

High Court of Judicature at Allahabad

(Lucknow)

Reserved on 07.11.2024

Delivered on 06.12.2024

Court No. - 10

Case :- FIRST APPEAL No. - 111 of 2019

Appellant :- Arshad Husain

Respondent :- Shahneela Nishat

Counsel for Appellant :- Shafiq Mirza, Ali Akhtar Zaidi

Counsel for Respondent :- Mohd. Mustafizul Haq

Hon'ble Vivek Chaudhary, J.

Hon'ble Om Prakash Shukla, J.

- (1) Heard Shri Ali Akhtar Zaidi, learned Counsel representing the appellant/husband and Shri Mohd. Mustafizul Haq, learned Counsel representing the respondent/wife.
- (2) This appeal under Section 19 of the Family Courts Act, 1984 has been filed by the husband/appellant, seeking to quash the judgment and order dated 04.07.2019 passed by the learned Principal Judge, Family Court, Lucknow, whereby Declaration Case No. 214 of 2019 filed by the husband/appellant for declaration of matrimonial status of the parties has been dismissed at the admission stage.
- (3) Facts of the case are that the marriage between the appellant and the respondent was solemnized on 12.01.2002 in accordance with Islamic Rites and Rituals. It was the case of the appellant that after marriage, the behaviour of his wife was not good as his wife was having affair

with a police officer, on account of which his wife visited her parental house frequently. With the connivance of the said police officer, his wife had lodged frivolous complaint against him and her behaviour became cruel. Ultimately, on 02.07.2018, she went to parental home and since then, she is living there only. Despite efforts made by him for reconciliation, settlement between them was not arrived and ultimately he gave *triple talaq* to his wife in accordance with muslim law. In this background, the appellant had instituted the declaration case, bearing No. 214 of 2019, seeking to declare the matrimonial status of the parties, before the Family Court, Lucknow.

- (4) The learned Family Court, Lucknow, heard the aforesaid declaration case at admission stage and has returned a finding that though the husband claimed to have given *triple talaq* in the month of March, April and May, but there was neither any endorsement to the fact that first, second and third *talaq* were given by the husband during the non-menstrual period of the wife nor there was any endorsement to the fact that any effort for reconciliation preceded Talaq. By recording these findings and placing reliance upon the judgment of the Apex Court rendered in **Shayara Bano v. Union of India : (2017) 9 SCC 1**, the learned Family Court has dismissed the declaration case vide judgment and order dated 04.07.2019 at the admission stage, which is assailed in the present appeal.
- (5) During the hearing of the present appeal, learned Counsels for the parties have drawn attention to Annexure SSA-1 of the second supplementary affidavit, which is a *Mubara'at* (mutual agreement) dated 15.06.2024 entered into between the parties. This mutual agreement was also filed in the proceedings under Section 125 of the Cr.P.C. initiated by the respondent (wife), bearing Case No. 358 of 2018. The agreement provides that both parties will withdraw all pending cases between them, and the marriage shall be dissolved by

mutual consent, subject to the payment of Rs.30,00,000/- (Rupees Thirty Lakhs) by the husband to the wife in three installments. Learned Counsel for the appellant submits that both the parties are living separately and the husband has already paid the entire sum of Rs.30,00,000/- in three installments and requests that the present appeal be disposed of in terms of the mutual agreement, thereby dissolve the marriage between the parties by consent.

- (6) Mohd. Mustafizul Haq, learned Counsel representing the respondent/wife does not dispute the aforesaid mutual agreement dated 15.06.2024 and states that Rs.30,00,000/- has been paid to the wife by the husband/appellant in three installments and the respondent has no objection to declare the marriage of the parties dissolve in terms of the mutual agreement dated 15.06.2024.
- (7) Muslim Personal Law (Shariat) Application Act, 1937, governs marriage and divorce for Muslims in India. Section 2 of the Act explicitly recognizes various forms of divorce, including *Mubara'at*, *Khula*, *Talaq*, and *Faskh*.
- (8) Under Shariyat Law, a marriage can be dissolved by mutual agreement between the husband and wife. This mutual dissolution may take the form of *khula* or *mubara'at*. *Mubara'at*, a form of mutual consent, is a valid and recognized method for dissolution of marriage. It allows both spouses to agree to terminate their marital relationship without requiring judicial intervention, as long as their intentions are clear and unambiguous. The process begins when one spouse proposes the dissolution, and the other spouse agrees. Once both parties affirm their intention to end the marriage, the divorce takes effect, but it does not affect the liability of husband to maintain her wife or children as per the agreement. We have also gone through the law laid down by the

Supreme Court in the case of **Zohara Khatoon v. Mohd. Ibrahim, (1981) 2 SCC 509**, and reaffirmed by subsequent judgments, the irrevocability of *mubara'at* takes effect once the intention of both parties to dissolve the marriage is established, in para 22 of the judgment, the Supreme Court has made following observations:—

“22. In these circumstances we are, therefore, satisfied that the interpretation put by the High Court on the second limb of clause (b) is not correct. This seems to be borne out from the provisions of Mahomedan law itself. It would appear that under the Mahomedan law there are three distinct modes in which a Muslim marriage can be dissolved and the relationship of the husband and the wife terminated so as to result in an irrevocable divorce:

(1) Where the husband unilaterally gives a divorce according to any of the forms approved by the Mahomedan law viz. talak ahsan, which consists of a single pronouncement of divorce during tuhr (period between menstruations) followed by abstinence from sexual intercourse for the period of iddat; or talak ahsan which consists of three pronouncements made during the successive tuhrs, no intercourse taking place between three tuhrs;.....

(2) By an agreement between the husband and the wife whereby a wife obtains divorce by relinquishing either her entire or part of the dower. This mode of divorce is called “khula” or mubarat. This form of divorce is initiated by the wife and comes into existence if the husband gives consent to the agreement and releases her from the marriage tie. Where, however, both parties agree and desire a separation resulting in a divorce, it is called mubarat. The gist of these modes is that it comes into existence with the consent of both the parties particularly the husband because without his consent this mode of divorce would be incapable of being enforced. A

divorce may also come into existence by virtue of an agreement either before or after the marriage by which it is provided that the wife should be at liberty to divorce herself in specified contingencies which are of a reasonable nature and which again are agreed to by the husband. In such a case the wife can repudiate herself in the exercise of the power and the divorce would be deemed to have been pronounced by the husband. This mode of divorce is called "tawfeez" (vide: Mulla's PRINCIPLES OF MAHOMEDAN LAW, § 314, p, 300).

.....”

(emphasis added)

- (9) When parties approach a court seeking formal recognition of their divorce through *mubara'at*, the court's primary role is to verify the mutuality and voluntariness of the agreement. Upon satisfaction, the court is obligated to endorse the dissolution and declare the marital status of the parties as divorced. The High Court of Kerala at Ernakulam in the case of **Asbi .K.N versus Hashim M.U. reported in 2021 SCC OnLine Ker 3945** in paragraphs 4 and 5 of the said judgment is reproduced herein below:-

“4.The Division Bench of this Court in X v.Y (2021 (2) KHC 709) has held that the Family Court in exercise of the jurisdiction under Explanation (d) of S.7 of the Act is competent to endorse an extrajudicial divorce to declare the marital status of a person. It was made clear in the said judgment that in the matter of unilateral dissolution of marriage invoking khula and talaq, the scope of enquiry before the Family Court is limited and in such proceedings, the Court shall record the khula or talaq to declare the marital status of the parties after due notice to other party. In the matter of mubaraat, the Family Court shall declare the marital status without further enquiry on being satisfied that the dissolution was effected on mutual consent. It was observed that

such matter shall be disposed treating it as uncontested matter without any delay by passing a formal order declaring the marital status. It was further held that if any person wants to contest the effectiveness of khula or talaq, it is open for such person to contest the same in appropriate manner known under the law.

5. The unilateral extrajudicial divorce under Muslim Personal law is complete when either of the spouse pronounce/declare talaq, talaq-e-tafweez or khula, as the case may be, in accordance with Muslim Personal Law. So also extrajudicial divorce by mubaarat mode is complete as and when both spouses enter into mutual agreement. The seal of the Court is not necessary to the validity of any of these modes of extra judicial divorce. The endorsement of extrajudicial divorce and consequential declaration of the status of the parties by the Family Court invoking S.7(d) of the Act is contemplated only to have a public record of the extrajudicial divorce. Hence, detailed enquiry is neither essential nor desirable in a proceeding initiated by either of the parties to endorse an extrajudicial divorce and to declare the marital status. The Family Court has to simply ascertain whether a valid pronouncement/declaration of talaq or khula was made and it was preceded by effective attempt of conciliation. In the case of khula, it has to be further ascertained whether there was an offer by the wife to return the "dower". It could be ascertained by perusal of the recitals in talaq nama/khula nama or its communication (if it is in writing) or by recording the statement of the parties. No further enquiry as in the case of an adversarial litigation like chief examination and cross-examination of the parties are not at all contemplated in such a proceedings. If the Court is prima facie satisfied that there was valid pronouncement of talaq/khula/talaq-e-tafweez, it shall endorse the same and declare the status of the parties. In the case of mubaarat, if the Court is prima facie satisfied that mubaarat agreement has been executed and signed by both parties, it shall endorse the same and declare the status of the parties. The Court shall pass formal order declaring the marital status without any delay. If any of the parties want to challenge the extrajudicial divorce by talaq, khula, mubaarat or talaq-e-tafweez mode, he/she is free to challenge the same in accordance with law in appropriate forum. The declara-

tion granted by the Family Court u/s 7(d) endorsing the extrajudicial divorce shall be subject to the final outcome of such proceedings, if any. We consider it desirable to formulate the following guidelines to be followed by the Family Court in a petition filed u/s 7(d) of the Act to endorse an extrajudicial divorce under Muslim Personal Law and to declare the marital status of the parties to the marriage.

(i) On receipt of the petition, the Family Court shall issue notice to the respondent.

(ii) After service of summons or appearance of the respondent, as the case may be, the Family Court shall formally record the statement of both parties. The parties shall also be directed to produce talaq nama/khula nama (if pronouncement/declaration is in writing)/mubaarat agreement.

(iii) The Family Court shall thereafter on perusal of the recitals in talaq nama/khula nama/ communication of talaq, khula or talaq-e-tafweez (if available) and the statement of the parties, ascertain whether there was valid pronouncement of talaq/khula/talaq-e-tafweez. In the case of mubaarat, the Family Court shall ascertain whether the parties have executed and signed mubaarat agreement.

(iv) On prima facie satisfaction that there was valid pronouncement of talaq, khula, talaq-e-tafweez, as the case may be, or valid execution of mubaarat agreement, the Family Court shall proceed to pass order endorsing the extrajudicial divorce and declaring the status of the parties without any further enquiry.

(v) The enquiry to be conducted by the Family Court shall be summary in nature treating it as an uncontested matter.

(vi) The Family Court shall dispose of the petition within one month of the appearance of the respondent. The period can be extended for valid reasons.

(vii) If any of the parties is unable to appear at the Court personally, the Family Court shall conduct enquiry using video conferencing facility.”

- (10) The Karnataka High Court in **Shabnam Parveen Ahmad v. Mohammed Saliya Shaikh, 2024 SCC OnLine Kar 39** in paragraph no. 9 of the said judgment held as under:—

“9. Having considered the contentions advanced and in view of the decisions which are relied on by the learned counsel appearing for the appellants we are of the opinion that the finding of the Family Court that the Family Court is not empowered to consider the application for Divorce by mutual consent when the parties are Muslims cannot said to be the correct proposition. In view of the fact that the parties have entered into Mubarat agreement and have decided to dissolve the marriage entered into between them by the said agreement, we are of the opinion that the prayer sought for by the parties i.e., for a declaration as to the dissolution of marriage ought to have been granted by the Family Court.”

- (11) In the present case, the facts are undisputed that the parties are living separately and have entered into a *Mubara'at* agreement dated 15.06.2024, wherein they mutually agreed to dissolve the marriage, subject to the payment of Rs.30,00,000/- by the husband to the wife. It is also undisputed that the sum of Rs.30,00,000/- has been paid in full by the husband, and both the appellant and respondent have consented to the dissolution of the marriage. In light of these facts, this Court finds that no useful purpose would be served by remitting the matter back to the Family Court for further proceedings.

- (12) Accordingly, the present appeal is **disposed of** in terms of the mutual agreement (*mubara'at*) dated 15.06.2024. The decree of divorce in

terms of mutual agreement/consent dated 15.06.2024 is granted by declaring dissolution of the marriage between the parties. Let a decree be prepared accordingly.

- (13) The judgment and order dated 04.07.2019 passed by the learned Principal Judge, Family Court, Lucknow, in Case No. 214 of 2019 is hereby set aside.
- (14) The suit for the declaration of matrimonial status is decreed.
- (15) The matrimonial status of the parties is declared as “divorced” under Muslim Personal Law and in accordance with their mutual agreement dated 15.06.2024.

(Om Prakash Shukla, J.) (Vivek Chaudhary, J.)

Order Date :- 06.12.2024

Saurabh