

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

TUESDAY, THE 12<sup>TH</sup> DAY OF OCTOBER 2021 / 20TH ASWINA, 1943

OP (FC) NO. 476 OF 2021

OP 387/2021 OF FAMILY COURT, MUVATTUPUZHA, ERNAKULAM

**PETITIONER/RESPONDENT:**

ASBI.K.N, D/O NASSER K.P.  
AGED 29 YEARS, KUNNAPILLI HOUSE, PEZHAKKAPPILLY  
PO, MULAVOOR VILLAGE, MUVATTUPUZHA PIN 686673

BY ADVS.C.DILIP  
ANUSHKA VIJAYAKUMAR  
P.N.VIJAYAN NAIR  
R.PRADEEP

**RESPONDENT/PETITIONER:**

HASHIM.M.U, S/O UMMERKHAN M.A. @ UMMER, AGED 33  
YEARS, MUKKANNIYIL HOUSE, KALAMBOOR, ENANALLOOR  
P.O, ENANELLOOR VILLAGE, MUVATTUPUZHA TALUK, NOW  
AT ZONE - 27, STREET-220, BUILDING NO-45, DOHA  
QATAR, REPRESENTED BY POWER OF ATTORNEY HOLDER  
MR.UMMERKHAN, M.A. @ UMMER, S/O ABDUL RAHMAN, AGED  
64 YEARS, MUKKANNIYIL HOUSE, KALAMBOOR, ENANALLOOR  
PO, ENANELLOOR VILLAGE, MUVATTUPUZHA TALUK 686673.

BY ADVS.ALEXANDER JOSEPH  
AKHILASREE BHASKARAN

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON  
12.10.2021, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

"C.R."

**J U D G M E N T**

Dated this the 12<sup>th</sup> day of October, 2021

**Kauser Edappagath, J.**

The scope and nature of enquiry to be undertaken by the Family Court in a petition filed u/s 7(d) of the Family Courts Act, 1984 (for short, 'the Act') to endorse an extrajudicial divorce under the Muslim Personal Law and to declare the marital status of the parties to the marriage has arisen for consideration in this original petition.

2. The petitioner was the wife of the respondent. The parties are Muslims. Their marriage was solemnized on 4/5/2015. A girl child was born in the wedlock on 10/2/2018. The respondent divorced the petitioner by pronouncing *talaq*. The pleadings would show the pronouncement of *talaq* was in accordance with Muslim Personal Law. The third pronouncement was made on 28/12/2019. It was communicated to the petitioner by registered post. The petitioner disputed the legal validity of the pronouncement of *talaq* and filed OP No.913/2019 at the Family Court, Muvattupuzha (for short, 'the Court below') for

-:3:-

restitution of conjugal rights. Thereafter the respondent filed original petition at the Court below as OP No.387/2021 to declare the marital status of the petitioner and the respondent on the ground that the marriage has been dissolved by pronouncement of *talaq*. The petitioner appeared at the Court below on 13/9/2021. The court below adjourned the original petition to 10/11/2021. The respondent filed IA No.6/2021 to advance hear the case and it was advanced to 25/9/2021. On that day, the case was adjourned for cross-examination to 28/9/2021 and it was taken for judgment to 30/9/2021. It was at that juncture the petitioner preferred the above original petition contending that she was not given proper opportunity by the Court below to contest the original petition on merits.

3. We have heard Sri.C.Dilip, the learned counsel for the petitioner and the Sri.Alexander Joseph, the learned counsel for the respondent.

4. The Division Bench of this Court in ***X and Others v. Y and Others*** (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

- : 4 : -

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

-:5:-

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

-:6:-

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 declaration 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

-:7:-

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.

-:8:-

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

6. Coming to the facts of the case, it is seen that intimation given to the petitioner about the pronouncement of *talaq* has been produced by the respondent. The Court below shall record the statement of the parties, if necessary, without further delay and pass final orders in the light of the observations made in this judgment. The original petition is disposed of accordingly.

Registry is directed to forward a copy of this judgment to all the Family Courts in the State.

Sd/-

**A.MUHAMED MUSTAQUE**

**JUDGE**

Sd/-

**DR. KAUSER EDAPPAGATH**

**JUDGE**

**Rp**



**APPENDIX**

PETITIONER'S EXHIBITS

EXHIBIT P1	TRUE PHOTO COPY OF THE ORIGINAL PETITION NO.387/2021 DATED 29.6.2021 ON THE FILE OF FAMILY COURT, MUVATTUPUZHA.
EXHIBIT P2	TRUE PHOTOCOPY OF IA NO.6/2021 IN OP NO.387/2021 DATED 22.09.2021 ON THE FILE OF FAMILY COURT, MUVATTUPUZHA.
EXHIBIT P3	TRUE COPY OF PROCEEDINGS OF OP NO.387/2021 ON THE FILE OF FAMILY COURT, MUVATTUPUZHA, EXTRACTED FROM THE OFFICIAL WEBSITE OF DISTRICT COURT.