

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Irfan Saadat Khan

Civil Petition No. 488-K of 2023 and 489-K of 2023

[Against order dated 06.02.2023 passed by High Court of Sindh, Karachi in C.P.No.S-262 of 2021 and C.P.No.S-457 of 2021]

Sohail Ahmed

(in both cases)
...Petitioner(s)

Versus

Mst. Samreena Rasheed Memon and another

(in both cases)
...Respondent(s)

For the Petitioner(s) : In-person

For the Respondent(s) : N.R.

Date of Hearing : 20.12.2023

JUDGMENT

Syed Hasan Azhar Rizvi, J:- Through these petitions, filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner (*Sohail Ahmed*) has challenged the order dated 06.02.2023 ("**Impugned Order**") passed by learned Single Judge of High Court of Sindh whereby two Constitutional petitions (*C.P.No.S-262/2023 and C.P.No.457/2023*) filed by him were dismissed.

2. Brief facts necessary for the disposal of the instant case are that Respondent (*Samreena Rasheed*), a dual citizen of Pakistan and United States of America (USA), contracted a marriage, duly registered at the New York, USA, with petitioner in accordance with Islamic law against a dower amount of US \$ 5000.

However, within 9 months of marriage, Petitioner maintained a harsh and irresponsible behaviour with the Respondent and also returned to Pakistan. Consequently, hatred developed between the spouses and respondent, through her duly constituted Attorney (*Mr. Abdul Jabbar Memon s/o Abdul Fateh Memon*), filed a **Family suit No. 3414 of 2019**

dated 12.10.2019 in the court of Family Judge Karachi, East for the dissolution of marriage by way of *Khula* and maintenance. The Petitioner contested the suit by filing an Application dated 17.12.2019 for dismissal of suit/return of plaint on the ground that Courts in Pakistan have no jurisdiction to entertain the case because marriage was solemnized in USA and the cause of action also accrued therein. This Application was dismissed by the Family Court vide order dated 27.02.2021, which was assailed by the petitioner before High Court through C.P.No.S-262 of 2021.

Thereafter, in the family suit reconciliation proceedings were conducted. However, on failure of such reconciliation proceedings, an order for the dissolution of marriage by way of *Khula* was passed on 10.04.2021 by Family Court and preliminary decree was prepared on the same day. The suit was fixed for evidence in respect of prayer clauses (ii), (iii) and (iv). Respondent filed a statement dated 28.04.2021 supported with an affidavit of her attorney for the withdrawal of the suit in respect of prayer clauses clauses (ii), (iii) and (iv). The suit was disposed of as withdrawn by the trial court vide order dated 07.05.2021.

Being aggrieved with the said order, Petitioner filed another Constitutional Petition No. S-457 of 2021 challenging the withdrawal of the suit. Both the petitions filed by the petitioner were consolidated and decided by the High Court through the impugned order dated 06.02.2023.

5. The petitioner, appearing in-person, contended that the impugned order of High Court suffers from illegality and is perverse in law thus liable to be set aside and the issue of jurisdiction of Family Court was decided in contravention of the law.

6. We have heard the arguments of the petitioner and have perused the record and the relevant materials placed before the Court.

7. With regard to the question raised before us by the petitioner as to whether Family Courts in Pakistan have jurisdiction to entertain the case when the plaintiff/wife is a dual citizen of Pakistan and the USA and is residing in the USA at the time of the institution of the suit, whereas, the husband is national and permanent resident of Pakistan. In this regard Rule 6 of the West Pakistan Family Courts Rules, 1965 is relevant which is reproduced herein-below;

*“6. The Court which shall have jurisdiction to try a suit will be that within the local limits of which:-
 (a) the cause of action wholly or in part has arisen, or
 (b) where the parties reside or last resided together.
 Provided that in suits for dissolution of marriage or dower, the court within the local limits of which **the wife ordinarily resides** shall also have jurisdiction.”*

8. In the above-proviso, the Legislature has intentionally used the word "*ordinarily*" which has a different meaning than that of permanent residence. According to Black's Law Dictionary (VIth Edition) word "*ordinary*" means "usual, common, settled, customary, and reasonable". Furthermore, Dicey, a renowned jurist, in his book, "Conflict of Laws" at page 96 explains expression "*Ordinarily resides*" in the following words:

“It is not, as a matter of law, necessary that the residence should be long in point of time, residence for a few days or even for part of a day is enough. The length of residence is not important in itself”.¹

9. In the present case, although the Respondent is living in the USA at the time of the institution of the suit through her duly constituted attorney. However, the respondent usually comes to Pakistan; have acquired her education in Karachi and visits her family in Karachi from time to time.

¹ Dicey A. V. & Morris J. H. C. (1949). Dicey's conflict of laws (6th ed.). Stevens & Sons ; Sweet & Maxwell.

10. By this proviso, the rigour of normal rule providing for territorial jurisdiction for trial of cases in Family Court have been relaxed in favour of female filing a suit for dissolution of marriage or recovery of dower. The words "*Ordinarily resides*" and "*shall also have jurisdiction*" used in proviso demonstrate the intention of parliament is to facilitate things for the wife and off-set her handicap. Therefore, the option of instituting such suits vests with the wife and the Court is bound to take her convenience subject to law. Hence, Family Courts in Pakistan have jurisdiction to entertain the matter and the trial court has rightly exercised so.

11. 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.

12. 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.”*

13. 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.)".

14. 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.

15. 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.

16. 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.

17. In the present case, the preliminary decree passed by the Family Court for the dissolution of marriage by way of *Khula* was in due compliance with the section 10(4) of the Act. Furthermore, vide order dated 10.04.2021 direction was given to frame issues for remaining controversies.

18. However, on 28.04.2021, Respondent filed a statement for withdrawal of the suit to the extent of prayer clauses (ii), (iii), and (iv). Therefore, suit was disposed of by trial court as withdrawn by order dated 07.05.2021. Thus, preliminary decree already passed/prepared shall be deemed to be the final decree as the respondent has already withdrawn the suit to extent of remaining prayer clauses.

19. It reveals from the record that after preliminary decree of *Khula*, Respondent has contracted a second marriage at the USA. The Petitioner has also attempted to contract second marriage here in Pakistan as he has made several applications to the concerned authorities for seeking permission to solemnize second marriage.

Since, the marriage inter se parties stands dissolved, we observe that the petitioner is unnecessarily dragging the respondent into litigation.

20. The orders passed by the courts below are well reasoned and we are in complete agreement with them. All aspects of the matter, either legal or factual, have been dealt with elaborately and the conclusion(s) drawn are apt. The petitioner has failed to point out any infirmity or illegality which could persuade us to interfere in the impugned judgment.

21. For what has been discussed above, the petitions being meritless are dismissed and leave to appeal is refused.

JUDGE

JUDGE

JUDGE

Bench
Karachi
20th December, 2023
APPROVED FOR REPORTING
Paras Zafar, LC*/