

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Writ Petition No. 21 of 2021

Muhammad Akram Nadeem
Vs
Chairman, Arbitration Council, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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<u>08-01-2021.</u>	Malik Shahid Mehmood Kandwal, Advocate for the petitioner.
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The petitioner is aggrieved by divorce certificate dated 03.12.2020 issued by respondent No.1 under section 7(3) of the Muslim Family Laws Ordinance, 1961 (**"Ordinance"**) in the name of his daughter Hina Akram pursuant to notice received from respondent No.3 on 08.05.2017.

2. Learned counsel for the petitioner submits that the petitioner's daughter and respondent No.3 reside in United Kingdom, they are separated but they are not divorced and proceedings regarding custody and maintenance of their children are pending in the family Court of Watford, U.K; that divorce certificate has been issued after a delay of three and a half year from initiation of proceedings before respondent No.1 and in breach of section 7(1) of the Ordinance; that the petitioner's daughter and respondent No.3's wife who resides in U.K has never

received any notice section 7(1) of the Ordinance the contravention of which is punishable for a term of up to one year under section 7(2) of the Ordinance; that non-compliance with mandatory conditions prescribed in the Ordinance is a fraud on the statute and in breach of fundamental rights of the petitioner's daughter who is respondent No.3's wife; that the impugned certificate issued without compliance of mandatory conditions prescribed under the Ordinance is void ab-initio and of no legal effect; that the petitioner's daughter is unable to travel to Pakistan due to Covid-19 and is also unable to issue a power of attorney certified by the Pakistan High Commission due to lockdown currently enforced in U.K; given that the impugned certificate can be abused by respondent No.3 to undermine valuable rights of the petitioner's daughter this Court ought to exercise its equitable jurisdiction to hear this matter, especially as the petitioner is father of respondent No.3's wife and neither has any monetary interest in the matter nor any interest adverse to his daughter/respondent No.3's wife. Learned counsel for the petitioner submits that the fact that the Petitioner's daughter/Respondent No.3's wife has authorized the petitioner to file the instant petition can be verified by the Court through

video-conference. The learned counsel relies on "*Mubarik Ali Shah and 4 others vs. Chief Administrative Auqaf*" [1988 CLC 348] and "*Mrs. Ambreen Naseem Khawaja vs. Federation of Pakistan and others*" [2015 P.Cr.L.J 506] on the issue of maintainability. The learned counsel further relies on "*Syed Wajiha Haris vs. Chairman Union Council No.7, Lahore*" [2010 MLD 989], "*Mst. Sana Asim Hafeez vs. Administrator/Chairman, Arbitration and Conciliation Court*" [2016 MLD 1061] and "*Mst. Asma Bibi vs. Chairman Reconciliation Committee and others*" [PLD 2020 Lahore 679] wherein the learned Lahore High Court has held that under SRO 1086(K)61 dated 09.11.1961, officers of Pakistan Mission abroad are authorized to discharge the functions of Chairman under the Muslim Family Laws Ordinance, 1961 and reconciliation proceedings ought to be undertaken at the place of residence of nonresident Pakistanis.

3. I am inclined to issue notice to the respondents and determine the issue of maintainability with their assistance. Office is directed issue notices to respondent Nos. 1 and 3 for **18.01.2021**. The matter will be taken up at 2.00 pm.

4. The notices shall be served through special messenger as well as courier service at the petitioner's cost to be deposited within

three days. Respondent No.1 shall ensure that Record Keeper of the said Arbitration Council appears in person on the next date of hearing along with the entire record of case No. 228/2017 in which the impugned certificate has been issued.

5. Learned counsel for the parties shall assist this Court on the issue of maintainability of this petition and the mandatory requirements and pre-requisites for the issuance of divorce certificate under section 7 of the Ordinance in cases where one or both of the spouses are residing abroad at the time of initiation of divorce proceedings under the Ordinance.

6. The petitioner shall place on record any power of attorney issued to him by his daughter Hina Akram, received by email, along with cover email before or after the institution of the instant petition, even if not signed by witnesses and certified by Pakistan's High Commission in UK. Learned counsel for the petitioner shall also move an application requesting the office to make arrangements for a skype call for the next hearing, pursuant to the e-court facility made available to petitioners, to enable the petitioner's daughter to confirm to the satisfaction of this court that the petition has been filed pursuant to her instruction and she

has been unable to formally issue a certified power of attorney to the petitioner due to the lockdown in United Kingdom amid Covid-19. The petitioner shall ensure that his daughter is available for the skype call on the next date of hearing.

C.M No. 01 of 2021.

Notice. Meanwhile, the impugned certificate dated 03.12.2020 shall remain suspended till the next date of hearing.

C.M. No. 02-E of 2021.

Exemption sought for is allowed, subject to all just and legal exceptions.

(BABAR SATTAR)
JUDGE

Saeed.