

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

W.P. No.1713-2020

Mamoona Mumtaz

Vs.

Chairman, Arbitration Council, Islamabad

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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06.08.2020	<p>Ms. Imaan Zainab Hazir Mazari, Advocate for petitioner.</p> <p>Mr. Abid Hussain Chaudhry, Advocate for respondent No.1.</p> <p>Mr. Muhammad Najeeb Malik, Advocate for respondent No.2.</p>
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The petitioner is aggrieved of refusal to exercise jurisdiction by respondent No.1 pursuant to the application made by her.

2. The facts, in brief, are that petitioner is married to respondent No.2 and in this behalf Nikah was solemnized on 17.10.2014. The petitioner executed a Divorce Deed pursuant to alleged right delegated to her by respondent No.2 under clause 18 of Nikah Nama. A letter/application was made to respondent No.1 for further action in the matter; however, respondent No.1 declined to exercise the jurisdiction on the basis that there is no valid delegation of right to pronounce divorce and secondly, it has no territorial jurisdiction in the matter.

3. Learned counsel for the petitioner, *inter alia*, contended that at present, petitioner is residing in Islamabad hence respondent No.1 has jurisdiction in the matter in light of law laid down by Hon'ble Lahore High Court in case reported as "Syed Muhammad Ali Raza Vs. Province of Punjab, through DCO Lahore and others" (2016 YLR 15). It was contended that even-otherwise, respondent No.2 delegated the right to petitioner to divorce to petitioner and on the basis thereof, Divorce Deed was executed and request was made to respondent No.1 to conclude the matter.

4. Learned counsel for respondent No.1, *inter alia*, contended that bare reading of Clause 18 of Nikah Nama shows that no valid delegation has been made by respondent No.2. It was contended that even-otherwise, respondent No.1 does not have jurisdiction in the matter inasmuch as she does not reside in Islamabad.

5. Learned counsel for respondent No.2, *inter alia*, contended that copy of Nikah Nama, appended with writ petition, is tampered inasmuch as no right of divorce was ever delegated to the petitioner. In this behalf, he produced original Nikah Nama for perusal of the Court and also placed on record copy of the same.

6. Arguments advanced by learned counsels for the parties have been heard and the documents, placed on record, examined with their able assistance.

7. The facts, leading to filing of instant petition, have been mentioned hereinabove, hence need not be reproduced.

8. As noted above, petitioner is aggrieved of letter dated 17.06.2020 by respondent No.1. The referred respondent refused to exercise its authority on two counts; firstly no valid right of divorce has been delegated and secondly, it has no jurisdiction in the matter.

9. Nikah Nama between the parties was registered at D.G. Khan, however, at present, it seems that petitioner is residing in Islamabad as is borne out from the address provided in the Divorce Deed.

10. The Hon'ble Lahore High Court, in case reported as "Syed Muhammad Ali Raza Vs. Province of Punjab, through DCO Lahore and others' (2016 YLR 15), observed as follows:-

*"7. Under section 8 of the Muslim Family Laws Ordinance, 1961 a wife who has been delegated the right of divorce by the husband, can pronounce divorce by invoking the provisions of section 7 and under subsection (1) of which a notice in writing has to be sent to the Chairman, Union Council and under Rule 3(b) of the West Pakistan Rules made under the Muslim Family Laws Ordinance, 1961, such notice has to be sent to the union council of the union where the wife in relation to whom Talaq has been pronounced was*

*residing at the time of the pronouncement of Talaq. The interpretation of the above clause leads this Court to an irresistible conclusion that since it is the place of residence of the wife where the Nikahnama is registered, therefore, in case of divorce by the wife with delegated powers by the husband the notice has to be sent to the union council where Nikah was registered. More so, since it is not the case of the petitioner that notice should have been sent to the union council where the husband was residing as the Talaq was pronounced by the wife to the husband. The only objection raised by the petitioner is that it is the place of residence of the wife where the notice has to be sent under the delegated right of divorce by the wife herself. I am afraid, this interpretation is not in accordance with the spirit of the statute and in line with the intention of the legislature as it will be entirely against the convenience of a woman.*

*9(sic) In this view of the matter, no illegality was committed by respondent No.2 who has issued the certificate of effectiveness of the divorce which does not require interference while exercising the constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, as a result of which this petition is dismissed”.*

11. In light of above judgment and Rule 3(b) of the Rules framed under Muslim Family Laws Ordinance, 1961, a Union Council, where wife resides, has the authority/jurisdiction to arbitrate in the matter and also to issue Divorce Certificate. Respondent No.1 erred in holding that it is the place of Nikah Nama, which has the authority in the matter; even-otherwise, respondent No.1 was required to verify from the petitioner about her residence in order to assume jurisdiction.

12. In so far as the issue of delegation by respondent No.2 the right of divorce to the petitioner, there is a controversy of fact inasmuch as the petitioner believes that a valid right has been delegated to her, whereas same is denied by respondent No.2. Even-otherwise, copy of Nikah Nama appended with writ petition has the words “کوئی شرط نہیں ہے” whereas copy of Nikah Nama produced in the Court by respondent No.2 against Clause-18, it is mentioned “نہیں کیا ہے” The controversy can only be resolved by the courts of plenary jurisdiction which are competent to take down evidence.

13. In such view of the matter, with respect to issue whether a valid right of divorce has been delegated to the petitioner, she may approach the courts of plenary jurisdiction to have the matter resolved, whereas on the issue of territorial jurisdiction, respondent No.1 erred, however, said error has no avail or advantage to the petitioner inasmuch as the controversy regarding delegation of right of divorce still exists and can only be resolved by the forum of competent jurisdiction.

14. The instant petition is disposed of with above observations.

(AAMER FAROOQ)  
JUDGE