

IN THE LAHORE HIGH COURT, LAHORE.

W.P. NO. 3967-14

PRESENT MR JUSTICE IJAZ UL AHSAN

PETITION UNDER ARTICLE 199 OF THE CONSTITUTION
OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973.

PRAY PARTY NAMES ATTACHED.

ORDER P.T.O.

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IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Case No:

W.P. No. 3967 of 2014

Insaf Society Intl.

Versus

Govt. of Pakistan etc.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary.
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21.02.2014.

Syed Zahid Hussain Shah, Advocate for the petitioner alongwith the petitioner
Mr. Faisal Zaman Khan, Addl. Advocate General alongwith Mr. Sheraz, Secretary-I and Muhammad Abid, Secretary-II, Union Council No. 99

The petitioner was married on

18.04.2009 against dower consideration of Rs. 5,000/-.

The relationship between the parties became strained for various reasons. The petitioner, therefore, filed a suit for dissolution of marriage on the basis of Khula against the said person. The learned Judge family Court, Lahore issued notice to the defendant who failed to appear before the Court. He was accordingly proceeded against ex parte vide order dated 24.10.2013. After recording the statement of the petitioner and her witnesses, the suit for dissolution of marriage was decreed on the basis of Khula in lieu of dower. The operative part of the judgment and decree of the learned Judge Family Court reads as follow: -

5. *There is nothing in rebuttal whatsoever to the oral evidence produced by the plaintiff; therefore, I am constrained to attach credence*

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therewith. Hence; the suit of the plaintiff for dissolution of marriage is decreed ex parte on the basis of Khula in lieu of dower. No order as to cost. Decree sheet be drawn accordingly. Ahlmad is directed to send one copy of this judgment to the defendant and another to the concerned union council at the expenses of plaintiff. The plaintiff is directed to deposit such expenses within three days. Ahlmad is directed to annex the receipt of post office and then file be consigned to record room after its due compilation.

2. The petitioner alleges that she approached the Union Council Office, Union Council No. 99, Naseer Abad, 47-M, Gulberg-III, Lahore. She provided a certified copy of the judgment and decree of the learned Judge Family Court and asked the concerned officials to initiate the process of issuing notice to the defendants in the suit. She alleges that despite receiving a certified copy of the judgment and decree and repeated reminders sent by the petitioner, she was directed to appear before the Chairman Arbitration Council No. 99 / Administrator Union Council Naseer Abad, Lahore. She alleges that she repeatedly informed the concerned officials of the said Union Council that her personal appearance was not

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necessary and that she would be hesitant to appear in public on account of the fact that she was undergoing the period of Iddat, the staff of the Union Council kept insisting that she must appear in person on each date of hearing failing which certificate of dissolution of marriage will not be issued to her.

3. The petitioner, who has appeared in person, submits that the acts of the Administrator and Secretary Union Council are illegal and without lawful basis. She further submits that the said actions amount to causing harassment to the petitioner. She submits that a direction may be issued to the respondents to issue a certificate of dissolution of marriage regardless of appearance of the petitioner before them on expiry of the requisite period of 90 days as envisaged under the provisions of Muslim Family Law Ordinance 1961 read with provisions of Family Court Act, 1964.

4. When this matter came up for hearing, notice was issued to respondent Nos. 4 & 5 who were directed to file a reply to this petition. Since the petitioner was unrepresented, Mr. Muhammad Nawaz, Advocate who volunteered himself to be her counsel, was allowed to appear on her behalf to assist the Court. Further Mr. Faisal Zaman Khan, Addl. Advocate General was also

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directed to assist this Court on the questions of law involved in this matter.

5. The questions of law requiring determination by this Court are: -

a. Whether Chairman Arbitration Council and or other functionaries of the Union Council have any jurisdiction to insist that a woman, who has obtained a decree for dissolution of marriage by way of Khula, appear before them in person on every date of hearing fixed by them?

b. Whether Arbitration Council has any jurisdiction to refuse issuance of a certificate for dissolution of marriage after the expiry of 90 days from the date of receipt of a copy of judgment and decree of the Judge Family Court?

6. On hearing the learned counsel for the parties, the answer to the above questions is in the negative for the following reasons: -

a. A decree for dissolution of marriage passed by a Family Court becomes effective and absolute on expiry of 90 days of its receipt by the appropriate Chairman. Neither the chairman nor other functionaries of the Union Council have any jurisdiction, power or authority to insist that the woman who has received a decree for dissolution

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of marriage on the basis of Khula appear before them in person either on the first or any date of hearing.

b. The Family Court is obliged under the law to dispatch a certified copy of its judgment and decree to the concerned Union Council / Arbitration Council. The decree holder also has the option to dispatch a certified copy of the judgment and decree to the concerned Union Council. The Union Council may verify the genuineness of such judgment and decree from the Court which passed the same.

c. The concerned Union Council / Chairman Arbitration Council is under a statutory obligation to issue notice to the parties at the addresses given in the judgment and decree. Irrespective of the fact that one or both parties do not appear, they are required, on expiry of 90 days from the date of receipt of judgment and decree for dissolution of marriage on the basis of Khula, to issue the requisite certificate.

d. It has been noticed that the concerned staff of the Family Courts is negligent in sending copies of the judgment and decree passed in suits for dissolution of marriage to the concerned Union

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Councils. Further, the concerned Chairman and other staff of the Union Councils illegally, in utter disregard of the law and in purported exercise of powers, not vested in them, insist that the woman appear in person on every date of hearing. This course of action subject woman to undue inconvenience, expense and at times harassment which is not the intent and purpose of the law which was promulgated with the objective of facilitating and simplifying the process without putting the parties to undue trouble and expense. It is, therefore, observed that misinterpretation of the relevant provisions of law whether deliberate or unintentional constitutes an abuse of the process of law and must come to an end. In view of above, the following principals of law which have repeatedly been declared and reiterated by the superior courts of the country are declared and spelt out for the benefit of the respondents: -

- i. Neither the Chairman Union Council, the Arbitration Council or any other official of the Union Council has any lawful power, authority or jurisdiction to set aside, over rule or modify any order, judgment or decree passed by a Judge Family Court

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relating to dissolution of marriage on the basis of Khula.

ii. The Judge Family Court and his staff must ensure that the judgment and decree issued in a suit for dissolution of marriage is immediately sent by registered post acknowledgment due to the concerned Union Council without undue delay.

iii. The Chairman Union Council is required to constitute an Arbitration Council in terms of Section 7 (4) of the Muslim Family Laws Ordinance 1961 within 30 days of receipt of a copy of the judgment and decree passed by a Judge Family Court.

iv. The Chairman Arbitration Council shall issue notices to both parties. He may also verify the authenticity of the judgment and decree from the Court which issued the same, if he deems appropriate.

v. Notwithstanding the fact whether or not either or both parties appear before the Arbitration Council, the Chairman Union Council shall issue a certificate for dissolution of marriage on expiry of 90 days from the date of receipt of a certified copy

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of the judgment and decree of the Judge Family Court.

vi. It is made clear that the Chairman, Members or the staff of the Union Council have no jurisdiction or power to refuse issuance of a certificate for dissolution of marriage after expiry of 90 days from the date of receipt of a certified copy of the judgment and decree issued by the Judge Family Court.

vii. It is further clarified that the functionaries of the Union Council have no power or authority to insist that the parties, whose marriage has been dissolved on the basis of Khula, appear in person before any functionary of the Union Council at any time. Further, they have no power, jurisdiction or authority to delay or refuse issuance of the requisite certificate beyond the statutory period of 90 days after receipt of the judgment and decree of the family Court whether received from the Court or any of the parties.

7. The respondents who have appeared in person have denied the allegations of the petitioner and

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submitted that they neither insisted that the petitioner appear in person nor do they intend to withhold her certificate after expiry of requisite period of 90 days from the date of receipt of a certificate copy of the judgment and decree of the Judge Family Court. Without commenting on the truth of the stance taken by the respondents, in view of the fact that they have categorically stated on oath before this Court that they have neither threatened to nor will they withhold issuance of certificate for dissolution of marriage beyond the period of 90 days from the date of receipt of a certified copy of the judgment and decree of the Judge Family Court, this petition is allowed with a direction to the respondents to issue a final certificate immediately on expiry of 90 days from the date that a certified copy of the judgment and decree of the Judge Family Court was received by them.

8. This petition is, therefore, allowed in the aforesigned terms.

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Authorized Under Article 87 of
Qanun-e-Shahadat Order 1981

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W.S.
(IJAZUL AHSAN)
JUDGE