PLJ 2017 Quetta 101 (DB)

Present: JAMAL KHAN MANDOKHAIL & ZAHEER-UD-DIN KAKAR, JJ.

GHULAM QADIR--Petitioner

Versus

Mst. ZAINAB *alias* ZEENA and another--Respondents

C.P. No. No. 663 of 2014, decided on 21-03-2017

Khula--

----Constitution of Pakistan, 1973, Art. 199--Constitutional petition--Jurisdiction--*Khula*--Ex-party--Decree--Challenge to--Question of--Whether the spouses can line together within the limits prescribed by the Allah Almighty without maintenance--Determination--**Held:** Family Court appears to have reached conclusion of Family Court in favour of grant of *khula* on consideration *inter alia*--Validity--Such conclusion cannot be termed unlawful or without jurisdiction so as to call for interference in exercise of power conferred under Art 199 of Constitution--Petition was dismissed.[P. 104] A

1993 CLC 1364, *Ref.*

Mr. Najam-ud-Din Mengal, Advocate for Petitioner.

Mr. Habib-ur-Rehman, Advocate for Respondents No. 1.

Date of hearing: 16.3.2017.

ORDER

Zaheer-Ud-Din Kakar, J.--By this petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 ("the Constitution"), the petitioner prayed the following relief:

> "It is therefore, respectfully prayed that the judgment and decree impugned dated 13.03.2014 passed by Respondent No. 2 be declared *null*, void and of no legal effect and consequently the matter may kindly be remanded to the learned trial Court for deciding afresh after providing proper opportunity of hearing, in the interest of justice, fair play and equity."

2. Precisely stated, the facts for disposal of the instant petition are that Plaintiff/Respondent No. 1 namely *Mst.* Zainab, married with petitioner Ghulam Qadir but, subsequently, due to some differences, that had cropped up between the parties, Respondent No. 1/plaintiff filed a suit for dissolution of marriage on the basis of *Khula* before the Court of Family Judge, Lasbella, in the month of March 2013, on the ground that she was married with petitioner about 22 years ago and out of wedlock two children were born and after marriage, the petitioner used to live in Dubai and he never paid maintenance to her, tortured her and even turned out of his house and for the last 15 years no payment of maintenance was made. After registration of the suit, the Family Court issued notices to the petitioner, but despite of service of notice upon his brother namely Muhammad Musa and publication in daily newspaper "Bolan" Hub dated 22.2.2014, he is failed to appear before the Family Court, therefore, proceeded against *ex-parte* and the Respondent No. 1/plaintiff was directed to produce *ex-parte* evidence. Thereafter, on the basis of *ex-parte* evidence, the Family Court decreed the suit *vide* impugned judgment and decree 31.3.2014, on the basis of *Khula* in the following words:

> **"اس تمام تر بحث و مباحثہ اور مقدمہ کے حالات، واقعات، مدعیہ کے حلفیہ بیان رو برو عدالت اور گواہان کی شہادت کو مد نظر رکھ کر یہ عدالت اس نتیجہ پر پہنچی کہ دعوی مدعیہ ثابت ہے۔ چونکہ مدعیہ گزشتہ 15/16 سالوں سے علیحدہ و الگ اور نفرت و انتظار بھری زندگی گزارنے پر مجبور ہے اور مدعا علیہ اپنی شرعی و قانونی حقوق ادا کرنے سے قاصر ہیں۔ مدعا علیہ نے بے غرضی و لاپرواہی کی انتہا کر دی ہے لہذا دعوی مدعیہ کو بحق مدعیہ بر خلاف مدعا علیہ ڈگری کیا جاتا ہے اور فریقین کے درمیان نکاح کے بندھن کو بذریعہ/بصورت خلع منسوخ کیا جاتا ہے۔"**

Hence the instant appeal.

3. Learned counsel for the petitioner contended that the impugned judgment and decree, passed by the Family Court is based on mis-appreciation of law and facts; that no opportunity of proper hearing has been afforded to the petitioner by the trial Court; that there are certain facts and grounds, which were concealed at the time of filing of the suit, thus, the impugned judgment is liable to be set aside.

4. Conversely, the learned counsel for the respondent vehemently opposed the contentions of the learned counsel for the petitioner and defended the impugned judgment.

5. We have heard learned counsel for the parties have gone through the record. Before going to further, it is necessary to mention here that the principle for grant of *Khula* are quite authoritatively laid down in the illustrative judgment of *Mst. Khursheed Bibi vs. Babu Muhammad Amin* (PLD 1967 SC 97), wherein after reference to a number of authorities and in the light of verses of Holy Quran, it is laid down as follows:

> '"Secondly, it confers a right and a privilege on the wife to seek dissolution of marriage. *Khula* is thus a right conferred on the wife. In the prior verse 2:228 the Holy Qur'an itself mentions 'women have rights against men similar to those that men have against them, according to the well known rules of equity'."

6. However, such right is circumscribed by the requirement of the Court being satisfied that the spouses cannot live as husband and wife within the limits prescribed by Allah Almighty. A women's not maintaining the limits ordained by the Allah Almighty is her neglecting or avoiding of her performance of her duties towards her husband as well as not obeying him at all. Likewise, the husband failing to provide protection and maintenance to his wife, is failure to keep the limits prescribed by the Almighty. The limits prescribed by the Allah Almighty would mean the directions regarding happy social life. In the present case, the Respondent No. 1/plaintiff through *ex-parte* evidence proved her case that the petitioner had failed to provide maintenance to her and her children for the last fifteen (15) years and also turned her out from his house. The fact that the husband and wife have lived separately for a long time and maintenance too has not been provided by the petitioner, can be a strong factor to assess as to whether the spouses can live together within the limits prescribed by the Allah Almighty. The learned Family Judge, appears to have reached the conclusion in favour of grant of *Khula* on consideration, *inter alia*, of about, factors. Such conclusion cannot be termed unlawful or without jurisdiction so as to call for interference in exercise of powers conferred under Article 199 of the Constitutions. In this regard reliance can be placed in the case of *Muhammad Rafi vs. Attaullah Kauser and others* reported in {1993 CLC 1364}.

7. For what has been discussed above, we find no merit in the petition, as such, the same is hereby dismissed.

(W.I.B.) Petition dismissed