JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.4163 of 2022
Muneeza Fatima
Versus
Chairman Arbitration Council Islamabad and another

Date of Hearing:	09.02.2023
Petitioner by:	M/s Sufyan Haider and Muzammil Hussain Shad, Advocates.
Respondents by:	Mr. Abid Hussain Chaudhary, Advocate for respondent No.1. M/s Huma Tariq Sheikh and Atif Majeed, Advocates for respondent No.2.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition the petitioner, Muneeza Fatima, impugns the certificate dated 20.10.2022 for the effectiveness of divorce issued by the Chairman Arbitration Council, Islamabad.

2. The facts essential for the disposal of the instant petition are that the petitioner and respondent No.2, Muhammad Umer Hameed Shah got married on 09.08.2008. They were blessed with one daughter, who is now 12 years old and one son, who is 11 years old. The couple lived in the United Arab Emirates (**"U.A.E."**).

3. On 14.07.2022, respondent No.2 executed an authority letter in favour of his father authorizing him to send the divorce deed signed by respondent No.2 to the petitioner. This authority letter was executed in the U.A.E. and is attested by the Consulate General of Pakistan, Dubai, U.A.E. Respondent No.2's father presented the divorce deed dated 14.07.2022 before the Arbitration Council, Islamabad along with an application for the issuance of a divorce effectiveness certificate. In the said application, it is mentioned that the divorce deed had been delivered to the petitioner and a copy of the courier receipt had also been attached with the said application.

4. The petitioner had authorized her father, Masroor Ahmad Khan, to appear before the Arbitration Council and to record any statement or give any evidence in the proceedings.

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5. On 20.10.2022, the Arbitration Council issued the divorce effectiveness certificate. The said certificate has been assailed by the petitioner in the instant writ petition, which was filed a week after the issuance of the said certificate.

6. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that both the petitioner and respondent No.2 resided in the U.A.E.; that the divorce deed had not been served on the petitioner in Pakistan; that the said deed was sent on her father's address while the petitioner was in U.A.E.; that instead of sending a copy of the divorce deed to the Arbitration Council at Islamabad, respondent No.2 ought to have sent the divorce deed pursuant to the notification (SRO No.1086(K)61), dated 09.11.1961 to the Pakistan embassy in U.A.E.; that a Court in the U.A.E. had nullified the divorce between the petitioner and respondent No.2 and had permitted the latter to live at her matrimonial abode in the U.A.E.; and that the proceedings before the Arbitration Council at Islamabad are liable to be set-aside due to procedural irregularities. In support of his submissions, learned counsel for the petitioner placed reliance on the law laid down by the Hon'ble Lahore High Court in the judgments reported as *PLD 2019 Lahore 285* and *PLD 2020 Lahore 679*.

7. On the other hand, learned counsel for the Chairman Arbitration Council submitted that on 24.08.2022, the petitioner's father tendered appearance before the Arbitration Council; that the certificate of the effectiveness of divorce was issued ninety days of the expiry from 14.07.2022; that both the parties were represented in the proceedings before the Arbitration Council by their respective fathers; that although respondent No.2 did not appear before the Arbitration Council but the Chairman, Arbitration Council satisfied himself about respondent No.2's intention not to reconcile with the petitioner by taking his statement on video link; that the notification (SRO No.1086(K)61), dated 09.11.1961 had been declared *ultra vires* the provisions of the Muslim Family Law Ordinance, 1961 ("M.F.L.O.") by this Court vide judgment reported as Muhammad Akram Nadeem Vs. Chairman, Arbitration Council (2021 CLC 1947); that intra Court appeal No.310/2021 against the said judgment has been dismissed by this

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Court; and that the proceedings before the Arbitration Council did not suffer from any legal infirmity or procedural irregularity.

8. Learned counsel for respondent No.2 submitted that the *nikahnama* dated 09.08.2008 is registered at Islamabad; that both the petitioner and respondent No.2 are Pakistani nationals and have been issued national identity cards; that the contesting parties had appointed their fathers as their attorneys with authorizations to appear before the Arbitration Council, Islamabad; that the petitioner had knowledge about the issuance of the divorce deed which she issued an authority letter in favour of her father; that at no material stage after the issuance of the divorce deed did respondent No.2 want to reconcile with the petitioner; and that the relations between the said parties have broken down irretrievably and they are not in a position to live together within the bounds prescribed by the injunctions of Islam. Learned counsel for respondent No.2 prayed for the writ petition to be dismissed.

9. 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 5 above and need not be recapitulated.

10. The primary ground on which the petitioner seeks the setting aside of the certificate dated 20.10.2022 for the effectiveness of divorce is that notice of the divorce in terms of Section 7(1) of the M.F.L.O. had not been issued to the Pakistan Consulate in the U.A.E. in terms of notification (SRO No.1086(K)61), dated 09.11.1961 but at the address of the petitioner's father in Pakistan when the petitioner was in the U.A.E. It is not disputed that the *nikahnama* dated 09.08.2008 was registered at Islamabad and both the contesting parties are Muslims and Pakistani nationals. The petitioner cannot deny knowledge of the execution of the divorce deed dated 14.07.2022 as she had appointed her father as an attorney to appear on her behalf in the proceedings before the Arbitration Council. Her father had appeared before the Arbitration Council on 24.08.2022. It is on expiry of ninety days from date of the divorce deed dated 14.07.2022 that the certificate of effectiveness of divorce was issued by the Arbitration Council after

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satisfying itself that respondent No.2 does not want to reconcile with the petitioner.

11. The record shows that respondent No.2's views about whether or not he wanted to reconcile with the petitioner were obtained through video link. It is only after that respondent No.2 declined to reconcile with the petitioner that the Arbitration Council issued the said certificate.

12. The petitioner's reliance on the law laid down by the Hon'ble Lahore High Court in the judgments reported as ***PLD 2019 Lahore 285*** and ***PLD 2020 Lahore 679*** are not of any help to her case since the sole ground on which the divorce certificate in the said judgments had been set-aside was that the notice of divorce under Section 7(1) of the M.F.L.O. had not been issued to the relevant diplomatic mission of Pakistan in the country where the couple resided in terms of the notification (SRO No.1086(K)61), dated 09.11.1961. Since the said notification has been declared *ultra vires* the provisions of the M.F.L.O. by this Court vide judgment reported as Muhammad Akram Nadeem Vs. Chairman, Arbitration Council (*supra*), the said ground agitated by the learned counsel for the petitioner is spurned. Furthermore, Section 1(2) of the M.F.L.O. provides that it extends to the whole of Pakistan, and applies to all Muslim citizens of Pakistan wherever they may be. The *nikahnama* dated 09.08.2008 was registered at Islamabad. The petitioner cannot deny knowledge of the issuance of the divorce deed since she had appointed her father as an attorney through an undated letter, which is annexed at page 34 of this petition. This letter was produced before the Arbitration Council on 21.09.2022. The certificate of effectiveness of divorce was not issued in haste but more than ninety days after notice of the divorce had been given by respondent No.2, through his father, to the Arbitration Council. Therefore, the issuance of the certificate for effectiveness of divorce is in conformity with the requirements of Section 7(3) of the M.F.L.O.

13. As regards the reliance by the petitioner on an order dated 07.10.2022 passed by a Court in the U.A.E. to permit the petitioner to live at her matrimonial abode in U.A.E., suffice it to say that the said order had been challenged by respondent No.2 and the same has

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already been set-aside by a Superior Court in the U.A.E. through order dated 12.01.2023.

14. In view of the above, I do not find any merit in the instant petition, which is accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 16.02.2023.

(JUDGE)

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