

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.199 of 2024

Md Sarif Anwar @ Shareef Anwar, Son of Md. Serajul Haque Resident of Village-Muraith, P.S.-Arer, District-Madhubani, Presently Posted at Dimapur, Kashiram Basti (Firing Range), E. Company, 15 Platoon 43, Assam Rifle, 99APO, Pin Code-932043.

... .. Appellant/s

Versus

Noorjahan Khatoon @ Noorjahan Khatun Daughter of Md. Mustafa Resident of Village-X-Colony Kimin, P.O.-Budh Bazar, P.S.-Salonibari, District-Lakhimpur (North), Assam, Presently Residing at C/o Jamil Ahmed Khan, House No. 46, Dwopuram, Bangalore

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Kumar Satyam, Advocate Mr. Ajay Kumar Mehta, Advocate
For the Respondent/s	:	None

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE RANA VIKRAM SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date: 31-08-2026

1. The judgement and decree of dismissal of M.M. Case No. 53 of 2021, passed by the learned Principal Judge, Family Court, Madhubani is under challenge in the instant appeal at the instance of the husband / appellant against his wife / respondent.

2. Necessary facts relevant for the disposal of the appeal is as follows:-

(i) Marriage of the appellant Md. Sarif Anwar was contracted with the respondent Noorjahan Khatoon on 7th of April, 1999 according to Muslim Rites and Rituals.



(ii) Dispute in nuptial agreement started since 2020 when the respondent started treating her husband with cruelty. She left the matrimonial home permanently on 14th of October, 2008 and started to stay in paternal home with her parents. The appellant repeatedly tried to bring home back but she denied. The respondent also wanted that her marriage with the appellant might be dissolved by a decree of divorce. Finding no other alternative, the appellant divorced the respondent by successive pronouncement of Talak. Subsequently, by filing M.M. Case No. 53 of 2021, he prayed for a decree of divorce.

(iii) In spite of service of summons, the respondent did not appear to contest the case. Therefore, hearing of the suit proceeded ex parte.

(iv) It appears from the evidence of the witnesses on behalf of the appellant that the respondent presently stays in Bangalore marrying another person. Moreover, the appellant also performed the second marriage after pronouncement of Talak.

(v) The learned Trial Judge considered the judgment of the Hon'ble Supreme Court in *Shayara Bano v. Union of India* reported in **2017 9 SCC 2** whereby and whereunder practice of divorce by pronouncing Triple Talak was held



unconstitutional.

(vi) Thus, it was held by the Trial Court that the appellant did not divorce his wife in accordance with law and finally the suit was dismissed.

3. In appeal, the respondent did not appear in spite of service of notice.

4. It is submitted by the learned Advocate for the appellant that the husband filed the suit for divorce also on the ground of cruelty and desertion. The respondent deserted the husband since 14th of October, 2008 and the suit for divorce was instituted in the year 2021 i.e., after expiry of 13 years.

5. The grounds of divorce by the husband is delineated in Chapter XVI of the Principles of Mahomedan Law by Mulla (19th Edition, reprint 2021). According to the Mulla, the contract of marriage under the Mahomedan Law may be dissolved by the husband in anyone of the following ways:-

(i) By the husband at his will, without the intervention of a Court;

(ii) by mutual consent of the husband and wife, without the intervention of a Court;

(iii) by a judicial decree at the suit of the husband or wife.

6. The wife cannot divorce her husband without his consent, except under a contract whether made before or after



marriage but she may, in some cases, obtain a divorce by judicial decree.

7. The grounds for decree for dissolution of marriage by a Mahomedan woman is delineated in Section 2 of the dissolution of Muslim Marriages Act, 1939. According to the Mulla, no specific reason for divorce is necessary for dissolution of marriage by the husband. It can be effected by oral pronouncement of Talak or by a written document called a Talaknama.

8. Talak is of three types:-

(i) Talak ahsan,

(ii) Talak hasan,

(iii) Talak-ul-bidaat or Talak-i-badai, i.e., three successive pronouncements of Talak.

9. Now Talak-i-badai is declared unconstitutional by the Hon'ble Supreme Court in the case of Sayara Bano (supra).

10. It is not the case of the appellant that the pronounced Talak by Talak ahsan or Talak hasan. Therefore, declaration of divorce by successive pronouncement of Talak cannot be held to be irrevocable.

11. A Talak ahasan becomes irrevocable and complete on the expiration of Iddat and a Talak hasan becomes



irrevocable and complete on the third pronouncement irrespective of the Iddat.

12. Therefore, in order to dissolve a marriage by Mahomedan Male, no ground of divorce is necessary.

13. The learned Advocate for the appellant is absolutely misconceived that the husband/appellant can dissolve the marriage by a decree of divorce on the ground of cruelty or desertion.

14. For the reasons stated above, we do not find any illegality in the impugned order passed in M.M. Case No. 53 of 2021 by the learned Principal Judge, Family Court, Madhubani.

15. The appeal is, accordingly, dismissed.

(Bibek Chaudhuri, J)

Rana Vikram Singh, J: I agree.

(Rana Vikram Singh, J)

uttam/-

AFR/NAFR	NAFR
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