

PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA),
SWAT.
FORM "A"
FORM OF ORDER SHEET.

Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of judge or Magistrate and that of parties or counsel where necessary
1	2	3
	11.12.2017.	<p style="text-align: center;"><u>W.P.No.856-M/2017.</u></p> <p><u>Present:-</u> Mr.Razauddin Khan, Advocate for the petitioners. =====</p> <p><u>MUHAMMAD NASIR MAHFOOZ, J:-</u> Petitioner/ defendant in the instant writ petition has invoked constitutional jurisdiction of this court on the following grounds:-</p> <p style="text-align: center;"><i>“that on acceptance of this petition, the impugned orders may kingly be set aside and direct the respondent No.4 to decide the case on merits after recording pro and contra evidence of both the parties, conduct reconciliation proceedings utmost necessary in family cases and to provide opportunity of hearing to the parties”.</i></p> <p>2. It is averred by the petitioner that respondent No.1 who was wife of the petitioner filed a suit for dissolution of marriage, recovery of dower 15 tolas gold or its market value, recovery of 10 tolas gold, recovery of maintenance allowance as mentioned in the plaint for herself as well as for her minor children respondents No.2 to 4 herein. Petitioner appeared in court but through an attorney</p>

and the learned Judge Family Court on 30.10.2017 adjourned the case for 04.11.2017 for arguments on application for dismissal of the suit as well as for pre-trial reconciliation. Respondent No.1 submitted an application for dissolution of marriage on the basis of Khula in lieu of relinquishing her dower which was resisted by the petitioner and the learned trial court on 04.11.2017 granted decree for dissolution of marriage under section 10 (4) of the Family Court Act, 1964 and also heard arguments on the application. This order is challenged by the petitioner on the ground that no proper reconciliation proceedings have been effected between the parties due to absence of the spouses.

Arguments of the learned counsel for the petitioner heard and record perused.

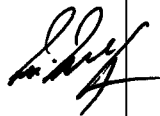
3. It is admitted by learned counsel for the petitioner that the petitioner is residing in Canada and similarly respondents are also citizens of Canada as their addresses reveal and none of them have personally appeared before the learned trial court at the time of reconciliation proceedings so the same could not hold the field. Respondent No.1 has filed the suit through her father and



petitioner is defending the suit through his brother and after grant of decree for dissolution of Nikah at the preliminary stage, the learned trial court has allowed the parties to produce evidence on the remaining parts of the relief as prayed for in the plaint.

4. Respondent No.1 voluntarily insists on her dissolution of marriage and she appears to be unwilling to reside with the petitioner on any ground whatsoever so she could not be forced to resettle. Under section 10 (4) of ibid Act, law has empowered the family court to grant a decree for dissolution of marriage keeping in view the nature of strained relationship of the spouses and so the learned trial court has exercised its jurisdiction accordingly. It may also be mentioned, that learned counsel for the petitioner stated at the bar that respondent No.1 has re-married after dissolution of marriage, so this would further substantiate the factum that decree for dissolution of marriage was rightly passed at the initial stage.

5. So far as the remaining contents of the plaint are concerned that would be decided after recording of evidence of both the parties and there



seems no reason to interfere with the impugned order in the present constitutional petition. Neither there is any jurisdictional defect in the impugned order nor abuse of process of law, therefore, this writ petition is dismissed in limine with no order as to costs.

Announced.
Dt.11.12.2017.


JUDGE

of 14/12

(A-K-KHAN)

HON'BLE MR. JUSTICE MUHAMMAD NASIR MAHFOOZ.