

**ORDER SHEET
HIGH COURT OF SINDH, KARACHI**

Suit No.891 of 2017

Date

Order with signature of Judge

Karim Sayani

.....**Plaintiff**

Versus

Almina Pardhan

.....**Defendants**

For hearing of C.M.A No.10048/2017.

Date of hearing 07.08.2017

Mr.Abdul Rehman, Advocate for the Plaintiff

Ms.Navin Merchant, Advocate for the Defendant.

Plaintiff and defendant are also present.

Muhammad Ali Mazhar, J: The plaintiff has brought this lawsuit for the declaration that his marriage with the defendant has been dissolved by means of communally agreed term and conditions embodied and typified in the settlement and indenture of Mubarat dated 5.4.2017.

1. The ephemeral facts are that the plaintiff and defendant both are Canadian citizens but presently residing in Karachi, Pakistan. Their marriage was solemnized on 18th July, 1997 in Alberta, Canada. Out of wedlock Azaan Pardhan Sayani and Aimaan Pardhan Sayani were born. At the present time there age is more or less fifteen and thirteen years respectively. Due to some irreconcilable differences, parties have dissolved their marriage by consent under the Islamic tradition of

Mubarat. The agreed terms of the Mubarat were in line with the settlement dated 27.10.2016 executed on 11.11.2016.

2. Seeing as the plaintiff and defendant being citizens of Canada could not recourse thru Muslim Laws Ordinance, 1961, nor do they have a registered Nikahnama for the reason that they were married under the laws of Canada. Since they could not exercise or avail the option of effecting the divorce through the Union Council of their respective jurisdiction therefore as a last resort they have approached this court for confirmation of dissolution of their marriage. What deciphers to me from the pleadings that the parties are not at issue hence they have filed compromise application to solicit decree for their divorce confirmation. Their learned counsel for the fortification made reliance on the dictum laid down by the apex court in the case of Masood Ahmad Malik v. Mst. Fouzia Farhana Quddus & others, reported in 1991 SCMR 681.

3. In the beginning, I would like to explicate that plain review of Muslim Family Laws Ordinance, 1961 unequivocally demonstrates that though it applies and extends to the whole of Pakistan but it only applies to Muslim citizens of Pakistan, wherever they may be whereas Section 5 of the Family Courts Act, 1964, provides and makes prolific emphasis that subject to the provisions of the Muslim Family Laws Ordinance, 1961, and the Conciliation Courts Ordinance, 1961, the Family Courts shall have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in Part I of the Schedule. In the case of **Masood Ahmad Malik vs. Mst. Fouzia Farhana Quddus**, reported in **1991 SCMR 681**,

the apex court held that “A close examination of the provisions of the Family Courts Act, 1964 and those of the Muslim Family Laws Ordinance, 1961 shows that they do not operate exactly in the same field and that the scope of the Family Courts Act, 1964 is wider than that of the Muslim Family Laws Ordinance, 1961. In our view, the effect of the words in section 5 that the Family Courts shall have the jurisdiction to entertain suits relating to dissolution of marriage, jactitation of marriage etc. but subject to the provisions of the Muslim Family Laws Ordinance, 1961 imply only that where there is an inconsistency between Muslim Family Laws Ordinance, 1961 and the Family Courts Act, 1964, the provisions of the Muslim Family Laws Ordinance will prevail and shall be given effect to in their pristine form and no more. They do not have any other effect and the provisions of other laws are not affected thereby. Accordingly, suits of this nature filed by the parties other than Muslim citizens of Pakistan if otherwise competent under any other law can be entertained but will be heard and tried not in accordance with the provisions of the Muslim Family Laws Ordinance but by the proper law applicable to them. Thus, under the Civil Procedure Code, 1908 a Civil Court has jurisdiction to entertain and try a suit if the parties, at the commencement of the suit, are residing within its local limits (section 20, C.P.C.). Accordingly, any party irrespective of the question whether he is a Muslim citizen of Pakistan or not can institute a suit, including a suit for jactitation of marriage, before a Court within whose local limits the defendant is, for the time being residing. If the parties are Muslim citizens of Pakistan, the suit will be tried and determined in accordance with the provisions of the Muslim Family Laws Ordinance, 1961. But if they are

not Muslim Citizens of Pakistan the suit can still be entertained but it will be tried and determined by the proper law of the parties; in the former case by the Family Court while in the later case by the ordinary Civil Court of competent jurisdiction”.

4. So in all fairness it is well-defined in the tenor and sagacity of law that family court can only exercise its jurisdiction subject to the provisions of the Muslim Family Laws Ordinance, 1961 but in the case under consideration nevertheless the parties are Muslims but they are not citizens of this country so the chances of applying or capable of being applied the Muslim Family Laws Ordinance for confirmation of divorce by the Union Council are remote and inaccessible and the only remedy in my considerate view was to approach the civil court where they presently reside rather than family court where the lis could not have been found maintainable. There is no doubt that this court at its original side is exercising the jurisdiction of civil court therefore the parties have rightly approached. In this regard, a reference can be made to the judgment authored by me being a member of divisional bench of this court in the High Court Appeal filed by **Muhammad Naved Aslam and others vs. Mst. Aisha Siddiqui and others**, reported in **2011 CLC 1176**, wherein it was held in paragraph 21 of the judgment that the *“comparison of both aforesaid provisions makes it undoubtedly clear that in paragraph 5 of the Establishment of West Pakistan High Court Order, 1955 the original civil and criminal jurisdiction of the Bench at Karachi was defined with certain parameters while under section 7 of Sindh Civil Courts Ordinance, 1962 the pecuniary jurisdiction*

of District Judge has been fixed excepting in the Karachi Districts where the original jurisdiction in Civil Suits and proceedings of the value exceeding 30 lacs of rupees shall be exercised by the High Court. The simple reading and comparison of both the provisions lead us to a conclusion that while exercising powers on original side, this court is in fact exercising jurisdiction for the civil district of Karachi as was exercisable immediately before the commencement of establishment of West Pakistan High Court Order by the Chief Court of Sindh under section 8 of the Sindh Courts Act 1926. The Karachi Bench of Sindh High Court is functioning or exercising the powers and performing the duties as the Principal Civil Court of original jurisdiction in the civil district of Karachi. It is also pertinent to mention here that by virtue of a latest amendment made under section 7 of Sindh Civil Courts Ordinance 1962 on 2-3-2011, the pecuniary jurisdiction of the original side of this Court at Karachi has been enhanced from 30 lacs to 15 million”.

5. In the wake of above discussion, I perceive no impediment to record the compromise between the parties. Consequently, the compromise application is allowed and the suit is decreed accordingly.

Judge