JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

WRIT PETITION NO. 4501/2021

Aqeel Ahmed
Vs.
Mst. Zunaira Amjad and others

Petitioner by : **Mr. Sultan Ahmed Jamshed, Advocate.**

Respondents by : **Syed Adil Safdar Gardezi, Advocate.**

Date of hearing : **10.01.2022.**

SAMAN RAFAT IMTIAZ, J. Through the instant writ petition, the Petitioner (Aqeel Ahmed) assailed Order & Decree dated 27.11.2021, passed by learned Judge Family Court-West, Islamabad whereby Respondent No.1's suit for dissolution of marriage on the basis of Khullah has been decreed.

2. Learned counsel for the Petitioner, *inter alia*, submitted that the impugned order has been passed in a slipshod manner without adopting legal process; that Petitioner was technically knocked out and fair trial has not been conducted by the learned trial Court. The main contention was that on 30.09.2021, the Petitioner produced his counsel and sought time for written statement which was filed on 11.10.2021 along with a separate suit for restitution of conjugal rights. Learned Trial Court fixed the case for personal attendance of the parties on 03.11.2021 but unfortunately, he got burned and, therefore, could not appear due to which he sought an adjournment; and that on 19.11.2021, the Petitioner could not appear because of his own incapacity due to burns coupled with the ailment of his mother who got seriously ill. On 26.11.2021, due to hospitalization of his mother, he filed another application for adjournment, however, learned Trial Court adjourned the case to the very next day and on the said day, passed the Impugned Order without affording any opportunity of hearing to the Petitioner. Learned counsel for Petitioner has relied on the cases of ***Mst. Dilshad Sultana Vs. Noor Muhammad, etc PLD 1993 Quetta 1, Muhammad lahrashib Vs. ghulam Ahmed Choudhary through legal heirs and others PLD 2019 Islamabad 544*** and ***Muhammad Andleeb Raza Vs. Muhammad nazar and another 2019 YLR 1974***.

3. Learned counsel for the Respondents opposed the arguments of the Petitioner and submitted that the impugned order was passed after taking into consideration all the facts and record and does not suffer from any illegality and that the order of Khullah is neither revocable nor appealable. Learned counsel for the Respondent No. 1 submitted that the Petitioner filed his suit for restitution of conjugal rights on 31.07.2021, however, he failed to appear on even a single date in such proceedings nor did he appear in the suit filed by Respondent No.1 for dissolution of marriage on the basis of Khullah despite abundant opportunities, which shows his non-seriousness and disinterest in reconciliation. As such, he contended that the learned Family Court rightly declared the pre-trial reconciliation proceedings as having failed.

4. Arguments advanced on behalf of learned counsel for the parties have been heard and record perused with their able assistance.

5. There is no dispute that the decree passed on the basis of Khullah is not appealable in terms of Section 14(2) of the Family Courts Act, 1964 ("**Act of 1964**") apparently for the reasons that a wife cannot be compelled to live with the husband against her wishes and secondly to protect her from cost and prolonged litigation.

6. It appears that the only cause of grievance agitated by the Petitioner in this Petition against the Impugned Judgment & Decree is that the learned Family Court did not allow his request for adjournment of pre-trial reconciliation proceedings despite cogent reasons.

7. It is trite law that where a statute does not provide appeal against decision of a Court, constitutional jurisdiction is not amenable only on the ground to reassess the evidence or record. Therefore, this Court will not go into appraisal of facts as to whether or not the Petitioner had made out a case for adjournment before the learned Family Court.

8. What is relevant is that the learned Family Court gave the Petitioner several opportunities to appear before the Court for reconciliation proceedings. The Respondent No. 1 was present on each and every date, however, the Petitioner was unable to appear on any date for one reason or another. The Respondent No. 1 recorded her statement before the learned Family Court wherein she categorically submitted in no uncertain terms that she has developed hatred toward her husband and that it is now not possible for her to live with him within the limits prescribed

by Allah. She expressed her willingness to return the dower amount already received by her and requested for her marriage with the Petitioner to be dissolved on the basis of Khullah. In such circumstances, the learned Family Court reached the correct decision by granting Khullah to the Respondent No. 1.

9. In the case of ***Muhammad Saddiq Hussain Vs. Khurshid Fatima, 1978 SCMR 130***, the apex Court held that as the petitioner had not shown any interest in the suit, the fact that the petitioner's [husband] father was questioned on behalf of the petitioner at the pre-trial reconciliation proceedings would at best be an irregularity which in no event changed the outcome of the suit, therefore, the High Court would not have been justified in interfering with the family court's judgment on this limited ground in exercise of Constitutional Jurisdiction. In light of such ruling, I find that no irregularity has been pointed out by the learned counsel for the Petitioner, which would vitiate the proceedings before the learned Family Court when multiple opportunities had been given to the Petitioner to participate in the pre-trial reconciliation proceedings after which the Respondent No. 1's statement was recorded by the learned Family Court, whereby she made it abundantly clear that she has developed a deep aversion to the Petitioner. In such circumstances, no Court is empowered to compel a wife to continue with a hateful union. Learned counsel for the Petitioner has failed to point out any material irregularity or jurisdictional defect in the Impugned Judgment & Decree which would warrant interference by this Court in its Constitutional Jurisdiction.

10. The case of ***Haji Muhammad Ismail Vs. Judge, Family Court, Jhang and another, 1981 CLC 243*** cited by the learned counsel for the Petitioner does not advance his case as the Honorable Lahore Court held that no further indulgence can be given to the petitioner in such case after he had failed to appear despite being given six opportunities for personal appearance for pre-trial reconciliation proceedings between the parties. As such, his non-appearance was deemed to have proved his disinterest in the reconciliation proceedings. Therefore, to this extent this case does not aid the Petitioner in his case before this Court.

11. However, the Honorable Lahore High Court set aside the ex-parte decree of Khullah in this case and remanded the matter back to the Family Court with a direction to proceed further in accordance with 10(4) of the Act of 1964. However, it is important to observe that the law has undergone amendments since the time of

the said ruling. The following proviso has been added to Section 10(4) of the Act of 1964 by way of Family Courts (Amendment) Ordinance, 2002:-

> *"Provided that notwithstanding any decision or judgment of any court or tribunal, the Family Court in a suit for dissolution of marriage, if reconciliation fails, shall pass decree for dissolution of marriage forthwith and shall also restore to the husband the Haq Mehr received by the wife in consideration of marriage at the time of marriage"*

12. It is now settled law that in a case for Khullah, the Family Court is required to pass decree for Khullah forthwith under the proviso to Section 10(4) of the Act of 1964 in the event of failure of pre-trial reconciliation proceedings. It is only when dissolution is sought on the basis of any ground other than by way of Khullah that the provisions of Section 10(4) of the Act of 1964 are resorted to, after failure of pre-trial reconciliation proceedings. Be that as it may, the Petitioner in the instant case has not prayed for proceedings to take place in accordance with Section 10(4) of the Act. The facts of the other cases cited by the learned counsel for the Petitioner are altogether different and as such are not relevant to the case at hand.

12. Having said that it is also settled law that Khullah constitutes a single divorce. As such, the parties are free to remarry each other by performing Nikah, if they wish to reunite even after a decree of Khullah has been passed by Court. In such case the parties do not need a pronouncement from this Court in exercise of its Constitutional Jurisdiction nor can this Court direct the parties to do so. However, it may be seen that the Respondent No. 1 is contesting the instant petition, which further indicates that there is no injustice caused to the Petitioner warranting interference by this Court in the Impugned Judgment & Decree passed by the learned Family Court.

13. Consequently, I see no force in this Petition, which is accordingly ***dismissed***.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on **19th of January, 2022**.

JUDGE