

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-263 of 2021

[Asif Ahmed Khanv.....Mst. Salma Asif & others IX Civil & Family Judge
Karachi Central & others]

Date of Hearing : 25.01.2024
Petitioner through : Mr. Farhan Ali Jafferi, Advocate
Respondents through : Mr. Naveed Ahmed Khan, Advocate.
Mr. M. Hisham Mahar, AAG.

ORDER

Zulfiqar Ahmad Khan, J:- The Petitioner is aggrieved with the order dated 30.10.2019 passed by learned Family Judge-XX South Karachi, whereby marriage between the petitioner and respondent No.1 was disposed by way of Khula.

2. Family Suit No. 1470 of 2019 was filed for dissolution of marriage by way of Khula by respondent No.1 and same was allowed vide Judgment & Decree dated 30.10.2019. Present petitioner filed Family appeal No. 98 of 2020 before the Additional District Judge VII, South, Karachi and the same was dismissed vide order dated 17.10.2020 on the ground that no appeal lies against the decree for dissolution of marriage per Section 14(2)(a) of West Pakistan Family Court Act, 1964, hence the petitioner is before this Court against the concurrent findings.

3. Learned counsel for the petitioner argued that the impugned Judgment of the learned Family Judge was passed ex parte, the petitioner was never served and ex parte proceedings be set aside. Learned counsel for the respondent No.1 contended that the respondent No.1 does not want to live with the petitioner and Islam

does not force on the spouses a life devoid of harmony and happiness and if the parties cannot live together as they should, it permits a separation. He further contended that the learned Family Court having adopted all modes of services including publication in newspaper passed a decree of dissolution of marriage by way of Khula.

4. Heard and perused the record. West Pakistan Family Courts Act, 1964 (“Act”) was promulgated for the expeditious settlement and disposal of disputes with regard to the marriage and other family affairs and also provides special procedure to achieve such object. Being special law, it creates the special courts for determination of the family disputes in order to advance justice and to avoid technicalities.

5. For understanding and resolving the question in dispute, it is appropriate to reproduce section 10 of the Act;

“10. Pre-trial proceeding:- (1) When the written statement is filed, the Court shall fix an early date for a pre-trial hearing of the case.

(2) On the date so fixed, the Court shall examine the plaint, the written statement (if any) and the precise of evidence and documents filed by the parties and shall also, if it so deems fit hear the parties, and their counsel.

(3) At the pre-trial, the Court shall ascertain the points at issue between the parties and attempt to effect a compromise or reconciliation between the parties if this be possible.

(4) If no compromise or reconciliation is possible the Court shall frame the issues in the case and fix a date for recording of the 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 also restore the husband the Haq Mehr received by the wife in consideration of marriage at the time of marriage.”

6. The Legislature while introducing amendment in the Family Court Act, 1964 has derived wisdom from Quran and Sunnah. Islam confers the right of Khula to woman by virtue of which a Muslim woman can get herself released from the bond of marriage if she feels, due to any reason, that she could not live with her husband within the limits prescribed by Allah Almighty. The right and mode of "Khula" has been described by Almighty Allah in verse No. 229 of Surah Baqra, translation of which is as under:--

"229. The divorce is twice, after that, either you retain her on reasonable term or release her with kindness. And it is not lawful for you (men) to take back (from wives) any of your Mahr (bridal money given by the husband to his wife at the time of marriage) which you have given them, except when both parties fear that they would be unable to keep the limits ordained by Allah (e.g. to deal with each other on a fair basis). Then if you fear that they would not be able to keep the limits ordained by Allah, then there is no sin on either of them if she given back (Mahr or a part of it) for her `Al-Khul' (divorce). These are the limits ordained by Allah, so do not transgress them. And whoever transgress the limits ordained by Allah, then such are the Zalimun (wrong-doers, etc.)".

7. The proviso to section 10 empowers the Family Courts to pass a preliminary decree for the dissolution of Marriage forthwith upon the failure of reconciliation and further provides that wife shall be ordered to return the Haq Mehr received by her.

8. Section 10(3) imposes a legal obligation on the Family Courts to make a genuine attempt for reconciliation between the parties. Trial Court shall remain instrumental and make genuine efforts in resolving the dispute between the parties. In case if despite of genuine efforts,

reconciliation fails, the Trial Court under proviso of section 10(4), without recording evidence is empowered to pass a decree of dissolution of marriage forthwith. At this juncture if the court observes that the wife without any reason is not willing to live with her husband, then under proviso (ibid) the Court is left with no option, but to dissolve the marriage.

9. Islam does not force on the spouses a life devoid of harmony and happiness and if the parties cannot live together as they should, it permits a separation.

10. It further unfurls from the record that the petitioner also filed an application before the learned Family Court for recalling of the ex parte order which application was also dismissed by the learned Family Court vide order dated 19.08.2020 on the ground that the recalling application was filed after the delay of more than four months as well as the address given in the application filed by the petitioner before the Family Court for recalling of ex parte order is also same as the address given in the plaint filed by the respondent No.1, therefore, no illegality, irregularity and infirmity is committed by the learned lower fora.

11. In view of the rationale and deliberation delineated above, the petition at hand is dismissed alongwith pending application.

Karachi
Dated: 25.01.2024

JUDGE

Aadil Arab.