



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13773 OF 2023

Mezouar Zouaouia & Anr.

.. Petitioners

Versus

Thane Municipal Corporation & Ors.

.. Respondents

Mr. Arshad Shaikh, Senior Advocate a/w Devansh Malhotra i/b Hafeezur Rahman, Advocates for the Petitioners.

Mr. Anand S. Kulkarni, Advocate for Respondent Nos.1 and 2.

CORAM: B. P. COLABAWALLA & SOMASEKHAR SUNDARESAN, JJ.

DATE: OCTOBER 15, 2024

P. C.

1. The above Writ Petition is filed seeking to quash and set aside the impugned notice/orders at Exhibit-H and Exhibit-P, and for a direction to Respondent No.2 to grant in favour of the Petitioner a Marriage Certificate pursuant to the Petitioner's application dated 6th February 2023. By the impugned order at Exhibit-H (page 52 of the paper book), the application for registration of the Petitioner's third marriage, and who is a Muslim, was rejected. The grounds of rejection are *inter alia* that the relevant documents have not been furnished and also the fact that under *The Maharashtra Regulation of Marriage*

Bureaus and Registration of Marriages Act, 1998, and more particularly the definition of the word “marriage” in Section 2(b) thereof, contemplates only a single marriage and not multiple marriages.

2. We have heard the learned senior counsel appearing on behalf of the Petitioners as well as the learned advocate appearing on behalf of Respondent Nos.1 and 2. As far as the argument that only one marriage can be registered under the provisions of *The Maharashtra Regulation of Marriage Bureaus and Registration of Marriages Act, 1998* is concerned, we find that the same is wholly misconceived. When one looks at the scheme of the Act, Section 4 thereof provides that from the date of coming into force of this Act, every marriage bureau and every marriage in the State shall be registered with the Registrar of Marriage Bureaus and Marriages. Section 6 thereafter casts a duty on the husband to submit a memorandum for registration of marriage. It *inter alia* stipulates that on solemnization of the marriage, it shall be the responsibility of the husband to present, within a period of ninety days from the date of solemnization, a memorandum in the prescribed Form before the Registrar within whose jurisdiction the husband ordinarily resides or where either one of the parties ordinarily reside. There are other stipulations also in the said section including the fact that the

parties and three witnesses to the marriage shall appear in person before the Registrar and sign the memorandum and that the same shall be accompanied by such fee and other documents as may be prescribed.

3. Then comes Section 7 which gives power to refuse registration and report to the Registrar General. Section 7 contemplates that where the Registrar, before whom the memorandum is presented under Section 6, on scrutiny of the documents submitted with the memorandum or, on the basis of other facts noticed or brought to his notice, is satisfied or has reason to believe that (a) the marriage between the parties is not performed in accordance with the personal law of the parties; or (b) the identity of the parties or the witnesses or the persons testifying the identity of the parties and the solemnization of the marriage is not established beyond reasonable doubt; or (c) the documents tendered before him do not prove the marital status of the parties; the Registrar may, after hearing the parties and recording the reasons in writing, refuse to register the marriage and may call upon the parties to produce such further information or documents as deemed necessary, for establishing the identity of the parties and the witnesses, or the correctness of the information or documents presented to him, and for that purposes direct the parties to appear before him with the

required further information or documents on any other date as may be mutually fixed. If deemed necessary, the Registrar can also refer the papers to the local police station within whose jurisdiction the parties reside, for verification, and direct the parties to appear before him on any other date as may be mutually fixed. Section 7(2) contemplates that after further verification as provided in sub-section (1), if the Registrar is satisfied that there is no objection to register the marriage, he may register the same. However, if in the opinion of the Registrar, the marriage is not fit for registration, he may pass an order of refusal in writing, recording the reasons therefor and then refer the matter, with all the relevant record and his report in the matter, to the Registrar General, within a period of 7 days, from the date of the order of such refusal. Section 8 then talks about the powers of the Registrar General, who after giving an opportunity of being heard to the parties concerned, pass an order after recording the reasons in writing, either directing the Registrar to register the marriage, or confirming the order of the Registrar refusing to register the marriage.

4. In the entire Scheme of the Act we do not find anything that would preclude a Muslim Male from registering a third marriage. In fact, Section 7(1)(a) specifically contemplates that the Registrar has to

ensure that the marriage between the parties is performed in accordance with the personal law of the parties. It is not even disputed by the authorities that under the personal laws for Muslims, they are entitled to have four wives at a time. Once this is the case, we are unable to accept the submission of the authorities that under the provisions of *The Maharashtra Regulation of Marriage Bureaus and Registration of Marriages Act, 1998* only one marriage can be registered even in the case of a Muslim Male. If we were to accept this submission, it would effectively mean that this Act overrides and/or has displaced the personal laws of Muslims. There is absolutely nothing in this Act to indicate that the personal laws of Muslims have been excluded. As mentioned earlier, the personal laws of the parties is a very important factor that has to be taken into consideration whilst deciding whether a particular marriage ought to be registered or otherwise. In these circumstances, as far as this objection is concerned, we find no merit in the same, and the impugned order, on this ground alone, would have to be set aside. Before concluding on this issue, we must mention that ironically, we find that these very authorities, under the provisions of *The Maharashtra Regulation of Marriage Bureaus and Registration of Marriages Act, 1998*, have registered the marriage of

Petitioner No.2 (the husband) with his second wife Assia Sadek Benthia (a Moroccan citizen at the time of her marriage).

5. The learned advocate appearing on behalf of Respondent Nos.1 and 2 thereafter submitted that in any event Respondent No.2 could not register the marriage of Petitioner No.2 with Petitioner No.1 because the requisite documents were not furnished by the Petitioners. In answer to this argument, Mr. Shaikh, the learned senior counsel appearing on behalf of the Petitioners, submitted that all the necessary documents have been submitted. However, to put an end to this controversy, he submitted that whatever documents are required by Respondent No.2, the Petitioners would submit, and thereafter he can give a hearing to the Petitioners and pass an order, either registering or refusing to register the marriage of Petitioner No.2 with Petitioner No.1.

6. To ensure that there is no further controversy on the issue of which documents ought to be submitted by the Petitioners, we inquired from the learned advocate appearing for Respondent Nos. 1 and 2 as to what documents would be required from the Petitioners. In answer to this, and on taking instructions, the learned advocate stated that:

- (i) **For proof of birth of the husband**, he would have to submit either his Birth Certificate or School Leaving Certificate or SSC Board Certificate/HSC Board Certificate (any one).
- (ii) **For identity proof of the husband**, he would have to submit either an Aadhar Card or Pan Card or Driving License or Voter ID Card or Passport (any one).
- (iii) **For residential proof of the husband**, he would have to submit the Electricity Bill or Ration Card or the Sale Agreement of the premises in which he is currently residing.
- (iv) Over and above this, for the 3 witnesses, their Aadhar Card or Ration Card will have to be submitted.

7. As far as the wife (Petitioner No.1) is concerned, it is stated that:

- (i) **For birth proof of the wife**, she will have to submit either a Birth Certificate or a School Leaving Certificate or a SSC Board Certificate/HSC Board Certificate or equivalent (any one).

- (ii) **For identity proof of the wife**, she can submit either an Aadhar Card or Pan Card or Driving License or Voter ID Card or Passport (any one).

8. We must clarify here that Petitioner No.1 (the wife) is an Algerian passport holder. We are informed that as far as the birth proof is concerned, she has a Birth Certificate which can be submitted. As far as the identity proof is concerned, it is stated that when the application for registration of marriage was made to Respondent No.2 [on 6th February 2023], her passport was valid. However, her passport has since expired on 28th May 2024 and an application has been made for renewal of the said passport. Considering these peculiar facts, we direct that for the identity proof of the wife (Petitioner No.1), the current passport of Petitioner No.1, and which has expired on 28th May 2024, shall be considered. We say this because all other documents, that she could possibly submit for identity proof would not be available to her as she is not an Indian Citizen. Since both the Petitioners are Muslims, they will also have to submit the Aadhar Card of the Qazi and the Nikah Nama and declaration evidencing the marriage of Petitioner No.2 with Petitioner No.1.

9. Mr. Shaikh, the learned senior counsel appearing on behalf of the Petitioners, on instructions, stated that all the necessary documents (as listed in this order), shall be submitted by the Petitioners, including the certificate of registration of marriage issued by the very same authority when Petitioner No.2 got married to Assia Sadek Benthia. He stated that these documents shall be submitted to the said Authority (Respondent No.2) within a period of 2 weeks from today. The said statement is accepted. Once these documents are submitted, Respondent No.2 is directed to give a personal hearing to the Petitioners and their advocates, if necessary, on 19th November 2024. Thereafter, Respondent No.2, within a period of 10 days of concluding the hearing, shall pass a reasoned order either granting registration of the marriage of the Petitioners or refusing the same. In the event he refuses the registration of marriage, as contemplated under Section 7(2) of *The Maharashtra Regulation of Marriage Bureaus and Registration of Marriages Act, 1998*, he shall refer the matter to the Registrar General who shall then give an opportunity of hearing to the Petitioners as contemplated under Section 8 and thereafter decide the matter.

10. In the interregnum and until this entire exercise is completed, and for a period of 2 weeks thereafter, Respondent Nos.3, 4

and 5 shall not take any coercive steps to deport Petitioner No.1 from India. It is needless to clarify that this order shall not in any way preclude Petitioner No.1 from having her application for renewal of her Passport processed by the concerned authorities.

11. The Writ Petition is disposed of in the aforesaid terms. However, there shall be no order as to costs.

12. Though we have disposed of the above Writ Petition, we now place it on board for reporting compliance on 29th November 2024.

13. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]

[B. P. COLABAWALLA, J.]