

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

W.P.No.161 of 2017
Fawad Ahsan and another
Versus

Chairman, Arbitration Council, Islamabad and another

Date of Hearing: 17.05.2017
Petitioners by: Ms. Fahmida Naz Sheikh, Advocate,
Respondents by: Mr. Shakil-ur-Rehman, Advocate for
respondent No.1,
Raja Muhammad Aleem Khan Abbasi,
learned ASC, and Ms. Hadia Aziz, learned
Amici Curiae.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioners, Fawad Ahsan, and Nargis Ayub, impugn the certificate of effectiveness of divorce dated 18.02.2015, issued by the Chairman, Arbitration Council, Islamabad (respondent No.1). The said certificate is stated to have been issued under Section 17(3) of the Muslim Family Laws Ordinance, 1961 ("M.F.L.O.").

2. Learned counsel for the petitioners submitted that the petitioners got married on 16.10.2014; that on 14.11.2014, petitioner No.1 pronounced *talaq* on petitioner No.2 and served a copy of the *talaqnama* on respondent No.1; that respondent No.1 separately recorded the statements of the petitioners; that prior to the expiry of ninety days of the date of the *talaqnama*, the petitioners reconciled their differences and executed a *razinama* on 27.01.2015; that petitioner No.1 could not attend the proceedings before respondent No.1 on 11.02.2015, because his father had passed away on 07.02.2015; that the petitioners have reunited and want to live as husband and wife; that the impugned certificate dated 18.02.2015 is liable to be set aside because the petitioners had reconciled their differences prior to the issuance of the said certificate. Learned counsel for the petitioners prayed for the impugned certificate dated 18.02.2015, to be set aside.

3. On the other hand, learned counsel for respondent No.1 submitted that respondent No.1 was not informed by the

petitioners about the reconciliation of the differences between them; that since respondent No.1 was not informed about the execution of the *razinama* dated 27.01.2015, between the petitioners, prior to the expiry of ninety days from the date of the *talaqnama*, respondent No.1 was legally bound to issue the impugned certificate dated 18.02.2015; and that respondent No.1 had, prior to the issuance of the said certificate, recorded the petitioners' statements to the effect that they did not want to reconcile their differences. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed.

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

5. Petitioners No.1 and 2 got married to each other on 16.10.2014. Subsequently, the relations between the petitioners turned sour. On 14.11.2014, petitioner No.1 pronounced *talaq* on petitioner No.2 by issuing a *talaqnama* and serving the same on petitioner No.2 as well as respondent No.1. On 03.12.2014, respondent No.1 recorded petitioner No.1's statement, and on 10.12.2014, petitioner No.2's statement was recorded. Both the petitioners were admitting on bringing their marriage to an end.

6. After respondent No.1 recorded the petitioners' statements, the petitioners' relatives intervened so that the petitioners reconcile their differences. The efforts made by the petitioners' relatives were successful, and the petitioners got back together. The petitioners prepared a deed of reconciliation on 27.01.2015. This deed was signed by the petitioners as well as two witnesses. This deed was also attested by a notary public (Nusrat Masood Qureshi). The date on which this attestation was made is not readable. The next date fixed by respondent No.1 was 11.02.2015. Since petitioner No.1's father passed away on 07.02.2015, he was not able to attend the proceedings before respondent No.1 on 11.02.2015. Thereafter, when petitioner No.1 approached respondent No.1, was informed that a certificate of effectiveness of divorce had already been issued on 18.02.2015. The ninety days period from the date of the

talaqnama expired on 11.02.2015. The said certificate of effectiveness of divorce issued by respondent No.1 on 18.02.2015, has been impugned by the petitioners in the instant writ petition.

7. Section 7 of the M.F.L.O. is reproduced herein below:-

"7. Talaq.--(1) 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 a notice in writing of his having done so, and shall supply a copy thereof to the wife.

(2) Whoever, contravenes the provisions of sub-section (1) shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

(3) Save as provided in sub-section (5) talaq, unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under sub-section (1) is delivered to the Chairman.

(4) Within thirty days of the receipt of notice under Sub-section (1), the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

(5) If the wife be pregnant at the time talaq is pronounced, talaq shall not be effective until the period mentioned in Sub-section (3) or the pregnancy, whichever later, ends.

(6) Nothing shall debar a wife whose marriage has been terminated by talaq effective under this section from remarrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time so effective."

(Emphasis added)

8. It is well settled that marriage can be dissolved by husband at his will without intervention of the Court. A husband who wants to divorce his wife should, as soon as might be, after the pronouncement of *talaq*, give the Chairman, Arbitration Council a notice in writing of his having done so and should supply a copy thereof to the wife. *Talaq* does not become effective until the expiry of ninety days from the date of delivery of such a notice, unless same was revoked earlier expressly or otherwise. The word "*talaq*" in Section 7 of the M.F.L.O is referable to any form of *talaq*, whether irrevocable or not and by whatever name called, be it *talaq-e-ahsan*, *talaq-hasan* or *talaq-e-biddat*. There is no provision in the M.F.L.O. requiring respondent No.1 to issue a certificate of effectiveness of *talaq*. All that respondent No.1 is to do is to record in writing whether or not reconciliation

between the spouses had failed within a period of ninety days of the delivery of the notice of *talaq* to respondent No.1.

9. In the case of Mst. Fahmida Bibi Vs. Mukhtar Ahmad (PLD 1972 Lahore 694), it was held *inter-alia* as follows:-

"...The divorce, notwithstanding the conduct or attitude of any of the parties, shall become effective after the expiry of ninety days unless the divorce is revoked earlier by the husband. In the event, the parties appear before the Chairman and an Arbitration Council is constituted, but reconciliation does not succeed, the only thing the Council or the Chairman may do is to record in writing that conciliation has failed. There is no other function which a Chairman or an Arbitration Council is competent to perform in this behalf. If reconciliation does not succeed or the husband does not revoke Talaq before expiry of ninety days, it becomes automatically operative and effective. There is no provision either in the Ordinance or the rules requiring the Chairman or the Arbitration Council to give a decision or to issue a certificate to make the divorce effective. If the Chairman issued the certificate, it was not under any provision of law and had no legal effect.

4. *The case can be examined from another angle as well. If under sub section (3) of section 7 of the Ordinance, the husband revokes the Talaq before the expiration of ninety days the spouses continue in law to be husband and wife. Learned counsel for the petitioner has not pointed out any provision of law and in fact there is none, under which the husband is to inform the Chairman of his decision that he has revoked the talaq. The words "unless revoked earlier, expressly or otherwise" are significant. A husband who pronounces divorce on his wife and has served the Chairman with the notice under section 7 of the Ordinance may simply revoke it and inform his wife of his decision. What will in such a case be the value of certificate which the Chairman may have issued in his ignorance of the factum of revocation of the divorce? The certificate therefore, cannot at all be a proof, let alone a conclusive proof of the divorce, as is alleged in the present case. If the certificate is used as a proof of divorce, it will be inconsistent with the statutory right of the husband to revoke talaq before the expiry of ninety days either "expressly or otherwise". It may be one of the reasons for the Legislature in not providing for the issuance of the certificate of divorce by the Chairman of a Council.*

(Emphasis added)

10. Recently, in the case of Almas Mubashar Vs. Mubashar Hanif (PLD 2014 Lahore 494), it has been held as follows:-

"9. The issuance of certificate of talaq is a mere technicality which does not find mention in the provisions of Muslim Family Laws Ordinance, 1961 and talaq becomes effective automatically after 90 days from receipt of notice of talaq by Nazim/Administrator of the Union Council concerned."

(Emphasis added)

11. In the cases of Muhammad Salahuddin Khan Vs. Muhammad Nazir Siddiqui (1984 SCMR 584) and Mushtaq Ahmad Vs. Mst. Sat Bharai (1994 SCMR 1720), it has been held that under Section 7(3) of the M.F.L.O. *talaq* does not become effective till the expiry of ninety days from the date of service of notice of divorce on the Chairman, Arbitration Council. In the case of Sardar Vs. Malik Khan (2003 YLR 2623), it has been held *inter-alia* that Section 7(3) of the M.F.L.O. is not in conflict with the injunctions of the Holy Quran. The author of the said judgment rose to grace the Hon'ble Supreme Court, therefore, the said judgment is to be respected and revered. In the case of Rana Zulfiqar Vs. Mariyam Rafique (2007 CLC 1047), it has been held that the Chairman, Arbitration Council's order declaring a divorce effective was declared illegal by the Hon'ble Lahore High Court because the husband had withdrawn/revoked the notice of divorce within a period of ninety days. In the case of Raja Qureshi Vs. Chairman, Arbitration Council (PLD 2012 Sindh 195), the Hon'ble High Court declared the reconciliation proceedings conducted by the Chairman, Arbitration Council after the withdrawal of the notice of divorce prior to the expiry of ninety days from the date of the notice of divorce, to be unwarranted by law.

12. After the expiry of the period as prescribed by Section 7 of the M.F.L.O., the divorce becomes effective automatically. True, respondent No.1 is not vested with the authority to annul a divorce, after it becomes effective upon the expiry of ninety days of the notice of divorce as contemplated by Section 7(1) of the M.F.L.O., but in the event the couple, prior to the expiry of the said ninety days, reconcile their differences and get back together (which would imply the revocation of the *talaq*), respondent No.1 can take into consideration such facts and recall the certificate of effectiveness of divorce and note that the *talaq* had been revoked prior to the expiry of ninety days of the delivery or receipt of notice of *talaq* by the Chairman, Arbitration Council.

13. In the case at hand, the petitioners executed a *razinama* prior to the expiry of ninety days of the issuance of the notice of *talaq* by petitioner No.1 to respondent No.1, I have no reason to doubt that petitioner No.1's father passed away on 07.02.2015, and that is why he could not attend the proceedings before respondent No.1 on 11.02.2015 or to inform respondent No.1 that he had revoked the *talaq*. If respondent No.1 satisfies himself that the petitioners did indeed reconcile their difference which would imply that the petitioner No.1 revoked the *talaq*, then there would be no impediment before respondent No.1 to determine by noting that the *talaq* pronounced by petitioner No.1 on petitioner No.2 had not become effective.

14. In view of the facts of the case and the above referred case law, this petition is allowed; and the impugned certificate dated 18.02.2015, issued by respondent No.1 is set aside; and the matter is remanded to respondent No.1, which shall determine, (after hearing the petitioners and taking into consideration such documents as the petitioners may produce and hearing such other persons as it may deem appropriate), whether or not petitioner No.1 had revoked the *talaq* (either expressly or otherwise by reconciling his differences with petitioner No.2) prior to the expiry of ninety days of the delivery of the notice of *talaq* to respondent No.1. There shall be no order as to costs.

15. Before parting with this judgment, I place on record a word of appreciation for the invaluable assistance rendered by the learned *amici curiae*, Raja Muhammad Aleem Khan Abbasi, learned ASC, and Ms. Hadia Aziz, Advocate.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 16/8 /2017

(JUDGE)

Approved for reporting.