

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P-S No.506 of 2024
[Muhammad Ayub Jatoi v. Mst. Maryam Yousufani and others]

Date	Order With Signature Of Judge
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1.For hg of CMA No.4366/24	
2.For hg of main case	
09.10.2024.	

Mr. Tanveer Aftab, advocate for the petitioner.
Mr. Shafqat Ali Shah Masoomi, advocate for respondent No.1.

MUHAMMAD IQBAL KALHORO, J:- Respondent No. 1 filed a suit for recovery of maintenance in the Family Court w.e.f. 12.04.2014 to 09.07.2017 against the petitioner. In para. 11 of the plaint, she has stated that on 09.07.2017 at around 3:30 pm noon, petitioner came personally to her house at Karachi and in presence of witnesses (Wahabullah Yousufani and Muhammad Haroon Siddique) pronounced divorce three times to her. The petitioner filed a written statement in which he denied claim of respondent No. 1 that he had divorced her.

2. On pleadings of the parties, issues were framed and issue No. 1 catered to this controversy, that whether the defendant pronounced divorce/Talaq to plaintiff on phone call, WhatsApp and text messages in the year 2015; and also pronounced orally divorce/Talaq to plaintiff at her mother's home in Karachi on 09.07.2017. This issue in the judgment dated 04.01.2024 was discussed in detail by the Family Court and was replied "as discussed". The Family Court concluded that plaintiff/respondent No. 1 had proved her claim and pronouncement of divorce through mobile conversations and text messages on 26.11.2015 and oral pronouncement of divorce on 09.07.2017. As a result, the suit was also decreed as prayed. The petitioner challenged the same in Family Appeal No.17 of 2024, which has been dismissed vide judgment

dated 06.04.2024 and the Appellate Court has upheld the findings of facts over divorce recorded by the Family Court.

3. Learned counsel for the petitioner has, however, submitted that respondent No. 1 has failed to prove the factum of divorce to her. There are contradictions in the evidence, as each time the statement about divorce to her has been improved by her and her witnesses. There is no mention of presence of mother at the time of Talaq in the plaint but during the course of the trial, she was also examined as a witness of the divorce. The witnesses have contradicted each other on so many points in their testimony and this fact has not been proved.

4. On the other hand, learned counsel for respondent No. 1 has supported the impugned judgments.

5. The Appellate Court has disbelieved the divorce given by the petitioner to respondent No. 1 through Whatsapp conversations/text messages. But while discussing the issue, has observed in respect of oral divorce in para No.17 as under:-

“17. As regards, pronouncement of divorce orally in physical presence of Respondent, Appellant, witness Wahabullah & Muhammad Haroon Siddique on 09.07.2017, perusal reveals that testimony regarding pronouncement of Talaq on 09.07.2017 in affidavit-in-evidence of Respondent was not challenged by the Advocate for the Appellant in cross examination, thus, such testimony gone unchallenged and would be deemed to have been admitted by the Appellant in the light of the established principles that any portion of testimony not challenged in cross examination is treated as admission. Perusal reveals that Respondent also examined his brother Wahabullah (P.W-1) as witness of pronouncement of divorce on 09.07.2017 at the residence of Respondent's mother, who in his affidavit-in-evidence has deposed that on 09.07.2017 at about 03:30 p.m., Appellant came at house of mother of Respondent personally and orally pronounced talaq thrice by saying “I Muhammad Ayub Jatoi your husband give you Talaq”. The said testimony of witness Wahabullah remained un-shattered in cross examination. Perusal

reveals that Respondent also examined witness Muhammad Haroon Siddique (P.W-3), who in his affidavit-in-evidence as well as cross examination remained consistent as to pronouncement of Talaq thrice by Appellant on 09.07.2017. perusal reveals that Respondent also examined her mother namely Parveen widow of Fazalullah (P.W-2), who affirmed pronouncement of Talaq by Respondent in her presence as well as in presence of Wahabullah, Muhammad Haroon Siddique, but, she in her cross examination has mentioned date of pronouncement of Talaq as 12.09.2017. I am of the considered view that since Respondent/wife as well as two of witnesses of the Talaq have consistently testified that Appellant has pronounced talaq to Respondent on 09.07.2017 in their presence, therefore, mentioning of wrong date by P.W-2 become immaterial as two witnesses have corroborated the factum of pronouncement of Talaq.”

6. In the trial, respondent No. 1, in order to prove factum of divorce to her in her parent's house on 09.07.2017, has examined herself, her mother namely Parveen and her brother Wahabullah Yusufani and another witness. Not only the plaintiff/respondent No. 1 but her witnesses have also supported the fact that petitioner had come in the house of the plaintiff at Karachi and pronounced divorce three times in their presence. There is no material contradiction between the evidence of the parties as far as this fact is concerned. The minor inconsistency by mother of respondent, who is an old lady, in describing the actual date when divorce took place will not adversely affect the consistency with which the witnesses otherwise have supported the factum of divorce by the petitioner to respondent No. 1. Respondent No. 1 and her witnesses are consistent over narration of the events culminating at pronouncement of divorce by the petitioner inside her mother's house. The learned trial Court has also discussed the issue in detail and has concluded it in favour of divorce having been pronounced by the

petitioner in her house. The Family Court and the Appellate Court have examined the evidence in its true context and there is no error in it.

7. In the constitutional jurisdiction, the findings arrived at by both the Courts below concurrently cannot be disturbed or set aside merely on assertion of the petitioner that he had not divorced the lady. As against it, there are three witnesses besides respondent No. 1, who have confirmed the factum of divorce to plaintiff/respondent No. 1. In the circumstances, I find no merit in this petition and dismiss it along with pending application.

JUDGE

HANIF