

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 739 OF 2022

Doctor Nadia Zaheer and another

Vs.

Zamir Naeem Khan and another

Petitioner by : Mr. Javed Iqbal Khan, Advocate.

Respondents by : Mr. Asad Ullah Khan Ghalib, Advocate.
(for Respondent No.1)

Mr. Abid Hussain Chaudhary, Advocate
(for Respondent No.2)

Date of hearing : 01.06.2022.

SAMAN RAFAT IMTIAZ, J. :- The Petitioner [Doctor Nadia Zaheer] through special attorney, Doctor Asad Zaheer, filed the instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (“**Constitution**”) to assail the Divorce Certificate dated 03.11.2021 issued in Case No. MFL-ID/2021-547 by the Respondent No. 2 [Chairman, Union Council, Islamabad] alleging it to have been issued without fulfilling the formalities as envisaged in Section 7 of the Muslim Family Laws Ordinance, 1961 (“**MFLO**”) and as such prayed for it to be declared null and void *ab-initio*.

2. Brief facts as per the Memo of Petition are that the Petitioner No.1 and Respondent No.1 entered into a contract of marriage on 01.06.2007. On 04.06.2011, the Petitioner and Respondent No.1 were blessed with one daughter namely, Leena Zamir Khan. The Petitioner got spouse visa, leave to enter and leave to work in the United Kingdom (“**U.K.**”) and moved there in May, 2019. In March 2021, the Petitioner came to Pakistan in an emergency, during which time Respondent No.1 communicated to her that he will contract another marriage of his choice. Due to his alleged misbehaviour, maltreatment and obnoxious remarks, the Petitioner proceeded back to London on 18.05.2021 along with her daughter. Keeping in mind the threats of dire consequences by the Respondent No.1, Petitioner on 06.06.2021 filed an application in the court of U.K. for a Prohibited Steps Order and Child Arrangements Orders to prevent removal of her daughter, a

British Citizen, from the U.K. According to the Petitioner, the said application was acknowledged as the Respondent No.1 filed his written statement accepting the jurisdiction of the court of U.K. The Respondent No.1, who is also a citizen of U.K. filed a cross application on 30.06.2021 in the court of U.K. seeking return of his daughter to Pakistan.

3. It has been further stated that a suit for Divorce was filed by the Petitioner on 03.08.2021 in the court of U.K., which is pending adjudication. On 30.07.2021, the Respondent No.1 filed an application for divorce in the office of Respondent No.2 with malafide intention and by concealing the facts and without disclosing the litigation pending in the competent court of U.K. The Petitioner alleged that the Respondent No.1 has no *locus standi* to file such application before Respondent No.2 and that the Respondent No.2 has no jurisdiction to entertain applications of U.K. nationals whose spouses are residing in the U.K. According to the Petitioner, the Respondent No.1 filed the application as a counter blast to the proceedings already pending in the court of law of England and Wales. It is admitted that the Respondent No.1 conveyed the divorce on 03.09.2021 at the residence, 141 John Arid Court, London, W2 1UU, United Kingdom through Peter Hayes, 48 Watling Street, Redlett, Hertis WD7 7NN, Notary Public but neither the application submitted in the Arbitration Council nor any notice thereof was conveyed to the Petitioner.

4. The learned counsel for the Petitioner argued that the Respondent No.1 instituted divorce proceedings against the Petitioner before the Respondent No.2 despite the fact that he was aware that the Petitioner is in the U.K. which is evident from the fact that he filed a response before the Courts and Tribunals Service Center in the U.K. He further submitted that the Respondent No.2 has no jurisdiction as both the Petitioner and Respondent No.1, are foreign citizens and lastly that even otherwise, the Respondent No.2 did not hold any reconciliation proceedings as required under 7(4) of MFLO. .

5. The learned counsel for the Respondent No.1 controverted the arguments presented on behalf of the Petitioner and submitted that the parties entered into a *Nikahnama* on 01.06.2007 in Islamabad, therefore he argued that the Respondent No. 2 had the jurisdiction to conduct proceedings and issue the Certificate of Divorce dated 03.11.2021. He drew this Court's attention to the Divorce Deed

dated 30.07.2021 whereby the Respondent No.1 has pronounced divorce upon the Petitioner. He also referred to the Notice of proceedings dated 11.08.2021 sent by the HM Courts & Tribunals Service (U.K) to the Respondent No.1 containing the divorce application filed by the Petitioner in the U.K. wherein she has disclosed that the Respondent No.1 has religiously divorced her on 30.07.2021 and on the basis of the aforementioned argued that the Petitioner was well aware of the divorce proceedings before the Respondent No.2. The learned counsel submitted that it was only after that i.e., on 06.09.2021 that the Respondent No. 1 filed his Answer to Divorce / Dissolution / (judicial) Separation or Nullity Petition/Application before the Courts and Tribunals Service Center. He also mentioned that both the parties are Pakistani citizens who have dual nationality and as such the provisions of MFLO apply to them. He explained that the address that the Respondent No. 1 provided to the Respondent No. 2 for the Petitioner is the Petitioner's parents' current address. He also apprised this Court that the Petitioner has not disclosed in the instant petition the fact that she had initially instituted a civil suit before the Senior Civil Judge, West-Islamabad, praying for a decree for declaration that divorce proceedings before the Respondent No.2 be declared null and void due to lack of jurisdiction as divorce proceedings are already pending in a competent court of law in the U.K., which suit was withdrawn by her on 14.10.2021.

6. The learned counsel for Respondent No.2 submitted that the notices to the parties to appear before the Respondent No.2 were duly served upon the Petitioner at the address provided by the Respondent No. 1 in his notice to divorce. He further stated that in response thereto, the Petitioner's brother, who is her attorney in the present proceedings before this Court, appeared on 23.08.2021 before the Respondent No. 2 to join the proceedings. He also confirmed that under Section 1(2) MFLO the provisions thereof apply to all Muslim citizens of Pakistan wherever they may be.

7. Arguments addressed by learned counsel for the parties have been heard and perused the available record.

8. The undisputed facts that have emerged from the record before this Court is that the parties entered into the contract of marriage in Islamabad, Pakistan. The Respondent No. 1 executed a Divorce Deed dated 30-07-2021 pronouncing divorce

upon the Petitioner and gave notice of the same to the Respondent No. 2 on the same date. Whereas the Petitioner filed a suit for Divorce on 03.08.2021 in the court of U.K. The above timeline shows that the Respondent No. 1 instituted the proceedings before the Respondent No. 2 prior to the proceedings filed by the Petitioner in the U.K. Therefore, the question of the Respondent No. 1 being aware of the divorce proceedings in the U.K., simply does not arise.

9. In so far as Petitioner's argument is concerned that MFLO does not apply to the Petitioner and Respondent No.1 as they are U.K. citizens, the same is misconceived and legally without merit in view of sub-section (2) of Section 1 of the MFLO which provides that MFLO applies to all Muslim citizens of Pakistan, wherever they may be. Admittedly both the Petitioner and the Respondent No.1 are Muslims who have dual citizenship and as such the provisions of MFLO are applicable upon them.

10. Next I come to the contention of the Petitioner that the Respondent No.1 could not have filed proceedings before the Respondent No.2 when he knew that the Petitioner is in the U.K. However, nowhere has the Petitioner mentioned in the instant petition that she informed the Respondent No.1 before proceeding to London on 18.05.2021. On the other hand Respondent No.1 has stated in his parawise comments that the Petitioner took the minor daughter of the parties to the U.K. without the knowledge or permission of the Respondent No.1 who came to know of his daughter's removal from the airport authorities on 03.06.2021. It is settled law that this Court cannot adjudicate upon factual disputes in exercise of its Constitutional jurisdiction, however, what is evident is that the Respondent No.1, admittedly, knew that the Petitioner was in the U.K. on 03.06.2021.

11. In such circumstances the relevant provisions that appear to be attracted in the instant case are Rules 3(b) and 3-A of the West Pakistan Rules under the Muslim Family Laws Ordinance, 1961 ("**MFLO Rules**"), which are reproduced herein below:

‘3. (b) in the case of notice of *talaq* under sub-section (1) of section 7, it shall be the Union Council of the Union or Town where the wife in relation to whom *talaq* has been pronounced was residing at the time of the pronouncement to *talaq*:

Provided that **if at the time of pronouncement of *talaq* such wife was not residing in any part of West Pakistan**, the Union Council that shall have jurisdiction shall be—

- (i) in case such wife was at any time residing with the person pronouncing the *talaq* in any part of West Pakistan, the Union Council of the Union or Town where such wife so last resided with such person; and
- (ii) in any other case, the Union Council of the Union or Town where the person pronouncing the *talaq* is permanently residing in West Pakistan.

3-A. Where the whereabouts of the wife who is to be supplied a copy of the notice of *talaq* under sub-section (1) of the Ordinance, are not known to the husband and cannot, with due diligence, be ascertained by him, he may, if so permitted by the Chairman give notice of the *talaq* to the wife through her father, mother, adult brother or adult sister, if any, and if the wife has no father, mother, adult brother or adult sister if their whereabouts are not known to the husband or cannot, with due diligence, be ascertained by him he may, with the permission of the Chairman, serve the notice of *talaq* on her by publication in a newspaper, approved by the Chairman, having circulation in the locality where he last resided with the wife. [Emphasis added].

12. The record reflects that the Petitioner was not residing in Pakistan at the time of pronouncement of divorce therefore the proviso to Rule 3(b) would apply. Rule 3(b)(i) would come into play if the Petitioner last resided with the Respondent No. 1 within the jurisdiction of the Respondent No. 2. In any other case, Respondent No. 2 would have jurisdiction pursuant to Rule 3(b)(ii) if the Respondent No. 1 permanently resides within the jurisdiction thereof. Even otherwise, the Petitioner has not alleged that the Respondent No.1 was aware of the Petitioner's address in the U.K., in which case service on the Petitioner's brother would be in accordance with Rule 3-A of the MFLO Rules.

13. As per the comments filed by the Respondent No. 2, the Petitioner's brother appeared before Respondent No.2 on 23.08.2021 to join the proceedings. In fact, the Petitioner herself has attached a copy of her application dated 04-11-2021 filed with the Respondent No. 2 through her counsel to stop the proceedings due to lack of jurisdiction. Even otherwise knowledge of divorce has not been denied and in fact has been specifically admitted by the Petitioners vide the Memo of Petition. While the Petitioner claims that divorce was conveyed to her London address on 3-09-2021, the divorce application filed by the Petitioner in the U.K., which was sent to the Respondent No. 1 along with the notice of proceedings dated 11.08.2021 by the HM Courts & Tribunals Service contains an acknowledgement that the Respondent No.1 has religiously divorced the Petitioner on 30.07.2021. Therefore, even if it were to be assumed for argument's sake that notice of divorce was not served upon the Petitioner, the question arises as to whether a pronouncement of divorce is valid if knowledge of divorce is admitted.

14. The Honourable Supreme Court in the case of *Allah Dad Vs. Mukhtar*, 1992 SCMR 1273 held that it is now evident that the notice of *Talaq* to the Chairman, Arbitration Council is not mandatory under the injunctions of Islam and any divorce pronounced or written by the husband cannot be ineffective or invalid in *Shariah* merely because its notice has not been given to Chairman, Arbitration Council.

15. In the present case the pronouncement of divorce and its communication to the Petitioner is admitted by both the parties. The requisite notice under Section 7(1) of the MFLO was also served by the Respondent No. 1 to the Respondent No.2. The notice was sent to the address which is reflected as the address of the Petitioner's attorney in the instant petition before this Court. The Petitioner's denial of receipt of notice of the proceedings before the Respondent No. 2 is belied by her application dated 04-11-2021 to the Respondent No. 2 through her counsel to stop the proceedings, a copy of which has been filed by the Petitioner herself along with the instant petition. Therefore, keeping in view the aforementioned judgment of the Honourable Supreme Court, the effectiveness of *talaq* cannot be denied by the Petitioner.

16. For all the foregoing reasons, the instant petition is **dismissed** for want of merit.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on 3rd of June, 2022.

JUDGE