

Judgment sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Muhammad Jaffer Raza

Constitution Petition No. S – 254 of 2024

Zeeshan Razzak Petitioner.

Versus

Cantonment Board Clifton & others Respondents.

Mr. Sufyan Zaman, Advocate for the Petitioner.

Mr. Zain A. Soomro, Advocate for Respondents 1 & 2.

Ms. Sana Valika, Advocate for Respondent No.3 a/w
Qazi Umair Ali Advocate.

Dates of hearing : 09.04.2025, 24.04.2025 & 09.05.2025.

Date of announcement : 14.07.2025.

J U D G M E N T

MUHAMMAD JAFFER RAZA – J: Through the instant petition the Petitioner has impugned the order dated 24.01.2024 whereby the Respondents No. 1 and 2 dismissed the application filed by the Petitioner for confirmation of divorce and subsequent issuance of the divorce certificate.

2. Briefly stated, learned counsel for the Petitioner has contended that the Petitioner left for United States of America in the year 1995 and subsequently upon his return in the year 2003 the Petitioner married Respondent No.3 under the principles of Muhammadan law under the Muslim Family Law Ordinance, 1961 (**“the Ordinance”**). Subsequently, three minors were born. During subsistence of the marriage both the Petitioner and Respondent No.3 moved to the United States of America where they resided for a significant period of time. Without delineating into the details of the said marriage, suffice it to mention that the parties could not continue with the said marriage and a divorce decree was granted by the District Court of Harris County, Texas on 12.09.2022. The

Petitioner contended that irrespective of the divorce decree by the Court noted above, the Petitioner is entitled for divorce certificate within the jurisdiction of Pakistan as the marriage according to him is still subsists in the official record of Pakistan and Respondent No.3 still features in the Family Registration Certificate of the Petitioner.

3. Thereafter, according to the learned counsel for the Petitioner, the Petitioner applied for divorce certificate by submitting divorce deed dated 10.02.2023 and despite a lapse of 90 days an opportunity for reconciliation and/or divorce certificate was not issued by the said Respondent. The Petitioner is aggrieved with the Respondent No.2 raising the issue of jurisdiction. Learned counsel for the Petitioner has further contended that he operates his business in and from Pakistan and has been paying taxes in respect of all his activities. Hence it is within the jurisdiction of Respondents 1 and 2 to grant divorce certificate in the terms of the provisions of the Ordinance. Learned counsel has lastly contended that the denial of the divorce certificate by the above Respondents is in derogation of his fundamental rights under the Constitution of the Islamic Republic of Pakistan as both the parties have dual nationality of Pakistan and United States of America.

4. Conversely, learned counsel for Respondents 1 and 2 has argued that the Petitioner and Respondent No.3 are not permanent residents of Pakistan and hence the Respondents being represented by him do not have the territorial jurisdiction to entertain the application submitted by the Petitioner. He has more particularly invited my attention to paragraphs number 6 and 7 of the comments filed by him. In that respect, the learned counsel has further invited my attention to Notification bearing SRO No.1086(K)/61 dated 09.11.1961 whereby according to him, the Ministry of External Affairs was authorized to appoint officers of Pakistan missions abroad to discharge the functions of Chairmen under the Ordinance. Further, learned counsel has relied upon Rule 3(b) of the West Pakistan Rules coined under the Ordinance. In this respect, learned counsel has argued that while the Petitioner may be entitled to a divorce certificate under the

provisions of the above noted Ordinance and Rules, the said certificate can only be granted under the Schedule laid down in the above Notification. He further contended that the Petitioner has attempted to circumvent the procedure laid down under the above Rules and SRO. He has also maintained that the status of the Petitioner as resident is disputed, which cannot be adjudicated by this Court in its jurisdiction under Article 199 of the Constitution. Lastly, he contended that even if the Respondent No.3 consents to the jurisdiction being vested in the Respondents being represented by him, the said Respondents will still be unable to issue the divorce certificate as prayed for by the Petitioner.

5. Learned counsel for Respondent No.3 has supported the contentions of the learned counsel for the remaining Respondents. She has stated that divorce proceedings between the parties culminated in United States of America and the Petitioner and Respondent No.3 are not residents of Pakistan. She has further contended that the Petitioner is not entitled for divorce certificate unless the provisions of the Rules and the above noted SRO are followed in letter and spirit. Learned counsel has most vehemently argued that the Petitioner applied for the said divorce certificate only to achieve his nefarious objectives in a manner which can only be classified as clandestine. The Petitioner, according to learned counsel, is making vile attempts to invoke the jurisdiction of the Courts and authorities in Pakistan. She further argued that if the instant petition is allowed the same will have an impact on the litigations pending between the parties and it will be presumed that the Courts in Pakistan have jurisdiction to entertain the custody dispute pertaining to the minors. She has also relied upon Sections 81 and 82 of the Income Tax Ordinance, 2001 and has contended that the Petitioner does not fall within the category of residents of Pakistan therefore he is not entitled for the relief sought.

6. I have heard all the respective counsels for the parties and perused the record. The question to be determined in the present petition is the applicability of Rule 3(b) of the West Pakistan Rules under Muslim Family Law Ordinance, 1961 (**“Rules”**). The same is reproduced below:-

“3(b) in the case notice of talaq under subsection (1) of section 7, it shall be the Union Council of the Union Council of the Union or Town where the wife in relation to whom talaq has been pronounced was residing at the time of the pronouncement of talaq:

Provided that if at the time of pronouncement of talaq such wife was not residing in any part of West Pakistan, the Union Council that shall have jurisdiction shall be---

(i) in case such wife at any time residing with the person pronouncing the talaq in any part of West Pakistan, the Union Council of the Union or Town where such wife so last resided with such person; and

(ii) in any other case, the Union Council of the Union or Town where the person pronouncing the talaq is permanently residing in the West Pakistan.” (Emphasis added)

7. It is evident from the perusal of the above noted rules that the Petitioner in the present petition and also in the divorce application filed before Respondent No.1 and 2 has failed to establish his permanent residency in Pakistan and in this regard I concur with the arguments advanced by learned counsel for the Respondents 1 and 2 in declining jurisdiction to entertain the divorce application. Further, I agree with the contentions of the learned counsel for Respondent No.3 that an assumption of jurisdiction in the divorce proceedings between the parties may have consequences in relation to the custody dispute in respect of the minors, which essentially pivots on the same issue i.e. jurisdiction.

8. In this regard, I have perused the record and it is evident that the Petitioner preferred Guardian & Ward Application No.980/2021 in which an application was preferred by Respondent No.3 under Section 9 of the Guardian & Wards Act 1890 on the ground of jurisdiction. The said application was allowed vide order dated 13.11.2021 and the Guardian & Ward Application mentioned above was returned to the Petitioner on the point of jurisdiction. Thereafter, the Petitioner preferred Family Appeal No.28/2021 and the same was dismissed vide order dated 15.05.2023 maintaining the order of the learned Family Court. The said order is the subject matter of Constitutional Petition No.616/2023 which is still pending adjudication. I will not deliberate upon the above noted orders as the same do not pertain to the instant petition.

9. I agree with the contention of the learned counsel for the Petitioner vis a vis his entitlement to a divorce certificate under Pakistani Law. However, in the absence of the Petitioner establishing conclusively his status as a permanent resident in Pakistan, the Petitioner has an alternate and efficacious remedy available to him as laid down under the above Rules and Notification. The Petitioner is at liberty to adopt the procedure and obtain a divorce certificate in accordance with the relevant provisions of law, without any of his fundamental rights being infringed.

10. In similar circumstances a learned single judge of the Lahore High Court in the case of **Syeda Wajiha Haris v. Chairman, Union Council No.7, Lahore¹**, held as below:-

“Both the petitioner and respondent No.2 are residing in Romania Learned counsel for the petitioner submits that "S.R.O. No. 1086(K)/61, dated 8-11-1961 empowers Ministry of Foreign Affairs to appoint officers of Pakistan Mission abroad to discharge functions of Chairman under the aforesaid Ordinance". Learned counsel for respondent No.2 submits that the respondent No.2 has written to the Pakistanis Mission in Bucharest Romania informing them about the divorce pronounced by him. It is obvious that for foreign resident Pakistani the law has created a remedy and forum for reconciliation between the spouses under the Ordinance in the Pakistan missions in the countries of their residence. In the first instance, the respondent No.2 should avail that remedy. In case such remedy is not available then any other competent forum may be approached by him for relief.

2. Accordingly, it is directed that the respondent No.2 shall approach the Pakistan Mission in Romania to register the divorce pronounced by him upon the petitioner and for reconciliation proceedings visualized finder the Ordinance to be undertaker there. As a consequence the proceedings before the respondent No.1 are declared to be incompetent and therefore illegal. Mrit petition is accordingly allowed.” (Emphasis added)

11. In analogous circumstances, following the judgment cited in the paragraph above, another learned single judge of the Lahore High Court in the case of **Ms. Sadaf Munir Khan v. Chairman, Reconciliation Committee and 2 others²**, held as under:-

¹ 2010 MLD 989 [Lahore]

² PLD 2019 Lahore 285

“31. However, at this stage, on account of the petitioner being not resident in Pakistan at the relevant time the proviso to Rule 3(b) assumes relevance. When the facts of the case are examined in the light of the proviso to Rule 3(b), even then, respondent No.1 does not have jurisdiction in the matter. The reason for the above conclusion is that the marital home of the parties as well as the permanent residence of respondent No.3 in Pakistan is respondent No.3's house/residence at 37-A Jail Road, Lahore. The said house/address does not fall within the jurisdiction of respondent No.1.

32. As to the contention of the learned Counsel for respondents Nos. 1 and 2 that the Notification, dated 09.11.1961, has been made to only facilitate Pakistan nationals living abroad and it does not oust the jurisdiction of respondent No.1, suffice it to say that the Notification has been promulgated to precisely deal with such like cases. The Notification is an enabling provision and creates a convenient forum for Pakistanis who are resident abroad, especially permanently resident abroad, for dealing with their matrimonial affairs under the Ordinance in the Pakistan mission in the country of their residence.

33. As has been held hereinabove respondent No.1 does not have jurisdiction in the matter, therefore, I tend to agree with the argument of the learned counsel for the petitioner that in the first instance, since the petitioner as well as respondent No.3 are dual nationals of Pakistan and the USA and were permanently residing in the USA at the relevant time, therefore, respondent No.3 should have approached the authorized officer of the concerned Pakistan mission under Section 7, of the Ordinance. Moreover, when this objection was raised before respondent No.1, he should have stayed his hands and required respondent No.3 to first have recourse to the authorized officer of the concerned Pakistan mission abroad.
(Emphasis added)

12. Recently, a learned single judge of this court whilst adjudicating a writ petition³ pertaining to cross border divorce between spouses, regarding the same SRO observed as follows:-

“17. Respondent No.1 acting on such information and the fact that petitioner was not pursuing the divorce proceedings before him either himself or through his advocate considered the scheme under SRO No.1096(K)/61 dated 09.11.1961 issued u/s 2(b) of Ordinance 1961 and disposed of proceedings u/s 7 of the Ordinance vide order dated 03.01.2024 He further advised the petitioner through the same order to approach the Pakistan Mission/Embassy in New York for commencement of the said proceedings. Since section 2(b) of Ordinance 1961 has been quoted in the aforesaid SRO, it is necessary to see what it lays down. It actually defines the Chairman as Chairman of the Union Council or a person appointed by the Federal Government in cantonment areas or by the provincial Government in other areas, or by an officer

³ C.P.No.S-525 of 2024 Muhammad Hassan Sultan versus Chairman Union Council Cantonment Board Office & another

authorized in that behalf by any such Government to discharge functions of the Chairman under this Ordinance.

18. This SRO stipulates the scheme whereby Central Government has authorized Director General (Administration) Ministry of External Affairs to appoint an officer of Pakistan Mission abroad to discharge functions – including functions u/s 7 -- of the Chairman under the aforesaid Ordinance. Learned counsel for petitioner urged in her arguments that the said SRO does not expressly delegate powers to the Director General to act as Chairman as defined u/s 2(b) of Ordinance 1961 and to hold proceedings u/s 7 of the said law to bring about either reconciliation between the parties or confirm the divorce. Insofar as vires of the said SRO are concerned, the same have not been challenged in this petition, therefore I cannot go into detail of its merits and rule against it. The plain reading of the said SRO, nonetheless, shows that Central Government has authorized the Director General, Ministry of External Affairs to appoint officers of Pakistan Mission abroad to discharge functions of the Chairman. It has not been brought to the notice of this court whether or not under such authority, the Director General has issued any notifications/orders appointing the officers in Pakistan Missions in the countries across the world to act as Chairman for the above purpose. None of the parties has placed on record any notification or order pursuant to such SRO indicating the relevant officers in Pakistan Mission/Embassies abroad having been delegated the powers of Chairman. But in absence of any adverse communication on record abridging the scheme of aforesaid SRO, I do not see any reason to hold that relevant officers of Pakistan Missions abroad have not been delegated powers to act as the Chairman and conduct proceedings u/s 7 of Ordinance 1961 between the parties residing within the limits of their respective domain. (Emphasis added)

13. In light of what has been held above, the instant petition is devoid of merit and is dismissed with no order as to cost.

J U D G E

Nadeem Qureshi “PA”