

Mr. M. Yaqub Panmu, Advocate for Petitioner. Date of hearing : 5-5-1987.

ORDER

The petitioner has questioned in these proceedings legality of the order passed by respondent No. 2 dated 7-1-1986, upholding the order of the Chairman, Arbitration Council dated 31-5-1985 awarding maintenance to respondent No. 3 at the rate of Rs. 300/- per month, along with arrears.

2.- It is contended that the impugned order as well as the order passed by respondent No. 1 are *coram nonjudice*, because the pecuniary jurisdiction conferred on respondent No. 1 by virtue of Conciliation Courts Ordinance, 1961 is restricted to Rs. 5000/- ; therefore, he had no jurisdiction under the law to pass the impugned order, which is in excess of the pecuniary jurisdiction.

3. I have considered the arguments of the learned counsel for petitioner but I am of the view that it is based upon misconception of law. The Arbitration Council and the Conciliation Court are two separate distinct and independent bodies, having been created under two different statutes, the former is a creature under the Muslim Family Laws Ordinance, 1961, whereas the latter has been conceived under the Conciliation Courts Ordinance, 1961 and bears at * whatsoever, *inter se*, nor do the two have any bearing on each other. Former is a special statute designed to deal with a particular branch of litigation and has an inbuilt self contained complete mechanism ; whereas the latter has provided a special forum to deal with civil as well as criminal matters specified in the schedule, generally dealing with relatively trivial matters.

4. Before I analyse the two statutes, it is pertinent to point out that though both the statutes have the same year of birth, i.e. were enacted in the year 1961 ; the Muslim Family Laws Ordinance, 1961 was already in existence on the statute book (Ordinance No. VIII of 1961) when the Conciliation Courts Ordinance, 1961 (Ordinance No. XLIV of 1961) was promulgated, thus the framers of the latter piece of legislation were not oblivious of the former special statute already holding the field. There fore, had the legislation intended that Arbitration Council conceived under Ordinance No. VIII of 1961 be the same body as Conciliation Court- under Ordinance No. XLIV of 1961, and to have the same pecuniary limits then it should have specified in the later enactment with particularity.

5. Apart from the fact that the two forums have been conceived by two distinct enactments designed to cater for different situations, but also, have different methodology in their composition and different procedures have been prescribed for their operation.

To begin with, the name, style and scope of the two are distinct and different, one is known as Arbitration Council and is defined in S. 2 (a), and has been conceived by virtue of section 9 of the Muslim Family Laws Ordinance, 1961, which is set out hereinbelow :

5. 2 (a) "Arbitration Council" means a body consisting of the Chairman and representative of each of the parties to a matter dealt within this Ordinance : Provided that where any party fails to nominate a representative within the prescribed time, the body formed without such representative shall be the Arbitration Council."

S. 9 . "If any husband fails to maintain his wife adequately, or where there are more wives than one, fails to maintain them equitably, the wife, or all or any of the wives, may in addition to seeking any other legal remedy available apply to the Chairman who shall constitute an Arbitration Council to determine the matter and the Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband."

These provisions have been supplemented by the Rules i.e. the West Pakistan Rules under Muslim Family Laws Ordinance, 1961 and the relevant Rules in this behalf are 3, 4, 5, 6 and 16. The text of these is being reproduced herein below : Rules : 3. The Union Council which shall have jurisdiction in the matter for purpose of clause (d) of section 2, shall be as follows, namely :

(a) in the case of an application to contract another marriage under subsection (2) of section 6, it shall be the Union Council of the Union or Town in which the existing wife of the applicant, or when the husband has more

*Not legible. wives than one, the wife with whom the applicant was married last, is residing at the time of his making the application ;

(b) in the case of a notice to *talaq* under sub-section (1) of section 7, it shall be the Union Council of the Union or Town in which the wife in relation to whom *talaq* has been pronounced was residing at the time of the pronouncement to *Talaq* ; and

(c) in the case of an application for maintenance under section 9, it shall be the Union Council of the Union or Town in which the wife is residing at the time of her making the application, and where application under that section is made by more than one wife, it shall be the Union Council of the Union or Town in which the wife who makes the application first, is residing at the time of her making the application."

4. 'Where a non-Muslim has been elected as Chairman of a Union Council, the Council shall as soon as may be, elect one of its Muslim members as Chairman for the purposes of the Ordinance, in the manner prescribed for the election of a Chairman of a Union Council."

5. "(1) All proceedings before an Arbitration Council shall be held *in camera* unless the Chairman otherwise directs with the consent of all the parties.

(2) The Chairman shall conduct the proceedings of an Arbitration Council as expeditiously as possible.

(3) Subject to the provisions of sub-rule (4), such proceedings shall not be vitiated by reason of a vacancy in the Arbitration Council, whether on account of failure of any person to nominate a representative or otherwise.

(4) Where a vacancy arises otherwise than through failure to make a nomination, the Chairman shall require a fresh nomination.

(5) No party to proceedings before an Arbitration Council shall be a member of the Arbitration Council.

(6) All decisions of the Arbitration Council shall be taken by majority, and where no decision can be so taken, the decision of the Chairman shall be the decision of the Arbitration Council.

(7) A copy of the decision of the Arbitration Council, duly attested by the Chairman, shall be furnished free of cost to each of the parties to the proceedings.

6. (1) Within seven days of receiving an application under sub-section (4) of section 6 or under sub-section (1) of section 9, or a notice under sub-section (1) of section 7, the Chairman shall, by order in writing, call upon each of the parties to nominate his or her representative, and each such party shall, within seven days of receiving the order, nominate in writing a representative and deliver the nomination to the Chairman or send it to him by registered post.

(2) Where a representative nominated by a party is, by reason of illness or otherwise, unable to attend the meetings of the Arbitration Council, or wilfully absents himself from such meeting, or has lost the confidence of the party, the party may, with the previous permission in writing of the Chairman, revoke the nomination and make, within such time as the Chairman may allow, a fresh nomination.

(3) Where a fresh nomination is made under sub-rule (2), it shall not be necessary to commence the proceedings before the Arbitration Council *de novo*, unless the Chairman, for reasons to be recorded in writing, directs otherwise."

16. (1) Application for the revision of a decision of an Arbitration Council, under sub-section (4) of section 6, or of a certificate under subsection (2) section 9, shall be preferred within thirty days of the decision or of the issue of the certificate; as the case may be, and shall be accompanied by a fee of two rupees.

(2) The application shall be in writing, set out the grounds on which the applicant seeks to have the decision or the certificate revised, and shall bear

(2) Any person aggrieved by an order of rejection under sub-section (1) may, on the ground that the order is *mala fide* or substantially unjust, prefer, in the prescribed manner and within the prescribed time, an application for revision to the Controlling Authority, or to such other authority as may be prescribed."

S. 5 (!)A Conciliation- Court shall be a body consisting of a Chairman and two representatives to be nominated, in the prescribed manner, by each of the parties to the dispute :

Provided that one of the two representatives so nominated shall be a member of the Union Council concerned.

(2) The Chairman of the Union Council or, as the case may be, the member representing the ward, or, in the case of a ward which has more members than one, such one of them as may be determined in the prescribed manner shall be the Chairman of the Conciliation Court but where he is, owing to illness or any other cause, unable to act as Chairman, or does not, on account of any personal consideration, wish to do so, or his impartiality is challenged by any party to the dispute, any other person appointed in the prescribed manner, not being a person nominated by any party, shall be the Chairman of the Court.

(3) If either party to the dispute consists of more than one person, the Chairman shall call upon the persons constituting that party to nominate the two representatives on its behalf, and if they fail so to nominate, shall authorize any one of such persons to do so, and thereupon the person so authorised shall alone have the right to nominate such representatives.

(4) Where representatives required under this section to be nominated are not nominated within the prescribed time then

(a) if the case falls under Part I of the Schedule, the Conciliation Court shall without such representatives, be deemed to have been validly constituted for the purposes of this Ordinance, and conciliation shall proceed accordingly ; and

(b) if the case falls under Part II of the Schedule, the court shall issue a certificate that conciliation has failed."

S. 6 : *Jurisdiction of Conciliation Courts, etc.* (1) Subject to the provisions of sub-section (a), Conciliation Court shall be constituted and shall have jurisdiction to try a case only when the parties to dispute ordinarily reside within the jurisdiction of the same Union Council in which the offence has been committed or the cause of action has arisen.

(2) Where one of the parties to a dispute ordinarily resides, and the offence has been committed or the cause of action has arisen, in one ward of a city, municipality or cantonment, and the other party ordinarily resides in another ward of the same city, municipality or cantonment, then, a Conciliation Court may be constituted in the Ward in which the offence has been committed or, as the case may be, the cause of action has arisen "

(2) If the decision of a Conciliation Court is by majority of three or two, and the case falls under Part I of the Schedule, any party may, within thirty days of the decision of a Conciliation Court, apply in the prescribed manner

(a) to the Controlling Authority, if the case relates to a matter falling under section A of that Part ; or

(b) to the District Judge, if the case relates to a matter falling under Section B thereof, and the Controlling Authority or the District Judge, as the case may be, if satisfied that there has been a failure of justice, may set aside or modify the decision or direct that the dispute be referred back to the Conciliation Court for reconsideration."

7. A *juxta position* examination of the two sets of statutory provisions clearly demonstrates that each statute is self contained, self comprehensive, self sufficient and one is not supplementary to the other.

Muslim Family Laws Ordinance, 1961 has created a machinery for resolution of family disputes whereas the Conciliation Courts Ordinance, 1961 has created a machinery for deciding cases specified in the schedule thereto both for criminal as well as of civil matters. For the sake of convenience of reference, the schedule is being reproduced *in extenso* hereinafter :

Section A. "(1) Sections 143 and 147 of the Pakistan Penal Code. (Act XLV of 1860), read with the Third or the Fourth clause of section 141 of that Code, when the common object of the unlawful assembly is to commit an offence under sections 323 or 426 or 447 of the

Code, and when not more than ten persons are involved in the unlawful assembly.

(2) Sections 160, 323, 334, 341, 342, 352, 358, 426, 447, 504, 506 (first part), 508, 509 and 510, Pakistan Penal Code.

(3) Sections 403, 406, 417 and 420, Pakistan Penal Code, when the amount in respect of which the offence is committed does not exceed one hundred rupees.

(4) Section 427, Pakistan Penal Code, when the value of the property involved does not exceed one hundred rupees.

(5) Sections 428 and 429, Pakistan Penal Code when the value of the animal does not exceed one hundred rupees.

(6) Sections 24, 26 and 27 of the Cattle-Trespass Act, 1871 (I of 1871).

(7) Attempts to commit or the abetment of the commission of any of the above offences."

Section B.

"(1) Suit for the recovery of money due on contracts, receipts or other documents.

(2) Suit for the recovery of movable property or for the value thereof.

(3) Suit for compensation for wrongfully taking or damaging movable property."

Section A of Part I of the schedule provides the extent of jurisdiction of the Conciliation Court *vis-a-vis* criminal matters ; whereas Section B, confines itself in exclusionary terms to civil matters. A bare reading of these three items, pregnantly manifests that it does not bring within the scope of Conciliation Courts, the jurisdiction conferred on the Arbitration Council, as contemplated by S. 9 of the Muslim Family Laws Ordinance, 1961.

8. There is another aspect of the matter. Arbitration Council is designed to provide maintenance to a wife not only for future but also for the past ; and the quantum of maintenance would vary depending upon the socio economic status of the parties ; therefore, if one is to go by the arguments advanced by the learned counsel for the petitioner ; then section 9 of the Muslim Family Laws Ordinance, 1961 would become redundant and would lose its efficacy in a controversy pertaining to wife belonging to a wealthier section of the society. This law is not intended to cater for a limited section of the social fabric of the country, but is meant to deal with the whole society.

9. On merits, it transpires from the order of the Arbitration Council that respondent No. 3 has not been maintained for a period of three years, which has been upheld by respondent No. 2. Thus, there is a *con-IB* current finding of fact, which cannot be looked into in this extraordinary constitutional jurisdiction.

10. Independent of the foregoing reasons, this petition suffers from laches since it has been filed after a period of one year of the date of the impugned order. There is no merit in this petition. It is dismissed *it, limine*,

(TQM)

Petition dismissed.