

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P.No.3571 of 2021

Hania Obaid

**Versus**

Chairman, Arbitration Council and another

**Date of Hearing:** 09.02.2022  
**Petitioner by:** Mr. Hasan Rashid Qamar, Advocate  
**Respondents by:** Mr. Abid Hussain Chaudhry, Advocate for respondent No.1  
Syed Muhammad Umer Sohail and Mr. Irshad Ahmed, Advocates for respondent No.2.

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**MIANGUL HASSAN AURANGZEB J.-** Through the instant writ petition, the petitioner (Hania Obaid) has called in question the assumption of jurisdiction by respondent No.1 (Chairman, Arbitration Council / Union Council No.13, Humak, Islamabad), and the proceedings conducted by him in case No.UCH 13(55)/2021, which were initiated pursuant to the pronouncement of divorce dated 25.07.2021 through notice issued by respondent No.2 (Obaid Salikeen) to the petitioner.

2. The petitioner and respondent No.2 got married on 09.11.2011. The *Nikahnama* was registered on 13.11.2011 at Ward No.14, which is located in Rawalpindi. The couple went to the United States of America ("U.S.A."). They don't have any children. Over the years, their matrimonial relations deteriorated leading to their separation.

3. On 25.07.2021, when the petitioner and respondent No.2 were in Pakistan, the latter pronounced divorce (*talaq*) and sent the *talaqnama* to the petitioner on her father's address (i.e., House No.14, Street No.9, Sector H, Phase-II, Defense Housing Authority, Islamabad). A notice of the divorce was also sent by respondent No.2 on 29.07.2021 to the Chairman Union Council – 13 (Humak), Islamabad. The petitioner's father's address is within the territorial limits of the said Union Council.

4. Respondent No.1 sent notices to the petitioner and respondent No.2 requiring them to attend the proceedings for reconciliation

scheduled for 04.08.2021. The notice to the petitioner was sent at her father's address.

5. Vide letter dated 13.08.2021, the petitioner's father acknowledged receipt of the notice from respondent No.1 and informed the latter that the petitioner and respondent No.2 were residing in the State of California, U.S.A. The petitioner's father also provided the petitioner's residential address in the U.S.A. to respondent No.1 so as to serve the petitioner on her said address in the U.S.A. On 31.08.2021, the petitioner's father addressed another letter to respondent No.1 wherein the position taken in the earlier letter dated 13.08.2021 was reiterated.

6. Respondent No.1 sent another notice to the petitioner at her father's address requiring her to appear for the reconciliation proceedings scheduled for 02.09.2021. It is an admitted position that the petitioner did not attend any proceedings for reconciliation.

7. On 06.10.2021, the petitioner filed the instant writ petition seeking a declaration to the effect that the proceedings before respondent No.1 were without lawful authority and of no legal effect. Furthermore, the petitioner has sought an injunction to restrain respondent No.1 from proceeding further with the matter.

8. It may be mentioned that after the petitioner's return to U.S.A. she, on 18.08.2021, instituted proceedings against respondent No.2 before the Superior Court of California, County of Alameda, U.S.A. for the dissolution of her marriage. The copy of the action instituted by the petitioner before the said foreign Court shows the date of separation to be 05.08.2021 i.e., the date on which the petitioner left Pakistan for the U.S.A. On 15.09.2021, respondent No.2 objected to the jurisdiction of the said foreign Court and has sought an order for quashing the proceedings from that Court. Before the said foreign Court, respondent No.2 has also asserted that on 29.07.2021, he applied to respondent No.1 for the issuance of certificate of divorce.

9. The race between the petitioner and respondent No.2 as to who obtains the divorce certificate earlier would have consequences on the quantum of maintenance and alimony payable to the petitioner. Learned counsel for respondent No.2 candidly admitted that if the

divorce proceedings in Pakistan are finalized earlier, the petitioner's entitlements would be governed by the personal law applicable to the parties.

10. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the petitioner did not receive a notice of divorce under Section 7 of the Muslim Family Laws Ordinance, 1961 ("M.F.L.O.") at the Union Council at Rawalpindi where the *Nikahnama* was registered; that the petitioner also did not receive the notice of divorce which was sent to her father's address; that respondent No.2 was under an obligation to issue the divorce notice to the petitioner at her residential address in California, U.S.A.; that unless a divorce notice was issued at the petitioner's said residential address, the proceedings before respondent No.1 were *coram non judice*; and that the petitioner did not reside at her father's address during her stay in Pakistan between 22.07.2021 and 05.08.2021.

11. Furthermore, learned counsel for the petitioner submitted that respondent No.2 has been able to obtain a divorce registration certificate dated 10.01.2022 from Union Council No.37 (Dhoke Dalal), Rawalpindi; that apparently respondent No.2 had sent a divorce notice to the said Union Council which issued the divorce registration certificate; that the petitioner had never received any divorce notice at Rawalpindi; that the petitioner has assailed the said divorce registration certificate in writ petition No.184/2022 before the Hon'ble Lahore High Court, Rawalpindi Bench and has also obtained an injunctive order; and that respondent No.2 cannot take a contradictory position by asserting that he had sent a divorce notice to Union Council No.37 (Dhoke Dalal), Rawalpindi as well as Union Council – 13 (Humak), Islamabad. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

12. On the other hand, learned counsel for respondent No.2 submitted that respondent No.2 had pronounced divorce on the petitioner while she was at Pakistan; that the divorce notice was sent at her father's address where she was residing; that the petitioner's

father's letters dated 13.08.2021 and 31.08.2021 show that the petitioner was in the knowledge of the divorce proceedings; that the petitioner had also executed a special power of attorney on 05.10.2021 in favour of her brother, Muhammad Zain, who resides at the same address as her father, authorizing him to *inter alia* file and / or defend any legal proceedings or appeal or revision filed or initiated in respect of the proceedings commenced in the arbitration Council at Islamabad; that in the said power of attorney, it is clearly mentioned that the petitioner had pronounced *talaq* on the petitioner vide divorce deed dated 25.07.2021 and the proceedings for the issuance of a *talaq* effectiveness certificate are pending before the Arbitration Council at Islamabad; and that it is not conceivable that the petitioner did not know about the notice for divorce sent at her father's address at the time when the petitioner was in Pakistan.

13. Learned counsel for respondent No.2 further submitted that the divorce registration certificate dated 10.01.2022 had not been issued on the basis of any notice sent by respondent No.2 to Union Council No.37 (Dhok Dalal), Rawalpindi; that respondent No.2 was not in the knowledge of any proceedings before the said Union Council; that respondent No.2 shall not object to writ petition No.184/2022 filed before the Hon'ble Lahore High Court, Rawalpindi Bench so that the said divorce registration certificate is quashed; and that it is the petitioner who has maneuvered the issuance of the said divorce registration certificate. Learned counsel for respondent No.2 prayed for the writ petition to be dismissed so that the proceedings before respondent No.1 are taken to their logical conclusion expeditiously.

14. Learned counsel for respondent No.1 submitted that the provisions of the M.F.L.O. are applicable to the whole of Pakistan; that under Section 7 of the M.F.L.O., a husband has a right to divorce his wife and send a notice of pronouncement of divorce to the Arbitration Council; that the purpose of the notice is that an Arbitration Council be constituted to make efforts for bringing about reconciliation between the parties; that if reconciliation is not possible, then after an expiry of ninety days, the divorce certificate is issued by the Arbitration Council; that the petitioner was in the knowledge of the divorce having

been pronounced on her by respondent No.2; and that the notice has to be sent to the address where the wife last resided in cases where her whereabouts are not known. He submitted that this Court may pass an order as it deems appropriate.

15. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

16. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 8 above, and need not be recapitulated.

17. Section 7(1) of the M.F.L.O. provides that any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of *talaq* in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to his wife. Rule 3(b) of the West Pakistan Rules under the Muslim Laws Ordinance, 1961 ("the 1961 Rules") provides that in case of notice of *talaq* under Section 7(1) 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 pronouncement of *talaq* which shall have jurisdiction in the matter.

18. Respondent No.2 pronounced *talaq* on the petitioner on 25.07.2021. On the said date, the petitioner was admittedly in Pakistan. She has explicitly pleaded in paragraph 5 of the instant writ petition that between 22.07.2021 and 05.08.2021 she was in Pakistan. Notice of divorce was sent by respondent No.2 to the petitioner at her father's address. Notice of divorce was also sent by respondent No.2 to respondent No.1 within whose territorial limits the petitioner's father resides. In the instant writ petition, it is categorically pleaded that the petitioner was in Pakistan between 22.07.2021 and 05.08.2021. She asserts that during her stay in Pakistan, she *"spent time with her family and cousins, albeit visited however never resided at House No.14, Street No.9, Sector H, Phase-II, Defense Housing Authority, Islamabad."*

19. The petitioner's father addressed letters dated 13.08.2021 and 31.08.2021 to respondent No.1 informing the latter that the

petitioner's residential address was in the U.S.A. and that she should be served with the notices on the address mentioned in the said letters. These letters do not mention the date when the notice of divorce was received at the petitioner's father's address.

20. Rule 3-A of the 1961 Rules permits the giving of notice of a *talaq* to the wife through her father, mother, adult brother or adult sister if the whereabouts of the wife are not known to the husband and cannot with due diligence, be ascertained by him. For giving such a notice, he has to obtain permission of the Chairman, Arbitration Council. In the case at hand, no such permission was taken since it was respondent No.2's assertion that the petitioner resided with her father while she was in Pakistan.

21. Learned counsel for the petitioner was tight-lipped about where the petitioner resided when in Pakistan. He would just not tell the Court where the petitioner resided while she was in Pakistan. For hoodwinking this question, I could have dismissed this writ petition on equitable considerations. However, in these circumstances, I deem it appropriate to exercise restraint and leave the matter regarding whether respondent No.1 has jurisdiction to proceed with the matter to be decided by respondent No.1, which may record evidence if it deems necessary to determine whether the notice for divorce had been issued in accordance with the law. For this purpose, the matter is remitted to respondent No.1 with the direction to decide the same expeditiously and preferably within two weeks from the date of the receipt of this Order.

22. Disposed of in the above terms.

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

**ANNOUNCED IN AN OPEN COURT ON 10/03/2022**