

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

**W.P.No.1643/2021**

Shahid Farooq

*vs.*

Judge Family Court, Islamabad & another

Petitioner by: Mr. Arshad Ali, Advocate.

Respondent No.2 by: Hafiz Ejaz Mehboob, Advocate.

*and*

**W.P. No.3434/2021**

Mst. Shaheena Kausar

*vs.*

Chairman Arbitration Council, Islamabad & another

Petitioner by: Hafiz Ejaz Mehboob, Advocate

Respondent No.2 by: Mr. Arshad Ali, Advocate.  
Mr. Moneeb Ahmad, State Counsel.  
Mr. Abid Hussain Ch., Advocate for Chairman,  
Arbitration Council  
Syed Shafqat Hussain, ADLG/Chairman  
Arbitration Council

Date of Decision: 02.03.2022.

**MOHSIN AKHTAR KAYANI, J:** By way of this common judgment, this Court intends to decide the captioned writ petitions having involved similar facts and parties.

2. Through the captioned W.P. No.1643/2021, the Shahid Farooq (petitioner) has called in question the judgment and decree of the learned Judge Family / Guardian Court (East), Islamabad, dated 27.01.2021, whereby suit filed by Mst. Shaheen Kausar (respondent No.2) for dissolution of marriage on the basis of *Khulla* has been decreed.

3. Similarly, through the captioned W.P. No.3434/2021, the petitioner Mst. Shaheen Kausar seeks issuance of direction to the Chairman Arbitration Council to record the statement of petitioner in writing with regard to refusal

from reconciliation with Shahid Farooq (respondent No.2) as well as to issue divorce certificate to the petitioner.

4. For the purpose of brevity, Shahid Farooq is hereinafter referred to as "*petitioner/ husband*" and Mst. Shaheen Kausar as "*respondent/ wife*".

5. Brief and consolidated facts are that a marriage between Shahid Farooq (petitioner) and Mst. Shaheen Kausar (respondent) solemnized on 25.02.2007 in accordance with Muslim rites and ceremony against a dower of 20 Tola gold ornaments, as such, as per the respondent's contention the petitioner failed to keep cordial relationship with the respondent, rather kept her in a far flung area of KPK having no basic necessities of life, per se, the respondent was allegedly ousted by petitioner's family from their house on 07.01.2020. Consequently, the respondent filed a suit for dissolution of marriage on the basis of Khulla, which was contested by the petitioner, as such, after recording of pro and contra evidence, the learned trial Court vide impugned judgment and decree dated 27.01.2021 decreed the suit. Feeling aggrieved thereof, the petitioner filed the captioned W.P. No.1643/2021.

6. On the other hand, in pursuance of the impugned judgment and decree, the respondent (wife) filed application on 17.02.2021 before the Chairman, Arbitration Council seeking issuance of a certificate for effectiveness of divorce, but the same was consigned to record room, as a result whereof, the respondent filed the captioned W.P. No.3434/2021.

7. Learned counsel for petitioner (Shahid Farooq) contends that impugned judgment and decree dated 27.01.2021 not merely suffer from material illegality, but travel against the record itself; that the respondent never wanted *Khula* from petitioner, rather she was compelled to opt for it by the family members, as such, the findings recorded in the impugned judgment qua return of the dower amount are vague and do not qualify to be a legal order on the face of it, per se, the learned trial Court has not appreciated the overall

circumstances of the case, rather resorted to passing the impugned judgment and decree in a hasty manner.

8. Conversely, learned counsel for respondent (Mst. Shaheen Kausar) stressed that the Chairman Arbitration Council has illegally relied upon the statement of petitioner that respondent does not want reconciliation whatsoever with the petitioner, which is contrary to the record, in pursuance whereof the Chairman Arbitration Council has illegally consigned the file under the influence of petitioner causing miscarriage of justice to the respondent, even otherwise, the petitioner filed the captioned W.P. No.1643/2021 by concealing material facts with malafide in order to achieve a favorable order in his favour; that the respondent has been condemned unheard while consigning the application filed by the respondent on 17.02.2021.

9. Arguments heard, record perused.

10. Perusal of record reveals that petitioner is aggrieved with the judgment and decree dated 27.01.2021, whereby respondent Mst. Shaheena Kausar has filed suit for dissolution of marriage on the basis of *Khula*, which was allowed in her favour and the marriage between the parties dated 25.02.2007 stands dissolved.

11. Counsel for the petitioner has taken a stance that respondent intends to reconcile with the petitioner on all counts, but she was forced to live apart from petitioner husband on the pressure of her family, though this aspect has been considered by the Trial Court, where proper opportunity of reconciliation was provided in terms of Section 10 of Family Courts Act, 1964, whereby respondent ex-wife has recorded her stance before the Judge Family Court in an unequivocal terms, whereby trial Court has observed the following:-

*"I am of the considered opinion that due to the persistent insulting and abusive behavior of the defendant and his family, she has developed acute hatred and aversion against him and there is no probability between the parties to live together as husband and wife or to lead a happy and*

*harmonious life. Therefore, the reconciliation between the parties is failed and issue No.1 is decided in favour of the plaintiff.*

12. The above aspect clearly establishes that pre-trial reconciliation proceedings have been failed and decree of *Khula* has been passed accordingly under the law.

13. The proviso in terms of Section 10(4) of the Family Courts Act, 1964 has been asserted by the Ordinance, 2002 with intent that if reconciliation fails between the parties in the Family Court, the decree shall be passed forthwith, but petitioner has challenged the same on an artificial ground through the instant writ petition and at the same time, he has filed the application before the Chairman, Arbitration Council, not to issue a certificate of effectiveness of divorce, which is the subject matter of W.P No. 3434/2021, filed by respondent ex-wife.

14. This Court has called Mst. Shaheena Kausar/respondent and confronted her qua the reconciliation, whereby she in categorical terms refused to live with petitioner anymore and the same stance has been recorded in the order dated 18.02.2022, therefore, the intent of the law has to prevail, whereby no appeal has been provided against the dissolution of marriage on the basis of *Khula*, hence no writ is entertainable in this regard as no illegality or jurisdictional defect is apparent in this case.

15. However, during course of proceedings of instant case, this Court has also called the Chairman, Arbitration Council and he has been confronted qua the situation in hand, whereby certificate of effectiveness of divorce has not been issued, the Chairman, Arbitration Council in person contends that petitioner has filed application qua the pendency of the matter before this Court, as a result whereof, said certificate was not issued, though the reconciliation has been failed between the parties. The Chairman, Arbitration Council has produced the original certificate of effectiveness of divorce today in

the Court and the original certificate of effectiveness of divorce has been handed over to Mst. Shaheena Kausar. Copy of the same has been placed on record.

16. In such scenario Writ Petition No. 1643/2021 being misconceived is hereby **DISMISSED**. Whereas W.P No. 3434/2021 is **DISPOSED OF** as the grievance of the petitioner has been redressed, therefore the same has become borne fruit.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

RAMZAN