

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P.No. S-1470 of 2015.

Date	Order with signature of Judge
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1. For orders on office objection No.4 alongwith reply as at "A".
2. For orders on CMA No. 5941 of 2015 (Ex/ A).
3. For orders on CMA No. 5942 of 2015.
4. For hearing of main case.

21.02.2018

Mr. Muhammad Ali Waris, Advocate for petitioner.

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Through instant petition, petitioner has challenged the *Khulah* granted by Family Judge-X, Karachi, Central, on 07.04.2015 in Family Suit No.2118 of 2014 [Re. Mst. Farhana vs. Zahid Hussain].

At the outset, learned counsel for the petitioner contends that trial Court was not competent to pass such order as respondent No.1 (Mst. Farhana) was not residing within the jurisdiction of Civil & Family Judge-X, Karachi, Central although petitioner (husband) after serving with the notice caused his appearance and filed objections that his wife is not residing within the territorial jurisdiction of that Court; on his application with regard to site inspection, learned trial Judge while allowing such application appointed Mr. Nisar Ahmed as Commissioner to visit the site and submit report specifying that whether respondent No.1 (wife of petitioner) is residing on same address as shown in the family suit. He submits photocopy of commissioner's report. Paragraph No.2 of that report being pertinent is reproduced herewith:

"It is pertinent to mention here that the undersigned commissioner collected the information from the neighbored as well as witness i.e. Yasir Ali S/o. Irshad Ahmed Khokhar & Jan Muhammad Mastoi S/o Mir Muhammad who has been disclosed that the plaintiff is residing at the address mentioned in the Plaint and also in the said

house as shown in the plaint, now a days the plaintiff is residing when she come in Pakistan then reside in the said house."

which reveals that the lady used to reside in that house as and when comes in Pakistan. Further, counsel contends that he had filed objections over the report but those objections were not considered.

Since, respondent No.1 filed suit seeking Khula and such suit was allowed by aforesaid order. Being relevant paragraph No.4 of that order is reproduced herewith:

"In view of above position, I do not find the probability of reunion of parties and in circumstances, it would not be in the interest of justice to deprive the plaintiff from right of Khula. Hence, I hereby dissolve the marriage of plaintiff with defendant by way of Khula in lieu of her dower Rs.50,000/- which according to record has not been paid to her. However, this Khula shall not be confirmed unless plaintiff shall serve the copy of this order U/s 7(1) and 8 of Muslims Family Laws Ordinance, 1961 upon Incharge of the Union Council within the limits of which she ordinarily resides and said Incharge within the thirty days of the receipt of such order shall constitute an Arbitration Council U/s 7(3) and 8 of the same Ordinance 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."

Perusal of impugned order reveals that after service upon the petitioner (Defendant) and hearing the parties, Khula was granted, however, with direction for issuance of notice under Section 7(1) and 8 of Muslim Family Laws Ordinance, 1961; objections as raised by learned counsel that Court was not having jurisdiction; Commissioner report reveals that address shown by the plaintiff was her house. Further, it would be pertinent to mention that in suits of Khula it is held in many judgments that temporary even one day residence is sufficient to seek such relief and that proposition of law is now has taken its status of stare decisis, hence, the counsel's objections over this Khula with regard to jurisdiction is not maintainable, whereas with regard to second plea that the compliance of section 7 and 8 of

Muslim Family Laws Ordinance, 1961, is yet to be made that is up to the trial Court and the same is formality. Petitioner (husband) cannot pursue her with regard to that procedure, since khula is already granted and there is no other option to deprive the respondent No.1 from her right, which is completely her choice under Islam as well as land laws as opined by apex Court as well as this Court. Petition is dismissed.

SAJID

JUDGE