

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-940 of 2023

[Azam Mirzav.....Mst. Saima Khan & others]

Date of Hearing : 29.02.2024
Petitioner through : Mr. Ali Ahmed Tariq, Advocate
Respondents through : N.R.

ORDER

Zulfiqar Ahmad Khan, J:- The Petitioner is aggrieved with the order dated 11.09.2023 passed by learned Family Judge-XXXI East Karachi, whereby marriage between the petitioner and respondent No.1 was disposed by way of Khula.

2. Family Suit No. 2480 of 2023 was filed for dissolution of marriage by way of Khula by respondent No.1 and same was allowed vide Order dated 11.09.2023 (“impugned order”).

3. Learned counsel for the petitioner contended that it is obligated upon the learned Family Court to make genuine efforts for reconciliation between the parties, however, the learned Family Court failed to make genuine efforts and passed the impugned order, therefore, the same be set aside.

4. Heard and perused the record. 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.

5. 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.”

6. 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.)".

7. 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.

8. 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.

9. 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.

10. In view of the rationale and deliberation delineated above, the petition at hand is dismissed alongwith pending application.

Karachi
Dated: 29.02.2024

JUDGE

Aadil Arab.