

Judgment Sheet.
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT.

Case No. W.P.No.70550/2021

Liaqat Ali

Versus

Chief Officer, Municipal Committee, Gojra etc

JUDGMENT

Date of hearing	19.10.2022.
Petitioner by	M/S Abid Saqi and Muddassar Farooq, Advocates.
Respondent No.3 by Respondents No.1 and 2 by	Mr. Akhtar Abbas Rizvi, Advocate. Rana Zain Tahir, AAG along with Sh. Muhammad Javed, Advocate/Legal Advisor of Municipal Committee, Gojra, Ishtiaque Ahmad Gondal, Chief Officer, Municipal Committee, Gojra and Muhammad Hafeez ur Rehman, Legal Assistant, Municipal Committee, Gojra.
Amicus Curiae	Khawaja Isaam Bin Haris, Advocate.

Abid Aziz Sheikh, J.- In this constitutional petition, the petitioner has challenged the order dated 30.6.2021 passed by Chief Officer, Municipal Committee, Gojra (respondent No.1) whereby it is held that Municipal Committee has no jurisdiction in the instant matter for issuing Divorce Effectiveness Certificate (**Certificate**) and parties were advised to

approach Council of Islamic Ideology (**Islamic Council**) for resolution of their dispute.

2. Relevant facts are that petitioner is a real brother of deceased Shafqat Ali who got married with Mst. Sadia Jafari (respondent No.3) on 07.10.2010 but due to strain relationship, on 13.4.2016, respondent No.3 filed suit for dissolution of marriage before learned Judge Family Court, Faisalabad which was exparte decreed in her favour vide judgment dated 28.5.2016. The said decree was received by the erstwhile Union Council, Gojra (**Union Council**) on 27.8.2016 and notices were issued to the parties for constitution of Arbitration Council for the purpose of bringing reconciliation between the parties for 29.9.2016. The respondent No.3 on 28.9.2016 submitted her affidavit (**affidavit**) to the Union Council to the effect that parties have reconciled, however, neither said affidavit was signed by Shafqat Ali (**husband**) nor he appeared before the Chairman/Administrator Union Council to affirm the reconciliation. Subsequently, the Union Council was dissolved and jurisdiction was conferred upon Municipal Committee, Gojra (**Municipal Committee**). The matter was again taken up by

Municipal Committee on 09.9.2017 and notices were issued to husband and respondent No.3 for 12.10.2017. The said notices could not be served upon respondent No.3 and husband refused service of notices. The notices were repeated on 16.11.2017 which were once again refused by the husband, however, respondent No.3 appeared and again recorded her statement unilaterally to the effect that parties have reconciled, hence she does not want to proceed in the matter and certificate may not be issued. Thereafter, no further proceedings were taken by the Municipal Committee, however, on 13.6.2021, husband (Shafqat Ali) was passed away and petitioner approached the respondent No.1 on 22.6.2021 for issuance of certificate. The said request was resisted by respondent No.3, hence impugned order dated 30.6.2021 was passed by respondent No.1, which has been assailed through this constitutional petition.

3. Learned counsel for the petitioner submits that after decree for dissolution of marriage dated 28.5.2016, the same became effective automatically after expiry of 90 days as reconciliation was not effected between the parties. He submits that affidavit of respondent No.3

dated 28.9.2016 submitted to Union Council is not only unilateral but also a bogus document. He explained that after the decree for khula dated 28.5.2016, respondent No.3 filed a suit for recovery of maintenance allowance against husband which was exparte decreed on 30.6.2017. He submits that husband during his life time filed application to set aside the aforesaid exparte judgment and decree and asserted that divorce was already effected through decree of khula dated 28.5.2016 and affidavit before Union Council is also one sided bogus document. He submits that though husband passed away on 13.6.2021, before the exparte judgment and decree was set aside, however, his stance being already available on record, there is no justification with respondent No.1 to refuse issuance of certificate and refer the matter to Islamic Council.

4. Learned counsel for respondent No.3 on the other hand submits that parties had already reconciled before expiry of 90 days from receipt of exparte khula decree dated 28.5.2016, therefore, said decree became ineffective, hence certificate could not be issued. In support of his argument, learned counsel has placed

reliance on Muhammad Afzal Khan vs. Chairman Arbitration Council etc (2018 CLC 1125). The learned Law Officer and learned counsel for the Municipal Committee reiterated the above facts and supported the impugned order.

5. Learned Amicus Curiae referred to various relevant provisions of law and case law to assist this Court on the proposition in hand.

6. I have heard respective contentions of learned counsel for the parties and perused the record with their able assistance.

7. There is no dispute that the exparte decree for khula was passed on 28.5.2016 and same was also received by the then Union Council on 27.8.2016. It is also admitted position between the parties that before expiry of 90 days from the receipt of decree, respondent No.3 filed affidavit on 28.9.2016 to the effect that parties have reconciled. It is also admitted on all hands that said affidavit was only signed and thumb marked by respondent No.3 whereas husband neither signed the said affidavit nor appeared before Union Council or Municipal Committee during his life time to support the

affidavit or above stance of respondent No.3. In the above given facts, the main moot legal issue is “that whether the decree of khula had already become effective or not for the purpose of issuance of certificate”.

8. In order to answer and determine the aforesaid legal proposition, it is necessary to reproduce the relevant provisions of section 7 and 8 of Muslim Family Laws Ordinance, 1961 (**Ordinance**) and section 21 and 21-B (Punjab Amendment) of the Family Court Act, 1964 (**Act**) as under:-

(Section 7 and 8 of the Ordinance)

S. 7. ‘Talaq’. (1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife.

(2) Whoever, contravenes the provisions of sub-section (1) shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

(3) Save as provided in sub-section (5), a talaq, unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under sub-section (1) is delivered to the Chairman.

(4) Within thirty days of the receipt of notice under sub-section (1), the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

(5) If the wife be pregnant at the time of talaq is pronounced, talaq shall not be effect until the period mentioned in sub-section (3) or the pregnancy, whichever be later, ends.

(6) Nothing shall debar a wife whose marriage has been terminated by talaq effective under this section from remarrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time so effective.

S. 8. Dissolution of marriage otherwise than by talaq. *Where the right to divorce has been duly delegated to the wife and she wishes to exercise that right, or where any of the parties to a marriage wishes to dissolves the marriage otherwise than by talaq, the provisions of section 7 shall, mutatis mutandis and so far as applicable, apply.*

(Section 21 and 21B of the Act)

S. 21. Provisions of Muslim Family Laws Ordinance to be applicable.— *Nothing in this Act shall be deemed to affect any of the provisions of Muslim Family Laws Ordinance, 1961, or the rules framed thereunder and the provisions of section 7, 8, 9 and 10 of the said Ordinance shall be applicable to any decree for the dissolution of marriage solemnized under the Muslim Law, maintenance or dower, by a Family Court.*

(2) When a Family Court passes a decree for the dissolution of a marriage solemnized under the Muslim Law, the Court shall send by registered post within seven days of passing such decree, a certified copy of the same to the appropriate Chairman referred to in S. 7 of the Muslim Family Laws Ordinance 1961, and upon receipt of such copy, the Chairman shall proceed as if he had received an intimation of talaq, required to be given under the said Ordinance.

(3) Notwithstanding anything to the contrary in any other law, decree for dissolution of a marriage solemnized under the Muslim Law shall:

(a) not be effective until the expiration of ninety days from the day on which a copy thereof has been sent under sub-section (2) to the Chairman; and

(b) be of no effect if within the period specified in clause (a) reconciliation has been effected between the parties in accordance with provisions of the Muslim Family Laws Ordinance, 1961.

Punjab Amendment.

S. 21-B. Intimation to Arbitration Council.— If a Family Court decrees dissolution of a Muslim marriage, the Family Court shall immediately but not later than three days from the decree send by registered post or other means a certified copy of the decree to the concerned Chairman of the Arbitration Council and upon receipt of the decree, the Chairman shall proceed as if he had received intimation of Talaq under the Muslim Family Laws Ordinance, 1961 (VIII of 1961).

9. The conjunctive reading of section 7 and 8 of the Ordinance shows that before promulgation of the Act, in order for a decree of dissolution of marriage to be effective, the wife must serve notice of the decree upon the Chairman of the Arbitration Council (**Chairman**) and inform the husband. However, in view of section 21(2) of the Act, the onus to inform Chairman of such a decree was on the Family Court and upon received of a decree, the Chairman shall proceed if he had received intimation of Talaq under the Act. For the purpose of Province of Punjab, this provision was further modified by inserting section 21B (The Punjab Amendment in year 2015) whereby maximum period was reduced from 7 days to 3 days for Family Court to send certified copy of the

decree to the Chairman. This leaves no room for doubt that as per plain reading of above proviso, period of 90 days for reconciliation will commence from the date of receipt of copy of decree for dissolution of marriage by Chairman. However, as per law settled in Mst. Farida Parwin vs. Qadeeruddin Ahmad Siddiqi (PLD 1971 Karachi 118) and Abdul Sattar vs. Zahida Parveen (1991 MLD 403) to which, I do agree, a decree for dissolution of marriage does not become ineffective merely because copy to Chairman was not sent by Court within prescribed period and in such situation, its effectiveness would be reckoned from the date of due service and efflux of the requisite period, as be relevant in a particular case. In the instant case, though it is not shown that decree was sent by Court within 3 days, however, as copy of decree was admittedly received by the Union Council on 27.8.2016, therefore, period of 90 days will commence from 27.8.2016.

10. Now the next question also arising from same legal proposition is that whether the decree of khula could become ineffective or revoked unilaterally by respondent No.3 through her affidavit dated 28.9.2016. In this

context, perusal of section 7(3) of the Ordinance manifests that talaq can be revoked expressly or otherwise before expiry of 90 days. However, section 21(3) of the Act is a nonabstante clause and under clause (b) of subsection (3) of section 21 of the Act, there is no room of revocation available for the decree of khula and only way decree will become ineffective if reconciliation has been effected between the parties in accordance with the provisions of the Ordinance. The presence of word “revoke” in section 7(3) of the Ordinance and its conspicuous absence in section 21(3)(b) of the Act, leave no manner of doubt that decree of khula will only become ineffective if within 90 days, a reconciliation has been effected between the spouses on the basis of mutual or bilateral arrangement. Unless there is mutuality, it cannot be said that reconciliation has been effected between the parties and decree has become ineffective for the purpose of section 21(3)(b) of the Act. The same view was also expressed by this Court in *Abdul Sattar supra*.

11. The above interpretation and intention of the legislation is also for the reason that though right of

divorce by way of khula is equal to the right of talaq available to the husband, however, they are fundamentally different as in case of khula, divorce is not by wife rather the Court acts as a substitute for the husband and the decree for dissolution of marriage virtually partakes of the character of pronouncement of divorce. To dissolve marriage by way of khula although husband consent is not needed but the wife has to satisfy the Court in order to get the decree for dissolution of marriage. Similar view was also expressed in Mst. Khurshid Bibi vs. Baboo Muhammad Amin (PLD 1967 Supreme Court 97), Mst. Manzoor Vs. Allah Wasaya (PLD 1973 Baghdad-ul-Jadid 36) and Mst. Huma Hafeez vs. Shaukat Javaid etc (1993 CLC 855). The case law relied upon by learned counsel for respondent No.3 does not relate to the divorce through decree of khula, therefore, not applicable to the facts and circumstances of this case.

12. When we examine the instant matter in the light of above legal position, there is no dispute that husband during his life time neither signed the affidavit dated 28.9.2016 nor ever appeared before the Union Council or

Municipal Committee to endorse the stance of respondent No.3 that reconciliation has been affected. He rather later filed application for setting aside exparte decree for maintenance allowance dated 30.6.2017 and stated that divorce was already affected and the affidavit is without his consent. In the circumstances, it cannot be said that the decree of khula dated 28.5.2016 became ineffective on the basis of unilateral affidavit or statement of the respondent No.3.

13. From the above discussion, it has become conspicuous that husband has right to revoke the divorce whereas wife has no authority to revoke the decree for dissolution of marriage unilaterally and revocation can only take place through reconciliation with mutual consent of the parties. However, as per law settled repeatedly by Courts, wife has right to remarry her husband again after solemnizing the Nikkah without intervening of third person, as pronouncement of khula by Court, would amount to a single divorce. This legal positon has been held in the following judgments:-.

- (i) “In SALEEM AHMAD and others v. GOVERNMENT OF PAKISTAN through Attorney General of Pakistan and 2 others

(P L D 2014 Federal Shariat Court 43) the Hon'ble Court held that "Khula" and "Mubarat" operated as a single, irrevocable divorce and even thereafter both the spouses could contract fresh marriage with mutual consent, of course if they wanted to, without any intermediary marriage of the wife with another person.

(ii) *In Major QAMAR ZAMAN QADIR v. JUDGE FAMILY COURT, JEHLUM and others (PLD 2013 Lahore 88) the Hon'ble Court held that Pronouncement of Khula' by court would amount to single divorce and husband would be at liberty to marry the wife again after solemnization of nikah without intervention of a third person. It is held that Section 7(6) of the Muslim Family Laws Ordinance, 1961 did not debar wife whose marriage had been terminated by divorce under S.7 of the said Ordinance from remarrying the same husband without intervening marriage with a third person.*

(iii) *In DANISH v. Mst. FOZIA DANISH and another (P L D 2013 Sindh 209) the Hon'ble Court held that the relevant provision of Muslim Family Laws Ordinance, 1961 provides approved mode of divorce by one 'Talaq' and this mode is obligatory for husband to divorce by one mode of 'Talaq' other than 'Talaq-e-Ahsan' so the couple could remarry without any intervening marriage except where the wife has been divorced thrice and third divorce has become effective and only in that case they cannot remarry without 'HALALA'.*

- (iv) *In ATTIQ AHMED KHAN vs. NOOR-UL-SABA and another (2011 C L C 1211) the Hon'ble Court held that Pronouncement of 'Khula' by the court was a single divorce, as the defendant husband never accepted it voluntarily and such kind of dissolution of marriage was known as "Talaq-ul-Ba'ayen" It is also held that before re-union in such-like cases "Halala" was neither condition precedent nor the decree of 'Khula' was a hurdle in the way of re-union. The learned Court observed that no provision of law precluded the spouses from re-union, however, only condition was to perform a fresh 'Nikah' and since, re-union of the parties after decree of 'Khula' was a result of a fresh contract, the judgment and decree had no restraining effect upon re-marrying.*
- (v) *In MUHAMMAD AYUB KHAN v. Mst. SHEHLA RASHEED and another (P L D 2010 Karachi 131) the learned Court held that pronouncement of Khula' by the Court would amount to a single divorce until the third divorce takes place. The petitioner would be at liberty to re-marry his wife and the parties can rejoin as husband and wife on the solemnization of Nikah without intervention of third person.*
- (vi) *In FAZLI-E-SUBHAN v. Mst. SABEREEN and 3 others (P L D 2003 Peshawar 169) held that in case of divorce through Khula' it was not obligatory on wife to re-marry a third person before re-marrying with her first husband and observed that re-marriage with same husband, of course, would be subject to performance of another Nikah.*

Further held that provisions of S.7(6) of Muslim Family Laws Ordinance, 1961, however, also allowed such re-union without 'Halala' and no restraint existed, in circumstances, either in Muslim Family Laws Ordinance, 1961 or in Injunctions of Qur'an and Sunnah not to allow prayer of husband for re-union with his wife when she was ready to live again as wife within limits of God.

(vii) *In GULZAR HUSSAIN v. Mst. MARIYAM NAZ (2000 M L D 447) the learned Court held that Pronouncement of Khula' by Family Court, in circumstances, would amount to single divorce and until third divorce would take place, husband would be at liberty to remarry his wife again and parties could join as husband and wife on solmanization of Nikah without intervention of third person.*

(viii) *In Mst. NAWAB BIBI AND 14 OTHERS v. Mst. ANWAR BIBI AND 6 OTHERS (P L D 1970 Lahore 1) this Court settled that if khula` is performed by a decree of dissolution of marriage by the Court the question of pronouncing talaq thrice does not arise and, therefore, the further question of there being an intervening husband before Second marriage between the spouses would similarly not arise.*

14. In aforesaid judgments, Hon'ble Courts repeatedly held that pronouncement of khula by the Court is a single divorce, as the husband never accepted it voluntarily.

Such kind of dissolution of marriage is known as “Talaq-ul-Baayen”, and in such like case, intervening marriage (Halala) is not a condition precedent for re-union of the spouses, however, only condition is to perform fresh nikah.

15. The next question is that once the reconciliation proceedings between the spouses have failed whether Union Council is bound to issue divorce effectiveness certificate. This Court in Muhammad Ishaque vs. Ch. Ahsan Ahmad etc (PLD 1975 Lahore 1118) held that neither the Chairman of the Union Council nor the Arbitration Council can nullify a decree of dissolution of marriage, rather their only function is to certify whether reconciliation has succeeded or failed. This question was also discussed in Muhammad Afzal Khan vs. Chairman Arbitration Council and another (2018 CLC 1125) and Mst. Gul Zameeran etc vs. Mst. Aasia (2017 CLC 1431) where it is held that purpose of Arbitration Council is to hold reconciliation proceedings between the spouses and if matter was not reconciled, Chairman Arbitration Council had to issue certificate of effectiveness of talaq after period of 90 days. In view of law settled above,

once the reconciliation not effected in this case within 90 days, the divorce became effective and the Union Council was required to issue Certificate.

16. In the present case, it is also relevant to note that decree of khula dated 28.5.2016 was received by Union Council on 27.8.2016 and notices were issued for 29.9.2016 when affidavit was submitted on 28.9.2016. However, the matter was not treated as closed by Union Council and notices were again issued by Municipal Committee on 09.9.2017, much after expiry of 90 days from the date when the decree of khula was received. It is also settled law that issuance of certificate of talaq is a technicality which does not find mention in the Ordinance and talaq become effective automatically after 90 days from receipt of notice of talaq by the Union Council. Reliance in this regard is placed on Almas Mubashar vs. Mubashar Hanif (PLD 2014 Lahore 494).

17. It is also argued that whether matter could be referred to Islamic Council by respondent No.1 under Article 230 of the Constitution of Islamic Republic of Pakistan, 1973 (**Constitution**). In this regard, it is noted that part IX of the Constitution deals with the

composition, functions and procedure of Islamic Council and the role of Islamic Council is of advisory nature in terms of Article 230 of the Constitution. The primary object of the Islamic Council is to advise the parliament, Provincial Assembly, President or Governor to ensure conformity of laws with the injunctions of Islam, therefore, the instant matter between private individuals could not be referred to Islamic Council by respondent No.1.

18. In view of above discussion, this **writ petition is allowed** and after setting aside the order dated 30.6.2021, respondent No.1 is directed to issue Divorce Effectiveness Certificate in the matter.

19. Before parting with this judgment, I must acknowledge with appreciation the valuable assistance rendered by the learned counsel for the parties, especially *amicus curiae* Khawaja Isaam Bin Haris, Advocate.

(ABID AZIZ SHEIKH)
JUDGE

Approved for Reporting

JUDGE