

ואי משום גלויי דעתא פלוגתא דאביי ורבא —

And if because of גלויי דעתא; that is a dispute between אבי and רבא

OVERVIEW

The גמרא cites a case where a person told his ארוסה, I am giving you this גט if we do not have נישואין within a month. When the month passed (without נישואין) the man said (but) ‘I tried my best to have the נישואין feast ready’; indicating that he does not want the גט to be effective. The גמרא says that this will depend on the dispute between אביי (רבא) whether a גלוי דעתא בגיטין can nullify the גט (רבא) or not (אביי).

תוספות comments; when the גמרא states that the ruling in this case depends on the מחלוקת between
- אב"י ורבא

היינו לפי סברת אביי¹ –

That is only according to the reasoning of אב"י (that our case is an example of גלוי דעתא - בגיטא

אבל רבא קאמר לעיל² אטו לבטולי גיטא קבעי לקיומי תנאי קא בעי –

However רבא stated previously: ‘does he want to nullify the גט; he wants to satisfy the stipulation (so it is not a case of בגיטא דעתא בגיטא -

ולא פליג רבא הכא³:

And therefore רבא will not argue here and will also maintain that it is a valid גט.

SUMMARY

According to אביי any indication that he does not want the גירושין to take place is considered a גלוי דעתא רבא (but it is not effective). גלוי דעתא (which is effective) is where he wants to be גט, but not where he does not want the גירושין to happen (there it is not effective).

¹ *הא טרענהא* (אביי) his excuse of *הא טרענהא* is considered a *גלוי דעתא בגיטא* since (according to אביי) *הא טרענהא* will claim that *הא טרענהא* will maintain in this case that the *גט* is *בטל*.

² The case there was a person gave a גט with the stipulation that it should be nullified if he returns (home) within thirty days. When the thirtieth day arrived he was on his way home but could not reach it because he could not cross the river. The husband shouted, 'see I have returned'. שמואל ruled the גט is valid since he did not return. אב"י derived from this that גילוי דעתא בגיטא is meaningless, for here we have a case where the husband does not want the גט to be effective and nevertheless the גט is valid. רבא claimed that in that case the person was not מגלה דעת that he wishes to nullify the גט (per se), but rather he is claiming that he fulfilled the stipulation and therefore the גט should be בטל. There is no גילוי דעת that he is מבטל the גט. The claim that he fulfilled the stipulation is invalid as שמואל ruled there.

³ In this case (of **הא טרחא**) as well, **רבא** will maintain there was no **גט** **מבטל** the **גט**, merely an excuse why he did not fulfill his obligation. See 'Thinking it over' # 1 & 3.

THINKING IT OVER

1. It seems that both according to אב"י and רבא, the גט is not בטל;⁴ so why does the גמרא say, פלוגתא דאב"י ורבא, There is no argument!⁵

2. When the גמרא concludes והלכתא כנחמני (which is אב"י), is that only that גלוי דעתא היא or does it also mean that the case of שמואל, or טרחנא (which are considered גלוי דעתא according to אב"י but not according to רבא) is considered a גלוי דעת (like אב"י) and not like רבא who does not consider it a גלוי דעת but rather לקיומי תנאיה בעי?⁶

3. חזו דאתאי' compares the cases of 'הא טרחנא' and 'ניסן אמרי' to the case of 'חזו דאתאי', that according to רבא they are not considered גלוי דעתא בגיטא but rather are לקיומא בעי.⁷ Seemingly however there is a difference in the case of חזו דאתאי, all he said was, 'I was תנאי מקיים' – I am here! Therefore it is not considered a גלוי דעת regarding ביטול. However in the latter two cases he seemingly did not say he was תנאי מקיים, rather he was explaining why there should be no גט (either because (ניסן אמרי or טרחנא); this seems to be more like the case of 'ברוך הטוב וכו' where (he also was not מבטל the גט, but) he gave the impression that he does not want there to be a גט.⁸

⁴ See footnote # 3.

⁵ See נח"מ.

⁶ See # 68 אמ"ה and רש"ש (on the גמרא)

⁷ See footnote # 3.

⁸ See דברות משה הערה כג בד"ה וכן (עמ' תעה)