

**2023 C L C 2025**

**[Lahore]**

**Before Shahid Bilal Hassan, J**

**Dr. HASSAN SHAHRYAR----Petitioner**

**Versus**

**SANA WAQAR through authorized attorney and 2 others----Respondents**

Civil Revision No.13538 of 2020, decided on 25th October, 2022.

**(a) Muslim Family Laws Ordinance (VIII of 1961)---**

---Ss. 2 (b) & 7---Rules under the Muslim Family Laws Ordinance, 1961, R. 3 (b)-  
--Notification S.R.O.No.1086(K)61, dated 09-11-1961---Specific Relief Act (I of  
1877), Ss. 42 & 54---Suit for declaration and injunction---Divorce proceedings---  
Jurisdiction---Parties had settled in USA, after their marriage in Lahore but  
relations became strained and divorce proceedings were initiated before authorities  
in USA---Petitioner / defendant / husband initiated divorce proceedings under S.7  
of Muslim Family Laws Ordinance, 1961, before Union Council concerned in  
Lahore, Pakistan---Respondent / plaintiff / wife invoked jurisdiction of Civil Court  
and got injunction against divorce proceedings before Union Council concerned---  
Suit filed by respondent / plaintiff was rejected---Lower Appellate Court allowed  
appeal and remanded the matter to Trial Court for decision afresh---Validity---  
Union Council and/or Chairman, which would have jurisdiction in the matter would  
be the Union Council and/or the Chairman within whose territorial jurisdiction  
respondent / plaintiff / wife was residing at the time of pronouncement of divorce---  
Wife was residing abroad during such time---As per notification S.R.O.No.  
1086(K)61 dated 09-11-1961, officers of Pakistan Mission abroad were authorized  
to discharge functions of Chairman under Muslim Family Laws Ordinance, 1961---  
Chairman, Union Council at Lahore had no authority to exercise such authority  
which he had exercised---High Court in exercise of revisional jurisdiction declined  
to interfere in the matter---Revision was dismissed, in circumstances.

Muhammad Akram Nadeem v. Chairman, Arbitration Council/ADLG, Islamabad  
and 2 others 2021 CLC 1947; A.M. Kamal through Legal Heirs and others v.  
Lahore Improvement Trust 1997 CLC 121; Messrs Sandal Dye Stuff Industries Ltd.  
v. Federation of Pakistan through Secretary Finance, Pakistan Secretariat,  
Islamabad and 5 others 2000 CLC 661; Shafqat Ullah and 2 others v. Land  
Acquisition Collector (D.C.), Haripur and 2 others 2006 CLC 1555; Allah Dad v.  
Mukhtar and another 1992 SCMR 1273; Mst. Shahida Shaheen and another v. The  
State and another 1994 SCMR 2098; Allah Rakha and others v. Federation of  
Pakistan and others PLD 2000 FSC 1; Farah Khan v. Tahir Hamid Khan and  
another 1998 MLD 85; Muhammad Talat Iqbal Khan through General Attorney v.  
Tanvir Batool through Wasim Iqbal and 2 others 2005 CLC 481; Sanya Saud v.  
Khawaja Saud Masud and others 2013 CLC 108; Mst. Lala Rukh Bukhari v. Syed

Waqar Ul Hassan Shah Bokhari and others 2018 YLR 273; Haji Abdul Karim and others v. Messrs Florida Builders (Pvt.) Limited PLD 2012 SC 247; Mst. Khurshid Bibi v. Baboo Muhammad Amin PLD 1967 SC 97; Ahmad Nadeem v. Assia Bibi and another PLD 1993 Lah. 249; Mst. Khurshid Mai v. The Additional District Judge, Multan and 2 others 1994 MLD 1255; Muhammad Yaqoob v. Mst. Sardaran Bibi and others PLD 2020 SC 338 and Messrs Mardan Ways SNG Station v. General Manager SNGPL and others 2020 SCMR 584 ref.

**(b) Muslim Family Laws Ordinance (VIII of 1961)---**

---S.7---Notification S.R.O.No.1086(K)61, dated 09-11-1961---Constitution of Pakistan, Art. 201---Decision of High Court---Binding effect---Principle---Plea raised by petitioner was that Notification S.R.O.No.1086(K)61, dated 09-11-1961 was not applicable as it had been struck down by Islamabad High Court---Validity--No verdict as such was passed by Lahore High Court, therefore, Notification S.R.O.No.1086(K)61, dated 09-11-1961, was fully in vogue in Punjab---Relief could not go beyond provincial boundary to affect any other province or Area or its people.

Hassan Shahjehan v. FPSC through Chairman and others PLD 2017 Lah. 665 rel.

Mustafa Ramday, Saad Sibghat-Ullah, Mahnoor Ahmed, Asfand Mir and Abdul Moiz Khan for Petitioner.

Muhammad Ahmed Qayyum (ASC), Shamil Arif and Zahir Abbas for Respondent No.1.

Date of hearing: 27th September, 2022.

**JUDGMENT**

**SHAHID BILAL HASSAN, J.**---Facts, in concision, are as such that the petitioner married with respondent No.1 as per Islamic rites and rituals on 15.05.2006 at Lahore (Pakistan) and Nikahanama was registered with Union Council No.129, Neelam Block, Allama Iqbal Town, Lahore; that from this wedlock three children were born. The petitioner and respondent No.1 went to reside in the United States after their marriage. Allegedly, in the year 2015, the respondent No.1 instituted a suit for dissolution of marriage before the Common Pleas of Center Country, Pennsylvania Civil Action Law for dissolving marriage and physical custody of the children and also applied for maintenance allowance; that the petitioner tried his best efforts to salvage the relationship and continue the marriage for the sake of the children. The petitioner purportedly tried his best to reconcile with the respondent No.1 but she was adamant therefore, the petitioner gave his consent to the Courts in Pennsylvania to dissolve the marriage; that the proceedings in the United States are still pending and have not been finally adjudicated upon and the petitioner has been, regularly, paying maintenance of his children. The petitioner shifted to Lahore and initiated divorce proceedings against the respondent No.1 under the provisions of the West Pakistan Muslims Family Laws Ordinance, 1961 and the rules framed thereunder by pronouncing divorce upon the respondent No.1 which was reduced into writing by way of deed of divorce dated 05.01.2017 and notices were also issued through the Union Council

concerned in this regard; that the respondent No.1 was also put to notice of the divorce by way of Email dated 10.01.2017 in which the deed of divorce was contained as an attachment; that subsequently, a second deed of divorce dated 10.02.2017 was put into writing and notices were also issued to the respondent No.1 through the concerned Union Council and the same was further intimated to respondent No.1 through Email dated 14.03.2017 in which the deed of divorce was contained as an attachment; that in pursuance of the said notice, father of the respondent No.1 appeared in the Arbitration proceedings before the respondent No.2, in which he challenged the jurisdiction of the proceedings pending before the respondent No.2. Simultaneously, the father of respondent No.1 instituted a suit in his own name before the learned Civil Court at Lahore on 15.07.2017 seeking a declaration to the effect that the proceedings pending before the respondent No.2 may be declared null and void; that the said suit was contested by the present petitioner, consequently, the interim injunction dated 18.07.2017 was vacated vide order dated 18.09.2017 and the matter was fixed for arguments on the maintainability of the suit. However, while concealing pendency of earlier suit, the suit under discussion was filed on 20.09.2017 by the respondent No.1 through her father as an attorney seeking the same relief as claimed in the earlier suit and the earlier suit was withdrawn on 21.09.2017 with permission to file afresh. The petitioner while submitting written statement controverted the averments of plaint and also filed an application under Order VII, Rule 11, Code of Civil Procedure, 1908 for rejection of plaint of the suit of respondent No.1 contending that the civil Court has no jurisdiction in the matter as only the Arbitration Council of a Union Council has jurisdiction and an injunction cannot be issued to stay proceedings before it; that the suit is not maintainable. The respondent No.1 filed her written reply. The learned trial Court vide order dated 09.05.2019 accepted the said application and rejected the plaint of the suit, instituted by the respondent No.1 through her father. The respondent No.1 impugned the said order by filing an appeal on 03.06.2019. The petitioner also filed an appeal against the said order specifically against two observations made therein i.e. the learned trial Court had observed that the petitioner and respondent No.1 were nationals of USA while they were only residents and not nationals and that since respondent No.1 had appeared in the proceedings before respondent No.2 through her father acting as her attorney, there was no need to issue fresh notices through the Pakistan Mission in the United States.

The learned appellate Court vide impugned consolidated judgment dated 01.02.2020 accepted the appeal of the respondent No. 1, order and decree dated 09.05.2019 passed by the learned trial Court was set aside and the matter was sent to the learned trial Court for deciding the same afresh after framing issues and recording evidence; however, appeal of the petitioner was dismissed. The learned appellate Court held that a previous case had been filed by the respondent No.1 in the United States of America (USA) and the petitioner had given his consent to the issuance of final decree in the matter; that the respondent No.2 was not empowered to issue certificate of Talaq in violation of law as it did not have the jurisdiction to proceed in the matter since respondent No.1 was residing in USA; that the petitioner was estopped from initiating proceedings before the respondent No.2 after having submitted to the proceedings before the Common Pleas of Central

Country, Pennsylvania Civil Action Law and that the Civil Court is competent to decide the legality of divorce proceedings initiated in Pakistan. Therefore, being aggrieved of the judgment dated 01.02.2020, the petitioner has filed the instant revision petition.

2. Mr. Mustafa Ramday (ASC), the learned counsel for the petitioner while opening the arguments has submitted that after acquiring a "permanent residency card" which is more commonly referred to as a 'Green Card', the card holder(s), the petitioner and respondent No.1 in this case, attained the status of US residents and not US citizens or US nationals; that Green Card is deemed to have been abandoned once the card holder travels outside of the USA and does not return back for more than six months; that the petitioner returned to Pakistan on 29.12.2016 and has not travelled back to the USA; therefore, the green card which is due to expire on 18.12.2022 has already become infructuous; that in case the petitioner intends to revive it, he will have to initiate the process for re-entry in the USA, which is known as an application Form I-131 and the petitioner has made no such application before the US Embassy; that the respondent No.1 attained Naturalization Status in the USA on 12.07.2019, prior to which she was merely a green card holder, which was issued to her on the basis of her marriage with the petitioner, however, she continues to remain a Pakistani National unless she categorically revokes the same by making an application to the Pakistan Embassy in the concerned country abroad for renunciation of her Pakistani Citizenship. He submits that in actual the petitioner and the respondent No.1 are Pakistani National and are governed by the provisions of Muslim Family Laws Ordinance, 1961; that right to dissolve marriage is a sacred and inalienable right granted to the husband and neither such a right can be taken away nor can the exercise of such a right be invalidated merely on the basis of some alleged procedural deficiencies or irregularities/technicalities, as such, the petitioner has divorced the respondent No.1/Mst. Sana Waqar and talaq has become effective after expiry of 90 days from pronouncement of the same on 05.01.2017 i.e. on 05.04.2017, however, the learned appellate Court has committed material illegality in overlooking this fact while passing the impugned judgment dated 01.02.2020; that the learned appellate Court while passing the impugned judgment in para No. 17 has given finding on the merits of the case, therefore, the learned appellate Court has travelled beyond the scope of the matter before it and has exercised jurisdiction in an illegal manner; that the learned appellate Court has erred in law while applying the principle of estoppel to the facts and circumstances of the case in hand; that perusal of Nikahnama entered into by and between the parties reveals that the petitioner did not delegate his powers of divorce to the respondent No. 1, therefore, when the right of divorce was not available to the respondent No.1, the proceedings initiated before the Courts in the USA are in nature of Khula proceedings, whereas the proceedings initiated by the petitioner before the respondent No.2 were in the nature of talaq and even if both the proceedings work towards the same goal i.e. dissolution of marriage, they are different proceedings which can be initiated simultaneously; that the impugned judgment suffers from major inconsistencies which tantamount to patent irregularity when the learned appellate Court did not interfere in the finding of the learned trial Court that respondent No.1 was to be served notice in the divorce proceedings through the Pakistan Mission in the USA,

while in the same breath holds that the petitioner was barred from invoking divorce proceedings in Pakistan; that the contents of SRO No.1086 (K) 61 dated 08.11.1961 are applicable to situations where the husband pronouncing the talaq as well as the wife are both residing abroad, despite being citizens of Pakistan, however, in the present case, the petitioner (husband) is residing in Pakistan while the wife (respondent No. 1) is residing in USA, therefore, the case falls squarely within the ambit of (i) of Proviso to sub-rule (b) of Rule 3 of the West Pakistan Rules under the Muslim Family Laws Ordinance, 1961 and matter falls within the domain of respondent No.2, thus, the proceedings in the form of suit for declaration are clearly barred by law and liable to be rejected under Order VII, Rule 11, Code of Civil Procedure, 1908, even otherwise, the said SRO has been declared ultra vires by the Islamabad High Court in judgment reported as 2021 CLC 1947 and any judgment wherein question of law is decided would be a judgment in rem and thus binding with regard to the said question of law as has been held in 1997 CLC 121, 2000 CLC 661 and 2006 CLC 1555; that section 22 of the Family Court Act, 1964 bars issuing of injunction by the Family Court to or stay any proceedings pending before, a Chairman or an Arbitration Council; that the function of respondent No.2 is not to decide any issue or adjudicate upon the rights of the parties but is merely limited to bringing about reconciliation between the parties and in the event of failure the divorce ipso facto becomes effective upon lapse of 90 days of receipt of notice under section 7 of the Muslim Family Law Ordinance, 1961, hence, no vested right has accrued to the respondent No.1 and no right of respondent No.1 has been denied for which a declaration is sought for; that even the Hon'ble Federal Shariat Court in PLD 2000 FSC 1 has held the provisions of section 7(3) and (5) to be repugnant to the injunctions of Islam and talaq takes effects from the date of pronouncement of talaq by the husband and not from the day of delivery of notice to the Chairman, Union Council; that the impugned judgment has been passed in a whimsical manner and the same being devoid of any cogent reasoning is liable to be set aside. Therefore, the impugned judgment dated 01.02.2020 may be set aside by allowing the revision petition in hand and plaint of the suit filed by the respondent No.1 may be rejected by restoring the order and decree dated 09.05.2019 and a declaration to the effect may also be issued that the Talaq pronounced by the petitioner upon the respondent No.1 on 05.01.2017 took effect upon the expiry of 90 days i.e. on 05.04.2017. Relies on Allah Dad v. Mukhtar and another (1992 SCMR 1273), Mst. Shahida Shaheen and another v. The State and another (1994 SCMR 2098), Allah Rakha and others v. Federation of Pakistan and others (PLD 2000 Federation Shariat Court 1), Farah Khan v. Tahir Hamid Khan and another (1998 MLD 85), Muhammad Talat Iqbal Khan through General Attorney v. Tanvir Batool through Wasim Iqbal and 2 others (2005 CLC 481-Lahore), Sanya Saud v. Khawaja Saud Masud and others (2013 CLC 108-Islamabad), Mst. Lala Rukh Bukhari v. Syed Waqar Ul Hassan Shah Bokhari and others (2018 YLR 273-Lahore), Haji Abdul Karim and others v. Messrs Florida Builders (Pvt.) Limited (PLD 2012 Supreme Court 247), Mst. Khurshid Bibi v. Baboo Muhammad Amin (PLD 1967 Supreme Court 97), Ahmad Nadeem v. Assia Bibi and another (PLD 1993 Lahore 249), Mst. Khurshid Mai v. The Additional District Judge, Multan and 2 others (1994 MLD 1255), Muhammad Yaqoob v. Mst. Sardaran Bibi and others (PLD 2020 Supreme Court 338), Muhammad Akram Nadeem v. Chairman, Arbitration Council/ADLG, Islamabad and 2 others (2021

CLC 1947 Islamabad), A.M. Kamal through Legal Heirs and others v. Lahore Improvement Trust (1997 CLC 121 Lahore), Messrs Sandal Dye Stuff Industries Ltd. v. Federation of Pakistan through Secretary Finance, Pakistan Secretariat, Islamabad and 5 others (2000 CLC 661 Lahore) and Shafqat Ullah and 2 others v. Land Acquisition Collector (D.C.), Haripur and 2 others (2006 CLC 1555-Peshawar).

3. On the contrary, Mr. Muhammad Ahmed Qayyum (ASC), the learned counsel for the respondent No.1 while responding to the above said submissions has avowed that the petitioner submitted to the jurisdiction of the Court in the USA and categorically consented to divorce through that Court only, stating in his affidavit that he will not be divorced until decree is issued by that Court, therefore, he is, now, estopped bypassing his undertaking/sworn affidavit and the procedure and forum that he submitted to through affidavit and specific undertaking on oath; that even if the petitioner would invoke the jurisdiction under Pakistani Law (though the same is denied by the respondent No. 1), he has invoked the same before the wrong Chairman under the Muslim Family Law Ordinance, 1961, as the spouse is residing abroad, so under the Muslim Family Laws Ordinance, 1961 the proceedings shall be conducted before the appointed officer in the Pakistan Mission abroad and the Local Chairman of the Union Council has no authority to take up the proceedings, because it has been clearly mentioned in SRO No. 1086(K)61 dated 09.11.1961 that respective officers of the Pakistan Mission abroad shall be deemed as the Chairman under section 2(b) constituting the Arbitration Council under the Muslim Family Laws Ordinance, 1961; that it is trite law that when law provides for a particular mechanism for an act, then that act should be done in that manner as provided or not at all; that the petitioner is abusing the process of Court in Pakistan; that he has not appeared himself before the Court and reportedly he is not even in Pakistan, and has remarried without the permission of his wife and is carrying on proceedings through his father who ostensibly has no authorization and C.M.No.4/2021 clearly establishes this fact; that during arguments it was not denied that the petitioner has illegally remarried without permission from the respondent No.1 and only the counsel evasively stated that the second marriage was not on record; that principle of comity of courts holds a court having legally assumed jurisdiction should be allowed to continue and pass a final judgment; that the bar of section 22 of the Family Courts Act is available to the Chairman as defined under law, which in the present case is not the Chairman Union Council rather is the officer designated in the US High Commission; that the petitioner has renewed his NICOP on 02.06.2018 (set to be expired on 02.06.2028 address: 6496 Terrace Court, Harrisburg, Pennsylvania USA as has been referred in C.M.No.1 of 2021 at page No.5; that even if the Chairman Union Council was prima facie couched with jurisdiction (which is vehemently denied), the view of the Hon'ble Supreme Court of Pakistan as enunciated in Messrs Mardan Ways SNG Station v. General Manager SNGPL and others (2020 SCMR 584) is that the trial Court even if its jurisdiction is barred can look into the matters to see if any portion of the same fell outside its jurisdiction, therefore, the suit at present stage is maintainable; that so far as the argument of striking down of SRO by the Islamabad High Court is concerned, nothing turns on the fact that Islamabad High Court has struck down the SRO, as the same still survives outside the Capital Territory and in fact this Court

has continually followed the SRO and this Court will follow its own line of precedents enforcing the SRO, until the same is brought under challenge before this Court and the same is struck down in Punjab. In this regard reliance has been placed on *Hassan Shahjehan v. FPSC through Chairman and others* (PLD 2017 Lahore 665); that the petitioner has consistently claimed to be resident of Pakistan whereby he is clearly to be classified as an overseas Pakistani in light of his NICOP, even during arguments it has been conceded by the petitioner's side that even if his residence lapses he can get the same restored. Submits that the petitioner's side is misreading the Muslim Family Laws Ordinance, 1961 because the said Rules would apply in instances where a mechanism is not available under the powers of the Act, because Rules cannot override the powers exercised under the Act, even otherwise the said rules are not applicable to international matters, rather on the face of it, it were applicable inside the then united Pakistan between East and West Pakistan; adds that Federal Notification overrides provincial rules in case of conflict. Lastly, prays that the revision petition in hand may be dismissed. Besides above referred judgment, further relies on *Mst. Asma Bibi v. Chairman Reconciliation Committee and others* (PLD 2020 Lahore 679), *Mian Irfan Latif through Special Attorney v. Nazim/Chairman Union Council No.100 and another* (2009 YLR 1141-Lahore), *Mst. Sana Asim Hafeez v. Administrator/Chairman, Arbitration and Conciliation Court* (2016 MLD 1061-Lahore), *Syeda Wajiha Haris v. Chairman, Union Council No. 7, Lahore* (2010 MLD 989-Lahore), *Saba Riaz v. Nazim/Chairman Arbitration Council, Gulberg, Lahore and another* (2003 YLR 3189) and *Ms. Sadaf Munir Khan v. Chairman, Reconciliation Committee and 2 others* (PLD 2019 Lahore 285).

#### 4. Heard.

5. The only point in issue is the assumption of jurisdiction by the respondent No.2/Chairman, Union Council No. 129, Neelam Block, Allama Iqbal Town, Lahore, on the divorce notice issued by the present petitioner in presence of already initiated and consented proceedings before Common Pleas of Center Country, Pennsylvania Civil Action Law (USA) in this regard. The respondent No.1 in order to get (the proceedings before the respondent No.2) declared null and void instituted a suit for declaration with permanent injunction against the present petitioner, wherein the petitioner filed an application under Order VII, Rule 11, Code of Civil Procedure, 1908, which was accepted on 09.05.2019 and plaint of the suit was rejected, prompted the respondent No.1 to file an appeal and the learned appellate Court accepted the appeal, set aside the order and decree dated 09.05.2019 and remanded the case to the learned trial Court for decision afresh after framing of issues and recording of evidence on merits. In this regard, it is observed that Sections 2(b) and 7 of the Muslim Family Laws Ordinance, 1961 and Rule 3(b) of the West Pakistan Rules under the Muslim Family Laws Ordinance, 1961 are necessary, in order to resolve the controversy in hand, which are to be reproduced infra:-

'Section 2(b):- "Chairman" means the Chairman of the Union Council or a person appointed by the Federal Government in the Cantonment areas or by the Provincial Government in other areas or by any officer authorized in that

behalf by any such Government to discharge the functions of Chairman under this Ordinance.'

- '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 a notice in writing of his having done so, and shall supply a copy thereof to the wife.
- (2) Whoever, contravenes the provisions of subsection (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 subsection (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 subsection (1) is delivered to the Chairman.
- (4) Within thirty days of the receipt of notice under subsection (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 subsection (3) or the pregnancy, whichever be later, ends.

In order to resolve the matter in hand, the respondent No.1 is permanently residing in the USA and petitioner is also there as is evident from his Green Card, copy of which has been placed on record through C.M.No.1-C of 2021, even at the time of alleged Talaq he was not available in Lahore; meaning thereby as per S.R.O.No.1086(K)61 dated 09.11.1961 the jurisdiction for taking up the matter was with the designated officer in the Pakistan Consulate/Mission in USA. The said S.R.O. reads:-

'In exercise of the powers conferred by clause (b) of section 2 of the Muslim Family Laws Ordinance, 1961 (VIII of 1961), the Central Government is pleased to authorize the Director General (Administration) Ministry of External Affairs to appoint officers of Pakistan Mission abroad to discharge the functions of Chairman under the aforesaid Ordinance.'

Rule 3(b) of the Rules provides:-

'Rule 3. The Union Council which shall have jurisdiction in the matter for the purpose of clause (d) of section 2 shall be as follows, namely:-

- (a) -----
- (b) in the case of notice of talaq under subsection (1) of section 7, it shall be 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 was 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 West Pakistan;'

In view of the above said provisions of law, the Union Council and/or the Chairman, which would have jurisdiction in the matter would be the Union Council and/or the Chairman within whose territorial jurisdiction the wife was residing at the time of pronouncement of divorce and in this case the respondent No.1 was residing in the USA as has been admitted by the petitioner. Reliance is placed on *Mt. Sharifan v. Abdul Khaliq and another* (1983 CLC 1296) and *Ms. Sadaf Munir Khan v. Chairman, Reconciliation Committee and 2 others* (PLD 2019 Lahore 285). When the position is as such, as observed above, as per Notification S.R.O.No. 1086(K)61 dated 09.11.1961, officers of Pakistan Mission abroad are authorized to discharge the functions of Chairman under the aforesaid Ordinance. Meaning thereby the Chairman, Union Council 129-Neelam Block, Allama Iqbal Town, Lahore had no authority to exercise that authority which he has exercised. This Court in judgment reported as *Mian Irfan Latif through Special Attorney v. Nazim/Chair man Union Council No.100 and another* (2009 YLR 1141-Lahore), has held:-

'Since both the parties are permanent resident of U.K. (sic) and as such as per Notification No. SRO No. 1086(K)/61 the function of Chairman Arbitration Council under the Muslim Family Laws Ordinance, 1961 are to be performed by an appointed offer of the Pakistan Mission abroad.'

The same view was reaffirmed and reiterated in judgments reported as *Mst. Sana Asim Hafeez v. Adminstrator/ Chairman, Arbitration and Conciliation Court* (2016 MLD 1061-Lahore), *Syeda Wajiha Haris v. Chairman, Union Council No.7, Lahore* (2010 MLD 989-Lahore) and *Ms. Sadaf Munir Khan v. Chairman, Reconciliation Committee and 2 others* (PLD 2019 Lahore 285).

In addition to the above, the petitioner did not disclose the factum of initiation of proceedings before the Common Pleas of Center Country, Pennsylvania Civil Action Law (USA) and consent given by him while approaching the Arbitration Council, Union Council No.129, Neelam Block, Allama Iqbal Town, Lahore, meaning thereby he did not approach the Council with clean hands. Though the consent of parties does not confer vested jurisdiction upon any Court of law but as the proceedings were in progress the petitioner must have disclosed this factum.

6. So far the argument that the Family Court cannot issue an injunction to, or stay any proceedings pending before a Chairman or an Arbitration Council under section 22 of the Family Courts Act, 1964; in this regard it is observed that when an act is performed without any jurisdiction, as discussed above, the civil Court being

a Court of plenary jurisdiction has authority and competence to look into the matter and proceed with the same in accordance with law as well as pass an appropriate order in this regard. Even if the Chairman/respondent No.2, for the sake of arguments, is considered to have jurisdiction, the trial Court, though its jurisdiction is barred, can look into the matter as has been held in Messrs Mardan Ways SNG Station v. General Manager SNGPL and others (2022 SCMR 584). The relevant para is reproduced as under:-

'7. With regard to bar of jurisdiction contained in any statute we are clear in our mind and it is concurrently declared by this court that if in any statute there is a bar of plenary jurisdiction of civil court, the bar will be applicable if the authority acts in accordance with the said statute and its acts, orders do not violate the jurisdiction conferred upon that authority under the said statute then the bar of jurisdiction contained in the said statute applies and if the authority acts or passes any order in violation of the jurisdiction vested in it under the said statute and transgresses jurisdiction or the order or action if scrutinized keeping in view the jurisdiction available under the said statute and the orders or action is found without jurisdiction then certainly the bar contained in the said statute on the plenary jurisdiction of civil court is not applicable and the suit would be competent.'

In this view of the matter, it is observed that the learned trial appellate Court has rightly appreciated law on the subject and observed that the learned trial Court has jurisdiction to look into the matter being a Court of plenary jurisdiction.

7. So far as the argument that the S.R.O. ibid has been struck down by the learned Islamabad High Court is concerned, it is observed that the said S.R.O. is fully in vogue in Punjab as no verdict as such has been passed by this Court, because a relief cannot go beyond the provincial boundary and affect any other province or Area or its people, as has already been held by this Court in a judgment reported as Hassan Shahjehan v. FPSC through Chairman and others (PLD 2017 Lahore 665) that:-

'As a corollary, the relief granted or the writ issued by the High Court also remains within the territorial jurisdiction of this Court and can only benefit or affect a person within the territorial jurisdiction of the Court. The relief cannot go beyond the Provincial boundary and affect any other Province or Area or its people. So for example, if a federal law or federal notification is struck down by Lahore High Court, it is struck down for the Province of Punjab or in other words the federal law or the federal notification is no more applicable to the Province of Punjab but otherwise remains valid for all the other Provinces or Area. Unless of course the Federation or the federal authority complying with the judgment of the Lahore High Court, make necessary amends (sic) or withdraw the law or the notification.'

8. In view of the above, it is concluded as such that: -

- The proceedings initiated by the respondent No.1 before the Common Pleas of Center Country, Pennsylvania Civil Action Law (USA), though consented by the present petitioner, are not maintainable, because the Competent Authority, as provided under law and SRO No.1086(K)61 dated 09.11.1961

is respective officer of the Pakistan Mission abroad, in this case (USA) who shall be deemed as the Chairman under section 2(b) constituting the Arbitration Council under the Muslim Family Laws Ordinance, 1961.

- The proceedings before the Chairman, Union Council No.129, Neelam Block, Allama Iqbal Town, Lahore are without any jurisdiction.
- The civil Court can look into the matter, even though jurisdiction is barred under law/statute, being a Court of plenary jurisdiction.

9. So far as the case law relied upon by the learned counsel for the petitioner is concerned, with utmost respect, it is observed that the same has no relevance to the peculiar facts and circumstances of the case in hand, because in this case pure issue of jurisdiction was involved and not the merits of the case, as such the same is not helpful to the petitioner's cause.

10. The compendium of the discussion above is that the revision petition in hand comes to naught and hence, the same is dismissed. No order as to the costs.

MH/H-29/L Revision Petition dismissed.

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