

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P.No.S-525 of 2024

Muhammad Hassan Sultan Petitioner

Vs.

Chairman Union Council Cantonment Board Office
 & another Respondents

Barrister Zahrah Sehr Vayani, a/w Rameez Lalani advocate for
 Petitioner.

Mr. Zain A. Soomro, advocate for respondent No.1.

Mr. Yaha Iqbal, Advocate for respondent No.2.

Date of hearing: 12.08.2024, 10.09.2024 & 01.10.2024.

Date of Judgment: 07.10.2024.

JUDGMENT

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MUHAMMAD IQBAL KALHORO J: Petitioner has impugned essentially two letters dated 11.08.2023 and 03.01.2024 issued respectively by the Chairman Arbitration Council Cantonment Board, Karachi, respondent No.1. In the first letter dated 11.08.2023, respondent No.1 has acknowledged receipt of an application by respondent No.2 dated 10th August 2023 seeking withdrawal of proceedings of divorce pronounced by herself vide Divorce Deed dated 03.07.2023, and has allowed withdrawal of the divorce proceedings, recalled notice issued u/s 7(1) of Muslim Family Law Ordinance 1961(Ordinance, 1961) to the petitioner and disposed of proceedings accordingly.

2. By order dated 03.01.2024, respondent No.1 has disposed of divorce proceedings for want of territorial jurisdiction initiated on the divorce deed communicated by the petitioner to him for proceedings u/s 7 of the Ordinance, 196, on gaining knowledge that respondent No.2 was living in USA. While dismissing the said proceedings respondent has advised the petitioner to approach the officer concerned in Pakistan Mission/Embassy in New York, USA in terms of a notification/SRO No.1086 (K)/61 dated 09.11.21961, promulgated u/s 2 of the Ordinance, 1961 for commencement of the proceedings u/s 7 of the Ordinance, 1961.

3. The aforesaid two documents have been impugned in the background indicating that petitioner and respondent No.2 were married on 24th November 2016. The marriage was duly registered in Pakistan and the parties then started living in New York, United States of America. Meanwhile, they were blessed with a child. Then, on account of some acrimony etc. respondent No.2 allegedly came to Pakistan without permission of the petitioner along with the child and filed an application for his permanent custody under section 25 of the Guardian and Wards Act 1890 (Act, 1890), before the family court at Karachi. Then on 03.07.2023 she pronounced divorce to herself in terms of right of divorce delegated to her at the time of marriage and duly mentioned in the *Nikahnama*. She sent such information to respondent No.1 for undertaking proceedings u/s 7 of the Ordinance, 1961 who accordingly on receipt of such information issued the notice to the petitioner.

4. Since the petitioner was interested in keeping custody of the child, he also filed proceedings before the Supreme Court of New York, USA for such purpose. It is stated that respondent No.2 despite notice failed to appear before the Court at New York, USA to submit a reply, hence an interim order envisaging handing over of custody of the child to the petitioner was passed. When respondent No.2 came to know of such order, she withdrew application under Guardian & Wards Act filed by her at Karachi. Nonetheless, she continued with divorce proceedings filed by her before respondent No.1. It is alleged that thereafter, when respondent No.2 received the summons issued by Court at New York, USA, she with mala fide sent a notice u/s 7(3) of the Ordinance, 1961 to respondent No.1 seeking withdrawal of pending divorce proceedings which the latter accordingly obliged vide letter dated 11.08.2023 and disposed of the proceedings.

5. The case of the petitioner as argued by his counsel is that once the Talaq-e-Bidiat/Talaq-e-Bida/Talaq-e-Bian (simultaneous pronouncement of three Talaqs by husband to the wife) is pronounced, it is final and cannot be revoked. It becomes immediately effective as soon as it is uttered orally or written down on a piece of paper or on something else from which it can be easily deciphered. It does not require any recommendation or reconciliation to become effective, nor is sanction of the Chairman of a Union Council to stamp it necessary in this connection. The knowledge of wife in such case is only for collateral purpose i.e. maintenance etc. The proceedings u/s 7 of Ordinance 1961 are

not mandatory but advisory. According to learned counsel, once respondent No.2 exercised her right of Talaq/divorce, delegated to her at the time of marriage, the divorce had become final and irrevocable. She could not thereafter revoke the divorce pronounced by her to herself and withdraw the divorce proceedings taken up u/s 7 of the Ordinance 1961 by respondent No.1, which are essentially aimed at addressing allied matters only. She has further argued that in her application dated 10.08.2023, seeking withdrawal of divorce proceedings u/s 7 of Ordinance, 1961, respondent No.2 has mentioned that she wished to reconcile the matter with her husband as the sole ground for withdrawal but after four days on 14.08.2023 she filed a case before the Supreme Court, New York, USA for divorce which smacks of mala fide and ill will on her part to gain much larger portion of alimony from petitioner. Learned counsel in support of her arguments has relied upon the case law reported in PLD 1962 Dakka 630, 2014 YLR 2315, 1987 CLC 1661, 1996 CLC 673, PLD 2017 Sindh 214, 1990 MLD 389, 2021 CLC 1947, paras 313 and 314 of Mohammadan law, which essentially lay down that divorce in writing operates as an irrevocable divorce and takes effect immediately on its execution in absence of words showing different intention; and further that right of divorce delegated to the wife cannot be taken back.

6. On the other hand, respondent No.1 in his comments has stated that in divorce proceedings pursuant to divorce deed by petitioner to respondent No.2 dated 23.08.2023, the counsel of the petitioner appeared before him i.e. respondent No.1 and herself informed that respondent No.2 was residing in New York, USA, hence impugned order dated 03.01.2024 was passed directing the petitioner to approach relevant official at Pakistan Mission/embassy at New York for proceedings u/s 7 of the Ordinance, 1961. It is further stated that respondent No.2 had exercised delegated right of divorce vide divorce deed dated 03.07.2023 and intimated respondent No.1 to take up proceedings u/s 7 of Ordinance 1961, upon which notices were issued to the petitioner and respondent No.2 for appearance for either reconciliation or confirmation of divorce deed. But then respondent No.2 vide letter dated 10.08.2023 informed respondent No.1 that she was withdrawing her divorce, hence the impugned order dated 11.08.2023 was passed in terms of which she was allowed to withdraw the divorce proceedings. After such

withdrawal, the petitioner himself had divorced the lady and intimated respondent No.1 on 23.08.2023 for the purpose of proceedings u/s 7 of the Ordinance 1961. Before such proceedings could start, and before expiry of 90 days stipulated under the said provision, he sent a letter dated 10.11.2023 requesting to suspend the proceedings due to ongoing proceedings between him and his wife in the Court at New York, USA. But before that on 20.10.2023 in the proceedings pending before respondent No.1, advocate of petitioner had appeared and informed him that respondent No.2 was residing in New York City, USA. This information, and the fact that no one was appearing on behalf of the petitioner after his letter dated 10.11.2023 requesting suspension of the divorce proceedings, led respondent No.1 to finally pass the order dated 03.01.2024. Learned counsel appearing for respondent No.1 has reiterated these facts in his arguments in addition to relying upon the case law reported as 2007 CLC 1047, PLD 2012 Sindh 195 and PLD 2019 Lahore 285.

7. Learned counsel for respondent No.2 has relied upon an order dated 18.08.2015 passed by a division bench of this court in HCA No.175/2014 to impress that even in the case of Talaq-e-bian, the period of 90 days to run from the date, on which the notice u/s 7 of Ordinance 1961 is given to the Chairman of the relevant Union Council, is necessary to either strike reconciliation between the parties or confirm divorce.

8. I have considered submissions of the parties and perused material available on record and the case law relied at bar. In this case, the controversy actually revolves around interpretation of section 7 of Ordinance 1961 which is reproduced as under for ready reference:-

"7. Talaq.—(1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife Provided that where the parties belong to *Faqah-e-Jafria*,--

(a) the man may voluntary and with his free will pronounce himself or through duly authorized attorney (Vakil) Talaq uttering in literal Arabic words (seegha) in the physical presence of at least two witnesses qualifying the requirements of clause (1) of Article 17 of the Qanun-e-Shahadat, 1984 (P.O. No.1 of 1984);

(b) the pronouncement of Talaq shall be ineffective if it is done jokingly or under anger, intoxication, insanity duress or coercion of any kind and from any corner whatsoever; and

(c) in case of dispute, with reference to clauses (a) or (b) arising due to difference of opinion, the parties or any of

the parties may have recourse to a court of competent jurisdiction or by approaching the “*Mujtahid-e-Alam*” and the decision of *Mujtahid-e-Alam* shall have a status of an award and the same shall be dealt with in accordance with the provisions of the Arbitration Act, 1940 (X of 1940).

{(1A).....

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with simple imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both.

(3) Save as provided in sub-section (5), a talaq unless revoked earlier, expressly or otherwise shall not be effective until the expiration of ninety days from the day on which notice under sub-section (1) is delivered to the Chairman.

(4) Within thirty days of the receipt of notice under sub-section (1), the Chairman shall constitute an Arbitration Council 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.

(5) If the wife be pregnant at the time talaq is pronounced, talaq shall not be effective until the period mentioned in sub-section 2 [(3)] or the pregnancy, whichever be later, ends.

(6) Nothing shall debar a wife whose marriage has been terminated by talaq effective under this section from re-marrying the same husband, without an intervening marriage with a third person unless such termination is for the third time so effective.

9. A perusal of this provision of law shows that if a man wishes to divorce his wife, he shall as soon as or may be after pronouncement of talaq/divorce in any form whatsoever give the Chairman a notice in writing of his having done so and shall supply a copy thereof to his wife. It is further stated in subsection (3) thereof that save as provided in subsection (5) -- when wife is pregnant Talaq becomes effective on the delivery -- a Talaq unless revoked earlier expressly or otherwise shall not be effective until expiration of 90 days from the date on which notice under subsection (1) is delivered to the Chairman. Section 8 of the Ordinance 1961 stipulates that where right of divorce has been delegated to the wife and she wishes to exercise such right or where any of the parties of the marriage wish to dissolve marriage otherwise than by Talaq, provision of section 7 shall *mutatis mutandis* so far as is applicable apply.

10. If section 8 of the Ordinance, 1961 is read with subsection (3) of section 7, it would make abundantly clear that even in the cases where right of divorce has been delegated to the wife and she wishes to exercise it, the scheme of section 7 would be applicable without any exception. Further, Talaq/divorce of any kind will not be effective until expiry of 90 days from the date on which the

notice u/subsection (1) is delivered to the Chairman. There are four kinds of Talaqs in Islam. Talaq, when a man initiates a divorce, he would do so by pronouncing word Talaq; Khula is the right of a woman in Islam to divorce and it means separation from her husband; Talaq-e-Tafweedh, a right is delegated to wife by the husband at the time of marriage to divorce herself at any time; and Mubarat is said to take place when the husband and wife, with mutual consent and desire, obtain release and freedom from their married state.

11. The words “pronouncement of Talaq in any form whatsoever” encapsulated in section 7 of the Ordinance go to indicate that this provision is applicable to all forms of Talaq including Talaq-i-Bidiat. Period of 90 days as an intervening time for confirmation of divorce has been spouted in this provision for a very important purpose: making efforts for reconciliation between the parties, and in the face of its failure, the confirmation of divorce. Legislature in its wisdom has introduced this condition as a bulwark against emotional Talaqs which not only terminate life-long relationship between the spouses but also undermine the family unit that is the basis of an Islamic society. If we read section 7 of Ordinance 1961 holistically, we would realize the wisdom underlying in providing 90 days for confirmation of the divorce between the parties. The pronouncement of Talaq done jokingly, or under anger, intoxication, insanity, duress, coercion of any kind or from any corner whatsoever are some of the conditions in which the parties (irrespective of faqah) are required to be given some time to ponder over such action and rectify their mistake, if it is so. These conditions or repercussion thereof stimulating pronouncement of divorce cannot be gauged or determined at the relevant time when the passions are high and the parties are unable to exercise control over themselves which a person otherwise in a normal course has on himself. Impact thereof can only be ascertained in due course of time when the tempers are down and the parties are cool/settled and in their normal senses. This is a reason why a protection in the shape of subsection (3) of section 7 of the Ordinance 1961 has been provided to the parties. This opportunity opens a window of 90 days to them to trace back their steps before the Chairman, Union Council and either to confirm the divorce to have been given with full consciousness and realization, or to reconcile the matter on having understood the mistake.

12. It is obvious that if pronouncement of Talaq has happened under any of the circumstances that are beyond the capacity, or normal and sensible control, of a person over his/her sanity, or for any other reason, and he is ready to rectify his mistake, the Chairman, Union Council would be competent to declare it null and void in the proceedings pending before him u/s 7 of the Ordinance 1961. But when the Chairman concludes on examining the parties that divorce/Talaq was pronounced by the husband or by the wife (on having been delegated such right) on purpose with full knowledge and consciousness and that the parties are not ready to reconcile the differences between each other and to live together, he can proceed to confirm the divorce and thereafter each party would be free to move on and live his/her life according to his/her wish.

13. Such important feature of the law providing safety-valve that reduces a chance of total annihilation of the family unit and ensures its survival cannot be summarily brushed aside and ignored on the plea impressed by the petitioner that impact of section 7 of Ordinance 1961 is not mandatory but directly in nature. This plea not only goes against the order passed by a Division Bench of this court in HCA No.175/2014 (*supra*) reiterating the principle that in any of the cases of Talaq the husband has the option to revoke divorce pronounced by him during period of 90 days. But does not take into account either the very phraseology of subsection (3) which makes expiry of 90 days for Talaq to become effective as obligatory and binding in nature. In addition, subsection (4) of section 7 of Ordinance 1961 commands the Chairman, Union Council to constitute an arbitration council after receipt of a notice under subsection (1) and the arbitration council shall take all necessary steps to bring about reconciliation between the parties. A reading of both subsections (3) and (4) together leaves indelible impression that at the time of pronouncement of divorce (of any kind), the relationship between the husband and wife are not automatically terminated. It will be only when the notice of which is given to the relevant Chairman who undertakes proceedings u/s 7 of Ordinance 1961 in next 90 days (unless revoked earlier by the parties) to either strike reconciliation between them and in the face of failure of such efforts confirm the divorce.

14. In the present case, there is no record that after receipt of the notice, the Chairman, Union Council constituted any

arbitration council in terms of subsection (4) to bring about reconciliation between the parties or the parties appeared before him for confirmation of the divorce. The fate of divorce proceedings stayed hanging in the air for want of the said rudiments. But in any case, the parties had a period of 90 days to think over their action of divorce and then either to reconcile with each other or confirm divorce between them. As per record, respondent No.2 had divorced herself on 03.07.2023 and on the same day intimated respondent No.1 for the purpose of proceedings u/s 7 of Ordinance 1961. Before expiry of 90 days therefrom, she intimated vide letter dated 10.08.2023 u/s 7(3) of Ordinance 1961 that due to changed circumstances, she wished to reconcile the matter with her husband and wished to withdraw her divorce document.

15. Acting on such letter, respondent No.1 disposed of the proceedings next day on 11.08.2023. This all happened within 90 days. As to arguments of learned counsel for petitioner that in the letter respondent No.2 has expressed her wish to reconcile the matter with petitioner. But then, after four days on 14.08.2023, she filed proceedings before the court at New York USA for divorce goes to evince her mala fide to gain more share of alimony from petitioner. Because if the divorce between the parties takes place in USA, its effect on the ratio of alimony to respondent No.2 will be different than the one if the divorce takes place in Pakistan. I am of the view that these arguments are not sustainable, for the reason that they are counterintuitive and go both the ways. If the divorce is held to have taken place in Pakistan, it will be beneficial for the petitioner, but per contra, it will benefit respondent No.2. Then, I have no scale to measure whether respondent No.2 had withdrawn divorce proceedings from Pakistan out of some bad intention, or to hold, on the other hand, the petitioner is acting on good intention to get a declaration that divorce has taken place in Pakistan. This court can only look at the facts and law and determine the consequences of actions of the parties in law. As far as the law on this point is concerned, it is very clear, it states that divorce shall not be effective, unless revoked earlier, until the expiration of 90 days from the day on which notice is delivered to the Chairman. Respondent No.2, it seems, has acted within that period to withdraw divorce proceedings pending before the Chairman concerned. Therefore, I do not tend to see the steps of respondent No.2 -- withdrawing her divorce from Pakistan, and then filing the same request before the

court at New York, USA -- as tainted with some mala fide, She appears to have acted within the parameters of law and her actions do not lead to any understanding detrimental to rights of the petitioner, arising out of his marriage with her.

16. Record also reflects that the petitioner himself also pronounced divorce to respondent No.2 to establish the fact that divorce has taken place in Pakistan. He gave the notice of which to respondent No.1 on 23.08.2023, the day from which the period of 90 days in terms of subsection (3) of section 7 of Ordinance 1961 would be counted. But before expiry of 90 days, on 10.11.2023 he himself wrote to respondent No.1 for suspending the ongoing divorce proceedings in view of the order passed by the Court at New York, USA directing and prohibiting him from pursuing any divorce or custody action in Pakistan. Further, after writing such letter the petitioner failed to pursue the divorce proceedings before the Chairman by either appearing himself or through his advocate. However, before that, his advocate had appeared before respondent No.1, and informed him, as is reflected in the case diary dated 20.10.2023, that respondent No.2 was residing in USA.

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 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.

19. Since the information was communicated by the petitioner's counsel herself that respondent No.2 was residing in New York, USA, acting in terms of rule 3(b) of West Pakistan Rules stipulating that it shall be the Union Council of the Union or Town, where wife is residing at the time of pronouncement of Talaq, which shall have jurisdiction to undertake proceedings u/s 7 of the Ordinance 1961, respondent No.1 passed the impugned order dated 03.01.2024.

20. In view of above discussion and clear cut directions pronounced by the law, I see no illegality in the impugned order dated 11.08.2023 whereby the divorce proceedings filed by respondent No.2 have been held to have been withdrawn by her. And the order dated 01.03.2024 whereby divorce proceedings launched pursuant to divorce deed of the petitioner were disposed of on account of residence of respondent No.2 in New York, USA and he was advised to approach Pakistan Mission/Embassy at

New York for the purpose of further proceedings u/s 7 of Ordinance 1961. This being the position, I do not see any merit in the instant petition and dismiss it accordingly.

The petition stands disposed of along with pending application(s).

Judge

A.K.