

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 125 of 2022

Nauman Atta

Versus

Mst. Amna Hassan & others.

Appellant by : Rana Abdul Latif, Advocate..
Respondent by : Mr. Khizar Hayat Khan, and Ms.
Surriya Marriam Khaleeq, Advocates.
Date of Hearing : 19.05.2022

ARBAB MUHAMMAD TAHIR, J. The instant writ petition has been filed with the following prayer:-

“In view of the above mentioned circumstances, it is therefore, most respectfully prayed that instant writ petition may kindly be allowed and the impugned order/decreed dated 14.12.2021 passed by the learned respondent No.2 may graciously be set aside, in the best interest of justice.

It is further prayed that the respondent No.3 may very graciously be directed to submit the report regarding the dissolution of marriage between the petitioner and respondent No.1 and also produce the copy of effectiveness of divorce certificate dated 21.06.2017 of the spouses before this Hon’ble Court.

It is also prayed that respondent No.2 may kindly be directed to initiate criminal/legal proceedings against the respondent No.1 in lieu of filing the false, frivolous and baseless suit as well as false certification.”

2. Tersely, relevant facts are that respondent No.1 namely Ms. Amna Hassan along with her minor daughter Aima Nauman, on 22.09.2021 filed suit for dissolution of marriage on the basis of Khula, recovery of gold ornaments and maintenance allowance, which was contested by the petitioner/defendant by filing written

statement. On 14.12.2021, the learned Judge Family Court held reconciliation proceedings and on failure of the same proceeded to decree the suit to the extent of dissolution of marriage on the basis of Khula in terms of Section 10(4) of the West Pakistan Family Court Act, 1964, being assailed through the instant writ petition.

3. In-addition, petitioner also prays for a direction to the respondent No.3 (Arbitration Council, Sector G-11/4 Islamabad) to submit report regarding the dissolution of marriage between the petitioner and the respondent No.1 and to produce divorce effectiveness certificate dated 21.06.2017.

4. Learned counsel for the petitioner argues that after issuance of divorce certificate by the respondent No.3, the Family Court retains no power to grant decree for dissolution of marriage as the suit filed by the respondent No.1 was barred by law. Further contended that the petitioner also filed a suit for cancellation of affidavit dated 23.09.2020 on the basis of which respondent No.1 filed the suit against the petitioner, therefore, impugned order of the Family Court is liable to be set aside.

5. On the other hand, learned counsel for respondent No.1 repelled the above submissions by contending that after pronouncing one divorce, the parties reunited and lived together and thereafter due to attitude of the petitioner, respondent No.1 filed the suit for dissolution of marriage on the basis of Khula besides recovery of gold ornaments and maintenance allowance for herself and for her minor daughter, therefore, petition is liable to be dismissed.

6 Heard, record perused.

7. The stance of the petitioner does not cohere with the facts gathered from the record as the stance of pronouncing one divorce on 07.03.2017 by the petitioner and reunion after about four years on 23.09.2020 through a settlement has duly been incorporated by the respondent No.1 in paragraph No.7 of the plaint.

8. It is significant to note that reconciliation, as contended by the respondent No.1, was entered into between the parties through writing dated 23.09.2020 (affidavit) but the petitioner opted to assail said affidavit after about two and half years of its execution and that

tooafter about five months of the filing of the suit by the respondent No.1 and her daughter.

9. Another important aspect is that the petitioner in reply to said Para-7 on facts simply asserted that after issuance of divorce certificate dated 21.06.2017, the question of reunion does not arise. In nowhere in his written statement it was the stance of the petitioner that the affidavit dated 23.09.2020 is a forged document, as pleaded by him in the plaint in suit for cancellation of affidavit filed on 08.02.2022.

10. Furthermore, before passing the impugned decree, the respondent No.1 got her statement recorded in terms that *“her marriage with the defendant/petitioner was solemnized on 02.11.2012 and rukhsati was effected on 18.03.2016; that defendant/petitioner had divorced her in the year 2017 but subsequently again performed Nikah; that now it is impossible for her to reside with the defendant/petitioner within the limits of shariah; that defendant/petitioner is in habit of pronouncing divorce and taking back the same; that defendant/petitioner again on 23.09.2020 in presence of witnesses solemnized Nikah with her; that the defendant/petitioner is not ready to take her back and that it is difficult for her to live with him and prays for dissolution of marriage on the basis of Khula.”*

11. In presence of the facts highlighted above coupled with the statement of the respondent No.1, impugned order dated 14.12.2021 appears to be in accordance with the facts and law on the subject and does not call for any interference. Consequently, instant writ petition is **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE