



**IN THE COURT OF THE III-ADDITIONAL DISTRICT AND
SESSIONS JUDGE, KOLAR
(SITTING AT KGF)**

: PRESENT :

SHRI. SHIVAKUMARA. B.

B.A., LL.B.

III-Addl. District & Session Judge, Kolar
(Sitting at KGF)

Dated this 4th day of August-2026

R.A. No.178/2024

APPELLANT/S:

Sri. Sheik Abdulla,

S/o. Ubedulla,

Aged about 44 years,

R/at. No.1212, 4th Cross,

Gowtham Nagar, Robertsonpet Post,

K.G.F.-563122, Kolar District.

(Plaintiff in O.S. No.393/2020)

(Rep. By: **Sri. B.M.V. Adv.**)

- V/s -

RESPONDENT/S:

Smt. A. Farzana,

W/o. Sheik Abdulla,

D/o. Aman Basha,

Aged about 36 years,

R/at. B.M. Road, Adjacent Masjid,

Andersonpet Post, KGF-563113,

Kolar District.

(Defendant in O.S. No.393/2020)

(Rep. By – **Sri. K.P.K. Adv.**)



Date & nature of the decree or order appealed against.	The judgment and decree dated: 28.06.2024 passed in O.S. No.393/2020 by the Learned I-Addl Civil Judge & JMFC at KGF.		
Date of institution of the appeal	27.07.2024		
Date of Judgment	04.08.2026		
Duration of the appeal	Year/s	Month/s	Day/s
	02	00	08

JUDGMENT

This Regular Appeal is filed under Order 41 Rule 1 R/w. Section.96 of CPC, by the appellant/plaintiff challenging the legality and correctness of the impugned judgment and decree dated: 28.06.2024 passed in O.S. No.393/2020 by the Learned I-Addl Civil Judge & JMFC at KGF.

2. The appellant was plaintiff and respondent was the defendant before the trial court. I would like to refer the parties to their ranks which they held in the trial court.

3. **The brief facts of the case of plaintiff before the trial court are that:**



The marriage of the plaintiff along with the defendant was performed on 21st November-2010 at St. Mary's Cultural Hall, Champion Reefs, KGF. After their marriage, both plaintiff and defendant were resided together at matrimonial home in Gowtham Nagar, Robertsonpet, KGF, for few days. Subsequently, the plaintiff had shifted his family to R.T. Nagar, Bengaluru, wherein both plaintiff and defendant were residing therein for a period of 1½ years. Due to their wedlock, they begotten a male child namely Master. Shaik Rahish who is aged about 8 years. While, plaintiff and defendant were residing at R.T. Nagar, Bengaluru, the defendant was in the habit of unnecessarily used to create havocs and altercations against his wishes and never behaved herself as dutiful wife. Frequently, the defendant without any basis and without informing the plaintiff, used to quit him and joined with her parents at Andersonpet, KGF, and continued to stay with them. However, the plaintiff and his parents went to the house of parents of the defendant and urged for re-conciliation and re-joining with him; but, the defendant somehow, under one or other pretext joined with the plaintiff and agreed to lead marital life with him. Accordingly, both plaintiff and defendant were again started residing at R.T. Nagar, Bengaluru. But, once again within a short span of time, the defendant deserted



the plaintiff with an evil and nefarious mind by posing all cruel attitude towards the plaintiff and the defendant willfully deserted the plaintiff without informing him and came to KGF and joined with her parents and continued to reside therein till the date and without consent of the plaintiff, she prosecuted her studies for Para Medical at KGF.

4. It is further averred that once the plaintiff and defendant and her parents were urged the matter before the jurisdictional police at KGF to resolve the issue in order to put an end for the misconceptions between them. Though, the defendant and her parents agreed in terms of interactions amongst themselves and assured the plaintiff and family members that they would restore the normalcy in the matrimonial life by joining with the plaintiff after completion of Para Medical course. But, nothing has been materialized even after a margin of time gap as provided and sought for by the defendant. Since, no other go, plaintiff has once again urged the matter to resolve the issue with the intervention of high level Zamath committee at Robertsonpet, KGF. In the eve of enquiry constituted by them, the defendant once again miserably failed to join with the plaintiff. Then, once again, the plaintiff went to urge the matter before the Superintendent of



Police, Champion Reefs, KGF, and accordingly, he was directed to approach Vanitha Sahayavani, Robertsonpet, KGF, to take up the issue. But, the defendant was so evasive and not acted upon as true and loyal wife and accordingly, reconciliation was utterly failed. Since, there is no any alternative to resolve the matter, the plaintiff decided and file a suit in O.S. No.194/2016 against the defendant for Restitution of Conjugal Rights. The defendant was seriously contested the matter and however, the said suit came to be decreed by directing the defendant to join with the plaintiff. But, the defendant failed to comply the order passed by the civil court. After obtaining decree in O.S. No.194/2016, once again the plaintiff urged the defendant to comply the court order and subsequently, he filed Execution Petition in Ex. No.10/2020 against the defendant. But, the defendant has never cared, nor given any credence to the court order.

5. However, against the judgment and decree passed in O.S. No.194/2016, the defendant had preferred an appeal in R.A. No.17/2020 which came to be dismissed on 05.10.2020 by confirming the judgment and decree passed in O.S. No.194/2016. Despite, the defendant who is having foul mind, with dubious act, she filed a petition under Domestic Violence



Act in D.V.A. No.3/2016 against the plaintiff and sought for maintenance. However, as per the order passed by the court in the said D.V.A. case, the plaintiff was directed to pay monthly interim maintenance amount of Rs.2,500/-. All the above said proceedings initiated by both plaintiff and defendant were attained finality exclusively D.V.A. No.3/2016 filed by the defendant and also Ex. No.10/2020 filed by the plaintiff. Since, the defendant was failed to join with the company of the plaintiff to restore the marital life, he has filed the present suit, seeking decree of divorce against the defendant. Hence, the suit.

6. On the other hand, the defendant has entered appearance through her counsel before the trial court and filed detailed written statement by denying the entire plaint averments except admitting the relationship between the plaintiff and the defendant as husband and wife. It is admitted that herself and her son who is aged about 8-9 years are residing at Andersonpet, KGF, for the last 6 years. The plaintiff has deserted herself and her son without any justification. It is also admitted that the plaintiff had filed a suit in O.S. No.194/2016 against the defendant for Restitution of Conjugal Rights, which was seriously contested by her and which came



to be decreed. It is further admitted that the defendant failed to comply with the order passed by the court in O.S. No.194/2016. The defendant had preferred an appeal against the judgment and decree passed in O.S. No.194/2016 in R.A. No.17/2020, which came to be dismissed. The suit filed by the plaintiff is premature for the reason that the appeal filed by the defendant in R.A. No.17/2020 was disposed-of only on 05.10.2020 and the plaintiff filed the suit within a span of 17 days from the date of judgment passed in R.A. No.17/2020. The plaintiff ought to have waited till the appeal period is completed and he hurriedly filed the suit to mislead the court in order to get order for his gain. Therefore, the suit of the plaintiff is not maintainable.

7. It is further contended that the defendant and her son are living separately. The plaintiff is liable to pay maintenance including litigation expenses to prosecute the case. The plaintiff in order to avoid to pay compensation and maintenance, has come up with false allegations and filed this false suit against her. Except the above said contentions and admissions as stated supra, rest of the plaint averments are denied by the defendant in toto and prayed for dismissal of suit.



8. On the basis of the above said pleadings, the Trial Court has framed the following:

ISSUES

1. Whether the plaintiff proves that the defendant voluntarily deserted the company of plaintiff?
 2. Whether the plaintiff proves that the defendant not complied the orders of O.S. No.194/2016?
 3. Whether the defendant proves that the suit of the plaintiff is prematured one?
 4. Whether the plaintiff is entitled for the relief sought prayed for?
 5. What order or decree?
9. The learned Trial Judge after hearing the arguments on both sides, considering the material and evidence available on record, answered Issue No.1 in the Affirmative, Issue No.2 and 4 are in the Negative, Issue No.3 the suit is barred by law and and Issue No.5 as per the final order and dismissed the suit of the plaintiff with costs.
10. Being aggrieved by the judgment and decree, the appellant/plaintiff has preferred this Regular Appeal.



11. The Learned counsel for the appellant assailed the judgment and decree of the trial court on the following:

GROUND

1. The impugned judgment and decree passed by the trial court is not maintainable either on facts and circumstance of the case.
2. The trial court has drawn adverse inference against the appellant by answering Issue No.1 to 5 and wrongly passed the judgment and decree which is one sided and also against to the principles of natural justice.
3. The impugned judgment and decree passed by the trial court is illegal, unlawful, capricious, arbitrary, frivolous and the same is not based on the sound principles of law.
4. The reasons given by the trial court are not proper and the same are untenable and baseless which neither supported by the material on record, nor on the pleadings and probabilities of the case.
5. The trial court has not applied its mind while passing the erroneous judgment and decree and it has misunderstood and misinterpreted the documentary evidence of the appellant and caused miscarriage of justice.
6. The trial court has given much importance to the documentary evidence of the respondent and passed the erroneous judgment and decree.



7. The trial court has not appreciated the material and evidence which are available on record and erroneously passed the judgment and decree.

Hence, it is prayed to allow the appeal filed by the appellant/plaintiff after setting aside the impugned judgment and decree dated: 28.06.2024 passed in O.S. No.393/2020 on the file of the Learned I-Addl Civil Judge & JMFC at KGF.

12. Heard arguments of both the learned counsels for the parties and perused the materials available on record. The learned counsel for the respondent also filed written arguments.

13. The points that arise for my consideration are as follows:

POINTS

1. Whether the trial court has erred in dismissing the suit of the plaintiff/appellant without properly appreciating the evidence and material available on record?

2. Whether the impugned judgment and decree of the trial court calls for any interference at the hands of the court?

3. What order?

14. My answer to the above points are as follows:



- Point No.1: In the **Negative**
Point No.2: In the **Negative**
Point No.3: As per the **final order** for the following:

REASONS

15. **POINT No.1 & 2**: Since, these two points are interlinked with each other and to avoid repetition of facts, they are taken up together for discussion.

I have secured the records of the trial court and gone through the pleadings of the parties, issues, both oral and documentary evidence adduced by the parties and also judgment and decree of the trial court.

16. The plaintiff who is examined as PW.1 has reiterated the entire plaint averments in his affidavit filed in lieu of examination-in-chief. In support of his oral evidence, plaintiff has produced the documents marked as Ex.P1 to P20. On the other hand, the defendant got examined herself as DW.1 and reiterated the entire written statement averments filed in lieu of examination-in-chief, but, no documents are marked.

17. As discussed above, the relationship between the plaintiff and defendant is not in dispute. The only version of the



plaintiff is that after the marriage, both husband and wife were started living at Robertsonpet, KGF, for few days. Thereafter, the plaintiff had shifted his family to R.T. Nagar, Bengaluru, wherein both husband and wife were residing for a period of 1½ years. Due to their wedlock, they blessed a male child by name Shaik Rahish who is aged about 8-9 years. The allegations made by the plaintiff and also version of PW.1 that the defendant while staying in the matrimonial home at R.T. Nagar, Bengaluru, she was in the habit of unnecessarily havocs and altercations against the wishes of the plaintiff and never behaved herself as a dutiful wife. Further, the defendant without any reasons and without informing the plaintiff, she used to quit the matrimonial home and joined her parents; she used to stay therein at Andersonpet, KGF, and continued to stay with her parents. Eventhough, the plaintiff and his parents approached the defendant and urged her parents for for re-conciliation and re-join, however, the defendant agreed to lead marital life with him and therefore, again they started living at R.T. Nagar, Bengaluru. But, within a short span of time, the defendant deserted the plaintiff and went back to her parents' house at KGF and started residing therein with them.

18. Another version of the plaintiff is that once the plaintiff



and his parents urged the matter to resolve the issue with the intervention of high level Zamath Committee at Robertsonpet, KGF; but, in the eve of enquiry constituted by them, once again the defendant miserably failed to join with the company of the plaintiff. The plaintiff and his family members also approached the Superintendent of Police, Champion Reefs, KGF, to resolve the dispute/problem. Accordingly, the matter was referred to Vanitha Sahayavani, Robertsonpet, KGF, to take-up the issue, where both parties were summoned to attend to participate in the proceedings. During the course of conciliation, the defendant was so evasive and not acted upon as true and loyal wife and thereby, re-conciliation was also failed and entire enquiry proceedings went in vain. Since, there was no option or alternative to the plaintiff, he filed the suit against the defendant in O.S. No.194/2016 for Restitution of Conjugal Rights. After contesting the matter by both plaintiff and defendant, the suit came to be decreed and the defendant was directed to join with the company of the plaintiff to lead marital life. Even after passing the said decree for Restitution of Conjugal Rights, the defendant failed to comply with the same. Therefore, the plaintiff had filed Execution Petition to execute the said judgment and decree passed in his favour in Ex. No.10/2020 which is pending



consideration. Since, the defendant was failed to comply with the decree passed in favour of the plaintiff and failed to re-join the company of the plaintiff, he has filed the present suit against the defendant for Decree of Divorce.

19. On the other hand, as per the contentions and evidence of defendant/DW.1 that against the judgment and decree passed in O.S. No.194/2016, she preferred an appeal in R.A. No.17/2020 which came to be dismissed; thereafter, she also filed a petition under D.V.A. No.3/2016 against her husband-plaintiff and sought for maintenance, in which, interim order was passed and directed the plaintiff to pay monthly interim maintenance of Rs.2,500/-. Another contention of the defendant/DW.1 is that the suit of the plaintiff is premature one as the plaintiff had filed the present suit within a span of 17 days from the date of judgment passed in R.A. No.17/2020. Hence, the suit of the plaintiff is not maintainable and same is liable to be dismissed.

20. As discussed above, the above said criminal proceedings initiated by both plaintiff and the defendant are not in dispute. According to the plaintiff, since the defendant failed to come and join with the plaintiff to lead marital life, he had no any



other option except filing the suit for Restitution of Conjugal Rights. However, the above said suit was decreed in favour of the plaintiff, against which, the defendant preferred an appeal before the Appellate Court, which came to be dismissed. Thereafter, the plaintiff had filed this present suit against the defendant seeking the relief of Decree of Divorce.

21. As per the documentary evidence produced by the plaintiff along with his oral evidence, Ex.P1 is judgment passed in R.A. No.17/2020 which was preferred by the defendant against the judgment and decree passed in O.S. No.194/2016. Ex.P2 is order sheet, Ex.P3 is appeal memorandum, Ex.P4 is objection filed by the defendant, Ex.P5 is decree pertaining to R.A. No.17/2020, Ex.P6 is criminal appeal preferred by the plaintiff and others against the defendant and son in Criminal Appeal No.53, 54, 55 of 2017 in which, common judgment was passed by the 3rd Additional District and Sessions Judge, KGF, regarding monthly maintenance as well as compensation which was directed to be paid by the plaintiff to the defendant and their son. Ex.P7 is certified copy of the order sheet in Criminal Appeal No.54/2017, Ex.P8 is certified copy of Joint memo filed in Criminal Appeal No.54/2017, Ex.P9 is certified copy of



Criminal appeal No.55/2017, Ex.P10 is Joint memo filed in Criminal appeal No.55/2017, Ex.P11 is certified copy of order sheet, Ex.P12 is certified copy of plaint, Ex.P13 is written statement, Ex.P14 is Objection filed by the defendant pertaining to O.S. No.194/2016, Ex.P19 is copy of the statement given by the defendant before the P.S.I. of Andersonpet police station, KGF, Ex.P21 is Endorsement issued by PSI of Andersonpet police station, Ex.P22 is letter dated: 04.04.2016 addressed by the plaintiff to the Superintendent of Police, Champion Reefs, KGF, Ex.P23 is Police notice, Ex.P24 is application, Ex.P25 is Requisition submitted to the Superintendent of Police, Ex.P26 is memo, Ex.P27 is Police notice, Ex.P28 is statement given by the concerned police at Vanitha Sahayavani and Ex.P30 is certified copy of deposition of the defendant herein filed in D.V.C. No.3/2016.

22. It is no doubt true that the documents produced by the plaintiff along with his oral evidence clearly goes to show that the plaintiff made an attempt to bring back the defendant to come and join with him to lead marital life along with their son; but, inspite of all the above said efforts made by the plaintiff, they all went in vain as the defendant failed to come



and join with the plaintiff to lead marital life. It is no doubt true that after having made all the efforts, the plaintiff had filed a suit in O.S. No.194/2016 against the defendant for Restitution of Conjugal Rights, which came to be decreed. Against the said judgment and decree, the defendant had preferred an appeal in R.A. No.17/2020 which came to be dismissed. The defendant/DW.1 has nowhere stated in her evidence that against the judgment and decree passed in R.A. No.17/2020, she has preferred Regular Second Appeal before the Hon'ble High Court. However, DW.1 has been cross-examined by the learned counsel for the plaintiff. On going through the cross-examination of DW.1, wherein she has stated as follows:

I am not interesting to re-join with the respondent for the past 10 years.

23. The above said version of DW.1 clearly goes to show that though the judgment and decree passed in O.S. No.194/2016 filed by the plaintiff for Restitution of Conjugal Rights, the defendant failed to re-join with the company of her husband to lead marital life. In spite of that, she had preferred an appeal against the judgment and decree passed in O.S. No.194/2016 which came to be dismissed. Even after dismissal of the said



appeal, the defendant also failed to come and join with the company of the plaintiff to lead marital life.

24. It is significant to note that as per the contention of defendant/DW.1, the present suit filed by the plaintiff is premature one as the said suit was filed within span of 17 days from the date of passing of judgment and decree in R.A. No.17/2020 on the file of Senior Civil Judge and Prl. JMFC, KGF, which was disposed-of on 05.10.2020. Therefore, according to the defendant/DW.1, the present suit filed by the plaintiff is not at all maintainable and the same is liable to be dismissed.

25. It is pertinent to note that on careful perusal of the documentary evidence produced by the plaintiff/PW.1, Ex.P1 is the certified copy of the judgment dated: 05.10.2020 passed in R.A. No.17/2020 on the file of Learned Senior Civil Judge and Prl. JMFC, KGF, which reveal that after contesting the matter by both parties, the said regular appeal preferred by the defendant herein was dismissed by confirming the judgment and decree dated: 20.12.2019 passed in O.S. No.194/2016. Admittedly, the judgment and decree was passed in R.A. No.17/2020 on 05.10.2020, but, the plaintiff



has filed the present suit on 22.10.2020. Hence, it is made clear that only after lapse of 17 days from the date of judgment passed in R.A. No.17/2020 dated: 05.10.2020, the plaintiff has filed the present suit before expiry of the stipulated period of time in preferring the Regular Second Appeal before Hon'ble High Court. Admittedly, the plaintiff ought to have been filed the present suit after expiry of appeal period from the date of judgment passed in R.A. No.17/2020. But, the plaintiff without following the procedure and also before expiry of the appeal period, he has filed the present suit within a span of 17 days and accordingly, the suit filed by the plaintiff is premature one.

26. It is significant to note that on going through the trial court judgment passed in O.S. No.393/2020, while discussing on Issue No.2, the trial court held that - all the cases i.e., DVC No.3/2016, Criminal Appeal No.126/2023 and also Ex. No.10/2020 filed by the plaintiff to execute the judgment and decree passed in O.S. No.194/2016 for Restitution of Conjugal Rights, were closed, the plaintiff filed the present suit.

27. It is further held and discussed by the trial court that the counsel for DHR filed not press memo in Ex. No.10/2020 which was accepted by the trial court by giving finding that if



the defendant not complied the order passed in O.S. No.194/2016, the question of filing not press memo by the plaintiff does not arise at all. Accordingly, by giving findings and assigning the reasons, the trial court has answered Issue No.2 is in the Negative. Therefore, I am of the opinion that the above said findings given by the trial court in answering Issue No.2 as in the Negative, is just and proper.

28. So for as Issue No.3 is concerned, the trial Judge has held and discussed that whether the present suit filed by the plaintiff is barred by law or not. Therefore, the trial court has held and discussed that it is appropriate to note that the object of dissolution of Muslim Marriage Act-1939 that an Act of 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 marriage tie. By making the above said observation, the learned trial Judge has relied upon a decision of Hon'ble High Court of Karnataka i.e., in **M.F.A. No.200834/2019 (FC), dated: 13.11.2019** (Kulaburagi Bench) between, **Zuber V/s. Mehazabeen** in which, the Hon'ble High Court of Karnataka, by referring the decision of Hon'ble Apex Court in **Shayara**



Bano V/s. Union of India and others – (2017) 9 SCC-1, has held and discussed that, *we are of the opinion that the trial court has not committed any error in holding suit not maintainable. The parties are governed by Shariyat which provides for divorcing a wife by husband*, subject to the decision of Hon'ble Apex Court **Shayara Bano vs Union Of India and others–(2017) 9 SCC.1**. *The Dissolution of Muslim Marriage Act-1939 permits a wife to bring a suit for divorce, but, the husband cannot.* In the case of **Md. Yusuf V/s. Nasreen Begum**, the Hon'ble High Court of Jarkhand, while dealing with Section.307 of Mulla's Commentary on Mohammedan Law, held that a ***Muslim husband cannot approach the court for decree of divorce.***

29. Based upon the above said decision of Hon'ble Apex Court as stated supra, the learned Trial Judge has given findings on Issue No.3 as suit is barred by law and rightly dismissed the suit of the plaintiff. The reasons assigned by the learned Trial Judge and also findings given by the trial court are just and proper. As already discussed above, admittedly the present suit filed by the plaintiff is premature one which is filed before expiry of appeal period from the date of passing judgment and decree in R.A. No.17/2020 dated: 05.10.2020.



By considering all the above said aspects, the trial court has rightly dismissed the suit of the plaintiff. There are no any irregularities or error committed by the trial court in dismissing the suit of the plaintiff. Hence, there is no need of causing interference with the impugned judgment and decree of the trial court by the hands of this court. In the result, I answered the above said **Point Nos.1 & 2** are in the **Negative**.

30. **POINT No.3**: In view of my findings on the above said Point Nos.1 and 2 and reasons assigned on them, I proceed to pass the following:

ORDER

The Regular Appeal preferred by the appellant under Order 41 Rule 1 R/w. Section.96 of CPC, is **Dismissed**.

The impugned judgment and decree dated: 28.06.2024 passed in O.S. No.393/2020 on the file of the Learned I-Addl Civil Judge & JMFC at KGF, in dismissing the suit of the plaintiff, is hereby **Confirmed**.

Both parties shall bear their own costs.



Draw decree accordingly.

Send back the Trial Court records along with
copy of this judgment forthwith.

*(Dictated to the stenographer, transcribed by him, revised, corrected, signed
and then pronounced by me in the open Court on this the **4th day of August-2026**)*

(SHIVAKUMARA. B.)
III-Addl. District & Session Judge,
Kolar (Sitting at KGF)