the means of her former husband or, as the case may be, for the payment of such Mahr or dower or the delivery of such properties

referred to in Clause (d) of Sub-section (1) to the divorced woman:

Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by

him, dispose of the application after the said period.

(4) If any person against whom an order has been made under Sub-section (3) fails without sufficient cause to comply with the order, the

Magistrate may issue a warrant for levying the amount of maintenance or mahr or dower due in the manner provided for levying fines under the

Code of Criminal Procedure, 1973, and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the

warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence

and the said sentence being imposed according to the provisions of the said Code.

4. Order for payment of maintenance--(1) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the

time being in force, where a Magistrate is satisfied that a divorced woman has not re-married and is not able to maintain herself after the iddat

period, he may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim law to

pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, the

standard of life enjoyed by her during her marriage and the means of such relatives and such maintenance shall be payable by such relatives in the

proportions in which they would inherit her property and at such periods as he may specify in his order:

Provided that where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event

of any such children being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to

her:

Provided further that if any of the parents is unable to pay his or her share of the maintenance ordered by the Magistrate on the ground of his or her

not having the means to pay the same, the Magistrate, on proof of such inability being furnished to him, order that the share of such relatives in the

maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such

proportions as the Magistrate may thin fit to order.

(2) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in Sub-section (1) or such relatives or any one of

them have not enough means to pay the maintenance ordered the Magistrate or the other relatives have not the means to pay the shares of those

relatives whose shares have been ordered by the Magistrate to be paid by such other relatives under the second proviso to Sub-section (1), the

Magistrate may, by order direct the State of Wakf Board established u/s 9 of the Wakf Act, 1954, or under any other law for the time being in

force in a State functioning in the area in which the woman resides, to pay such maintenance as determined by him under Sub-section (1) or, as the

case may be, to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order.

5. Issue which has been sought to be raised by Petitioner before this Court has already been examined by Division Bench of this Court in the case

of Amjum Hasan Siddiqui Vs. Smt. Salma B., and therein view has been taken that application u/s 3 of the Muslim Women (Protection of Rights

on Divorce) Act, 1986 can lie only to the Magistrate, having jurisdiction in the area and provision of Muslim Women (Protection of Rights on

Divorce) Act, 1986 confers no jurisdiction on the Family Court whereas Sub-section (2) of Section 3 of 1986 Act provides that an application

may be made before the Magistrate and not to Family Court. Relevant extract of the said judgment is being extracted below:

4. The point that remains to be seen is whether an application u/s 3 of 1986 Act can be entertained by the Family Court or whether it lies within the

exclusive jurisdiction of the concerned Magistrate as provided by the Act itself. The Respondent vehemently urged that the application could be

entertained only by the Family Court in view of Section 7 of the 1984 Act. We may therefore first consider Section 7 of the Family Courts Act,

1984.

7. Jurisdiction--(1) Subject to the other provisions of this Act, a Family Court shall--

(a) have and exercise all the jurisdiction exercisable by any District Court or any subordinate Civil Court under any law for the time being in force

in respect of suits and proceedings of the nature referred to in the explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate civil

Court for the area to which the jurisdiction of the Family Court extends.

Explanation--The suits and proceedings referred to in this Sub-section are suits and proceedings of the following nature, namely:

(a) 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;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a Suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise--

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of

the Code of Criminal Procedure, 1973 (2 of 1974);

(b) such other jurisdiction as may be conferred on it by any other enactment.

The Section consists of two parts. The first relates to civil jurisdiction and the other to the criminal jurisdiction but this too is limited to Chapter IX

of Code of Criminal Procedure Besides this u/s 7(2)(b) a provision has been made for conferment of jurisdiction on the Family Court by any other

enactment also. According to the Respondent her case would be covered by Explanation (c) of Section 7(1) of the Act. The contention must

unhesitatingly be rejected.

5. Section 7(1)(a) confers the entire jurisdiction hitherto exercised by any district Court or any subordinate civil Court in suits or proceedings

relating to matters mentioned in Clauses (a) to (g) of the explanation. Sub-clause (b) creates a legal fiction endowing upon the Family Courts the

status of the District Court or subordinate civil Court. Similarly Section 7(2)(a) confers the powers and jurisdiction hitherto exercisable by First

Class Magistrate on the Family Court in relation to Chapter IX of the Code of Criminal Procedure, 1973.

6. Section 7(2)(b) however relates to conferment of any additional jurisdiction on the Family Courts by other enactments. This provision is in the

nature of an enabling provision by which Legislature can enlarge the Court's jurisdiction.

7. The point canvassed for the Respondent is that an application u/s 3 of the 1986 Act can be filed before the family Court because it relates to

property of parties to the marriage. This plea is not sustainable in view of the fact that Section 7(1) Call apply only when (i) the suit or proceeding

is of the nature envisaged by Clauses (a) to (g) of the Explanation, and (ii) the matter was cognisable by the District Court or any subordinate civil

Court. On both these counts application u/s 3 of the 1986 Act cannot be said to be covered by Section 7. The application is neither a suit nor a

proceeding and such a matter was also not cognisable by the civil Court. It was vainly urged that the word "proceeding" is of wide import and will

cover Section 3 matter also. We find it difficult to accept this submission. The context in which the word "proceeding" has been used in

juxtaposition to the word "suit" indicates that the proceeding also has to be akin to a suit or related to a suit. It cannot extend to a proceeding of

criminal nature.

8. Apart from the above no application u/s 3 lies to the District Court or subordinate civil Court. As provided in Section 3(2) of 1986 Act the

application can be moved before the first class Magistrate having jurisdiction in the area under the Code of Criminal Procedure Thus Section 7(1)

does not help the Respondent at all.

9. Sub-clause (2) of Section 7 of the Family Court Act is also of no help to the Respondent since the Act confers only a limited jurisdiction relating

to those matters only as are covered by Chapter IX of the Code of Criminal Procedure Only this limited jurisdiction has been transferred to the

Family Court. To this extent alone the First Class Magistrate having jurisdiction in the area for which Family Court has been established loses his

jurisdiction which is thenceforth exercisable by the Family Court only.

10. Thus, we have seen that neither under Sub-section (1) nor under Sub-section (2) of Section 7 the Family Court's Act has any jurisdiction to

entertain an application of the nature contemplated by Section 3 of the 1986 Act.

11. Faced with such a situation the learned Counsel for the Respondent turned to Sub-section (2)(b). He urged that jurisdiction may be deemed to

have been conferred on the Family Court under this provision. We are afraid, the learned Counsel is again on a weak ground. The words

"conferred on it" in Sub-clause (b) speaks of conferment of jurisdiction on the Family Court by an enactment. The jurisdiction must be specifically

conferred and cannot be assumed to have been conferred. No provision of 1986 Act however, confers any such jurisdiction on the Family Court.

On the other hand Section 3(2) of the 1986 Act provides that the application may be made to a Magistrate and not to the Family Court. Apart

from this the 1986 Act was enacted subsequent to the Family Court Act and its provisions supersede all earlier enactments. Hence this section

must prevail over the Family Courts Act, 1984. Thus an application u/s 3 can lie only to the Magistrate having jurisdiction in the area.

12. Section 3 of the 1986 Act itself recognises rights of divorced Muslim Woman, prescribes a forum for redress thereof and prescribes the

manner of execution of the order made in that behalf. This makes the Act complete in itself and does not depend for support on any other

enactment. The section begins with a non obstante clause and it overrides all other provisions of the then existing laws. All provisions contrary to

what is contained in Section 3 of 1986 Act, including the Family Courts Act, 1984, shall stand superseded by its provision. A comparison of the

provisions of 1984 and 1986 Acts would also show that the purpose and scope of the two Acts is somewhat different. Section 3 is only limited to

certain claims enumerated therein which alone can be put forward by a divorced Muslim Woman under the Act in the manner prescribed. In other

respects it seems to us that even a divorced Muslim woman can press her claim in the Family Court.

13. Having considered the matter therefore we are of the view that an application u/s 3 of 1986 Act can lie only before the Magistrate concerned

and the Family Court established under the 1984 Act cannot exercise jurisdiction unless the same had been specifically conferred upon the Family

Court under the provision of Section 2(b). The Family Court in this case was, therefore, not competent to deal with the application moved by the

Respondent for want of jurisdiction.

6. Faced with similar situation Orissa High Court also in the matter decided by Hon"ble A. Pasayat, J as His Lordship then was, in the case of

Allauddin v. Shamima Akhtari reported in 1995 Cri.LJ 228 considered the nature of provision took the view that family Court has no jurisdiction

to deal with the matter and proceeding before it is misconceived. Proceedings u/s 3 of 1986 Act has to be tried by Magistrate. Relevant extract of

the said judgment is being quoted below:

Section 7(1)(a) provides that the Family Court shall have and exercise all the jurisdiction exercisable by any District Court or any subordinate civil

Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation. Section 7 consists of

two parts. The first related to civil jurisdiction and the other relates to criminal jurisdiction. The latter is limited in its operation to Chapter IX of

Code of Criminal Procedure Section 7(1)(a) confers the entire jurisdiction exercisable by any District Court or any subordinate civil Court under

any law for the time being in force in respect of suits and proceedings of the nature referred to in Clauses (a) to (g) of the Explanation by operation

of a deeming provision in Clause (b) of Sub-section (1) of Section 7, the Family Court is deemed to be a District Court or, as the case may be,

such subordinate civil Court for the area to which the jurisdiction of the Family Court extends, for the purpose of exercising such jurisdiction under

such law as referred to in Clause (a) of Sub-section (1) of Section 7. Similarly Clause (a) of Sub-section (2) provides that Family Court shall have

and exercise jurisdiction exercisable by a Judicial Magistrate, first class or Family Court in regard to Chapter IX, Code of Criminal Procedure An

application u/s 3 of the Divorce Act cannot be said to be covered by Section 7 as Sub-section (1) of the said provision has application only when

a suit or proceeding is of the nature envisaged in Clauses (a) to (g) of the Explanation, and the matter was adjudicable by the District Court or any

subordinate civil Court. An application u/s 3 of the Divorce Act is neither a suit nor a proceeding, nor is a matter adjudicable by the civil Court.

7. It is urged by learned Counsel for the opposite parties that the expression "proceeding" is wide enough to engulf an application u/s 3. Though

the submission is attractive, it is clearly unacceptable, because the context in which the word "proceeding" has been used in juxtaposition to the

word "suit" indicates that the proceeding also has to be one akin to a suit, or related to a suit. It cannot extend to a proceeding of a criminal nature.

Similarly no application u/s 3 lies to the District Court or subordinate civil Court. The expression "District Court or subordinate civil Court" clearly

indicates that Legislature wanted that the disputes of civil nature are encompassed by Sub-section (1) of Section 7. So far as Section 7, Sub-

section (2) is concerned, it has to be noticed that Clauses (a) and (b) of Sub-section (2) deal with two different aspects. The first deals with the

jurisdiction exercisable by a Magistrate of the first class under Chapter IX, Code of Criminal Procedure while the latter deals with such other

jurisdiction as may be conferred with it by any other enactment.

8. It is submitted by the learned Counsel for the opposite parties that the jurisdiction can be deemed to have been conferred by Section 3 of the

Divorce Act. The plea is unsound. The expression "conferred on it" used in Clause (b) of Section 2 of the Act has to be read along with the

expression "by any other enactment". The jurisdiction has to be specifically conferred and cannot be deemed to have been conferred. There is no

provision in the Divorcee Act which lends support to the plea. On the other hand, the Divorce Act enacted subsequent to the Act has by Sub-

section (2) of Section 3 provides for an application to be made to a Magistrate. The Family Court, therefore, has no jurisdiction to deal with the

matter, and the proceeding before it is misconceived. The orders passed in the proceeding are without jurisdiction. The matter shall be dealt with

by the learned SDJM, Panposh.

9. The application is allowed.

7. Issue, thus, has been considered and has been accordingly answered and same has also been considered by Gauhati High Court in the case of

Md. Siddique Ali Vs. Mustt Fatema Rashid, Relevant extract of the said judgment is being quoted below:

50. In the backdrop of the above scheme of the F. C. Act, 1984, when one turns to the MW Act, what clearly becomes noticeable is that the

MW Act is a later enactment and, hence, the provisions of the Family Courts Act, 1984, will not override the provisions of the MW Act, for,

Section 20 of the F. C. Act shows that it has overriding effect only in respect of anything inconsistent therewith contained in any other law for the

time being in force. The question of the Family Court, therefore, prevailing upon the MW Act does not arise at all. The MW Act is also a special

mechanism for protecting the rights of the Muslim women, who have been divorced by, or have obtained divorce from, their husbands and to

provide for matters connected therewith or incidental thereto.

51. What is, now, of significance to note is that Section 2(c) of the MW Act defines a Magistrate of the First Class exercising jurisdiction under the

Code in the area, where the divorced woman, within the meaning of the MW Act, resides. An application, u/s 3 and/or 4 of the MW Act, seeking

Mahr or various reliefs incorporated therein or restoration of properties, must be made, under the MW Act, to a Magistrate of the First Class,

who exercises jurisdiction under the Code. Though Section 7(2)(a) of the F. C. Act states that the Family Court shall also have jurisdiction, which

is exercisable by a Magistrate of the first class under Chapter IX of the Code, yet in view of the fact that a Muslim divorced woman cannot apply

for maintenance, under Chapter IX of the Code, except by way of an agreement as indicated in Section 5 of the MW Act, the question of Muslim

divorced woman making an application, under Chapter IX of the Code, before a Family Court does not arise at all. Section 7(b) makes it clear

that Family Court shall have such other powers as may be conferred on it by any other enactment. Since no other enactment confers jurisdiction on

the Family Court to try applications under the MW Act, a Family Court cannot be held to have jurisdiction to deal with the applications made

under the MW Act. Though a Family Court has the jurisdiction, which is exercisable by a Magistrate of first class under Chapter IX of the Code

(which relates to order for maintenance of wife, children and parents), the fact remains that an application, made u/s 3 or 4 of the MW Act, is not

covered by Chapter IX of the Code. Consequently, a Family Court cannot exercise jurisdiction in respect of matters, which are amenable to the

jurisdiction of the Magistrate of First Class, under the MW Act.

52. Coupled with the above, one may also notice that there is no enactment containing an express provision that the Family Court shall have the

jurisdiction to deal with applications made by a Muslim divorced woman u/s 3 and/or 4 of the MW Act. On the contrary, the scheme of the MW

Act shows that an application under Sections 3 or 4 can be made only to a Magistrate of the First Class. The F.C. Act is a prior enactment and

the MW Act is a later one, but it makes no reference to the F. C. Act. Had the legislature intended to include, within the jurisdiction of the Family

Courts, applications, which may arise under Sections 3 and/or 4 of the MW Act, legislature could have given such an indication either under the

MW Act or by making necessary amendments to the F.C. Act. That the MW Act is beyond the jurisdiction of the Family Court can also be

gathered from the fact that u/s 5 of the MW Act, a Muslim divorced woman and her former husband can, as already discussed above, declare that

they would prefer to be governed by the provisions of Sections 125 - 128 of the Code and when such a declaration is made, the Magistrate shall

dispose of the application for maintenance accordingly; otherwise, the Magistrate has to deal with an application, made under Sections 3 and/or 4

of the MW Act, in terms of the provisions of the MW Act only. Thus, there is no provision express or implied, in the MW Act, suggesting that the

Family Courts have the jurisdiction to entertain applications arising under Sections 3 and/or 4 of the MW Act.

8. Inevitable conclusion is that any proceedings initiated under Sections 3/4 of Muslim Women (Protection of Rights on Divorce) Act, 1986, qua

the same it is specifically provided for the Magistrate and adjudication has to be done accordingly, and Family Court has no jurisdiction as nature

of proceedings are not at all falling within the scope and ambit of the suit or proceeding defined u/s 7 of Family Courts Act, 1984. Rule 6 of U.P.

Family Court Rules, 2006 which provides that petition may be filed before the Court as permitted under any law, also includes provision contained

under any law, will also not help to improve the situation as the special law of 1986 does not permit filing of application before any forum for

getting relief mentioned in Section 3 of 1986 Act, except for the forum specifically provided for under 1986 Act. Unless and until corresponding

amendments are not introduced under 1984 Act or 1986 Act, provision mentioned in the rule would be of no assistance.

9. Learned Counsel for the Petitioner has placed reliance on the judgment in the cases of Abdul Hanif v. Smt. Banno Khatoon and Anr. reported

in 1994 (3) ACC 648 ; Dawalsab Vs. Khajasab, and Shabana Bano Vs. Imran Khan, Said judgments will not come to the rescue of the Petitioner

for the simple reason that therein issue has been raised in respect of application moved u/s 125, Code of Criminal Procedure Application u/s 125,

Code of Criminal Procedure has been moved in term of Sub-section (2) of Section 7, and are clearly competent and maintainable. Nowhere in the

judgment cited proposition has been laid that jurisdiction of family Court is exercisable even in reference of the matters falling within the scope and

ambit of Muslim Women (Protection of Rights on Divorce) Act, 1986. In such a situation and in this background Magistrate has got full authority

and jurisdiction to entertain application u/s 3 of the 1986 Act. Consequently objection which has been raised are devoid of substance and same is

accordingly dismissed. Order under challenge is upheld and concerned Magistrate/Court is directed to conclude the proceeding as expeditiously as

possible preferably within one year from the date of presentation of certified copy of this order. No order as to cost.