

ISLAMABAD HIGH COURT, ISLAMABAD

NO. \_\_\_\_\_ IHC/Jude. Deptt.


(REVISED FORM OF BLUE SLIP)

Case No. WP-373 of 2012.

Titled Sanya Saud vs Khwaja Saud Masud etc

- (a) Judgment approved for reporting ☒ Yes / ☐ No
- (b) Judgment any comment upon the Conduct of the  
Judicial Officer for Quality of the impugned  
judgment is Desired to be made. Yes / ☒ No

(In case the answer is the affirmative Separate  
confidential note may be Sent to the Registrar  
drawing his Attention to the particular aspect).

  
Initial of the Judge.

- NOTE
1. If the slip is used, the Reader must attach on top of first page of the judgment.
  2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
  3. This slip is only to be used when some action is to be taken.

**FORM NO.HCJD/C**

**JUDGMENT SHEET**

**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**


**CASE NO. : W.P. NO.373-2012**

**Sanya Saud**  
**Vs.**  
**Khawaja Saud Masud etc.**

**Date of hearing : 27.04.2012**  
**Petitioner by : Raja Inam Ameen Minhas, Advocate & Ch.**  
**Muhammad Waqas, Advocate**  
**Respondent by : Mr. Rizwan Faiz Muhammad Malik, Advocate**

**NOOR-UL-HAQ N. QURESHI J.-** Through the present writ petition, the petitioner seeks relief by declaring the proceedings conducted by respondent No.2 & 3 on the basis of divorce deed dated 28-09-2011 passed orders dated 21.12.2011 & 23.01.2012 & 25.01.2012 as illegal, corium non-judice and without jurisdiction.

2. The facts narrated in the petition whereby the petitioner entered into contract of marriage with respondent No.1 on 30.03.2006 according to Muslim rites. Couple started living more than one year in America. After marriage, one child namely Rehan Khawaja Masud was born as a result of wedlock on 24.09.2007, who by virtue of his birth, is the citizen of USA.

 The couple returned for visit of Pakistan in the month of August, 2011, where father of the petitioner was in intensive care struggling for his life. Respondent No.1 started quarrelling on petty matters with the petitioner and by using abusive language, he made life of the petitioner as well as her family miserable, therefore, no way remained with the petitioner, except to return to USA and she left for America on 28.09.2011 at 4:00 a.m. in the morning. On reaching America, the petitioner filed family suit for dissolution of marriage, custody of minor

and equitable distribution of the property before Supreme Court of New York on 06.10.2011. Summons were served upon respondent No.1, who appeared with his counsel on 01.11.2011, produced a forged divorce deed. Prior to that, he avoided process of law and to defeat the ends of justice, prepared a forged divorce deed, presented it before respondent No.2, who by maneuvering the record to defeat valuable rights of the petitioner, showed such proceedings initiated by complying the proceedings required u/s 7 of the West Pakistan Muslim Family Laws Ordinance, 1961, thereby validating the divorce deed. The petitioner, therefore, immediately appeared before respondent No.2, on acquiring knowledge, raised objection about her non-residence within the territorial jurisdiction of respondent No.2. Such point of jurisdiction raised as well as apprised about the illegalities committed by respondent No.1 by sending notice to petitioner, but instead to consider such legal questions, respondent No.2 assumed the jurisdiction to proceed with the matter. Such order passed by respondent No.2 dated 21.12.2011 was impugned through the revision petition before respondent No.3, which was disposed of with the direction to respondent No.2 to execute divorce deed after determination of exact date of communication to the petitioner. However, respondent No.3 failed to appreciate the question of territorial jurisdiction. Respondent No.2, without providing an opportunity of hearing to the petitioner, issued divorce certificate dated 25.01.2012. The petitioner, feeling aggrieved by the said order, invoked constitutional jurisdiction of this Court.

3. Learned counsel for the petitioner Raja Inam Ameen Minhas, Advocate, while referring divorce deed at page-18 of the petition, pointed out that it contains date of communication to be 28<sup>th</sup> day of September, 2011, whereas the same has been attested on

29.09.2011, hence same while referring page-27 showing the petitioner leaving in the morning of the said date, as such, the divorce deed is forged document. He also referred page-32, ground No.3 of the revision petition, whereby such plea raised with reference to submission of divorce deed before Chairman, Arbitration Council on 28.09.2011, showing that it is a forged/fabricated document prepared with intention to frustrate the proceeding pending against respondent before Supreme Court of New York, USA filed by the petitioner. He contended that when the documents, which were prepared to achieve ill purposes, or on the face of it, appears to be fabricated, therefore, rest of the claim of pronouncement of Talaq on the basis whereof, is totally vague. He emphasized that after 12:00 on 28.09.2011, she left Pakistan, she filed a petition for custody of minor on getting knowledge about the maneuvering of record to defeat the proceedings at New York. She further agitated her rights before respondent No.2 as well as respondent No.3. While referring page-22, which is a notice showing its date of issuance as 26.10.2011, containing address of New York, therefore, same should have been sent to New York. Plea of divorce while challenging jurisdiction of Arbitration Council.

He referred page-16, whereby Deputy Commissioner, ICT, Islamabad passed order, while sending the file to the Chairman, Arbitration Council to execute divorce deed after determination of exact date of communication to wife. However, respondent No.3 observed that there is no chance of reconciliation, but case was remanded to examine the record produced before the forum and to decide the issue of divorce in accordance with law and merits on the expiry of three months keeping in view the purported date of communication to wife, that too, are dated 01.10.2011 & 02.10.2011 needs to be ascertained as per record. He emphasized that such

directions issued vide order dated 23.01.2012 by respondent No.3 have not been complied with by respondent No.2. He referred Section 7 of the West Pakistan Muslim Family Law Ordinance, 1961, which requires service of notice upon wife, which on the fact of fact and record, not served upon wife, therefore, cannot be considered as divorce for which, finally the order was passed on 28.09.2011, subject notice of divorce.

He, in support of his contention relied upon **1993 CLC 2181** (Abbas Khan & 03-Others Vs. Mst. Sat Bherai and Others), whereby the Hon'ble High Court while considering the issue, observed that Talaq would not become effective, unless until period of 90-days has elapsed w.e.f. date of receipt of notice of Talaq by the Chairman, Union Council concerned, a copy thereof has also been received by the wife. It is observed that 90-days period has not elapsed from the date of issuance of notice of Talaq. Therefore, relation between spouse remained as husband and wife after the death of husband on 14.06.1969, when notice was received by the Chairman on 19.05.1969.


Another case law has been submitted by the learned counsel for the petitioner reported in **PLD 2010 Lah. 681** (Romana Zahid Vs. Chairman, Arbitration Council/Nazim, Union Council & Another). The Hon'ble High Court, while deciding the impugned certificate, observed that notice to the Chairman must be in writing and copy thereof must be supplied to wife. Muslim Family Law Ordinance, 1961 has since not excluded application of Qananoon-e-Shahadat Order, 1984, which is to be complied with the requirement of Article 79 of Qanoon-e-Shahadat, 1984. The Chairman, even on expiry of 90-days has not received notice of Talaq duly verified by Pakistan Embassy, as such, issuance of

certificate of Talaq by the Chairman on the basis of such unverified Talaq-e-Salasa became ineffective.

The case law reported in **2010 MLD 989** (Syeda Wajiha Haris Vs. Chairman, Union Council No.7, Lahore) specified same issue of notice received by wife from the Chairman, Union Council informing him about notice of divorce by the husband offering reconciliation proceedings under Muslim Family Law Ordinance, 1961, spouses were residing abroad. The Hon'ble Court observed that husband should avail that remedy as forum of reconciliation between spouses in the Pakistan Mission in countries of their residence lacking whereof, invalidates such proceedings initiated by the Chairman.

Another case law reported in **PLD 1976 Lah. 1466** (Inamul Islam Vs. Mst. Hussain Bano & 4-Others) has been referred, which provides the requirement of pronouncement of Talaq in accordance with muslim laws, which includes service of notice on Chairman and on wife, lacking of any condition even after 90-days, not gives effect to Talaq pronounced.

Learned counsel for the petitioner further argued that e-mail address of the petitioner was available. She could have been served through that e-mail, that too, is lacking, which lead towards an aspect that all the proceedings shown to have been initiated by respondent No.2 in connivance with respondent No.1, are managed merely to defeat the proceedings initiated by the lady at New York.

 4. Learned counsel for the respondent argued that Section 7 of the Muslim Family Laws Ordinance, 1961 is directory in nature. He emphasized the effectiveness of the divorce not on 28.09.2011, but it was effected on 25.09.2011 and few days back, she went to her father with minor son.

He referred page-26, a divorce deed signed on 28.09.2011 by respondent No.1, whereas covering letter also contains the same date of its issuance i.e. 28.09.2011 mentioning the address of the petitioner. He also referred page-29 Annex-B, containing the date to be 29.09.2011 as well as the receipt of courier service, both containing the same address. He also drew my attention towards page-30, which is an e-mail communicated to the petitioner by respondent No.1, containing its date as 01.10.2011. At para-5 of the said e-mail, attachment of divorce deed has been clearly mentioned for her record and requires confirmation thereof, so also the other issues, which were required to be settled between them with regard to the minor. Therefore, while referring such e-mail, there remained no reason to disbelieve that she was not served with the notice. Learned counsel for the respondent has also referred page-32, the first notice issued from the Chairman, Arbitration Council, whereby the petitioner was directed to attend the Office on 26.10.2011. He also referred page-33, whereby the Chairman, Arbitration Council ordered for issuance of notice to the parties with the caption "Notice Talaq". By the said notice, it is contended that respondent No.1 has given the Chairman not only the address of the petitioner, but also notice of Talaq issued to her and further requested for onward proceedings. He also referred page-44, whereby the petitioner has appointed her father Khawaja Dawood Masud as her agent and he subsequently participated in the proceedings. The said document contains signature and thumb impression of the petitioner with its date of execution on 04.10.2011, duly received in the Office of the Chairman on 26.10.2011. He also referred document, a letter issued to respondent No.1 by the Chairman for onward proceedings in this regard, showing appearance of Raja Inam Ameen Minhas, Advocate for Kh. Dawood Masud, the

father of petitioner on 21.12.2011, requiring the parties to appear on 28.12.2011. He also referred another notice issued by the Chairman, Arbitration Council, Islamabad to the lady i.e. the petitioner at her address of New York, which is a document communicated through registered post as well as page-40 an envelope through which, it was dispatched, so also the postal receipt submitted at page-41. He referred page-5 Annex-K submitted with the reply to the instant petition, whereby the petitioner herself submitted a reply affidavit in support and in opposition of cross motion before the Supreme Court of County of New York, showing wherein the respondent No.1 as defendant. He specifically referred para-26, whereby the fact of divorce, as admitted by the petitioner, has been mentioned. By the said reply in para-26, she herself has mentioned the date to be 26.10.2011 and her appearance before the Arbitration Council on 14.12.2011. He also referred Rule 3(b) of West Pakistan Family Rules, 1961 framed under the Muslim Family Laws Ordinance, which provides the address of lady to be considered, where she lastly resided with her husband. He argued that all efforts were made to serve her, which sufficiently prove that she had the knowledge about pronouncement of Talaq, issuance of notice and she herself admitted such fact in para-26 of the above referred document, therefore, it now needs not require to be proved again and again. He emphasized that purpose is to only acquire knowledge by the lady and for this purpose, law is very clear, even the legislation by making law, foolproof procedure, <sup>provided</sup> in case, she avoids to receive notice.

In support of his contention, he referred a case law reported as **PLD 2005 Karachi 358** (Batool Tahir through Nominee Vs. Province of Sindh through Secretary, Local Government Sindh and 03-Others). The said case was decided by a Division Bench of the Hon'ble Sindh



High Court, which in view of the scheme of law that Section 7 of the Ordinance being directory in nature, did not entail any penalty for its non-compliance, formed an opinion that wife could not claim that non-issuance of notice u/s 7(1) of the Mulsim Family Laws Ordinance, 1961 either by the Nazim Union Council or non-supply of copy of the Talaqnama by her husband, would make Talaq ineffective or would invalidate the same, merely for the reason that she knew about Talaq pronounced by the husband, besides the fact that Talaq would become effective on expiry of 90-days from the date of its pronouncement irrespective of service of notice on the Chairman, Union Council or wife. It was also observed that non-service of notice on them would not make Talaq ineffective.

He also referred unreported decision of Hon'ble Lahore High Court, whereby his Lordship Mr. Justice Ijaz-ul-Ahsan has also, while discussing such issue at length, observed that provision of Section 7 (1) and Rule 3(b) are directory in nature, as no penalty provided for non-compliance, therefore, non-service of notice is merely irregularity, which does not affect validity of divorce pronounced and communicated. Also, another issue has been discussed, a notice of divorce to be sent to the U.C., where wife resides, to facilitate her participation in the proceedings, if she desires so. The purpose since adequately served, by service of notice on current address, where she presently resides, when cognizance is taken and for this score, it cannot be challenged.

Learned counsel for the respondent has also relied upon a case law reported in **1992 SCMR 1273** (Allah Dad Vs. Mukhtar & Another), whereby while deciding several other issues, their Lordship observed the effectiveness of the divorce, even in the absence of notice to the Chairman u/s 7, as same being injunctions of Islam.

5. Arguments heard, so also the authorities referred, the relevant provisions of law and record perused.

6. At the very outset, issues were raised through the instant writ petition with regard to the service of notice effected upon the petitioner and the jurisdiction assumed by the Chairman, Arbitration Council.

7. Besides all other factual controversies raised by other side, I am constraint to confine myself to the extent of her own admission, which she while submitted a reply affidavit before the Supreme Court of County of New York in its para-26, as clearly asserted in below mentioned paragraphs, which is reproduced: -

*"After I filed this action in court on October 7, 2011, Defendant did not try to leave some documents for me on or about October 18, 2011 at my parent's residence in Pakistan with full knowledge that I was in New York at that time. On or about October 26, 2011, I received notification for the Arbitration Council (Exhibit 6 to my husband's moving papers) on my right to attend the proceedings of the Arbitration Council under the Muslim Family Laws Ordinance/Rules, 1961. In any case, no divorce in Pakistan could be granted before ninety (90) days from October 26, 2011 (January 24, 2012)"*

From the said para, it is crystal clear that petitioner had the knowledge about the pronouncement of Talaq, proceedings before the Arbitration Council from the date mentioned in it, therefore, now with such lame excuses, she cannot deny the pronouncement of Talaq as well as proceedings initiated by the Arbitration Council, which were likely to be commenced from the date disclosed and to be concluded, on its assessment.

8. Likewise, while referring Rule 3(b) of the Rules under the West Pakistan Muslim Law Ordinance, 1961 and its provisos, which for convenience, are reproduced hereunder: -

**"3(b)** in the case of notice of talaq under subsection (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 of 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; and".*

It is absolutely clear scheme of law on referring the above procedure provided by the rules, whereby at the time of pronouncement of Talaq, if not found available, the Union or Town, where such wife last resides with such person, has the jurisdiction. Therefore, the point of jurisdiction is entirely resolved by referring the said Rule 3(b) and its provisos, which needs not to be further discussed.

9. Likewise, the case law referred by the learned counsel for the petitioner enunciates a very important principle of law, which strongly favours the case of respondent No.1, coupled with her own admission as mentioned above.

10. I, therefore, hold that the petition in hand, merits no consideration, as no illegality has been highlighted nor there is any reason available on record on the basis whereof, orders passed earlier, could be interfered, nor there is any valid reason to set aside the same.

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11. In view of foregoing reasons, instant writ petition is dismissed accordingly.

(NOOR-UL-HAQ N/ QURESHI)  
JUDGE

Announced in Open Court on 18-05-2012

JUDGE

Zawar  
welew

Approved for reporting

Blue slip added.

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