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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL (ST.) NO. 11650 OF 2017
WITH
CIVIL APPLICATION NO. 1570 OF 2017
IN
SECOND APPEAL (ST.) NO. 11650 OF 2017

Adnan Chara	]	
Age 46 years, Occupation Business,	]	
R/at. A-701, Kalash Vaibhav,	]	
Mahalakshami CHS Ltd., Plot No.21,	]	
Sector 11, Koparkhairane,	]	**... Appellant/**
Navi Mumbai.	]	**Applicant.**

Versus

Farhat Adnan,	]	
Age 42 years, Occupation Business,	]	
R/at. A/1501, Tharwani Heights,	]	
Sector 18, Sanpada,	]	
Navi Mumbai.	]	**... Respondent.**

- Mr.Javeed Hussein i/b. Mr.Makrand P. Panchakshari for the Appellant/Applicant.

- Mr.Saeed Akhtar a/w. Mr.Rehan Ansari, Mr.Vzair, Ms.Pinny Pathak, Mr.Khushnood Akhtar and Ms.Pradnya Meshram for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 25th JULY, 2018.

PRONOUNCED ON : 2nd AUGUST, 2018.

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JUDGMENT. :

1] With consent of learned counsel for the parties, heard finally at the stage of 'admission' itself.

2] Admit.

3] A very short question raised for consideration in this Second Appeal is, *whether in a suit filed under Section 2 of the Dissolution of Muslim Marriages Act, 1939, the Civil Court was competent to grant the relief of maintenance and the relief in respect of matrimonial property of the spouses, for which other statutory enactments and other forums are available?*

4] This Second Appeal is directed against the judgment and order dated 06/12/2016 passed by the District Judge-5, Thane, in Civil Appeal No.56 of 2016 which was preferred against the judgment and order dated 11/02/2013 passed by the 9th Joint Civil Judge, Senior Division, Thane, in Special Civil Suit No. 257 of 2011.

5] The said suit was filed by the Respondent-wife, herein, under Section 2 of the Dissolution of Muslim Marriages Act, 1939 *(hereinafter referred as, "the Act")*, seeking divorce on the ground of

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cruelty. In the plaint itself, she has claimed the return of 'Meher Amount', the maintenance for her two minor children and half share in the flat jointly owned by her and the Appellant.

6] The Appellant resisted the suit on all the counts but did not raise any objection to the maintainability of the various reliefs claimed in the plaint, apart from the decree for 'dissolution of marriage'. No plea was raised before the trial Court that these reliefs relating to the maintenance, meher and share in the jointly owned flat cannot be asked for or granted in the suit filed under Section 2 of the Act, as those reliefs are provided under different statutes. Conversely, the suit was resisted on merits.

7] Both the parties led their evidence in support of their respective contentions and thereafter, the trial Court was pleased to decree the suit partially. The trial Court granted the decree for dissolution of marriage and also for return of meher amount of Rs.51,000/-. At the same time, the trial Court also awarded the maintenance, at the rate of Rs.15,000/- per month each, to the two minor children and 50% of the share in the jointly owned flat of the parties. The trial Court further directed that either the Appellant can give Respondent 50% of the market value of the said flat or by

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appointment of Court Commissioner, the flat may be sold and the sale proceeds be divided between the parties equally.

8] The Appellant challenged this judgment and decree of the trial Court before the First Appellate Court and the First Appellate Court vide its impugned judgment and decree dismissed the appeal on all the counts and confirmed the judgment and order of the trial Court. At this stage, it may also be stated that, no specific contention was raised before the Appellate Court also that in a suit filed under Section 2 of the Act, the trial Court was not competent to grant other reliefs, like, return of meher amount or the maintenance and the share in the jointly owned flat.

9] In this Second Appeal, however, this contention is advanced for the first time by learned counsel for the Appellant by submitting that when admittedly as per the title of the suit filed before the trial Court, it was a simpliciter suit filed under Section 2 of the Act, the trial Court was not at all competent to grant any of the above said reliefs. It is submitted that the separate forums are provided for seeking these reliefs, as those rights are granted under various other statutes. According to learned counsel for the Appellant, as the trial Court has thus exceeded its jurisdiction in granting such reliefs, it is a

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substantial question of law, which is required to be decided in this Second Appeal.

10] Normally, when the objection to the jurisdiction of the trial Court to entertain and grant such reliefs is not raised either before the trial Court or even in the First Appellate Court, this Court in the Second Appeal cannot entertain such objection, as it is too late in a day to do so, because after subjecting himself to the jurisdiction of the trial Court and contesting the suit and the First Appeal also on merits, now as the certain reliefs granted by the Courts below are against him, the Appellant is raising this contention for the first time and therefore, such contention needs to be rejected outrightly.

11] However, as learned counsel for the Appellant has advanced extensive submissions on this issue, mainly on the count that, if any relief is granted by the Court which it was not having jurisdiction to grant, then not only such Court has acted without jurisdiction or exceeded its jurisdiction but such decree also becomes null and void, this Second Appeal is heard and admitted on this substantial question of law only, which is framed as follows:-

> *"Whether in a suit filed under Section 2 of the Dissolution of Muslim Marriages Act, 1939, the Civil Court was competent to grant the reliefs in respect*

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> *of maintenance of the children and matrimonial property of the parties, for which other statutory enactments and the other forums are available?"*

12] In short, the question for consideration is, whether both the Courts below have committed an error in granting these reliefs to the Respondent, when admittedly the suit was filed under Section 2 of the Dissolution of Muslim Marriages Act, 1939?

13] In this respect, learned counsel for the Appellant has drawn attention of this Court to the title of the plaint, which states that, it was a petition filed for 'dissolution of marriage' under Section 2 of *the Dissolution of Muslim Marriages Act*. Then learned counsel for the Appellant has also taken this Court through the provisions of the said Act to submit that, the Act was enacted purely *"to consolidate and clarify the provisions of Muslim Law relating to suits for 'dissolution of marriage' by women married under Muslim Law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her married tie".* It is urged this Preamble of the Act, nowhere stipulates that the Act also deals with the "matters incidental" to the 'dissolution of marriage', which clause normally appears in such enactments.

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14] Further, it is submitted that *'The Dissolution of Muslim Marriages Act, 1939'* is a very short one, consisting of only five sections. Section 1 deals with the definition and extent of the Act; whereas Section 2 provides grounds for decree for dissolution of marriage. Section 3 then deals with the notice to be served on heirs of the husband, when the husband's whereabouts are not known. Section 4 deals with the effect of conversion to another faith by a married Muslim woman and Section 5 states that, 'nothing contained in this Act shall affect any right which a married woman may have under Muslim Law to her dower or any part thereof on the dissolution of her marriage'.

15] Thus, it is submitted that the entire Act is conspicuously silent, as to, the rights of the married Muslim woman towards the meher, maintenance or the matrimonial property. In such situation, according to learned counsel for the Appellant, in a suit filed under Section 2 of the said Act, the Respondent cannot claim other reliefs *like* maintenance, meher or share in jointly owner property, nor the Court is also competent to grant such rights or reliefs to her. According to learned counsel for the Appellant, the Respondent may be having those rights under other enactments, *like*, the right of maintenance under *'The Protection of Women from Domestic Violence*

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Act, 2005' or under *'The Muslim Women (Protection of Rights on Divorce) Act, 1986'*, but such rights cannot be granted under *'The Dissolution of Muslim Marriages Act, 1939'* because the rights under those two enactments, *like, 'The Protection of Women from Domestic Violence Act, 2005'* and *'The Muslim Women (Protection of Rights on Divorce) Act, 1986'*, are available under different forums. For getting those rights, the competent Court is *"Judicial Magistrate First Class"* or *"Family Court"* and not the *"Civil Court"*, where this suit was filed. According to learned counsel for the Appellant, therefore, the trial Court had exceeded its jurisdiction or exercised the jurisdiction which was not vested in it, while granting these reliefs to the Respondent.

16] It is submitted by learned counsel for the Appellant that, as regards the decree of 'dissolution for marriage', granted by both the Courts below, the Appellant is not having any grievance. The Appellant is also not pressing the grievance in respect of the order relating to return of meher amount, as he has already returned the same. However, as regards the reliefs of maintenance to the children and in respect of granting share to the Respondent in the jointly owned flat, the Appellant is having real grievance; because these reliefs should not have been granted by the trial Court and confirmed by the Appellate Court.

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17] In support of his submission, learned counsel for the Appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of *Santosh Hazari V/s. Purushottam Tiwari*[1], wherein it was held that when both the Courts have not functioned properly, then it may give rise to substantial question of law. It is urged that, when in a suit for 'dissolution of marriage', the Courts below have granted the other reliefs *like* maintenance and share in the matrimonial property, then definitely it has to be inferred that both the Courts below have functioned improperly. Their judgments do not display conscious application of mind and whenever such doubt arises, as to, whether the Courts below have carried out their functions correctly, such doubt itself must give rise to a substantial question of law, on which this Second Appeal needs to be admitted, heard and decided.

18] Learned counsel for the Appellant has then relied upon another judgment of the Hon'ble Supreme Court in the case of *Gauri Shankar V/s. Rakesh Kumar and Others*[2], wherein on the count of non consideration of substantial question of law articulated in memo of Second Appeal, it was found fit by the Hon'ble Supreme Court to remand the matter to the High Court for reconsideration afresh.

1 (2001) 3 SCC 179
2 (2017) 5 SCC 792

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19] Then, learned counsel for the Appellant has placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Chandrika Singh and Others V/s. Raja Vishwanath Pratap Singh and Another*[3], wherein it was held that, as the issue of tenancy was framed in the suit, it was not open to the Civil Judge to decide the same on its own. The said issue should have been referred to the appropriate and competent authority established under the relevant law. Accordingly, the appeal was allowed and the issue was referred for its decision to the competent authority.

20] Learned counsel for the Appellant has then relied upon the judgment of the Hon'ble Supreme Court in the case of *Rameshwar Dass Gupta V/s. State of U.P. and Another*[4] to submit that it is bounden duty of the High Court to ensure that the Courts below do not exceed their jurisdiction.

21] According to learned counsel for the Appellant, therefore, as in the instant case, it is clear that the Courts below have exceeded their jurisdiction by granting those reliefs to the Respondent, which could not have been claimed in this suit, it is necessary to set-aside the

3 (1992) 3 SCC 90
4 (1996) 5 SCC 728

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findings of fact recorded by both the Courts below, by entertaining and allowing this Second Appeal on this substantial question of law.

22] Per contra, learned counsel for the Respondent has relied upon the Full Bench judgment of this Court in the case of *Jagdish Balwantrao Abhyankar & Others V/s. State of Maharashtra & Others*[5] to submit that if the relief is claimed under wrong provision, it is within the power of the Court to grant relief by disregarding the 'nomenclature' or the 'label' to ensure that the right of the party is not lost. In this case, it was observed by the Full Bench of this Court that, *"some times it does happen that the application is filed under a particular provision of statute and it is found to be not maintainable thereunder or the Court or Tribunal has no power to grant the relief asked for thereunder but the said application is maintainable under some other provision of the statute before the same Court or Tribunal and it has power to grant the relief asked for, it is in such cases that it has always been held that the "label" or the "nomenclature" of the application or petition should not matter and after seeing the substance or contents of the application, if it is possible to grant the relief under some other provision of the statute, such a relief should not be denied to a party. Such a recourse can be taken only when it is*

5 AIR 1994 Bombay 141 (At Nagpur)

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found that the relief asked for cannot be granted under the provisions under which the jurisdiction of the Court or Tribunal is invoked, much less when the result would be to deprive the party of a right of appeal provided against the order passed under such a provision".

23] According to learned counsel for the Respondent, the Civil Court, definitely has the jurisdiction to grant the relief of maintenance and also in respect of share in the property. It is not a case at all, that the Civil Court has no jurisdiction over the subject matter of the dispute. The entitlement of the Respondent to those reliefs is recognized under other statutes. In such situation, there was nothing wrong, much less illegal, if the trial Court has exercised the jurisdiction available to it and granted the relief in the suit. Merely because the suit was labeled to be filed under Section 2 of the Act, does not take out the power or jurisdiction of the Court to grant such reliefs; especially when at the very first opportunity, the Appellant has not taken any such objection. According to him, if such objection was taken at the appropriate time, the Respondent would have taken resort to appropriate remedies. At this stage, if the decree of the trial Court, which is confirmed by the Appellate Court also, in respect of these two reliefs is set-aside by this Court, merely on the count that the 'nomenclature' of the suit filed before the trial Court was a suit

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under Section 2 of the Act and hence, the trial Court should not have granted these reliefs, then the valuable rights accrued to the Respondent, would be lost; especially if such plea is allowed to be entertained in the Second Appeal.

24] Learned counsel for the Respondent has then also placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Sushilabai Laxminarayan Mudliyar & Others V/s. Nihalchand Waghajibhai Shah & Others*[6] wherein also it was held that while considering the maintainability of the appeal against the judgment of the Single Judge, the Division Bench has to find out whether in substance the judgment has been passed by the learned Single Judge in exercise of the jurisdiction under Article 226 of the Constitution of India. Learned Single Judge is at liberty to decide according to the facts of each particular case, whether the said application had to be dealt with only under Article 226 of the Constitution of India or whether it can invoke the power under Article 227 of the Constitution of India. It was held that, *"the determining factor is the real nature of the principal order passed by the Single Judge, which is appealed against and neither mentioning in the cause title of the application of both the Articles nor the granting of ancillary orders thereupon made*

6 AIR 1999 SC 185

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by learned Single Judge would be relevant".

25] Here, in the case, according to learned counsel for the Respondent, it is totally irrelevant, whether the plaint should also carry the title of other reliefs claimed in the suit and it is sufficient if the plaint carries only the nomenclature that it was filed under Section 2 of the Act. According to him, all the reliefs which Respondent was seeking in the suit were pleaded specifically in the plaint, including the relief relating to the maintenance of the children and also the share in the jointly owned flat. The Appellant has resisted the suit including these reliefs also. He has proceeded with the trial knowing fully that these reliefs were claimed. Even after the judgment of the trial Court, in the First Appellate Court he has not raised any grievance on this score. Hence, according to learned counsel for the Respondent, the Appellant is now in the first place precluded from raising this contention and secondly, mere title of the suit will not be sufficient to deprive the Court from exercising its power under other enactments when the reliefs to that effect were maintainable under other enactments. Mere non mentioning of those enactments or the Sections thereof in the title of plaint, according to him, is not sufficient to hold that the trial Court has exceeded its brief.

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26] Further, learned counsel for the Respondent has also relied upon the various judgments of the Hon'ble Supreme Court and this Court to submit that the relief of maintenance and the right in matrimonial property being incidental reliefs to the 'dissolution of marriage', it cannot be accepted that the trial Court has exceeded its jurisdiction in granting those reliefs. Conversely, according to him, the very object of enactment of *'The Family Courts Act, 1984'*, if kept in mind, then it requires that all the disputes between the spouses should be brought in one forum and they should be decided together under one umbrella, so that the valuable time spent by the parties in the litigation can be saved.

27] Having given my anxious consideration to the rival submissions advanced by learned counsel for the parties, I find much substance in the submissions advanced by learned counsel for the Respondent. Here, in the first place, the Appellant has not raised objection to the Respondent claiming in the plaint these reliefs of maintenance and share in the jointly owned flat, though she has titled the suit as the one for 'dissolution of marriage' under Section 2 of the Act. The Appellant has contested these reliefs on merits. He has resisted these reliefs by filing his written statement and leading his own evidence. Even after the reliefs were granted by the trial Court in

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the First Appeal also, he has at no time raised any objection on this score that Respondent could not have sought these reliefs in a suit filed under Section 2 of the Act and the trial Court has exceeded its jurisdiction in granting those reliefs.

28] In the 'Appeal Memo' of the Second Appeal also, he has not raised this ground. Only at the time of final hearing, if the Appellant is raising this objection that too merely because in the title of the suit, the provisions of other enactments, *like*, *'The Protection of Women from Domestic Violence Act, 2005'* and *'The Muslim Women (Protection of Rights on Divorce) Act, 1986'*, are not added, then it is not only too late in a day to do so but it is as good as to deprive the Respondent of the right accrued to her. It would be also as good as directing the Court to be guided merely by "nomenclature" or "label" of the plaint. It can hardly be accepted as it would be against the spirit of the law.

29] While deciding any litigation, the Court has to consider entire case in its proper perspective, including the pleadings, the points argued, the reliefs claimed, everything. The Court is never expected to be guided by mere "nomenclature" or "label" of the plaint. As held by this Court, in the above referred judgment of *Jagdish*

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Balwantrao Abhyankar, at times such nomenclature may be due to mistake or inadvertence. The party cannot be penalized for the same. The Court of law has to do the substantive justice to the parties and not to be misled by technicalities. Even if at times, the 'nomenclature' is incorrect, *like*, where it is not mentioned specifically whether the petition is under Article 226 or 227 of the Constitution of India, the Court has to consider properly, depending upon the reliefs sought thereunder and accordingly grant or reject such petition. Merely because a wrong provision of statute is quoted in the petition or the suit, the Court cannot dismiss the same. Here, in the case, therefore, merely because the Respondent had not stated the provisions of other statutes, while filing the plaint and has stated that it is filed under Section 2 of the Act, it will not denude the Court from its powers to do the justice.

30] It is also not a case where the Civil Court cannot and does not have the jurisdiction to grant these reliefs of maintenance and share in the matrimonial property. Under the provisions of *the Protection of Women from Domestic Violence Act, 2005,* Section 26 confers concurrent jurisdiction on all the three forums, including the Family Court, the Court of Judicial Magistrate First Class and also the Civil Court, as regards the relief like the maintenance. So far as the

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relief in respect of the matrimonial property or the property standing in the joint name of both the spouses which is a fact in this case also, the Civil Court is having the jurisdiction to entertain such suit. As a matter of fact, according to learned counsel for the Appellant also, Section 22 of *'The Specific Relief Act, 1963'*, clearly provides for partition of such jointly owned property and under the provisions of *'The Specific Relief Act, 1963'*, it is the Civil Court, which is having the jurisdiction to grant such decree. Therefore, it is not a case, where the Civil Court was not having the jurisdiction to grant the reliefs which the Respondent had claimed in the suit. Hence, it also cannot be said that the trial Court has exceeded its jurisdiction.

31] As regards the reliance placed by learned counsel for the Appellant on the judgment of the Hon'ble Supreme Court in the case of *Chandrika Singh (supra),* there the issue framed was relating to the tenancy, for which a separate competent authority is established and the Civil Court's jurisdiction to decide such issue is excluded. Therefore, it was held that such issue was required to be referred to the tenancy authorities. Here, in the case, the jurisdiction of the Civil Court is not excluded in any way to decide both these issues relating to maintenance of the children and the right and share of the Respondent in the jointly owned flat. The Civil Court was having very

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much jurisdiction and therefore, there is no question of the trial Court exceeding its jurisdiction or acting beyond its jurisdiction or exercising the jurisdiction, which was not vested in it. Hence, on this score also, the contention raised by learned counsel for the Appellant cannot be accepted.

32] Third and the most important factor which is required to be considered is that the law always expect that all the disputes between the parties should be decided in one forum and in one proceeding, so as to avoid the multiplicity of proceedings and the waste of time, energy and money of the parties in prosecuting the remedies in different forums. The right of maintenance and right in the matrimonial property are the consequences of the marriage or its dissolution. Those reliefs are incidental to the main relief of 'dissolution of marriage' and therefore, these reliefs are very much integral part of decree of 'dissolution of marriage'. Hence, they are required to be considered in the same proceeding, even if at times such reliefs are not asked for also. It is well recognized that the award of maintenance is the fall out of the decree of 'dissolution of marriage', hence even if at times, the Respondent has not asked for the maintenance, she is awarded that maintenance for herself and her children while passing the decree for 'dissolution of marriage'. It may

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be stated that, even when the decree is of *'Restitution of Conjugal Rights'* under Section 9 of *'The Hindu Marriage Act, 1955'* there is provision for award of maintenance under Order 21, Rule 33 of the Code of Civil Procedure, till the decree is complied with. The point to be stressed is that the relief of maintenance whether to the wife or the children is incidental to the relief of 'dissolution of marriage'. Merely because *'The Dissolution of Muslim Marriages Act, 1939',* does not mention that the Court is also having the jurisdiction or power to grant such relief, it cannot be said that the Court is not having jurisdiction to grant it, if it is incidental, claimed and the Court finds it necessary to grant the same. Moreover, the right of maintenance given to wife and the minor children under the provisions of *the Muslim Women (Protection of Rights on Divorce) Act, 1986,* is in addition to the right, which the minor children are having under Muslim Law to get maintenance from the father. The law expects that the parties should not be driven to approach the different forums but in one forum itself they should be granted whatever reliefs to which they are entitled.

33] In this respect one can also take note of the decision of this Court relied upon by learned counsel for the Respondent, in the case of

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Mohammed Anis Ul Haq Manzul Ul Haq V/s. Asma Anjum Anis Ul Haq[7]. The issue raised in that case before this Court was whether in a suit filed under Section 2 of *the Dissolution of Muslim Marriages Act, 1939,* cognizable under Section 9 of the Civil Procedure Code, 1908, the Civil Court has power or jurisdiction to grant interim maintenance? After taking note of its earlier decisions and considering various provisions of the Mohammedan Law, it was held by this Court that, though the parties to the case are Mohammedan, as the maintainability of the suit filed under Section 2 of *'The Dissolution of Muslim Marriages Act, 1939',* was not disputed, the power to grant interim maintenance was available to the Civil Court. It was held that "inherent power of the Court, as is well known, can be denied only by way of statutory interdiction. There does not exist any provision either in Civil Procedure Code, or in *the Dissolution of Muslim Marriages Act, 1939,* dis-entitling the Court from granting interim maintenance". It was held that such power is available by necessary implication, where circumstances so warrant.

34] In respect of the right of minor children to get maintenance from the father, learned counsel for the Respondent has placed reliance on the judgment of the Hon'ble Supreme Court in the

7 I (2011) DMC 646

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case of *Noor Saba Khatoon V/s. Mohd. Quasim*[8], wherein it was held that when the children are in custody of the mother, the obligation of father to maintain his children till they attain majority is absolute. Even under the Muslim Personal Law, the right of minor children to receive maintenance from the father till they are able to maintain themselves is absolute". Thus, if the trial Court in this case was having such jurisdiction to grant the maintenance to the children, then exercise of such jurisdiction by the trial Court, in the facts of the present case, cannot be called as exceeding beyond its jurisdiction.

35] As a matter of fact, the Division Bench of this Court, in the case of *Shabbir Ahmed Sheikh V/s. Shaikilabanu*[9], has held as follows:-

> *"The preamble of the Dissolution of Muslim Marriages Act, 1939, shows that the Act is of a consolidating and declaratory character and that it was intended to consolidate and clarify the provisions of Muslim Law relating to suits for dissolution of marriages by women married under Muslim Law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie. It was never intended to abrogate the general Law applicable to Mohammedans. Therefore, this Act is not the sole statute. They are having the rights under other*

8 AIR 1997 SC 3280
9 II (1985) DMC 13

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> *statutes also and those rights can be very well exercised in the Civil Court. Therefore, if any decree is passed by the Civil Court granting those rights, it cannot be said that the Civil Court is acted beyond its jurisdiction."* *(emphasis supplied)*

36] In this respect, the useful reference can also be made to the judgment of the Hon'ble Supreme Court in the case of *K.A. Abdul Jaleel V/s. Shahida*[10], wherein the Hon'ble Supreme Court was concerned with the provisions of Section 7 of *the Family Courts Act, 1984,* as to, whether the Family Court had jurisdiction to adjudicate upon any question relating to properties of the parties not only of subsisting marriage but also divorced parties and the Hon'ble Supreme Court was pleased to hold that the reason for enactment of *the Family Courts Act, 1984,* was to set up a Court to deal with all the disputes concerning with the Family and it is now well settled principle of law that the jurisdiction of a Court created specifically for resolution of disputes of certain kinds should be construed liberally. Hence, the restricted meaning if ascribed to explanation "C" appended to Section 7 of the Act would frustrate the object where for the Family Courts were set-up.

37] The point to be stressed is that in the course of

10 AIR 2003 SC 2525

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matrimonial proceedings, all the disputes relating to the parties are as far as possible, required to be brought under one umbrella and one forum, instead of driving the parties to various forums. If the Family Court can decide such disputes, the Civil Court, which is considering whether to grant decree for 'dissolution of marriage', cannot be said to be devoid of the jurisdiction to grant the relief of maintenance and right in matrimonial property.

38] The law is required to be interpreted in such a manner that it causes least inconvenience to the parties to the litigation. Now setting aside the decree of the trial Court, after the lapse of seven years from the date of filing of the suit that too on technical and academic ground that the specific provisions of these two enactments, like, *'The Protection of Women from Domestic Violence Act, 2005'* and *'The Muslim Women (Protection of Rights on Divorce) Act, 1986'*, were not quoted in the plaint filed before the trial Court is not only going to cause inconvenience to the parties but it is also taking too technical and pedantic view of the matter and thereby allowing the ends of justice to be defeated. Such approach cannot be adopted by any Court of law, which is in the real sense a "Court of justice". Things would have been different, if the Appellant had taken such objection at the earliest opportunity but now in the Second Appeal, raising such

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objection, after contesting the matter on merits, is merely an attempt to protract and prolong the execution of the decree and thereby to harass his wife and children. The answer to the point framed for determination therefore has to be in the negative.

39] As regards the submission that one of the child has already become major and therefore, not entitled for maintenance; if it is so, the Appellant can very well raise that grievance in the Executing Court. This is not a forum to raise that grievance.

40] Before concluding, one more submission advanced by learned counsel for the Appellant needs to be considered and it pertains to the sale of the jointly owned flat, as ordered by the Courts below. There is concurrent finding recorded by both the Courts below and which is based on proper appreciation of evidence on record; especially the admission given by the Appellant himself in the course of his cross-examination that the flat stands in the joint name. It is proved on record that the Respondent has contributed the amount of Rs.5,00,000/- for purchase of the said flat. Hence, in the light of the judgment of this Court in the case of *Smt.Sunita Shankar Salvi V/s. Shankar Laxman Salvi* [11] as the flat is standing in the joint name and appeared to be acquired jointly by the parties, then it follows that the

11 AIR 2003 Bombay 431

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Respondent is having right and share therein. Therefore that finding cannot be disputed in the Second Appeal.

41] The only grievance raised by learned counsel for the Appellant is that the trial Court has directed the flat be sold and consideration thereof be divided equally between the parties; in the alternate the Appellant himself can purchase the flat and pay the half consideration, as per the market price to the Respondent. The submission of learned counsel for the Appellant is that the trial Court has not considered the provision of Section 22 of the Specific Relief Act, which also provide for the partition of the property owned jointly. Here, in the case, according to him, such discretion is not given to the executing Court as the decree is silent about the same. If it is so, then in my considered opinion, this point also should have been advanced before the trial Court or the Appellate Court but assuming that it is not advanced, to that extent, it is directed that the Executing Court is also having the discretion to consider, in addition to the two other modes given in the decree, whether the flat can be partitioned between the Appellant and the Respondent, if it is acceptable, agreeable and convenient to both the parties. Except to this limited extent, no other substantial question of law is raised, hence this Second Appeal stands dismissed.

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42] In view of the dismissal of the Second Appeal, nothing survives in the Civil Application and therefore, it stands disposed off.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

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