

**HIGH COURT OF TRIPURA
AGARTALA
FA NO.3 OF 2024**

Md. Deepraj Sarkar,
Son of Md. Mia Sarkar,
Resident of West Khilpara,
P.O: Khilpara, P.S.- Radhakishorepur,
District: Gomati, Tripura.

-----Appellant(s)

Versus

Ms. Tahima Aktar,
Wife of Md. Deepraj Sarkar, and
Daughter of Abul Khayer Miah,
Residing in the care of Md. Abul Khayer Miah,
At Netaji Nagar(Near Udaipur Girls' H.S. School,
P.S. & P.O.- Radhakishorepur-799120.
District- Gomati Tripura.

-----Respondent(s)

For the Appellant(s)	: Mr. D.K. Daschoudhury, Advocate.
For the Respondent(s)	: Mr. P. Roy Barman, Sr. Advocate. Mr. S. Bhattacharjee, Advocate.
Date of hearing	: 05.11.2024
Date of delivery of Judgment & Order	: 20/11/2024.
Whether fit for reporting	: YES.

**BEFORE
HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

J U D G M E N T & O R D E R

(Justice T. AMARNATH GOUD)

This present appeal has been filed under Section
19(1) of the Family Courts Act, 1984, for setting aside the Order

dated 05.09.2023 passed by the learned Judge, Udaipur, Tripura, in Case No. T.S.(RCR) 20 of 2023.

2. The brief facts of the case are that the marriage between the appellant and the respondent, both belonging to the Islamic (Sunni sect) religion, was solemnized on 14.03.2022 according to Muslim rites at the residence of the respondent's father in Udaipur Town, in the presence of relatives from both parties.

3. The appellant and the respondent lived together as husband and wife at the residence of the appellant's father in the village of West Khilpara. Thereafter, on 18.08.2022, the respondent left for her father's house, stating that she would return within 5 to 6 days.

4. After returning from her father's house, after about 10 days, the respondent began refusing cohabitation with the appellant on flimsy grounds, which led to discord between the respondent and the appellant. The respondent neglected to maintain the conjugal relationship with the appellant and finally left the appellant's father's house in October 2022.

5. At the instance of the appellant, a panchayat meeting was held on 22.05.2023 in the presence of the

respondent to resolve the discord between the appellant and the respondent. During the meeting, the respondent refused to live with the appellant and to continue the marital relationship without any reasonable ground.

6. In light of the above situation, the appellant filed a suit before the learned Judge, Family Court, Udaipur, District Gomati, Tripura, against the respondent for the restoration of conjugal rights, as permitted under Section 281 of Mohammedan Law. This was registered as Case No. TS (RCR) 20 of 2023.

7. By passing an order dated 05.09.2023, learned Judge, Family Court without admitting the suit dismissed it. The impugned order is quoted below:-

"As it appears that the plaintiff belongs to Mohameddan community for which the personal law is governed under the Sharia, hence, the suit is not maintainable in this Court and passing a judgment in the opinion of the Court shall be a transgressing the limits of its jurisdiction since at the time of passing the judgment issues shall have to be formulated and to be decided on different aspects therein.

Hence the suit is dismissed without contest, being not maintainable."

8. Hence, this appeal was filed for setting aside the impugned order and for issuing directions to the trial court to restore the suit to its file and dispose of it according to law.

9. Heard Mr. D.K. Daschoudhury, learned counsel appearing for the appellant-husband, as well as Mr. P. Roy Barman, learned Senior Counsel, assisted by Mr. S. Bhattacharjee, learned counsel appearing for the respondent-wife.

10. Mr. D.K. Daschoudhury, learned counsel for the appellant, drew the Court's attention to Section 281 of Mohammedan Law and Section 7 of the Family Courts Act. He argued that the case is maintainable and should be remanded to the lower Court for a fresh hearing on its merits, asserting that the Court has jurisdiction and the application is valid.

11. On the other hand, Mr. P. Roy Barman, learned Senior Counsel, assisted by Mr. S. Bhattacharjee, learned counsel for the respondent-wife, submitted that the matter had been settled amicably between the parties, making the issue academic. However, Mr. Choudhury, learned counsel appearing for the appellant-husband, denied this claim and insisted that a decision on the merits was necessary.

12. Mr. Roy Barman, learned Senior Counsel, further contended that the trial Court's order was correct and required no interference, as the case was filed under the Family Courts Act, which is civil in nature, unlike Cr.P.C., where uniform laws apply

to all citizens. He also argued that the appeal should be dismissed and the lower Court's order upheld, as the proceedings should be governed by Mohammedan law.

13. Heard learned counsels appearing for both the parties.

14. For proper adjudication of the matter, let us produce Section 281 of the Mulla Principles of the Mohammedan Law:-

**" 281- Suit for restitution of conjugal rights (1)
Where a wife without lawful cause ceases to cohabit
with her husband, the husband may sue the wife for
restitution of conjugal rights."**

15. Further, the following sections and the objects and reasons provided in the Family Courts Act, 1984, which are relevant to the facts of this case, are as follows:-

**" State of objects and Reasons.-
.....(d).exclusively provide within
the jurisdiction of the family Courts the matters
relating to:-**

**(i) matrimonial relief, including nullity of marriage,
judicial separation, divorce, restitution of conjugal
rights, or declaration as to the validity of a marriage or
as to the matrimonial status of any person;**

(ii) the property of the spouses or of either of them;

iii) declaration as to the legitimacy of any person;

(iv) guardianship of a person or the custody of any minor;

(v) maintenance, including proceedings under Chapter IX of the Code of Criminal Procedure;”

1. Short, title extent and commencement-(1) This Act may be called the Family Courts Act, 1984.

(2) It extends to the whole of India.

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, 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;”

16. Having heard the arguments and perused the record, this Court finds that the order of the trial court dismissing the suit on the ground of non-maintainability due to the parties

being governed by Mohammedan law is not sustainable in law. The trial Court observed that since the parties belonged to the Mohammedan community, their personal law would govern the matter. As such, the suit for restitution of conjugal rights was deemed non-maintainable. The Court believed that it lacked jurisdiction, stating that passing a judgment would amount to "*transgressing the limits of its jurisdiction.*" However, The Family Courts Act, 1984, was enacted to establish specialized Courts to deal with matrimonial and family-related disputes. Section 7 of the Act clearly vests jurisdiction in Family Courts over suits related to matrimonial relief, including restitution of conjugal rights, nullity of marriage, judicial separation, divorce, and other related matters, regardless of the personal law governing the parties. The mere fact that the parties belong to the Mohammedan community does not oust the jurisdiction of the Family Court. Section 7 of the Family Courts Act, 1984, read with the Explanation, makes it abundantly clear that Family Courts have exclusive jurisdiction to entertain and decide matrimonial disputes, including those related to the restitution of conjugal rights. That unless by way of any expressed provision a person or community or religion is exempted by the law, it is reasonably presumed that law applicable to the law of the land is binding upon all citizens. *Section 7(1)(a)* of the *Family Courts Act*, states

that "a Family Court shall have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law". Accordingly, Section 7(1)(a) of the 'Act' clearly indicates that the law of the land which is unless expressly prohibited, shall be dealt by the Courts.

17. In view of the *Statement of Objects and Reasons* of the *Family Courts Act, 1984*, it is evident that the Act confers exclusive jurisdiction upon Family Courts to adjudicate matters relating to matrimonial relief, including nullity of marriage, judicial separation, divorce, restitution of conjugal rights, and declarations concerning the matrimonial status of any person. Therefore, the lower Court's dismissal of the suit was contrary to the express jurisdictional mandate of the *Family Courts Act, 1984*, which clearly provides for the exclusive jurisdiction of Family Courts over matters such as matrimonial relief, property disputes, legitimacy, guardianship, custody, and maintenance, and applies uniformly across all communities, including Muslims. The Act does not exclude any community from its purview, and as such, the suit was maintainable under the Act.

18. The provision in Section 1(2) of the *Family Courts Act, 1984*, stating that the Act "*extends to the whole of India*," ensures that the Act applies uniformly across all regions and

communities. This means that matrimonial disputes, regardless of the personal law governing the parties, are to be adjudicated by Family Courts according to the Act's procedural framework.

19. In view of the above, the impugned order dated 05.09.2023 passed by the trial court is set aside, and the matter is remanded back to the Court below to consider the same as per procedure, as the court below has jurisdiction.

20. With the above observations and directions, this present appeal stands disposed of. As a result, any stay granted, if any, stands vacated. Pending application(s), if any, also stand closed.

B. PALIT, J

T. AMARNATH GOUD, J