

Date of institution :

Date of decision :

Remained pending for :

..... Days Months Years

**BEFORE THE HON'BLE COURT OF ADDITIONAL CIVIL
JUDGE, VAPI**

RCS NO. 118/2022.

Ex:

**PLAINTIFF: Mustari Divorcee of Abdulkadir Isab and
D/o. Altaf Manga.**

Having Residence at Dar e Rehmat, Mota
Taiwad, Valsad.

VERSUS

DEFENDANTS: Mr. Abdulkadir FakirMohamad Isab
Having Residence at Plot No. 09, 2/1384,
Mohamad Bunglow, Atul Society, Vapi.

Appearance : Ad. Mr. A. R. Khan for Plaintiff.
Ad. Mr. A. A. Shekh for Defendant.

Suit for Declaration of KHULA.

-:JUDGMENT:-

(1)Present suit has been filed by the plaintiff seeking
declaration that 'KHULA' means Divorce by Mutual

Consent has been complied by the plaintiff and defendant.

(2) BRIEF FACTS OF THE PLAINT :-

- 2.1 The facts stated in the plaint is that the plaintiff and the defendant both are Muslim and propogates the Muslim religion. The plaintiff has pleaded that the plaintiff and the defendant are residing at the address shown in the cause title. The plaintiff further pleads that as the plaintiff and the defendant propogate the Islam, their marriage is governed by the Muslim Personal Law and Sahriat.
- 2.2 The plaintiff has further pleaded that she contracted NIKAH with the defendant on 27/12/2007 at Valsad as per muslim rites and Ceremonies and the NIKAHNAMA i.e., the marriage Certificate bearing no. 182 dtd. 27/12/2007 was issued by te competent authority of Ghadochi Moholla Sunnat Jamaat. The plaintiff further pleads that the marriage was further registered before the Registrar of Marriages, Valsad Nagarpalika, Valsad on 29/03/2008 vide Sr. No. 107, Vol. 01 in the rigister of Marriages.

2.3 It is also the case of the plaintiff that after the marriage, she started residing with the defendant and the plaintiff had given birth to a son named Master Musa Abdulkadir Isab on 31/09/2009 who is under the care and custody of the plaintiff with the consent of the defendant.

2.4 The plaintiff has further pleaded that during the wedlock, due to difference of opinion and misunderstanding, some minor quarrels used to happen between them which were amicably settled with the interventions of elders of the family. However, both the plaintiff and the defendant realised that they are not compatible with each other which led to the ultimate breakdown of marriage. It is further pleaded by the plaintiff that after consulting the elders of the family, the plaintiff and the defendant decided to dissolve their marriage through 'KHULA' at the request of the plaintiff which was accepted by the defendant on 13/11/2021 whereby the defendant waived the repayment of consideration i.e. dower amount of Rs. 1000/- and in this manner the marriage of the plaintiff and the defendant stood dissolved on 13/11/2021 as per the Muslim Law in the presence of witnesses and the plaintiff and the defendant separated thereby. The plaintiff has further pleaded that the plaintiff has filed

this suit seeking declaration that the 'KHULA' means the divorce by mutual consent stood completed on 13/11/2021 between the plaintiff and the defendant and prayed to pass the decree as prayed for.

(3) Upon institution of the suit, the court has issued notice to the defendant and upon service of the notice the defendant has appeared before this court has filed his written statement which is on the record at Exh. 06.

(4) WRITTEN STATEMENT :-

4.1 The defendant in the written statement has clearly and specifically admitted the pleadings of the plaintiff and specifically stated that the defendant has no objection if the suit filed by the plaintiff is decreed as prayed.

(5) ISSUES.

For the determination of real issue, The court has framed following issues at Exh. 07 on 07/02/2023.

I. Whether plaintiff proves that the plaintiff and the defendant contracted Nikah on 21/12/2007?

- II. Whether the plaintiff proves that due to ultimate breakdown between the plaintiff and the defendant, plaintiff had requested khula from the defendant on 13/11/2021?
- III. Whether plaintiff is entitled to relief sought?
- IV. What order and Decree?

FINDINGS:-

- I. In Affirmative.
- II. In Affirmative.
- III. In Affirmative
- IV. As per Final Order.

(6) EVIDENCE OF PLAINTIFF:-

The plaintiff has remained present before this court and has given following oral as well as documentary evidence.

6.1 ORAL EVIDENCE:

Ex:27 Deposition of plaintiff.

Mustari Divorcee of Abdulkadir Isab

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6.2 DOCUMENTARY EVIDENCE.

Exhibit	Description of Documents.
Exh. 11	Verifie Copy of Nikahnama dtd. 27/12/2007
Exh. 12	Verified copy of Certificate of Marriage Registration dtd. 29/03/2008 issued by Registrar of Marriages, Valsad.
Exh. 13	Verified Copy of the Notes of 'KHULA' i.e., the dfivorce by Mutual Consent at the request of plaintiff dtd. 13/11/2021.

6.3 At this juncture, it is important to look into the evidence produced by the plaintiff. the plaintiff has presented her examination in chief through affidavit whereby the plaintiff has reitrated all the facts of the plaint Hence, it is not reproduced here. This court has observed that the defendant has not cross examined the plaintiff and, the contents of the affidavit of the plaintiff are admitted by the defendant.

(7) EVIDENCE OF DEFENDANT.

To prove his case, the defendant has presented following oral as well as documentary evidence.

7.1 ORAL EVIDENCE:

Ex:15 Deposition of defendant.

Mr. Abdulkadir FakirMohamad Isab.

7.2 The defendant has presented his examination in chief through affidavit whereby the defendant has reiterated all the facts of the written statement. Hence, it is not reproduced here. This court has observed that the plaintiff has not cross examined the defendant and, the contents of the affidavit of the defendant are admitted by the plaintiff.

(8) FINAL ARGUMENTS:-

8.1 Learned advocate of the plaintiff has submitted that the plaintiff has sufficiently proved the case by adducing oral as well as documentary evidence that the plaintiff and the defendant has taken mutual divorce on 13/11/2021 and therefore, the decree be drawn as prayed by the plaintiff.

8.2 Learned advocate of the defendant has submitted that they have no objection if the decree as prayed by the plaintiff is drawn by the court.

(9) MARSHALING OF FACTS AND APPRECIATION OF EVIDENCE:-

9.1 ISSUE NO. 1 to 3.

- 9.1 This court is of the opinion that the issue no 1 to 3 are interconnected and therefore, to avoid repetition, the same are discussed together.
- 9.2 To prove the case, The plaintiff has deposed on oath vide an affidavit at **Exh. 09** that the defendant both are Muslim and propogates the Muslim religion. The plaintiff has deposed that the plaintiff and the defendant are residing at the address shown in the cause title. The plaintiff further deposed that as the plaintiff and the defendant propogate the Islam, their marriage is governed by the Muslim Personal Law and Sahriat.
- 9.3 The plaintiff has further deposed that she contracted NIKAH with the defendant on 27/12/2007 at Valsad as per muslim rites and Ceremonies and the NIKAHNAMA i.e., the marriage Certificate bearing no. 182 dtd. 27/12/2007 was issued by the competent authority of Ghadochi Moholla Sunnat Jamaat. To substantiate this facts, the plaintiff has submitted the verified copy of the NIKAHNAMA issued by the Ghadochi Moholla Sunnat Jamat dtd. 27/12/2007 which is on record at **Exh. 11.**

The plaintiff has further deposed that the marriage was further registered before the Registrar of Marriages, Valsad Nagarpalika, Valsad on 29/03/2008 vide Sr. No. 107, Vol. 01 in the register of Marriages and to substantiate the said facts, the plaintiff has submitted the verified copy of the Certificate of Marriage Registration issued by the Registrar of Marriages, Nagarpalika, Valsad dtd. 29/03/2008 which is on record at **Exh. 12**. The defendant has also admitted that he had contracted NIKAH with the plaintiff in his written statement at **Exh.06**.

- 9.3 It is also the case of the plaintiff that after the marriage, she started residing with the defendant and the plaintiff had given birth to a son named Master Musa Abdulkadir Isab on 31/09/2009 who is under the care and custody of the plaintiff with the consent of the defendant.
- 9.4 The plaintiff has further deposed that during the wedlock, due to difference of opinion and misunderstanding, some minor quarrels used to happen between them which were amicably settled with the interventions of elders of the family. However, both the plaintiff and the defendant realised that they are not compatible with one another which led to the ultimate breakdown of marriage. It is further deposed by the plaintiff that after consulting the

elders of the family, the plaintiff and the defendant decided to dissolve their marriage through 'KHULA' at the request of the plaintiff which was accepted by the defendant on 13/11/2021 and whereby the defendant waived the repayment of consideration i.e. dower amount of Rs. 1000/- and in this matter the marriage of the plaintiff and the defendant stood dissolved on 13/011/2021 as per the muslim Law in the presence of witnesses and the plaintiff and the defendant seperated thereby. To substantiate this facts, the plaintiff has submitted the verified copy of the notes of KHULA where in the plaintiff and the defendant has put their signatures in presence of the witnesses on 13/11/2021 which is on record at **Exh. 13.**

- 9.5 This court firmly believes that the plaintiff has sufficiently proved that the plaintiff and the defendant had contracted NIKAH on 27/12/2007 and has dissolved the said marriage with the consent of both the plaintiff and the defendant on 13/11/29021. This court has also observed that the said facts are also admitted by the defendant in his wriottedn statement as wellas in his affidavit of Examination in Chief at Exh. 15. Hence, the facts are proved conclusively and therefore, I pass following order in the interest of Justice.

ORDER

- I. The plaintiff's suit is allowed.
- II. The NIKAH contracted by the plaintiff and the defendant on 27/12/2007 stands dissolved through KHULA i.e., by the mutual consent of plaintiff and defendant through TAKAQNAMA dtd.13/11/2021.
- III. Decree be drawn Accordingly.
- IV. Parties shall bear their own cost.

The Judgment pronounced and signed today in open court.

Date: 01/03/2023

Vapi.

(Ms. M. J. Kikani.)

GJ01549

Addl. Civil Judge,

Vapi.