

RAJASTHAN HIGH COURT

ShamimBano

Vs.

State of Rajasthan

Cri. R. P. No. 519 of 2001

(Ashok Parihar, J.)

09.04.2004

ORDER

Ashok Parihar, J.

1. An application under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 was filed by the petitioner before the Civil Judge (Senior Division) and Additional Chief Judicial Magistrate, Danta Ram Garh, Sikar.
2. After filing reply as also the documents, an application was filed by the petitioner before the trial Court with the prayer that on admitted facts in reply filed on behalf of the respondent husband and the agreement placed on record, the petitioner was entitled for possession of part of the property in dispute.
3. Accordingly, the trial Court vide order dated 11-4-2001 issued directions that as per the agreement and contract, the petitioner may be given possession of the part of the property mentioned therein.
4. Aggrieved by the above order dated 11-4-2001, the respondent husband filed a revision petition mainly on the ground that the impugned order dated 11-4-2001 has been passed by the trial Court under Section 151, Civil Procedure Code. As such, the order was without jurisdiction. While allowing the revision petition, the revisional Court, vide order dated 5-7-2001 set aside the order dated 11-4-2001 and possession of the property in dispute was again ordered to be given to the respondent husband. Hence the present revision petition challenging the order dated 5-7-2001 passed by the revisional Court.
5. After hearing counsel for the parties, I have carefully gone through the material on record, the relevant provisions of the Act of 1986 as also the original record as

summoned by this Court.

6. A bare, perusal of the application filed before the trial Court would show that the application was filed under Section 3(d) of the Act of 1986. The reply and the agreement have also been placed on record. It was only after receiving the reply and on the basis of agreement as placed on record, the petitioner applicant submitted an application that in view of admitted facts the possession of the property in dispute may be given to her. However, it appears that the revisional Court labored hard in setting aside the order passed by the trial Court only on the ground that the application under Section 151, Civil Procedure Code was not maintainable and no such order could be passed under Section 151, Civil Procedure Code.

7. After having carefully gone through the impugned order passed by the revisional Court, in my opinion, the revisional Court failed to consider the original application of the petitioner as also the reply and the documents available on record. Mere mention of a wrong section in the application or the order would not make the order or the application as illegal or nullity because the main contents of the application have to be taken note of and further in what context the application has been filed should be the main consideration before the Court concerned. After having considered entire facts and circumstances, in my opinion, the order passed by the revisional Court is not sustainable.

8. Accordingly, the revision petition is allowed. The order passed by the revisional Court is set aside. The order dated 11-4-2001 passed by the trial Court is maintained and the authorities are directed to restore back the possession to the petitioner of the property in dispute. The trial Court is further directed to decide the main application of the petitioner as expeditiously as possible. The record of the trial Court be sent back immediately.

Petition allowed.