

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

C.P.No.S- 38 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

1. For orders on MA 200/2021.
2. For orders on office objection.
3. For orders on MA 201/2021.
4. For orders on MA 202/2021.
5. For hearing of main case.

26.02.2021.

Mr. Shaukat Ali Pathan, Advocate for petitioner

=

ARSHAD HUSSAIN KHAN, J: Through this petition, the petitioner has challenged the order and decree dated 16.12.2020 passed by learned Family / Civil Judge-V, Hyderabad, whereby the learned Family Court declared the pre-trial proceedings as failure and issued preliminary decree for dissolution of marriage by way of Khula.

2. The facts of the case in nutshell are that respondent No.1 / plaintiff Mst. Saba Khan filed a suit for dissolution of marriage by way of *Khula*, return of dower, dowry articles and maintenance against the petitioner / defendant before the learned Family Court No.V, Hyderabad and the petitioner / defendant upon service filed the written statement. Thereafter, the matter was fixed for pre-trial proceedings and on 16.12.2020, learned Family Court declared the pre-trial proceedings as failure and dissolved the marriage by way of Khula. The petitioner challenged the above order in the instant constitutional petition.

3. Learned counsel for the petitioner mainly contended that on the day of passing of the impugned order, the counsel for petitioner / defendant had moved an adjournment application on the ground that the petitioner was suffering from COVID-19 but the learned trial court without considering the said contention of the counsel, passed the impugned order in a hasty manner and did not adopt due process of law for holding pre-trial proceedings as there was chance of amicable settlement between the parties. He further contended that the learned trial court also failed to frame the proper issues and allow the parties to lead their evidence and to hold post-trial proceedings. He further contended that the learned trial court did not comply with Section 10(4) of Family Court Act, 1964. Lastly he has prayed for setting aside of the impugned order and decree by remanding back case to the learned trial court to adopt the legal procedure.

4. Heard learned counsel for the petitioner and perused the material available on record.

5. Perusal of record reflects that respondent No.1/plaintiff filed suit for dissolution of marriage by way of *Khula*, return of dowry articles and maintenance against the petitioner. The petitioner when despite opportunities failed to participate in the pre-trial proceedings, the learned Family Judge on 16.12.2020 while holding the failure of pre-trial proceedings partially decreed the suit and dissolved the marriage by way of *Khula*, however, for the recovery of dowry articles and maintenance, it framed the issues. The petitioner impugned the above order in the instant petition. The operative part of the impugned order is reproduced as follows:-

"Today, matter was fixed for pre-trial proceedings. Plaintiff and her counsel are present while counsel for defendant is present and defendant despite of last chance and stern directions is called absent. Plaintiff contended that she has developed hatred against the defendant and she is no more interested to participate in pre-trial proceedings. Hence, pre-trial proceedings declared as failure."

6. Before going into any further discussion, it would be expedient to reproduce section 10(4) of the Family Courts Act, 1964, as follows:-

"S.10(4)---If no compromise or reconciliation is possible the Court shall frame the issues in the case and fix a date for recording evidence;

Provided that notwithstanding any decision or judgment of any Court or tribunal, the Family Court in a suit for dissolution of marriage, if reconciliation fails, shall pass decree for dissolution of marriage forthwith and shall also restore to the husband the Haq Mehr received by the wife in consideration of marriage at the time of marriage."

The above provision evolves a mechanism to expedite the conclusion and disposal of suit for dissolution of marriage, which empowers the Family Court that while conducting pre-trial proceedings, if reconciliation efforts resulted in failure, the Court shall pass decree for dissolution of marriage straightway and shall also restore to the husband the dower amount or any article given in shape of dower received by the wife in consideration of marriage at the time of marriage and in this context the Court has no other preference.

The intent and wisdom behind the promulgation of amendment in section 10(4), West Pakistan Family Courts Act, 1964, was to expedite the disposal of matrimonial disputes of the spouses, as due to the lengthy process of proceedings, the object of prompt justice could not be achieved and obtaining of divorce became a difficult task for a wife. Due to consumption of years in conclusion of the trial, which was not only causing unnecessary delay but was also colossal hurdle for a woman to re-marry due to the advancement of her age. Indeed marriage is a most important segment of Muslim society to ensure the continuity and stability of family bond. Islam believes upon a happy and congenial atmosphere in matrimonial life. If a husband wants to dissolve the marriage tie, he is authorized to do by exercising

such right by pronouncing divorce directly without any embargo. A Muslim wife has been accorded a right and choice to continue her marriage tie voluntarily and she could not be constrained to maintain her marital tie in a hatred atmosphere against her wish and whim. *Khula*, release from matrimonial bond, is a right of divorce conferred upon a woman to obtain divorce from her husband if she feels that the matrimonial relations are so strained and due to cruelty, non-maintenance, hatred, maltreatment or any other unwarranted circumstances, she could not live with her husband within the limits prescribed by Almighty Allah and compelling the wife to live with her husband, will give birth to a hateful union, then the Courts are bound to grant the right of *Khula* to a woman where she has expressly claimed for.

Under section 10(3) West Pakistan Family Courts Act, 1964 the Trial Court before initiating the trial proceedings is under legal obligation to make a genuine attempt for reconciliation between the parties. Trial Court shall remain instrumental and will make genuine efforts in resolving the dispute between the parties. If despite genuine efforts, reconciliation fails, the Trial Court under proviso of section 10(4), without recording evidence shall pass a decree of dissolution of marriage forthwith.

7. Reverting to the case in hand, from the perusal of above order, it manifestly appears that despite several chances given to the petitioner / defendant, he failed to participate in the pre-trial proceedings. Even otherwise, respondent No.1 / plaintiff had clearly stated that she has hatred against the petitioner / defendant and is no more interested to join the petitioner. In such view of the matter, respondent No.1 cannot be forced to join the petitioner or to participate in pre-trial proceedings. In these circumstances, the learned Family Court has rightly passed the above order which is in accordance with law.

9. As the sequel of above discussion of facts and circumstances, petitioner has failed to point out any illegality or material irregularity in impugned order dated 16.12.2020 passed by learned Family / Civil Judge-V, Hyderabad hence the same does not call for any interference under the constitutional jurisdiction of this Court. Consequently, instant petition being devoid of any legal substance stands dismissed in limine alongwith listed applications.

JUDGE