

2017 M L D 1344

[Balochistan]

Before Jamal Khan Mandokhail and Zaheer-ud-Din Kakar, JJ

GHULAM QADIR---Petitioner

Versus

Mst. ZAINAB alias ZEENA and another---Respondents

C.P. No.663 of 2014, decided on 21st March, 2017.

Family Courts Act (XXXV of 1964)---

---S.7 & Schd.---Dissolution of marriage on the basis of Khula---Ex parte decree---Scope--- Husband (petitioner) contended that wife (respondent) had obtained Khula through court by ex parte evidence which was based on mis-appreciation of law and facts---Respondent contended that petitioner lived abroad who had turned her out from his house fifteen years back---Validity-- -Requirement of law was to be satisfied that the spouses could not live as husband and wife within the limits prescribed by Allah Almighty---Maintaining limits ordained by Allah by husband and wife---Scope---Limits prescribed by Allah would mean the directions regarding happy social life---In the present case, respondent (wife) through ex parte evidence proved her case that petitioner (husband) had failed to provide maintenance to her and the children for the last 15 years and also had turned her out from his house---Fact that husband and wife had lived separately for a long time without maintenance could be a strong factor to assess as to whether the spouses could live together within the limits ordained by Allah---Family Court had rightly reached to conclusion in favour of grant of Khula on consideration, inter alia, of such factors--- Constitutional petition was dismissed accordingly.

Mst. Khursheed Bibi v. Babu Muhammad Amin PLD 1967 SC 97 and Muhammad Rafi v. Attaullah Kauser and others 1993 CLC 1364 ref.

Najam-ud-Din Mengal for Petitioner.

Habib-ur-Rehman for Respondent No.1.

Date of hearing: 16th March, 2017.

ORDER

ZAHEER-UD-DIN KAKAR, J.---By this petition filed under Article 199 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:-

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 v. Babu Muhammad Amin (PLD 967 SC 97), wherein after reference to a number of authorities and in the light of verses of Holy Qur'an, 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 woman is 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 Constitution. In this regard reliance can be placed in the case of Muhammad Rafi v. Attaullah Kauser and others reported in (1992 CLC 1364).

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

MQ/40/Bal

Petition dismissed.