JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3153 of 2022
Ali Ejaz
Versus
Arbitration Council and another

Date of Hearing:	12.09.2022
Petitioner by:	Ms. Natalya Kamal, Advocate
Respondents by:	M/s Abid Hussain Chaudhary and Mian Nadeem Aziz Jatala, Advocates

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MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Ali Ejaz, impugns the order dated 15.08.2022 passed by the Chairman, Arbitration Council, Islamabad whereby his application for revocation of divorce had been held to be not maintainable.

2. The record shows that the petitioner and respondent No.2, Raha Ali, got married on 02.08.2009. They have two daughters. The older daughter is ten years old and the younger one is four. Since the matrimonial relationship between the couple became strained, they executed a deed for mutual divorce on 26.05.2022. Subsequently on 30.05.2022, respondent No.2 submitted an application to the Chairman, Arbitration Council for the issuance of a certificate for the effectiveness of divorce. On 22.06.2022, the Chairman, Arbitration Council recorded the respective statements of the petitioner and respondent No.2, which show that the deed for mutual divorce was executed with the consent of both parties and that they did not want reconciliation. Furthermore, they requested that on the expiry of the *Iddat* period, a certificate for the effectiveness of divorce be issued.

3. On 15.08.2022, the petitioner filed an application before the Chairman, Arbitration Council for the termination of the proceedings on the basis of the revocation of the deed for mutual divorce. On the same day, the said application was turned down by the Chairman, Arbitration Council on the ground that the same was not maintainable.

4. The order dated 15.08.2022 passed by the Chairman, Arbitration Council has been assailed by the petitioner in the instant writ petition.

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The petitioner has sought a declaration to the effect that the proceedings before the Chairman, Arbitration Council are liable to be terminated on the basis of the revocation of the deed for mutual divorce.

5. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that regardless of the form of divorce, it was the inviolable right of the husband to revoke the divorce prior to the expiration of the *Iddat* period; that Section 7(3) of the West Pakistan Muslim Family Laws Ordinance, 1961 (“MFLO”) provides *inter alia* that a divorce shall not be effective until the expiration of ninety days from the day on which notice of pronouncement of divorce is delivered to the Chairman, Arbitration Council unless such pronouncement is revoked; that the petitioner had revoked the divorce prior to the expiration of ninety days from the day on which notice of the pronouncement of divorce by way of execution of the deed for mutual divorce was delivered to the Chairman, Arbitration Council; that the provisions of the MFLO do not place any fetter on the husband from revoking the divorce prior to the expiration of ninety days; that perusal of the deed for mutual divorce dated 26.05.2022 shows that it was one sided and not mutual; that the said deed does not set out the reciprocal obligations on the petitioner and respondent No.2; that the functions of the Chairman, Arbitration Council are ministerial in nature and it had no power to interpret the provisions of the deed for mutual divorce; and that the use of the word ‘*mutual’* in the said deed dated 26.05.2022 ought to be treated as obsolete and surplusage. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

6. On the other hand, learned counsel for the Chairman, Arbitration Council / respondent No.1 submitted that on 26.05.2022, the petitioner and respondent No.2 had executed the deed for mutual divorce to bring an immediate end to their matrimonial relationship; that the said deed is signed by both the parties; that both the parties appeared before the Chairman, Arbitration Council and recorded their respective statements to the effect that they had mutually decided to end their marriage and that they had no intention to reconcile their differences; and that it is

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obligatory on the Chairman, Arbitration Council to issue a certificate for the effectiveness of divorce on the expiration of ninety days from the date on which the notice of the mutual divorce was delivered. Learned counsel for the Chairman, Arbitration Council / respondent No.1 prayed for the writ petition to be dismissed.

7. Learned counsel for respondent No.2 adopted the arguments of the learned counsel for respondent No.1 and submitted that the provisions of Section 7 of the MFLO were not applicable to a case of mutual divorce / *Mubaraat*. Learned counsel for respondent No.2 also prayed for the writ petition to be dismissed.

8. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 4 above and need not be recapitulated.

9. The execution of the deed for mutual divorce dated 26.05.2022 between the petitioner and respondent No.2 is not disputed. It is also not disputed that on 30.05.2022, respondent No.2 submitted an application to the Chairman, Arbitration Council for the issuance of a certificate for the effectiveness of divorce. The petitioner asserts that he revoked the deed of mutual divorce and applied to the Chairman, Arbitration Council, to terminate the proceedings for the issuance of a certificate of effectiveness of divorce. The vital question that needs to be answered is whether a husband can unilaterally revoke a deed for mutual divorce executed by him and his wife.

10. *Mubaraat* is an extra-judicial form of joint divorce applicable to a Muslim husband and wife. It is a dissolution of marriage by mutual consent of the spouses. The law does not insist on a particular form in which such mutual agreement is to be made. What is essential is the meeting of the minds of the parties to such an agreement. When both the parties enter into *Mubaraat*, all mutual rights and obligations come to an end. It is an irrevocable divorce. The offer for a divorce through *Mubaraat* may proceed from the wife or from the husband but once it is accepted, the dissolution of marriage is complete and irrevocable. In

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Ameer Ali's Commentaries on Muhammadan Law (Fifth Edition), *Mubaraat* is explained as *"mutual discharge from the marriage tie."* Furthermore, it is stated that when both the parties entered into *Mubaraat*, all matrimonial rights that they possess against each other fall to the ground. In Muhammadan Law by D.F. Mulla (Eighth Edition), it is explained in paragraph 319(3) that *Mubaraat* is a dissolution of marriage by agreement, and that when the aversion between a husband and wife is mutual and both the sides desire a separation, the transaction is called *Mubaraat*. It is also stated that once the offer for the dissolution of marriage made either by the husband or wife is accepted by the other, the dissolution is complete and it operates as *Talaq-e-Bain.* It is not disputed that in case of a *Talaq-e-Bain,* there is no question of reconciliation. Such *Talaq* becomes effective the moment it is pronounced. In the case of Roheela Yasmin Vs. Neelofar Hassan (2014 YLR 2315), the Hon'ble High Court of Sindh held that *Talaq-e-Bain* operates as an irrevocable divorce and takes effect irrespective of *Iddat* and that it leads to a definite dissolution of marriage without reservation of the power of retraction. Law to the said effect has also been laid down in the judgment reported as Mst. Zarina Begum Vs. Major Aziz ul Haq (2006 CLC 1525).

11. It is no longer *res integra* that the mutual revocation of the contract of marriage is known as *Mubaraat* and the same was irrevocable from the date of its execution. Reference in this regard may be made to the following case laws:-

(i) In the case of Mst. Ambreen Shah Vs. Chairman, Union (Arbitration) Council (2002 MLD 778), the Hon'ble Lahore High Court held *inter alia* that where the pronouncement of divorce is in the form of *Mubaraat* (i.e., agreement to dissolve marriage with the consent of both parties), one party cannot unilaterally revive the contract of marriage without the consent of the other. Furthermore, it was held that where a contract of marriage is rescinded with the agreement of the parties, one party cannot unilaterally revoke the rescission. For the purposes of clarity, paragraph 6 of the said report is reproduced herein below:-

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> ***"6. It is obvious from the document of Talaq that it is not a unilateral pronouncement, rather it is a Talaq in the form of Mubaraat i.e. which has been entered into by the consent of both the parties. In this case it is a mutual revocation of the contract entered into at the time of Nikah and since both the parties have mutually revoked the contract, one party cannot unilaterally revive the contract without the consent of the other. Under section 62 of the Contract Act if a party to a contract agreed to substitute a new contract for it, or to rescind or alter it the original contract need not, to be performed. Therefore, the Nikah also being a contract and both the parties having agreed to rescind from it, the contract need not to be performed and one party cannot unilaterally revoke the rescission. The case-law relied upon by the learned counsel for the petitioner is fully applicable to the present controversy wherein it was held that a Talaq in the form of "Mubaraat" which is from in which the present Talaq was executed is irrevocable from the date of its execution and the provisions of section 7 of MFLO would be inapplicable to such a case. It has been further held that if the party to Talaq applies for a certificate from the Chairman regarding the effectiveness of Talaq, he would have no option in such case but to declare the Talaq as effective. It has been further held that an application for cancellation or revocation to the Chairman and issuance of cancellation certificate was not competent and was held to be without lawful authority."***

(ii) In the case of Muhammad Shahbaz Ahmad Vs. Sher Muhammad (1987 CLC 1496), the Hon'ble Lahore High Court, after making reference to a number of judicial precedents, held that divorce which was in the nature of *Mubaraat* becomes irrevocable from the date of its execution and the provision for revocation of divorce contained in Section 7 of the MFLO was inapplicable to such a divorce.

(iii) In the case of Mst. Shamshad Mai Vs. Chairman, Union Council (2000 MLD 173), it was held that if the divorce is with the mutual consent of the husband and wife and on the basis of *Mubaraat,* neither party could retract or withdraw the divorce nor did the Chairman, Union Council have any authority to adjudicate upon the validity of the divorce. Furthermore, it was also held that the Chairman, Union Council was bound to issue a certificate for the effectiveness of divorce and had no power in law to entertain a notice for the withdrawal of divorce or to start proceedings on the basis thereof. Reference in the said judgment was made to the law laid down in the cases of Muhammad Shahbaz Ahmad Vs. Sher

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Muhammad and others (1987 law Notes (Lahore) 418), Prince Aiysha Yasmeen Abbasi Vs. Maqbool Hussain Qureshi (PLD 1979 Lahore 241) and Abdul Rashid Vs. S.H.O. Police Station Sadar Rehnala (1995 Law Notes (Lahore) 366), wherein it was held that *Talaq* in the nature of *Mubaraat* through mutual agreement of husband and wife is final and the provision for revocation contained in Section 7 of the MFLO would not be applicable and the husband has no authority to revoke the divorce.

(iv) In the case of Dr. Iftikhar Ahmad Minhas Vs. Mst. Aisha Mahmood (1997 CLC 1985), it was held *inter alia* that a divorce having been executed by the parties through mutual agreement was *"Talaq Mubaraat"* and irrevocable. Furthermore, it was held that in case of a divorce on the basis of an agreement, Section 8 of the MFLO would be applicable and not Section 7. It was clarified that Section 7 of the MFLO deals only with divorce by a husband and that other forms of divorce recognized by Islam are not covered by Section 7.

(v) In the case of Saleem Ahmad Vs. Government of Pakistan (PLD 2014 Federal Shariat Court 43), it was held as follows:-

> ***"19. Here it is pertinent to point out that 'Khula' and 'Mubaraat' operate as a single, irrevocable divorce. Even thereafter both the spouses can contract fresh marriage with mutual consent of course if they want to, without any intermediary marriage of the wife with another person as is required in the case when a husband pronounces divorce for the third time. However, Iddat shall be incumbent on the wife if she wants to contract marriage with some one else."***

12. True, Section 7(3) of the MFLO mandates that *talaq*, unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice of the pronouncement of *talaq* in any form whatsoever is delivered to the Chairman, but in the case of Dr. Iftikhar Ahmad Minhas Vs. Mst. Aisha Mahmood (*supra*), it was held that Section 7 of the MFLO deals only with the divorce by the husband and the case of other forms of divorce recognized by Islam would not be covered by it. Now, Section 8 of the MFLO provides *inter alia* that *"where any of the parties to a marriage wishes to dissolve the marriage otherwise than by talaq, the provisions*

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of section 7 shall, mutatis mutandis and so far as applicable, apply." **In the case of Dr. Iftikhar Ahmad Minhas Vs. Mst. Aisha Mahmood (*supra*), it was also explained that the words *"so far as applicable"* in Section 8 would not make the requirements of Section 7 applicable to a mutual divorce / *Mubaraat*. Divorce as *Mubaraat* becomes effective immediately upon its execution, unlike *Talaq-e-Ahsan* which becomes irrevocable on expiry of the *Iddat* period, and *Talaq-e-Hassan* which becomes irrevocable on the third pronouncement irrespective of the *Iddat* period. As mentioned above, *Talaq-e-Bain,* like *Mubaraat,* become irrevocable immediately on its pronouncement irrespective of *Iddat*.**

13. The marriage contract / *Nikahnama* dated 02.08.2009 was executed between the petitioner and respondent No.2 with mutual consent and so was the deed for mutual divorce dated 26.05.2022. The latter bilateral contract between the petitioner and respondent No.2 could not be revoked or nullified by the petitioner unilaterally. Had the divorce been pronounced by the petitioner unilaterally either in the form of *Talaq-e-Ahsan* or *Talaq-e-Hassan,* he could have revoked or retracted the same prior to becoming irrevocable.

14. As regards the argument of the learned counsel for the petitioner that the mutual divorce deed dated 26.05.2022 is structured such that it cannot be categorized as *Mubaraat* or an agreement for the dissolution of marriage with the consent of both the parties, suffice it to say that the law does not prescribe a form or manner in which such an agreement is to be structured. It only needs to be seen whether the essential requirement of the parties agreeing to the dissolution of marriage is present or not. In the case at hand, the mutual divorce deed in its recital explicitly states that *"the parties have decided mutually that it is impossible for them to sustain relationship as husband and wife and no alternate [has] been left with parties except to mutual consent divorce."* It is also stated that henceforth respondent No.2 stands under no obligation to the petitioner as a wife and that she can contract a second marriage after the expiry of the *Iddat* period. The pronouncement of divorce three times is also apparent in the said mutual divorce deed.

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More importantly, the pronouncement of such divorce has been accepted by respondent No.2 and the deed for mutual divorce bears her signature. The said deed is attested by two male witnesses.

15. Although there is no ambiguity in the said mutual divorce deed, it is necessary to mention that after its execution, the petitioner appeared before the Chairman, Arbitration Council on 22.06.2022 and recorded his statement to the effect that the deed for mutual divorce had been executed between the petitioner and respondent No.2 with mutual consent. This statement ought to have eliminated any doubt in the mind of the petitioner that upon the execution of the said deed, the marriage bond between the petitioner and respondent No.2 had ceased to exist and the question of the petitioner revoking the said deed did not arise. The order dated 15.08.2022 of the Chairman, Arbitration Council holding that the petitioner's application for the revocation of the deed for mutual divorce was not maintainable was in consonance with the law referred to herein above, and warrants no interference.

16. In view of the above, the instant petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN OPEN COURT ON 11/10/2022

(JUDGE)

Qamar Khan* ***APPROVED FOR REPORTING***

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