

**2017 Y L R 837**

**[Lahore]**

**Before Jawad Hassan, J**

**AWAIS AFZAAL---Petitioner**

**Versus**

**Mst. SAFIA IRSHAD and others---Respondents**

Writ Petition No.402 of 2017, decided on 10th January, 2017.

**Family Courts Act (XXXV of 1964)---**

---S. 7 & Sched.---Civil Procedure Code (V of 1908), O. IX, R. 9---Certificate of effectiveness of divorce, issuance of---Suit for dissolution of marriage and recovery of maintenance---Family Court passed ex-parte judgment---Husband moved application for setting aside ex-parte decree, whereafter the court directed parties to approach concerned Union Council for arbitration proceedings regarding divorce decree---Husband assailed issuance of certificate of effectiveness of divorce by Union Council contending that he was unheard at both forums---Validity---Record revealed that before issuing said certificate reconciliation proceedings were conducted on different dates for which prescribed notices were issued to husband, hence contention of husband that he had been condemned unheard was not tenable---Wife on every date of proceedings repeatedly stated that there was no chance of reconciliation and flatly refused to live with husband as his wedded wife and asked to issue certificate of divorce in her favour after completion of statutory period of 90 days---Union Council had no option except to issue certificate of divorce in favour of wife---Constitutional petition was dismissed accordingly.

Assad ur Rehman Qureshi for Petitioner.

## **ORDER**

**JAWAD HASSAN, J.**---Through this constitutional petition, the Petitioner calls in question the orders dated 03.09.2016 and 05.09.2016 passed by the Respondent No.3/Chairman Union Council No.120, Ali Raza Abad, Lahore whereby he issued certificate of effectiveness of divorce in favour of the Respondent No. 1.

2. Brief facts are that the Respondent No.1 filed suit for dissolution of marriage as well as recovery of maintenance etc. The said suits were consolidated as a consequence whereof ex-parte judgment and decree dated 30.05.2016 was passed by the learned Judge Family Court, Lahore. Subsequently the Petitioner moved an application under Order IX Rule 13 read with Section 151, C.P.C. on 30.06.2016 for setting-aside ex-parte judgment and decree before the learned Judge Family Court, operation of which was suspended to the extent of recovery of maintenance allowance, delivery expenses and dowry articles however, the ex-parte judgment and decree to

the extent of dissolution of marriage was ordered to remain intact and both the parties were directed to join the proceedings before the concerned Union Council. On 26.07.2016 on the statement of learned counsel for the Respondent No.1/plaintiff the said application was allowed subject to payment of costs of Rs.2000/- and matter is still pending adjudication before the learned Judge Family Court, Lahore.

3. Learned counsel for the Petitioner argued that the Respondent No.1 obtained ex-parte judgment and decree dated 30.05.2016 against which the Petitioner moved an application for setting-aside which was accepted on 30.06.2016 on the statement of the learned counsel for the Respondent No.1/plaintiff. The counsel argued that thereafter the Petitioner filed an application before the Respondent No.3 with prayer to adjourn the proceedings as operation of said ex-parte judgment and decree has been suspended. It is next argued that neither the Respondent No.3 entertained the application of the Petitioner nor given any single opportunity to the Petitioner for joining the reconciliation proceedings as such the Petitioner has been condemned unheard and issued certificate of effectiveness of divorce which is against the law and facts.

4. Arguments heard. Record perused.

5. The perusal of the record reveals that the Respondent No.3 before issuing certificate of effectiveness of divorce conducted reconciliation proceedings on different dates i.e. 28.06.2016, 03.07.2016, 20.08.2016 and 03.09.2016 whereby the notices were issued to the Petitioner for reconciliation hence the arguments of the Petitioner that he has been condemned unheard is not tenable. However, the Respondent No.1 on every date of proceedings repeatedly stated before the Respondent No.3 there is no chance of reconciliation and flatly refused to live with Petitioner as his wedded wife and to perform matrimonial obligations coupled with the prayer to issue certificate of divorce in her favour after completion of statutory period of 90 days. Faced with this situation, the Respondent No.3 had no option except to issue certificate of divorce in favour of the respondent No.1 on 05.09.2016. The petitioner has failed to point out any illegality and infirmity in the order impugned warranting interference of this Court through this constitutional petition which is devoid of force, hence dismissed in limine.

MQ/A-9/L

Petition dismissed.