IN THE HIGH COURT FOR THE STATE OF TELANGANA, HYDERABAD

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FAMILY COURT APPEAL NO.75 OF 2024

Between:
Mohammed Arif Ali

Appellant

AND

Smt. Afsarunnisa and Another

Respondents

JUDGMENT PRONOUNCED ON: 24.06.2025

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE B.R.MADHUSUDHAN RAO

FCA.NO.75 OF 2024

1.	Whether Reporters of Local newspapers may be allowed to see the Judgments?	:	Yes
2.	Whether the copies of judgment may be Marked to Law Reporters/Journals?	:	Yes
3.	Whether Her Ladyship wishes to see the fair copy of the Judgment?	:	No

MOUSHUMI BHATTACHARYA, J

*** THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA**
AND
THE HON'BLE JUSTICE B.R.MADHUSUDHAN RAO

+ FCA.NO.75 OF 2024

ORDER:

% Dated 24.06.2025

Between:
Mohammed Arif Ali

Appellant

AND

Smt. Afsarunnisa and Another

Respondents

! Counsel for the appellant: Mr. J. Prabhakar, learned Senior Counsel representing Mr. Mohd. Shafiuddin, learned counsel,

^ Counsel for the respondent No.1: Mr. Mubashir Hussain Ansari, learned counsel representing Mr. Imtiaz Gulam Mahboob Faiz MD, learned counsel.

< GIST :

> HEAD NOTE :

? Cases referred :

1. (2014) 10 SCC 736
2. 2008 (103) DRJ 137
3. (2017) 9 SCC 1
4. (2002) 7 SCC 518
5. 2025 LiveLaw SC 495
6. (2014) 7 SCC 707
7. 2023 SCC OnLine Mad 471
8. 2021 SCC OnLine Ker 3945

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE B.R.MADHUSUDHAN RAO

F.C.A.NO.75 OF 2024

Mr. J. Prabhakar, learned Senior Counsel representing Mr. Mohd. Shafiuddin, learned counsel for the appellant.

Mr. Mubashir Hussain Ansari, learned counsel representing Mr. Imtiaz Gulam Mahboob Faiz MD, learned counsel appearing for the respondent No.1.

JUDGMENT: (Per Hon'ble. Justice Moushumi Bhattacharya)

1. The Family Court Appeal arises out of an order dated 06.02.2024 passed by the learned Family Court, Hyderabad, in a petition filed by the appellant for a declaration that the judgment passed by the respondent No.2/Sada-E-Haq Sharai Council by which the marriage between the appellant (husband) and the respondent No.1 (wife) was dissolved, should be declared as null, void and not binding on the appellant.

2. By the impugned order, the Trial Court dismissed the Original Petition (O.P.No.1009 of 2020) filed by the appellant on the ground that the respondent No.2 had followed due procedure in issuing a Divorce Certificate to the respondent No.1/wife. The Trial Court also found that the respondent No.1 had obtained 'Khula' divorce from the appellant by following the procedure laid down by the Courts.

The Facts leading to filing of the Original Petition by the Appellant

3. The appellant and the respondent No.1 were married on 01.06.2012 with a dower of Rs.11,000/-. The respondent No.1 stayed in the marital home for about five years. The respondent No.1, however, made several complaints against the appellant alleging assault and other acts of violence. On 07.07.2017, on being assaulted by the appellant, the respondent No.1 was admitted in a hospital and was shifted to her parents' house after being discharged from the hospital. Subsequently, the respondent No.1 demanded Khula divorce from the appellant, which the appellant refused. The respondent No.1, thereafter, approached the respondent No.2 for grant of Khula divorce. The respondent No.2 consisted of experts in Muslim Law: a Mufti, a Professor of Islamic Studies, a Professor of Arabic and the Imam of a Mosque. The respondent No.2 sent three notices to the appellant with the demand for Khula divorce and invited the appellant to attend a reconciliation meeting. The appellant visited the office of the respondent No.2 and handed over a letter to the respondent No.2 on 14.09.2020 questioning the authority of the respondent No.2 in assuming the duty/jurisdiction to resolve/mediate the disputes

between the appellant and the respondent No.1 and refused to attend the reconciliation meeting scheduled on 26.09.2020.

4. Upon the failed conciliation efforts between the parties, the respondent No.2 issued a Khulanama (Divorce Certificate) on 05.10.2020 to the respondent No.1 certifying the dissolution of the marriage between the appellant and the respondent No.1. The appellant, however, did not accept the Advisory Opinion/Fatwa/Khula nama issued by the respondent No.2 and filed an Original Petition (O.P.No.1009 of 2020) against the respondent No.1 and the respondent No.2 in the Family Court at Hyderabad. The appellant prayed for a declaration that the Khulanama was null and void and without authority of law and also sought a restraint on the respondent No.1 from claiming that the respondent No.1 is no longer the appellant's wife. The Family Court dismissed the said O.P. by the impugned order dated 06.02.2024.

Arguments made on behalf of the Parties

5. Learned Senior Counsel appearing for the appellant argues that the respondent No.2, being a Society/Non-Government Organisation, is not authorized to grant divorce by dissolving the marriage between the appellant and the respondent No.1. Senior Counsel submits that

the respondent No.2 lacked the jurisdiction to decide on a plea for Khula divorce and hence has no authority to issue a Certificate of Divorce/Khulanama. According to Counsel, the respondent No.2 is neither a Mufti nor a Qazi who can deliver a Qaza (judgment) under the Shariat. It is further submitted that the power to adjudicate must flow from a valid law which is absent in the present case since the Khulanama issued by the respondent No.2 suffers from a lack of jurisdiction.

6. Learned counsel appearing for the respondent No.1 prays for dismissal of the Family Court Appeal on several grounds. Counsel explains the concept of Khula divorce in the light of section 2 of The Muslim Personal Law (Shariat) Application Act, 1937. Counsel relies on the decision of the Supreme Court in *Juveria Abdul Majid Patni Vs. Atif Iqbal Masoori*[1] in the context of Khula divorce and urges that the dissolution of marriage by way of Khula comes into effect without the intervention of the Court. Counsel submits that only a judgment of the Family Court or a Qaza is binding on the parties, as opposed to an Advisory Opinion or Fatwa given by a group of experts like the respondent No.2. Counsel further submits that the Family Court in the present case did not place any emphasis on the advisory opinion

[1] (2014) 10 SCC 736

given by the respondent No.2, and instead laid down six principles of Muslim Personal Law as established by the judgments of the Supreme Court and various High Courts. It is submitted that the findings of the Family Court are factually undisputed and that the appellant has not challenged the six principles formulated by the Family Court. Counsel submits that the Family Court arrived at a detailed conclusion that the marriage between the appellant and the respondent No.1 is no longer subsisting and hence the appellant is not entitled to seek setting aside of the said finding in the impugned order without raising any question of law or fact in the present Appeal.

7. We have heard the respective cases put forward by learned Senior Counsel appearing for the appellant (husband) and learned counsel appearing for the respondent No.1 (wife).

8. We wish to preface the judgment with a clarification of the concept of a Khula divorce.

Decision

9. The concept of Khula divorce has been explained in the Quran – Chapter II Verse 229 which is set out below:

> ***C.II.V.229****. Divorce must be pronounced twice and then (a woman) must be retained in honour or released in kindness. And it is not lawful for you that ye take from women aught of that which ye have given them; except (in the case) when both fear that they may not be able to keep within the limits (imposed by) Allah. And if ye fear that they may not be able to keep the limits of Allah, in that case it is no sin for either of them if the woman ransom herself. These are the limits (imposed by) Allah. Transgress them not. For whoso transgresseth Allah's limits: such are wrongdoers.'*

10. Khula is also been defined in several textbooks on Mohammedan law including Muhammadan Law, Vol.II by Mr. Syed Ameer Ali; Muslim Law of Marriage, Divorce and Maintenance by Mr. M.A. Qureshi; Mullas Principles of Mahommedan Law, 19th ed., by Mr. Hidayatullah and Mr. Arshad Hidayatullah; Divorce and Gender Equality in Muslim Personal Law of India by Dr. Justice Kauser Edappagath; The Islamic Digest of Aqeedah and Fiqh by Mr. Mahmoud Rida Murad and Summarised Sahih Al-Bukhari – 61 The Book of Divorce by Dr. Muhammad Muhsin Khan.

<u>Khula Divorce</u>

11. 'Khula' literally translates to relinquishment in Arabic. It is a mode of dissolution of marriage when the wife does not want to

continue with the marital tie and can settle the matter privately by consulting a Mufti (Jurist Consult) of her School. The Mufti gives an advisory decision (Fatwa) based on the Shariat of his School. In a Khula divorce, the wife proposes to her husband for dissolution of marriage which may or may not be accompanied by an offer on the part of the wife to give something in return. The wife may however offer to relinquish her claim to Mahr (Dower) as an option available to her but which is not a pre-requisite for a Khula divorce. When approached by the wife, the Mufti gives a Fatwa/advisory decision based on Shariat of his School. However, if the matter cannot be settled privately and is carried to litigation, the Judge (Qazi) is required to deliver a judgment (Qaza) based upon the Shariat: *Masroor Ahmed Vs. State (NCT of Delhi)*[2].

12. The difference between a Khula divorce and a Mubaraat divorce is that the former is initiated by the wife whereas both spouses desire a separation in a Mubaraat divorce. In essence, a wife's right to Khula is parallel to a husband's right to Talaq and both forms of divorce are unconditional.

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[2] 2008 (103) DRJ 137

13. The Quran in Verses 228 and 229 in Chapter II confer absolute right on the wife to annul the marriage with her husband. The husband's consent is not a precondition for the validity of Khula: *XXXXX Vs. XXXXX (MAT Appeal No.89 of 2020) (2021 SCC OnLine Ker 2054).* A part of the judgment of the Kerala High Court is extracted below:

> *"Wael B.Hallaq in his book (Sharia Theory Practice Transformation at Pages 283-284) refers to khula:*
>
> *Another form of marital dissolution, apparently more widespread than talaq is khula. "If a woman dislikes her husband due to his ugly appearance or as a result of discord between the two, and she fears failure to fulfill her (marital) duties toward him, she may rid herself of him for consideration. But even though she may not dislike anything (about him), and they amicably agree to separate (through khula) without a reason, it is also permissible."*
>
> *…*
>
> *"Section 2 of the Shariat Act specifically recognized all modes of extra-judicial divorce except Faskh. Faskh, as we noted earlier, is a mode of divorce with the intervention of an authority like Qazi. In Section 5 of the Shariat Act a provision was made to dissolve marriage by the District Judge on a petition made by Muslim married women. This would show that the intention of the Shariat Act is to entrust the mode of dissolution of marriage by Faskh through the court. Thus, under the Shariat Act, a Muslim women retained the right of all modes of extra judicial divorce recognized under their personal law Shariat, except Faskh."*

The Four Approaches

14. Upon the considering various authorities, it can be concluded that Islamic law does not prescribe any procedure either in the Quran or in the Sunnah/sayings of the Prophet if the husband rejects the wife's demand for Khula. The decisions pronounced by the Courts however point to four different procedures/approaches undertaken in the case of a Khula divorce.

15. *Procedure 1:*

Khula divorce envisages a private settlement where a person only needs to consult a Mufti of his/her School. The Mufti gives his fatwa/advisory decision based on the Shariat of his School. Upon failure of a private settlement, if either of the parties carry the matter to litigation, the Judge (Qazi) is required to deliver a judgment (Qaza) based upon the Shariat. A Qazi is a Judge appointed by the State and may pass a judgment within the prescribed jurisdiction in respect of legal matters including divorce, inheritance, property and contractual disputes.

16. The Supreme Court in *Juveria Abdul Majid Patni* (supra) relied on the judgment of the Delhi High Court in *Masroor Ahmed* (supra) to

describe the first approach. *Juveria Abdul Majid Patni* (supra) described Khula in simple terms as a mode of dissolution of marriage when the wife does not wish to continue with her marriage and consults a Mufti for his advisory decision based on the Shariat of his School. The wife is simply required to propose Khula to her husband and may choose to accompany her offer to give something in return including giving up her claim to dower.

17. *Procedure 2:*

A Division Bench of the Kerala High Court relied on Divorce and Gender Equity in Muslim Personal Law of India, a Book authored by Dr.Justice Kauser Edappagath, in *XXXXX Vs. XXXXX (MAT Appeal No.89 of 2020) (2021 SCC OnLine Ker 2054)* to hold that the concept of Khula by women is the counterpart of Talaq by men in Muslim law. A married woman can decide to put an end to the marriage by asking her husband for a divorce. As in Talaq, the parties must make an attempt for a reconciliation in Khula. However, unlike Talaq, the married woman has the last word in a Khula divorce and the husband cannot compel her to continue in the marriage. The dower becomes immediately payable by the husband in the case of Talaq. In Khula, the husband may ask the wife to forego her unpaid dower. The

Division Bench of the Kerala High Court relied on the Islamic scholar Maulana Abul Ala Maududi to further hold that the wife's right to Khula is parallel to the man's right of Talaq and both are unconditional forms of divorce. The relevant passage from the decision is extracted below:

> *'59. .....it is indeed a mockery of the Shariat that we regard Khula as something depending either on the consent of the husband or on the verdict of the Qazi. The law of Islam is not responsible for the way Muslim women are being denied their right in this respect'*

18. The Court further held that the Quran entitles a Muslim wife with the right of Khula for annulling the marriage without prescribing a procedure and clarified that there is no pre-condition for validating a Khula. It was further held that the stipulation of Quran with regard to the attempts of reconciliation applies also in the matter of Khula divorce and that invocation of Khula without any reconciliation would be bad in law.

19. *Procedure 3:*

This is reflected in the decision of the Kerala High Court on the Review Petition *(AIR 2023 Ker 33)* filed by the husband against the

judgment. The Division Bench observed that the Review Petition may have been filed at the behest of individuals representing a conservative section of Muslim scholars who believe that a woman lacks the capacity and competence to pronounce Khula. The review applicant/husband argued that the wife does not have an absolute right to pronounce Khula as opposed to the absolute right of the husband to pronounce talaq. It was also argued that a large section of Muslim women were resorting to Khula in derogation of the Sunnah and that the Court is not competent to decide on religious practices.

20. On the other hand, the wife's argument in the Review Petition was that Khula is a form of divorce where the acceptance of the husband to the demand for Khula constituted an essential element. Although Khula contemplates an out-of-Court resolution, it takes the form of faskh (a judicial divorce) when a woman seeks the intervention of a Qazi (Judge) on the husband's refusal to give consent.

21. The Kerala High Court disagreed with the argument of the review applicant (husband) that a wife must approach the Court upon the husband's refusal to accept the demand for Khula. The Court held that Khula may be invoked even if the husband refuses to give consent. The review was accordingly dismissed.

22. *Procedure 4*:

The Court's approach dwells on the interpretation of Muslim Personal Law within the framework of the Constitution of India. This approach was articulated in *Shayara Bano Vs. Union of India*[3] in the judgment delivered by Justice Kurian Joseph (Justice Nariman and Justice Lalit, concurring in the result). The Supreme Court reiterated the view taken in *Shamim Ara Vs. State of U.P*[4] , which held that a man cannot force a woman to remain married against her will. Therefore, the husband's refusal to the wife's demand for Khula divorce, being theologically wrong, would also be legally untenable.

The Points of Concurrence in the Four Approaches

23. For putting the four approaches in the context of judicial precedents, at the risk of some amount of repetition, it is important to summarize the views taken by the Courts regarding the procedure to be adopted for a Khula divorce. The decisions are given in chronological order, from the earliest to the most recent.

24. In *Masroor Ahmed Vs. State (NCT of Delhi),* the Delhi High Court suggested that where the matters can be settled privately, a person

[3] (2017) 9 SCC 1
[4] (2002) 7 SCC 518

only needs to consult a Mufti (Juris Consult) of his/her School to avail Khula. The Mufti will issue a Fatwa/advisory opinion based on the Shariat of his School. In this arrangement, the parties agree to treat the decision of the Mufti as final by putting an end to their marriage. However, if the matter cannot be resolved amicably in a private settlement and one of the parties carries the matter to Court, then a Qazi/Judge is required to deliver a Qaza (Judgment) based on the Shariat. While a Qaza is binding, a Fatwa is merely advisory. However, both must be based on the Shariat i.e., The Muslim Personal Law (Shariat) Application Act, 1937. The relevant part of the judgment is extracted below:

> *".....Islamic jurisprudence (fiqh) has developed from four roots (usul al-fiqh):- (1) The Quran; (2) The hadis or sunna; (3) Ijma; and (iv) Qiyas. Employing these usul al-fiqh, the ulema (the learned) conducted a scientific and systematic inquiry. This is known as the process of ijtihad. Through this process of ijtihad sprung out various schools of law each of which owed its existence to a renowned master. For example, the jurisprudence (fiqh) developed by Abu Hanifah and continued by his disciples came to be known as the Hanafi school. The Maliki school owed its origin to Malik b. Anas, the Shafie school to al-Shafii, the Hanbali school to Ibn-Hanbal and so on. These are the sunni schools. Similarly, there are shifa schools such as the Ithna Ashari, Jaffariya and Ismaili schools. In India, muslims are predominantly sunnis and, by and large, they follow hanafi school. The shias in India largely follow the Ithna Ashari School.*

> *In essence, the Shariat is a compendium of rules guiding the life of a Muslim from birth to death in all aspects of law, ethics and etiquette. These rules have been crystallized through the process of ijtihad employing the sophisticated jurisprudential techniques. The primary source is Quran."*

25. In *Juveria Abdul Majid Patni Vs. Atif Iqbal Masoori* (supra), the Supreme Court followed the view taken by the Delhi High Court in *Masroor Ahmed* and reiterated that the wife is required to propose dissolution of marriage to her husband if she does not want to continue with the marriage and takes the mode of Khula for dissolution of marriage. This proposal may or may not be accompanied by an offer to give something in return. The husband cannot refuse the wife's proposal for Khula and may only negotiate with the wife with regard to what the wife may offer to give in return. The Mufti gives his Fatwa/advisory decision based on the Shariat of his School and in case the parties approach the Court/Qazi through litigation, the Court/Qazi is then required to deliver a Qaza (Judgment) based upon the Shariat.

26. The Kerala High Court in *XXXXX Vs. XXXXX* (2021 SCC OnLine Ker 2054) held that the Quran entitles a Muslim wife to the right of Khula to annul her marriage without prescribing a procedure. This would indicate that fairness of procedure should be followed. The

Court opined that Khula is a no-fault divorce but its invocation without any attempt for reconciliation would be bad in law. Upon Review of the earlier judgment, the Kerala High Court in *XXXXX Vs. XXXXX* (AIR 2023 Ker 33), reaffirmed its earlier view and added that the nature of Khula is in the form of a permissible action to the Muslim wife who seeks to exercise the option of terminating her marriage. The husband does not have the right either to accept or repudiate the will expressed by the wife for dissolution of the marriage. Further, the husband cannot impose any contingencies for accepting the wife's proposal for divorce.

27. The Supreme Court in the recent judgment delivered on 04.02.2025 in *Shahjahan vs The State of Uttar Pradesh*[5] held that a Court of Qaza (Dar-ul-Qaza) does not have any legal recognition. The Supreme Court relied upon the earlier view taken in *Vishwa Lochan Madan vs. Union of India*[6], wherein it was held that decisions taken by religious functionaries is not binding on anyone including the person who had asked for the decision. In *Shahjahan* (supra), the Supreme Court reiterated that such an advisory decision/Fatwa does not have the force of law. It should be noted that the Madras High Court,

[5] 2025 LiveLaw SC 495
[6] (2014) 7 SCC 707

relying on *Vishwa Lochan Madan,* had taken a similar view in *Mohammed Rafi Vs. State of Tamil Nadu*[7].

28. The Constitution Bench of the Supreme Court in *Shayara Bano* (supra) reiterated the view taken in *Shamim Ara* (supra) that what is bad in the Quran cannot be good in Shariat in respect of talaq.

Conclusion from the Case law cited above

29. The consensus which emerges from the decisions is that Khula is a no-fault divorce initiated by the Muslim wife. Upon a demand for Khula, the husband does not have the option to refuse the demand save and except to negotiate the return of the dower (Mehr) or a part thereof. The husband however does not have the right to refuse Khula merely because the wife declines to return the dower or a part of it. Khula is, therefore, a non-confrontational form of divorce and one which is privately settled after the parties have made an attempt to preserve the marriage.

30. Approaching a Mufti for a Khulanama is not compulsory and does not reinforce the Khula as the Fatwa/advisory decision given by a Mufti is not legally enforceable in a Court of law. The aggrieved

[7] 2023 SCC OnLine Mad 471

party/husband may approach a Court/Qazi for adjudication on the status of the marriage consequent upon the wife seeking the Khula. The Court/Qazi is required to pronounce its view which becomes a binding judgment on the status of the marriage. The judgment/qaza pronounced by the Court is binding on the parties.

The Impugned Order of the Family Court dated 06.02.2024

31. In the present case, after considering the factual matrix, the Family Court formulated six legal requirements, which are set out below:

1) *The khula should be preceded by reconciliation attempts. efforts to sort out the differences between husband and wife.*
2) *The wife may offer some consideration to the husband to accept the divorce. Even if no consideration is offered by the wife, it's a valid khula.*
3) *For a valid khula, the husband's concurrence is not necessary.*
4) *If the husband does not agree to the khula, the wife can approach the mufti/khazi/or other religious functionaries and obtain khula nama from them.*
5) *If the said khula nama is not acceptable to the husband, he can file a case in the Family court against the same.*
6) *The family court then decides the validity of the khula based on the points 1 to 3.*

32. As stated above, the Family Court recorded the undisputed facts including that the respondent No.1 demanded a Khula divorce from

the appellant on multiple occasions despite efforts made by the respondent No.2 for a reconciliation between the respondent No.1 and the appellant. None of these findings have been disputed by the appellant. After considering the facts and the relevant law on the subject, the Family Court concluded that the Fatwa/advisory opinion given by the respondent No.2 was correct. Therefore, the Khulanama granted by the respondent No.2 did not warrant interference.

33. Although Khula divorce is recognized as a private non-confrontational dissolution of marriage, the wife has the option to approach the Qazi for a Khulanama (Certificate of Divorce) if the husband refuses to grant the Khula. The husband, in turn, is entitled to approach the Court if he disputes the demand for Khula or the Khulanama. The Family Court, in essence provides a forum (the only forum) to both the parties to ventilate their grievances in relation to the status of the marriage. The requirements formulated by the Family Court paraphrases the essentials for a Khula divorce for attaining finality.

34. Notably, the appellant has not challenged the formulation of requirements by the Family Court nor the conclusion that the marriage of the appellant and the respondent No.1 is no longer

subsisting. The only grievance of the appellant is that the respondent No.2 lacked jurisdiction to issue the Fatwa or the Khulanama in favour of the respondent No.1. This would be evident from the prayers of the appellant before the Family Court, which are reproduced below:

> *"RELIEF(S): It is therefore prayed that this Hon'ble Court be pleased to:*
>
> *(i) Pass a Judgment, Decree or Order declaring the Judgment dated 05.10.2020 passed by the respondent No.2 dissolving the marriage by and between the petitioner and the respondent No.1 as was performed as per the tenants of Mohammadan Law on 1st day of June 2012 by way of QULA as NULL AND VOID AB-INITIO AND WITHOUT ANY AUTHORITY OR FORCE OF LAW; and consequently declare the petitioner and the respondent No.1 is still Husband and Wife.*
>
> (ii) *Consequentially restrain the respondent No.1 from claiming to be no more the wife of this petitioner on the basis of the so-called Judgment/Order respondent No.2 on 05-10-2020."*

35. The second prayer is couched in vague and negative terms. Simply put, the appellant sought a prohibition on the respondent No.1 from acting upon or giving effect to the order passed by the respondent No.2 on 05.10.2020 dissolving the marriage between the appellant and the respondent No.1, as well as the Khulanama. The second relief sought for by the appellant clearly indicates that the appellant had specifically requested the intervention of the Family Court to decide

the status of his marriage with the respondent No.1 i.e., whether the marriage was subsisting after the Khulanama issued by the respondent No.2.

36. The impugned order contains a detailed exposition of the law on the subject and expresses the unequivocal view that the order passed by the respondent No.2 was correct. Hence, once the Family Court pronounced its decision, the appellant is required to plead and show a factual or legal error warranting interference by this Court. The appellant has not shown any such infirmity.

Conclusion

37. We do not consider it necessary to dwell on the facts prior to the respondent No.1 demanding Khula divorce from the appellant; that is, the cause of marital discord between the parties. These facts are not relevant for the adjudication, which is whether the appellant's challenge to the Khulanama was legal and whether the appellant's O.P. was dismissed on correct legal principles.

38. We are of the considered view that obtaining a Khulanama (Certificate of dissolution of marriage) from a Mufti or a Dar-ul-Qaza is not necessary for putting the seal of finality on the dissolution of the

marriage since the opinion given by a Mufti is advisory in nature. What however is important is the transition of the private dispute from the personal sphere to the Court on the parties seeking a decision on the wife's demand for Khula. This means that the wife's proposal for Khula takes immediate effect upon the demand being made, provided the matter remains within the private, non-adjudicatory realm of the parties.

39. Since the wife's right to demand Khula is absolute and does not have to be predicated on a cause or acceptance of the demand by the husband, the only role of a Court of law is to put a judicial stamp on the termination of the marriage, which then becomes binding on both parties.

40. The Family Court is simply to ascertain whether the demand of Khula is valid upon an effective attempt to reconcile the differences between the parties; or any offer by the wife to return the dower. The enquiry should be summary in nature without long-drawn out evidence – adjudication: *Asbi.K.N. Vs. Hashim.M.U.*[8].

41. Viewed in this context, the appellant's prayer before the Family Court for declaring the judgment of the respondent No.2, which issued

[8] 2021 SCC OnLine Ker 3945

the Khulanama to the respondent No.1, as null and void was unnecessary and superfluous.

42. We, therefore, find the O.P. filed by the appellant to be misconceived and contrary to the law on the subject. Thus, although we agree with the impugned order dismissing the O.P. filed by the appellant, we find the fourth and fifth requirements formulated by the Family Court on the powers conferred upon a Mufti for issuing a Khulanama, to be contrary to the law laid down by the Courts.

43. We confine our opinion to the matter before us although learned counsel for the respondent has urged that the collective fate of muslim women, post-demand for Khula, is consigned to limbo and a long and uncertain wait for resolution. We are confident that the law pronounced by the Courts shall be given their due weightage by all the stakeholders in easing the plight of muslim women in their respective situations.

44. In conclusion, the impugned order dated 06.02.2024 passed by the Family Court is found to be correct, insofar as it pertains to the rejection of the O.P. filed by the appellant/husband. The appellant has failed to make out a case for interference in the impugned order, save and except to the extent that a Mufti/Religious Functionary does

not have the authority to certify a Khula Divorce. Subject to this clarification, we are in agreement with all other aspects of the impugned order.

45. F.C.A.No.75 of 2024 is accordingly dismissed. All connected applications are disposed of. Interim orders, if any, are vacated. There shall be no order as to costs.

MOUSHUMI BHATTACHARYA, J

B.R.MADHUSUDHAN RAO, J

Date: 24.06.2025
Note: Mark L.R. Copy.
(B/o.) *VA/BMS*