

[Sindh]

**Before Muhammad Shaft Siddiqui, J**

**Ms. ROHEELA YASMIN---Plaintiff**

**Versus**

**Ms. NEELOFAR HASSAN and 6 others---Defendants**

Suit No.1386 and C.M.As. Nos.10734, 10735 and 12120 of 2012, decided on 21st April, 2014.

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

---S. 7---Civil Procedure Code (V of 1908), O. XX, R. 13-Administration suit- Talaq-e-Bain- Effect--- Contention of plaintiff was that she being wife of deceased was entitled for deferred dower as well as share from his property whereas defendants contended that plaintiff had been divorced by the deceased and she was not legal heir to claim inheritance-Validity-Plaintiff was given Talaq-e-Bain and no question of reconciliation would arise---Such Talaq would become effective the moment same was pronounced-Plaintiff was not entitled for any inheritance however claim of dower amount was debt on the property of deceased which was to be paid first.

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

---S. 7---Divorce--- Effectiveness of--- Scope---Marriage could be dissolved by husband at his will without intervention of the court-Man who wished to divorce his wife should as soon as might be after pronouncement of Talaq give the Chairman Union Council a notice in writing of his having done so and should supply a copy thereof to the wife---Talaq would not be effective until the expiry of 90 days unless same was revoked earlier expressly or otherwise.

**(c) Islamic Law---**

---Talaq, Mubarat and Khula-Meaning---"Talaq" was divorce which was pronounced by the husband whereas "Mubarat" was Talaq effected by mutual consent of parties and "Khula" was dissolution of marriage through court.

**(d) Islamic Law--**

---Talaq, kinds of-Scope-Talaq would be of three kinds i.e. Talaq-e-Ahsan, Talaq-e-Hassan and Talaq-e-Bain-Talaq-e-Ahsan could be pronounced by single pronouncement during "Tuhrs" followed by abstinence from going to wife to establish marital relationship till Iddat period-Talaq-e-Hassan was pronouncement of divorce through successive three "Tuhrs" without establishing physical relationship with wife in any of the three "Tuhrs"---Talaq-e-Bain was the divorce by husband through pronouncement made through single "Tuhr" either in one sentence or in separate sentences---Talaq-e-Bain was irrevocable divorce whereas Talaq-e-Ahsan would become irrevocable on expiry of Iddat period and Talaq-e-Hassan on third pronouncement irrespective of Iddat period-Talaq-e-Bain would become irrevocable immediately on pronouncement of the same either uttered orally or written down on a piece of paper irrespective of Iddat period-Talaq-e-Bain did not provide any room for any reconciliation-Communication was not material ingredients or prerequisite for validity of Talaq.

Mst. Zarina Begum v. Major Azizul Haq and others 2006 CLC 1525; Mst. Maqbool Jan v. Arshad Hussain and another PLD 1975 Lah. 147 and Mst. Sakhina Khatun v. Ahmad Ali Mia PLD 1962 Dacca 630 rel.

Shoaib Rashid for Plaintiff.

Barrister Shabbir Shah and Sameer Ghazanfar for Defendants Nos. 1 to 4.

Yousuf Naseem for Defendants Nos. 5 and 6.

Date of hearing: 8th April, 2014.

## **ORDER**

**MUHAMMAD SHAFI SIDDIQUI, J.**---These are two connected suits subject-matter of which are same.

The plaintiff in Suit No.1386/12 claimed to be the widow of one Tanveer Hassan being second wife of the deceased whereas the defendants Nos.1 to 4 are being first wife, son and daughter's defendants Nos.5 to 7 are companies incorporated under Companies Ordinance where the deceased was Director/ shareholder.

In the connected suit first wife has claimed succession of the deceased husband's property which was subsequently converted and numbered as Suit No.1486/13.

The brief facts of the case are that the plaintiff in Suit No.1386/12 claimed that a marriage was solemnized between herself and deceased Tanveer Hassan on or about 25-6-2011, however Tanveer Hassan expired on 11-9-2012. It is claimed that the dower amount was fixed at Rs.20.00 Million out of which Rs.500,000 was prompt dower and remaining Rs.19,500,000 was deferred dower which she is entitled to receive from the estate of the deceased. She claimed that the deceased and she herself belongs to Sunni Hanfi Fiqah. However their rights and interest in the estate of the deceased according to Sunni Hanfi law were denied by defendants which she is entitled according to Sharia.

Learned counsel for the plaintiff submitted that the deceased was a successful businessman and have shares in defendants Nos.5 and 6 which schedules are available at pages 21 and 27. It is claimed that 39690 shares were owned by the deceased in Messrs Habib Oil (Pvt.) Ltd. whereas 10100 shares were owned by the deceased in Mrs. HOM Quality Food (Pvt.) Ltd. She submitted that under Sharia she is entitled to share of 1/16th besides the deferred dower in the sum of Rs.19,500,000.

On the other hand learned Counsel for the defendants No.1 to 4 at the very outset submitted that the plaintiff Mrs. Rohila Yasmeen has been divorced by the deceased and such Talaqnama dated 23-7-2012 was 'also executed by the deceased and sent to the plaintiff which is filed and attached along with the application bearing C.M.A. No.12120/12. Learned counsel submitted that since the plaintiff has been divorced by the deceased hence under the law the plaintiff is not entitled to claim inheritance nor she can be treated as legal heir being divorced. Learned counsel submitted that the alleged proceedings of the Union Council filed by the plaintiff along with Counter affidavit is of no avail since the Talaq pronounced by the deceased has attained finality and no observation and declaration with regard to such pronouncement could be made by the Chairman Union Council. Learned counsel submitted that there are three kinds of divorce recognized under Sharia such as Talaq-i-Ahsan, Talaq-i-Hasan, Talaq-i-Bidai/Bain. He submitted that this being Talaq-i-Bidai/Bain is irrevocable and complete and no reconciliation efforts could be

made in pursuance of section 7 of the Ordinance, 1961. Learned Counsel submitted that the parties admittedly belongs to Sunni Hanfi Fiqah and they being follower of such Fiqah cannot talce any other recourse since Talaq-i-Bidai/Bain was effective from the date when it was pronounced.

Learned counsel for the plaintiff submitted that in terms of provisions of subsection (3) of section 7 of the Muslim Family Laws Ordinance, 1961 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. Learned counsel for the plaintiff has further argued that this subsection (3) of section 7 of the Ordinance, 1961 is in addition to subsection (5) which provides a mechanism in relation to effectiveness of talaq upon the wife who at the time of pronouncement of Talaq is pregnant and as such Talaq shall not be effective until the period mentioned in subsection (3) or the pregnancy whichever be later, ends. Learned counsel for the plaintiff submitted that in either of the case a period of 90 days is required to give effect to such divorce if at all pronounced by the deceased. He claimed that since the deceased was ill, therefore; there is every possibility that such divorce was manipulated or was executed under compulsion or coercion or executed without senses. Learned Counsel submitted that 'apart from her share under Sharia which is 1/16th tne plaintiff is also entitled to the deferred dower amount which admittedly in the sum of Rs.19,500,000 which is a debt on the property and estate of the deceased.

Heard learned counsel and perused the material available on record.

The plaintiff has two fold claim; first is the claim of dower amount to the extent of Rs.1 Crore 95 lacs and the other is the claim which she allegedly inherited as being legal heir after the sad demise of Tanveer Hussain. As far as the claim of dower amount is concerned the defendants have not raised serious contention and it has only been stated that the plaintiff has been divorced and such divorce since irrevocable the plaintiff is not entitled for any such claim made out in the plaint. Such argument could not be extended as far as the claim of dower is concerned. In fact the Talaqnama attached to C.M.A. 12120 of 2012 relied upon by the defendant confirms that dower amount of Rs.19,500,000 vide cheque/pay order/demand draft No.1153166 dated 30-7-2012 drawn on Askari Bank Limited, SITE Branch was enclosed however the plaintiff has shown ignorance as far as said pay order is concerned. It leads to two undisputed facts; firstly that the Talaqnama was received since she also relied upon proceedings under section 7 of the Ordinance, 1961 and secondly that there is no dispute with regard to the dower amount. The only thing that could not be clarified is as to whether such pay order issued by the Bank mentioned above accompanied with Talaqnama or not and if at all it was accompanied whether it was encashed. To resolve this limited controversy notices may be issued to the Manager of Askari Bank Limited, SITE Branch, Karachi, to submit a report/statement with regard to such pay order referred to above and as to whether the same has been encashed or otherwise. The amount of dower as shown in Nikahnama is not otherwise disputed.

I shall now take up the second issue i.e. the effectiveness of divorce. Section 7 of Ordinance 1961 provides that a man who wishes to divorce his wife shall as soon as may be after the pronouncement of Talaq; give the Chairman notice in writing of his having done so and shall supply a copy thereof to the wife. Subsection (3) of section 7 of Ordinance 1961 provides that save as provided in subsection (5) a Talaq unless revoked earlier, expressly or otherwise, shall not be effective until expiry of 90 days from the day. Subseci<sub>i</sub>on (5) of section 7 deals with the situation when the wife is pregnant at the time of pronouncement of Talaq

and it shall not be given effect until period mentioned in subsection 3 or the pregnancy whichever be later ends. It appears that section 7 of Ordinance 1961 provides a mechanism to give effect to a divorce in a peculiar situation; one of course being the fact that wife being pregnant and the other is one where a Chairman of the Union Council could arbitrate or reconcile. In order to understand the peculiar situation it is necessary to provide some details.

The contract of marriage under Muslim law can be dissolved by husband at his will without intervention of the Court, by mutual consent of spouses through judicial decree in suit filed by any of the spouse. Divorce when provided from the side of husband is called Talaq and when it is effected by mutual consent it is called Mubarat and Khula is a kind of dissolution of marriage through Court.

Primarily we have three kinds of Tallaq under Muslim Law i.e. Talaq-e-Ahsan, Talaq-e-Hassan and Tallaq-e-Bain. As far as Talaq-e-Ahsan is concerned it can be pronounced in a manner i.e. by single pronouncement made during "Tuhrs" followed by abstinence from going to wife to establish marital relationship till Iddat period. Talaq-e-Hasan is another method of pronouncement of divorce through successive three "Tuhrs" without establishing physical relationship with wife in any of the three Tuhrs and this divorce is called Talaq-e-Hassan.

The third way of divorce by husband is through pronouncement made through single "Tuhr" either in one sentence or in separate sentences. This clearly indicates an intention of "irrevocability" of divorce. Talaq-e-Ahsan becomes irrevocable on expiry of Iddat period; Talaq-e-Hasan becomes irrevocable on the third pronouncement irrespective of Iddat period and Talaq-e-Bain becomes irrevocable immediately on its pronouncement irrespective of Iddat. If any reference is needed one may look at the case of Mst. Zarina Begum v. Major Azizul Haq and others 2006 CLC 1525.

Thus, in the absence of word showing a different intention, Talaq-e-Bain operates as an irrevocable divorce and takes effect immediately on its pronouncement/ execution. Considering effect of Talaq-e-Bain it appears that provisions of section 7 I of Ordinance, 1961 has ignored Talaq-e-Bain as Talaq-e-Bain does not provide any room for any reconciliation. Talaq-e-Bain leads to a definite dissolution of marriage without reservation of the power of retraction which takes effect immediately after the formula is pronounced.

Thus what I can conclude is that section 7 of Ordinance, 1961 contemplates the attempt of legislation to incorporate Islamic provisions with regard to the two forms of Talaq-us-Sunnat vis Talaq-e-Ahsan and Talaq-e-Hasan. The first of them is that form in which single pronouncement of Talaq is made during the period of menstrual purity, no intercourse having taken place during that period and is followed by period of Iddat. The second is one in which first pronouncement is made in similar circumstances is followed by two further pronouncements in succeeding period, no intercourse takes place at any time during three periods. Such divorce become irrevocable only on, third pronouncement. There is thus no provisions either in the Ordinance 1961 or the rules requiring the Chairman of an Arbitration Council to give decision of the question of validity or otherwise of the Talaq under the relevant law applicable to the parties or even to issue a certificate to make divorce effective or ineffective.

In the case of Mst. Maqboot Jan v. Arshad Hussain a another PLD 1975 Lahore 147 it is observed that if a Talaq is otherwise valid under the personal law of the parties it would become effective under the law but the only

clog thereon is that the effectiveness would be postponed for 90 days under subsection (3) of section 7 of Ordinance 1961. Thus, if it is manifest that the Talaq in question is one which is irrevocable i.e. Talaq-e-Biddat or Talaq-e-Bida or Talaque Bain it becomes effective immediately after it is either uttered orally or written down on a piece of paper or on some thing else from which it deciphered. Thus, such manifestation does not require any recommendation or reconciliation. Knowledge of wife may be for some other collateral purposes but communication is not material ingredients or prerequisite for validity of Talaq.

In the cases cited by learned counsel for the plaintiff perhaps this aspect has not been discussed as in the case of Talaq-e-Bain the recourse cannot be made therein since it is irrevocable and becomes effective the moment it is pronounced and in general this observation that until and unless reconciliation efforts are made Talaq would not be effective, loses its applicability in relation to Talaq-e-Bain.

Similarly in the case of Mst. Sakhina Khatun v. Ahmmad Ali Mia reported in PLD 1962 Dacca 630 the learned Single Judge observed that Bedai mode of Talak (simultaneous pronounce-ment of three Talaks) takes effect immediately after it is either uttered orally or written down on piece of paper from which it could be deciphered.

Thus, I am clear in my mind that as far as the divorce/Talaqnama which is admitted is one which could only relates to Talaq-e-Bain and since section 7 of Ordinance, 1964 does not cater the situation as envisaged in the subject Talaqnama i.e. Talaq-e-Bain, therefore, the question of reconciliation is immaterial and it became effective the moment it was pronounced. In my view the plaintiff is not entitled for any inheritance however the claim of dower amount to the tune of Rs.19,500,000 is a debt on the property of the estate which is to be paid first.

Let in the first instance notice be issued to the concerned Manager of the Bank wherefrom the pay order referred above is said to have been issued as mentioned in the Talaqnama. The concerned Manager would submit report regarding issuance of such pay order and also to the effect as to whether it has been encashed and/or cancelled. In the meantime the market value of the shares of defendants Nos.5 and 6 be also ascertained and thereafter the question of retaining the considerable number of shares of deceased in defendants Nos.5 and 6 which could cover the dower amount shall be retained for the satisfaction of such claim and rest would then be free to be devolved amongst the legal heirs of the deceased i.e. defendants in this suit. Once such process is complete only then transfer of shares to the legal heirs would commence.

AG/R-5/Sindh  
accordingly.

Order