

Amendment in Rule 4 of W P Family Courts Rules, 1965

Mr. Saadat Ali Khan, Secretary, Union Council Langri, Tehsil Jand, District Attock, has moved a complaint to the Hon'able Chief Justice of Pakistan and has proposed changes for making provision/direction to the Family Court for forwarding the decrees of dissolution of marriage to the concerned Union Council so that a certificate for confirmation of the dissolution of marriage can be issued.

The applicant has moved application stating therein that a woman at the time of second marriage is required a certificate of dissolution of marriage by way of Khula by the Nikah Registrar in order to make the entries in the relevant column of the Nikah Nama, otherwise without this certificate, the Nikah Registrar shows his inability to perform Nikah.

It may be mentioned that after dissolution of marriage by way of Khula, the court issues decree for the same which becomes effective after passing of ninety days. After the said period, the divorced woman can contract second marriage, but the Nikah Registrar in order to fulfill the requirement of relevant column of the Nikah Nama insists for the production of certificate of confirmation to be issued from the concerned Union Council. Thus, she has to produce the same only after getting it from the concerned Union Council. But unless the decree is forwarded to the Union Council it cannot issue the same. This happens because most of the time the address of the Union Council is not given in the plaint. This problem can be resolved in two ways:

1. The Family Court should forward the decree of dissolution to the concerned Union Council; or
2. The women after getting decree should submit/forward the same to the Union Council.

So after getting the decree in both cases, the record of Union Council would be maintained, updated and the necessary proceedings would be initiated accordingly and the relevant certificate can be issued.

Since the provision is already existing in sub-section (2) of section 21 of the Family Courts Act, 1964 (XXXV of 1964), according to which the Family Court is under obligation to send by registered post within seven days of passing such decree, a

certified copy of the same to appropriate Chairman whereupon the Chairman would proceed as if he had received intimation of Talaq required to be given under section 7 of the Muslim Family Laws Ordinance, 1961. Period of ninety days after which decree would be effective would start from the date the certified copy was sent to the Chairman by Court. In case of dissolution of marriage through Family Court such decree was a substitute for pronouncement of divorce. The relevant section reads as under:-

Section 21. Provisions of Muslim Family Laws Ordinance to be applicable. – (1) Nothing in this Act

shall be deemed to affect any of the provisions of the Muslim Family Laws Ordinance, 1961, or the rules framed there under and the provisions of sections 7, 8, 9, and 10 of the said Ordinance shall be applicable to any decree for the dissolution of marriage solemnized under the Muslim Law, maintenance or dower, by a Family Court.

(2) Where a Family Court passes decree for the dissolution of a marriage solemnized under the Muslim Law, the Court shall send by registered post within seven days of passing such decree a certified copy of the same to the appropriate Chairman referred to in section 7 of the Muslim Family Laws Ordinance, 1961 and upon receipt of such copy, the Chairman shall proceed as if he had received an intimation of Talaq required to be given under the said Ordinance.

(3) Notwithstanding anything to the contrary contained in any other law, a decree for dissolution of marriage solemnized under the Muslim Law shall---

(a) not be effective until the expiration of ninety days from the day on which a copy thereof has been sent under sub-section (2) to the Chairman; and

(b) be of no effect if within the period specified in clause (a) a reconciliation has been effected between the parties in accordance with the provisions of the Muslim Family laws Ordinance, 1961.

According to above provisions, the Family Court is already empowered to send the copy of decree of dissolution of

marriage, however, strict compliance is required on behalf of the Courts, as practically, it has been observed that the Family Courts do not follow this provision which creates legal complications for the parties and they are face with frivolous litigation.

In this regard observations have already been made by the High Court which are available, in a judgment in the case of Mst. Manzoor v Allah Wasaya PLD-1973, Baghdadad-ul-Jadid 36 as under:-

“Sub-section (3) of section 21 of the West Pakistan Family Courts Act provides that a decree for dissolution of marriage shall not be effective until the expiration of ninety days, from the date when the copy of the decree is sent to the Chairman under sub-section (2) and will be completely ineffective if reconciliation has been effected between the parties in accordance with the provisions of section 7 (4) of the Ordinance. This is clearly a reiteration of the provision. Evidently it has been added merely to emphases that the period of ninety days after which the decree will be effective, will start not from the date of notice. If any, given by any party to the suit, to the Chairman but from the date the certified copy is sent to the Chairman by the Court. The intention of Legislature that under section 8 of the Ordinance notice to Chairman is to follow the Court’s decree, becomes amply clear from section 21 (3) of the Family Courts Act”.

In the Case of Khadim v Judge, Family Court, Samundari, MLD-1991, Lahore 1250, the Court observed as under:

“Learned counsel for the petitioner next placed reliance on Mst. Manzoor v Allah Wasaya etc. PLD 1973 BJ 36 to contend that notwithstanding the passing of the decree by the judge, Family Court, the Talaq would become affective only after notice of Talaq has been given by the petitioner to the Chairman and period of three months provided for bringing out the conciliation between the parties has expired. It is submitted that no notice has been given till now; therefore, the Talaq has not become effective, under section 7 of the Muslim Family Laws Ordinance, 1961. The contention has no force. Section 21 (2) of the West Pakistan Family Court Act, 1964 (XXXV of 1964) provides that where a Family Court passes decree for the dissolution of a marriage solemnized under the Muslim Law, the Court shall send by registered post within seven days of passing such decree a certified copy of the same to the appropriate Chairman

referred to in section 7 of the Muslim Family Laws Ordinance, 1961 and upon receipt of such copy, the Chairman shall proceed as if he had received an intimation of Talaq required to be (given) under the said Ordinance.

It would, therefore, be seen that the aforesaid provisions of Act obligates the Family Court to send a certified copy of decree for dissolution of marriage to the Chairman, who shall act upon it as if it is an intimation given under section 7 of the Ordinance.

In above circumstances, the parties used to agitate the issue of non-sending the decree by Court and the second marriage becomes in disputed. Such issues have been raised by High Courts and the Courts have clarified the position that the Family Courts are already equipped with this enabling provision, therefore, the parties cannot agitate the point. However, it has been observed that the Family Courts usually do not send the copy of decree passed therein, and even the parties also do not care for the same until and unless faced by legal complications. It is, therefore, recommended that the Family Court be directed to comply with the provision in order to facilitate the parties and enable the concerned Union Councils to intimate accordingly.

The problem raised by the complainant needs a serious thought because many women face the problem of false and frivolous litigation after getting the dissolution of marriage from the Family Courts and on other hand the Union Councils which are supposed to take necessary steps for the issuance of certificate of confirmation are not sent a copy of decree from the Family Courts as required, so the litigations on this account are increasing and the Family Courts are burdened with frivolous litigation. In this regard, an amendment in W.P Family Courts Rules, 1965, is required to be made in sub-rule (2) (b) of Rule 4 for enabling the Family Court to send a copy of decree of dissolution of marriage to the concerned Union Council where the Nikah was registered.

The comparative table relating to proposed amendment is given below:

COMPARATIVE TABLE

Existing Provisions	Proposed Provisions
4. (1) A plaint under sub-section (1) of section 7 shall be in writing, signed and verified	4. (1) A plaint under sub-section (1) of section 7 shall be in writing, signed and verified

<p>by the plaintiff, it shall be presented to the Court having jurisdiction under Rule 5 of these Rules by the plaintiff or through a Council, and where the plaintiff is a female, by her agent.</p> <p>(2) The plaint under sub-rule (1) shall also contains the following particulars:-</p> <p>(a) name of the Court in which the suit is brought and the facts showing that it has jurisdiction;</p> <p>(b) the name, description and place of residence of the plaintiff;</p>	<p>by the plaintiff, it shall be presented to the Court having jurisdiction under Rule 5 of these Rules by the plaintiff or through a Council, and where the plaintiff is a female, by her agent.</p> <p>(2) The plaint under sub-rule (1) shall also contains the following particulars:-</p> <p>(a) name of the Court in which the suit is brought and the facts showing that it has jurisdiction;</p> <p>(b) the name, description and place of residence of the plaintiff and address of the Union Council where the Nikah was registered;</p>
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Commission's Deliberations on 05 December, 2009

The Commission considered the problem faced by a married woman who obtained the decree for dissolution of marriage on the basis of Khula or otherwise but fell victim of legal complexity due to non intimation of dissolution decree to the Chairman of the Union Council. It, therefore, approved an amendment to the Family Court Rules to the effect that the plaint for dissolution of marriage should contain, apart from other particulars, the name of Union Council where the marriage is registered or Nikah was performed, so that the Court passing the decree send a copy of it to such Union Council without loss of time. The Commission further directed the Secretariat of LJCP to examine Section 10 of Muslim Family Laws Ordinance 1961 regarding passing of decree of dissolution of marriage by way of Khula in case of dispute whether the husband has paid dower or not and wife has returned the dower if she has already received, as the Family Court is unable to pass the decree of Khula without settlement of these issues.