

(2013) 06 AP CK 0008

Andhra Pradesh High Court

Case No: F.C.A. No: 339 of 2012

Dr. Syeda Fatima Manzelat

APPELLANT

Vs

Mr. Syed Sirajuddin Ahmed  
QuadriRESPONDENT

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**Date of Decision:** June 25, 2013**Acts Referred:**

- Dissolution of Muslim Marriages Act, 1939 - Section 2(i), 2(ii)

**Citation:** (2013) 5 ALD 298 : (2013) 5 ALT 675 : (2014) 1 DMC 428**Hon'ble Judges:** S.V. Bhatt, J; L. Narasimha Reddy, J**Bench:** Division Bench**Advocate:** B. Mayur Reddy, for the Appellant; Mohd. Shafiuddin, for the Respondent**Final Decision:** Disposed Off

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### Judgement

L. Narasimha Reddy, J.

The marriage between the appellant and the respondent took place on 02.12.1994 as per the Islamic traditions. After the marriage, the petitioner and the respondent lived in India and abroad, for about two decades. They were also blessed with a girl child, in the year 1996. However, disputes arose between them and the appellant filed O.P. No. 1600 of 2011 in the Family Court, Hyderabad, for divorce in the form of Khula u/s 2(i) and (viii) of the Dissolution of Muslim Marriages Act, 1939 (for short "the Act"). The appellant pleaded that her parents gave a sum of Rs. 3 lakhs towards Ghoda Joda Ki Rakham, 24 Tulas of gold jewellery and other valuable articles. The appellant stated that the respondent, her brothers and sisters have taken away all the gold ornaments and even during her stay in Saudi Arabia, she was subjected to physical and mental harassment, by the respondent. A detailed account of the events, that are said to have taken place for about 15 years, is furnished in the O.P. She ultimately prayed for a decree of divorce.

2. The respondent filed counter, opposing the O.P. He denied all the allegations. He has presented his version of events that have taken place, ever since his marriage with the appellant.

3. Through its order, dated 07.11.2012, the trial Court dismissed the O.P. Hence, this appeal.

4. Sri B. Mayur Reddy, learned counsel for the appellant, submits that the respondent has also agreed for mutual divorce but he declined the consent only when the religious leaders informed him that he would be under obligation to return the goods received at the time of his marriage with the appellant. He contends that the negligence on the part of the respondent to maintain the appellant and their child, for the past several years, would certainly constitute the basis for grant of divorce u/s 2(i) of the Act, and the trial Court was not justified in dismissing the O.P.

5. Sri Mohd. Shafiuddin, learned counsel for the respondent, on the other hand, submits that the trial Court has taken various aspects into account and held that the appellant is not entitled for the decree of divorce. He contends that small differences and inconveniences that arose due to factors beyond their control, were projected as the basis for claiming divorce.

6. The trial Court framed the following points for its consideration and dismissed the O.P.

a) Whether the respondent treated the petitioner with a cruelty and failed to maintain the petitioner and her daughter and petitioner is entitled for dissolution of marriage?

b) Whether the petitioner is entitled for return of jewelry of 24 tulas?

c) Whether the petitioner is entitled for an amount of Rs. 2 lakhs which was spent by her parents for marriage?

d) Whether petitioner is entitled for an amount of Rs. 3 lakhs paid to the respondent towards goda joda?

e) Whether the petitioner is entitled for Rs. 6 lakhs towards permanent alimony?

7. The appellant deposed as PW. 1 and filed Exs. P. 1 to P.6. The respondent deposed as RW. 1 and he filed Exs. R. 1 to R. 29.

8. Under Muslim Law, marriage is more a contract. Even at the time of marriage, various contingencies that would ensue, in the event of divorce, are required to be taken care of. The male spouses are given almost unbridled freedom to put an end to the marriage by pronouncing Talak successively for three times. However, similar freedom is not available for a woman spouse. In case the woman spouse intends to walk out of the marriage, she has to take recourse to the provisions of the Act. The

Court can grant decree, if the grounds pleaded in the O.P., filed before it, are proved to its satisfaction.

9. The record in the instant case, discloses that the relationship between the appellant and the respondent was suffered strain for more than one decade. At one point of time, both of them agreed to get separated through mutual consent and are said to have approached the religious leaders. The arrangement as per the religious tenets, was to entail payment of substantial amount by the respondent. Obviously, to avoid his obligation, he did not give his consent. Therefore, the appellant filed the O.P.

10. One of the grounds pleaded by the appellant is that the respondent neglected to maintain her and their child for a period exceeding two years. In her deposition, the appellant categorically stated that the respondent did not pay any amount for maintenance for a period exceeding two years before filing of the O.P. In his evidence, the respondent admitted that he did not pay the amount towards maintenance. He, however, stated that it was on account of the fact that he remained unemployed, due to political turmoil in Saudi Arabia. Fact remains that, he did not take care of the appellant and their daughter.

11. Learned counsel for the respondent tried to oppose the plea based on Section 2(ii) of the Act, viz., negligence to maintain wife and child, by making reference to Exs. R.1 to R.25, the forms of remittances of different amounts, spread over long period. However, those remittances were made long before the O.P. came to be filed and they cannot wipe away the clear admission on the part of the respondent.

12. It is pleaded that though the appellant is entitled to receive substantial amounts towards the value of the goods presented at the time of marriage, she does not intend to press for return of the same.

13. In view of the discussion undertaken above, we find that the appellant has made out a case for divorce under the provisions of the Art. The appeal is accordingly allowed and the order under appeal is set aside. As a result, O.P. No. 1600 of 2011 on the file of the Family Court, Hyderabad, is decreed, as prayed for. There shall be no order as to costs. The miscellaneous petition filed in this appeal shall also stand disposed of.