Present:

Mr. Justice Syed Muhammad Dastagir Husain
And
Madam Justice Kashefa Hussain

F.A. No. 08 of 2012

Mrs. Rabeya Khatun and others

--------Defendant-Appellants.

-Versus-

Mrs. Taslima Hasan

----------Plaintiff-Respondent.

Mr. M. Qumrul Haque Siddique along with
Mr. Md. Bazlur Hasan, Advocates
------ For the Defendant-Appellant.
Mr. A. J. Mohammad Ali along with
Mrs. Rubayat Hossain and
Mrs. Bilkis Jahan, Advocates,
----------- For the Plaintiff-Respondent.

Heard on 10.11.2015, 11.08.2015, 12.11.2015, 15.11.2015 and Judgment on 16.11.2015.

Kashefa Hussain, J,

This appeal is directed against judgment and decree dated 09.08.2011 passed in Title Suit No. 383 of 2006 by the Learned Joint District Judge, 3rd Court, Dhaka. In the said Title Suit, plaintiff has prayed for a declaration that the marriage vide registered Nikha Nama No. SL 166 Page-12 dated 18.08.1995 as well as the relationship between the plaintiff and her husband Late Manzar Hasan as husband and wife subsisted till his death on 24.04.2005 including some other reliefs.

The plaintiff's case in a nutshell is that the cause of action for filing the suit by the plaintiff-respondent arose on 29.11.2005 when the defendant–

appellants filed a succession case being no.1263 of 2005 in the court of Joint District Judge, 3rd Court, Dhaka by suppressing actual facts, and subsequently the succession case was allowed and being aggrieved by and dissatisfied with the same, the plaintiff filed a Revocation Miscellaneous Case being no. 46 of 2006 for cancellation of succession certificate, and, thereafter, the Title Suit and the Miscellaneous Case were heard analogously and disposed of by a single judgment decreeing the suit and allowing the Revocation Miscellaneous Case.

The plaintiff stated in her plaint that she got married to the deceased Manzar Hasan on 18th August, 1995 and was leading normal conjugal life. The deceased Manzar Hasan was an executive at DUNCAN BROTHERS LTD, and at the cost of the said company, the plaintiff and deceased Manzar Hasan enjoyed several benefits as a couple including travelling abroad. During his life time Manzar Hasan by swearing an Affidavit adopted the plaintiff's son, namely Tanzim Hasan through her first husband and even during their travels abroad the plaintiff and the deceased Manzar Hasan were also accompanied by their only son Mr. Tanzim Hasan and the plaintiff states in the plaint that she had continued her marital life and performed her marital obligations and lived together as husband and wife till death of her husband Manzar Hasan. As an adopted son of

Manzar Hasan, the plaintiff's son was also granted the stipend by DUNCAN BROTHERS (BD) LTD. according to their own rules and regulations. The plaintiff lead a happy conjugal life though they had no child was born through her wedlock with Manzar Hasan. The plaintiff states in her plaint that the defendant-appellants on several occasions provoked a discord between her husband and herself to disturb their conjugal life on various pretexts and also tried to influence the deceased to revoke his adoption of the plaintiff's son and after their return from a pleasure trip abroad, arising out of a certain incident an altercation took place between the deceased and the plaintiff which was personal in nature and which caused the plaintiff agony and following the altercation in her mental agony she went to consult an Advocate namely Mr. Shah Alam on 20.11.2002 and discussed with him about a certain matter and asked the Advocate to send a notice to Manzar Hasan on his behalf. She also states that she never went to any Notary Public for swearing Affidavit on divorce and the signature of the Witness No. 1 in the Affidavit was forged and Witness No.2 is unknown to her and she never instructed the lawyer to draft any Affidavit of divorce and send it to Municipal Corporation and no notice of such Affidavit was ever served to deceased Manzar Hasan or to the Nikah Registrar for registration.

She states that following her visit to the Advocate she returned home and resumed her conjugal life normally with her husband. After about 1 and ½ months the deceased husband received a notice under the Muslim Family Laws Ordinance, 1961 from the office of Municipal Corporation. After receiving the same, both the plaintiff and her deceased husband were surprised with the contents of the notice which was regarding a proceeding taken up by the Municipal Corporation. Suspecting a conspiracy to jeopardize their happy, conjugal life and suspecting that the defendant no. 1-6 conspired collusively to start a conciliation proceeding on 24.12.2002 being Arbitration Case No. 2825 of 2002 but that the order No.1 dated 24.12.2002 does not speak anything upon the basis of which the conciliation proceeding was started, and there is also nothing on record to show that under the provision of Muslim Marriages and Divorce (Registration) Act, 1974 and the rules thereunder framed in 1975 that any registered Talaknama was ever placed before the Chairman of the alleged Conciliation Board. It is also stated in the plaint that the arbitration proceeding is illegal, malafide and without jurisdiction. That pursuant to this notice from the Municipal Corporation the plaintiff and the deceased husband Manzar Hasan also sought advice from a senior lawyer on the issue who advised them that the

conciliation case being initiated without any proper legal document, which is without jurisdiction and has no legal effect and was not binding upon them. Moreover, the alleged proceeding was disposed of with a finding on **27.02.2003** and that finding was not in accordance with law, because registration of "*Talaq-i-tafweez*" in the office of the Nika Registrar is compulsory, and the alleged Affidavit by way of unilateral declaration has no value in the eye of law. Being so advised and assured by a senior lawyer that it was not necessary to proceed further on the issue, they continued to live together as husband and wife and subsequently after this incident the plaintiff performed her marital duties with all marital obligations including accompanying the deceased to India for the purpose of treatment of her deceased husband Manzar Hasan.

Subsequent to these events, the plaintiff and her deceased husband Manzar Hasan decided to purchase an apartment in Dhaka, and executed a loan agreement where the plaintiff was a co-applicant with some necessary registered documents in order to avail the loan facilities to purchase the apartment jointly in their name as husband and wife. It is stated in the plaint that from these facts inter-alia others, it is clearly evident that the plaintiff and the deceased Manzar Hasan lived together as husband and wife till the death of her husband and only

after his death following the succession case filed by the defendant-appellants, the plaintiff at one stage communicated with DUNCAN BROTERHS LTD. who ultimately advised her to settle the succession case before she could obtain any of the facilities which may be due to her as wife of the deceased Manzar Hasan. And it is evident from the order sheet that the defendant no.8 started illegal proceedings being Arbitration Case No. 2825 of 2002 on 24.12.2002 without any document of registered Talaknama from the office of Nikah Registrar and according to the provisions contained under Clause 6 of the Muslim Marriages and Divorce (Registration Act.), 1974, the Registration of "*Talaq-i-tafweez*" either by the husband or wife is compulsory and mandatory. But in the present case this provision was not exhausted and an unilateral declaration only, by way of affidavit does not carry any legal value. The said proceedings being instituted without any proper documents and being an ex-parte decision, thereof, is wholly unauthorized, illegal and void and not binding upon the plaintiff. The defendant No. 1-6 in collusion with the staffs of the Dhaka City Corporation fraudulently started the aforesaid illegal proceedings to deprive the plaintiff form her legal right. The entire proceedings of the Arbitration Case No. 2825 of 2002 are tainted with fraud. The plaintiff prays for calling all papers and documents of the

entire proceedings of the Arbitration Case which are in custody of the Defendant nos. 7-8. And under Muslim Family Laws Ordinance, 1961 the period of limitation is 90 days for cancellation of the matter and the impugned **Order No. 4 dated 27.02.2003** confirming Talak by the defendant No. 8 without any basis and legal documents is illegal, without jurisdiction and not binding upon the Plaintiff. Furthermore under Section-7(4) of the Muslim Family Laws Ordinance-1961 that failure of the Arbitration council is inconsequential and under the Registration Act the registration of "*Talaq-i-tafweez*" is mandatory by the Nikah Registrar and in absence of such registration the initiation of Arbitration proceedings in the absence of both parties who are the interested persons is of no avail. The entire proceedings of the arbitration case initiated by the defendant no. 1-6 was done in a planned way, collusively and as well as the impugned order **dated 27.02.2003** arising out of the Arbitration proceeding so obtained by them is ex-facie illegal, malafide and without jurisdiction.

The defendant no. 1, 2 and 6 entered appearance through filing a written statement on their behalf where the said defendants basically denied all the allegations of the plaintiff and stated that Advocate Shah Alam being approached by the defendant confirmed to the defendant that the plaintiff had herself

approached for the divorce and duly put her signature on the divorce notice and it was also signed by the plaintiff and the mother of the plaintiff also signed as a witness therein. An Affidavit of divorce was drafted upon her instruction and was filed by the plaintiff herself before the Municipal Corporation, and following the execution of divorce she never lived with Manzar Hasan anymore, and though she was aware of the notice of divorce she did not withdraw the same, and, thereafter, did not take any other steps. The defendant in their written statement denying the plaintiff's claim in contrary stated that pursuant to the said notice in the year 2002, she never lived with the deceased or otherwise took care of Manzar Hasan during his illness. They stated that after completion of 90 days, on **27.02.2003** the divorce being final, thereafter, she was no longer a legal wife or successor of late Manzar Hasan and that is why she was not impleaded as a party in the Succession Case no. 1263 of 2005 and that the plaintiff has no locus-standi to challenge the signature of the defendant or to file the instant case and further stated in their written statement that the divorce was executed on **27.02.2003** i.e. before the death of Manzar Hasan on **24.04.2005**, and the plaintiff on 06.06.2005 applied before the Dhaka City Corporation for cancellation and for revocation of her divorce notice i.e. after two years of

execution of divorce. As per Muslim Family Laws Ordinance, 1961, an application for revocation after the statutory period of 90 days does not lie and is unlawful and after the death of Manzar Hasan the plaintiff is trying to concoct a story to fulfill her ulterior motive of appropriating the property of late Manzar Hasan resorting to fraudulence and illegal means.

The defendants no. 1, 2 and 6 in their written statement also stated that according to Section 7(1) of the Muslim Family Laws Ordinance, 1961, there is no scope to cancel the divorce after expiry of stipulated 90days, and, as such, the Dhaka City Corporation did not respond to the same, which is evident by the order dated 28.06.2005 passed in Arbitration Case No. 2825 of 2002 by the concerned authority of DCC. After issuance of divorce notice, the plaintiff lead an immoral life and after the death of Manzar Hasan only she filed the instant case claiming herself as the legal successor of Manzar Hasan with the ulterior motive and intention to grab his property though she was no more a legal successor of Manzar Hasan, and, as such, she is not a necessary party in the Succession Case being no. 1263 of 2005.

The defendant nos. 7 and 8 also entered appearance by filing written statement on behalf of DCC represented by its Mayor and the Chairman,

Arbitration Board and Law officer, DCC respectively, in which they basically stated that following the divorce notice they had issued notices duly in accordance with law, both to the plaintiff and deceased Manzar Hasan to appear before them for cancellation of the proceedings. But none of the parties appeared before the Arbitration Council even after receiving the notices. Subsequently on **27.02.2003** upon expiry of 90 days none of the parties being present before the Arbitration Council, consequently the Arbitration Council disposed of the proceeding with an order in accordance with the provision of Section 7 (1) of the Muslim Family Laws Ordinance, 1961,and thereupon the parties not responding to the conciliation proceeding automatically the divorce was effective from the date of the order dated 27.02.2003. The plaintiff made an application on 06.06.2005 for reconsideration of the order dated 27.02.2003 passed by the Arbitration Council but according to the rules of the Arbitration Council there was no scope of reviewing the order since the parties were not present before the Arbitration Council at the conciliation proceeding. As per clause 7 (1) of the Muslim Family Laws Ordinance, 1961, the divorce become effective after the expiry of 90 days i.e. from 27.02.2003.

The Trial Court framed 5 issues in the suit. A single plaintiff witness deposed from the side of the plaintiff while 3 defendant's witnesses deposed from the side of the defendants. The documents produced by the plaintiff have been exhibited as exhibit 1 to 13 Ka. The defendant produced exhibits which is marked as exhibit -Ka to Ta (প্রদর্শণী ক-ত) series. Upon consideration of those materials on record, the Trial Court decreed the suit by the impugned judgment and decree, against which the instant appeal has been brought.

Learned Advocate Mr. M. Qumrul Haque Siddique along with Mr. Md. Bazlur Hasan appeared on behalf of the appellants while Learned Advocate Mr. A. J. Mohammad Ali along with Mrs. Rubayat Hossain and Mrs. Bilkis Jahan appeared on behalf of the respondent.

Mr. M. Qumrul Haque Siddique in support of the appellants asserts that after sending the divorce notice, the plaintiff never again lived with deceased Manzar Hasan and further assails that even though the Municipal Corporation sent the notices under the provisions of the relevant laws, neither the plaintiff-respondent nor the deceased Manzar Hasan appeared before the Arbitration Council. Upon this point, that neither parties appeared before the Arbitration Council he stresses that the non-appearance of the parties itself is an evidence

that the plaintiff-respondent did not take any steps to revoke the notice at any stage within 90 days. Against the plaintiff's claim that there was evidence on record to show that she had continued living together as a married couple with the deceased Manzar Hasan after the said notice, even after the 'notice' the Learned Advocate for the Appellant submits that whatever evidence the plaintiff might have produced those are not relevant to prove revocation since she cannot bypass the law. The learned Counsel mainly argues that following the notice the Municipal Corporation had issued, following receipt of the Affidavit of divorce and in due course of law, in accordance with the provision of Section 7 (4) of the Muslim Family Laws Ordinance, 1961 the Municipal Corporation had taken necessary steps to bring about a reconciliation between the parties but to which the parties did not respond.

Following a query from us, the learned Counsel submits that registration of divorce is not compulsory under the Marriages and Divorce Registration Act, 1974. Since following the notice from the Arbitration Council the parties did not take any steps towards reconciliation, it is also evident that the revocation was intended, and, therefore, the divorce became effective after expiry of the statutory 90 days. He drew our attention to the evidence produced by the

plaintiff-respondent before the Trial Court showing that they lived together as husband and wife following the notice. The learned counsel contends that the Order of Arbitration Council and proceeding of the Arbitration Council is on record which is a public document. Through his argument he stresses on the point that section 114 (e) of the Evidence Act, provides for presumption of regularity to any judicial act and official act regularly performed, and there arises a presumption of regularity of official proceeding and which can in no way be over looked. He tries to impress upon us his contention that the arbitration proceeding being a "public record" the regularity of such may be normally presumed under the law. Therefore, whatever documentary evidences the plaintiff might have produced showing subsistence of the marriage, such evidence cannot override a 'public document' and under the law a public document prevails over any other evidence.

He concludes his submissions assailing that the arbitration proceedings and the order arising out of a public document had made the divorce final and effective, and, therefore, no registration being mandatory under the Marriages and Divorce Registration Act, 1974, the divorce was in consequence 'complete' on **27.02.2003** and after expiry of 90 days there is no question of subsistence of

the marriage, and, therefore, the Judgment and Decree of the Trial Court ought to be set-aside and the appeal may be allowed.

On the other hand, the Learned Advocate Mr. A. J. Mohammad Ali appearing for the plaintiff-respondent opens his submissions by drawing our attention upon several documentary evidences produced as exhibits before the Trial Court which he claims are “proofs” to show that even if the divorce notice was sent and it was genuine one it was only given at the heat of momentary anger. He persuades us that the various exhibits produced as evidences, for example hotel tickets, travel documents etc. are evidence enough that the marriage was continuing and submits that these documents facilitates to prove that the plaintiff-respondent continued to live together with Manzar Hasan as his lawful and wife.

During course of the submissions of the Learned Advocate for the respondent we had pointed out to the learned counsel for the Respondent the submission of the appellants that once the order of the arbitration council is passed, it is treated as a “public record” and presuming regularity of such record it became effective from 27.02.2003. Against such contention the Learned Advocate contrary to the submission of the defendant-appellants submits that the

arbitration council can "call upon" for a reconciliation "only" between the parties, but he contends that if the parties are absent, the arbitration council has no authority to decide whether revocation has at all taken place or not. Moreover he persuades that whether revocation has actually taken place or not, it is only the husband and wife who can declare it, and no third party is entitled or competent for such declaration, and in this case neither defendant-appellants nor the arbitration council can be considered to be "competent" parties. He further argues that the defendant-appellants with their ulterior motives whatsoever, executed the Succession Case, and stresses upon the point that the divorce and revocation is eventually a 'personal matter' between two persons i.e. husband and wife only. He takes us to the provisions of divorce under the Muslim law where he draws our attention to the different forms of Talak. He takes us through the present form of Talak with reference to the case in hand that is "*Talaq-i-tafweez*" under the Muslim Laws and which is a delegated power to grant a Talaq or divorce delegated by the husband to the wife. He specially lays emphasis on the term "otherwise" as used in Section 7(3) of Muslim Family Laws Ordinance 1961, that a revocation may be affected by the conduct of a party, and that in the case before us the plaintiff-respondent wife is the relevant party. He contends

that the evidence of the conduct of the wife continuing their married life together is already on record through the production of documents, and, therefore, no further proof is necessary. Against the arguments of the appellants pertaining to a "record" of the arbitration council being a "public record" and that a "presumption of regularity" arises out of such public record, the learned counsel for the respondent argues that, given that, it is true that it is a "public record" yet in this case the connected laws have laid down the conditions of revocation which is provided for under section 7(3) of the Muslim Family Laws Ordinance 1961. Furthermore, he controverts the submissions of the learned Advocate for the Appellants regarding registration of divorce under the Marriages and Divorce Registration Act, 1974, and assails that under Section 6 of the said Act it is mandatory to register the divorce, and since following the notice the plaintiff-respondent's divorce was not registered, and from the evidences adduced and from the record it shows that there was no registration of the divorce, therefore, it is to be obviously concluded that the marriage was subsisting between the plaintiff-respondent and deceased Manzar Hasan till the death of the Manzar Hasan and the plaintiff-respondent continued to be his lawful wife till the death of the deceased. In pursuance of his arguments the learned counsel stresses that

the defendant-appellants filed the succession Case “unlawfully” by excluding the plaintiff-respondent from her rights and benefits as a lawful widow of the deceased. He lastly asserts that the Judgment and Decree of the Trial Court was correctly given, and, therefore, the instant appeal being not maintainable is liable to be dismissed.

We have heard the learned Advocates from both sides, perused the materials on record including the deposition made by the witnesses and gone through the exhibits. Upon scrutinizing the deposition made by the witnesses, we have noticed that the deposition of the P.W.-1 which is the plaintiff herself, it is true that we have found some inconsistencies in her statements during the trial and which are inconsistencies mainly appearing from her statements related to the divorce notice. It is stated in the plaint that following an altercation with the deceased Manzar Hasan, the plaintiff had gone to meet the Advocate and he had narrated some facts and events to the Advocate “and asked him to send a notice in her name to Manzar Hasan”. But as we find, there are no clarification or explanation regarding the nature of the Notice. While in her examination in chief she at one point deposes “হলফনামা তঞ্চকী ও জাল” while at the time of cross-examination she at one stage deposes “সই দিয়েছিলাম মনে হয়” The phrase “মনে হয়”

however leaves an ample area of uncertainty and makes reliability of her statements questionable.

On the other hand the defendant no.2 deposed as DW-1 in the suit who is the brother of the defendant no.1 and he stereotypically denied the subsistence of the marriage, and D.W. 2 is the cousin of the defendant no.1 and from his deposition it appears before us that the D.W. 2 was not very knowledgeable and conversant of the facts and circumstances of the marital status or the personal affairs of the deceased. DW.3 appeared on behalf of the defendant no. 7 and 8 and he more or less repeats from the record i.e. the order dated 27.02.2003 and deposes basically echoing whatever there is on record, and it is evident that he has no personal knowledge of the matter.

But after hearing the learned Advocates and examining the records and documents and taking all aspects including the relevant laws into consideration, we are able to appreciate that in this particular case, the position of the relevant laws regarding registration of divorce and the supporting evidences in the case including that of the plaintiff's claim to revocation demands our attention.

The learned Advocate for the appellants had argued that the divorce became effective upon the order dated 27.02.2003 passed by the arbitration

council and upon expiry of 90 days, since no "revocation was initiated" by the plaintiff. It is also insisted upon by the Learned Advocate for the Appellants that registration of divorce is not mandatory. Keeping all these aspects in mind including the documents and evidences produced by the parties and the submissions of the Learned Advocates from both sides, we have looked into the relevant laws mainly the Muslim Family Laws Ordinance, 1961 and the Marriage and Divorce Registration Act, 1974. Section 7(3) of the Muslim Family Laws Ordinance provides for revocation either 'expressly' or 'otherwise'. Now, the learned Advocate for the appellants had brought up an issue on point of law regarding presumption of regularity of Public documents in accordance with the provisions of Section 114(e) of the Evidence Act, 1872. Section 114(e) of the Evidence Act, 1872, is reproduced below ;

> 114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.
>
> *Illustrations*
>
> The Court may presume-
>
> (e) that judicial and official acts have been regularly performed

It is true that according to the provision of Section 114(e) of the Evidence Act, normally a presumption of regularity arises against a public record, and in this case we are not here actually questioning regularity of such record, and the arbitration council though is performing their duty which is basically an attempt to bring about a reconciliation between the parties, but non appearance before the arbitration council is not necessarily a conclusive evidence that the divorce is complete and effective from a given prescribed time.

There is no reason for us to undermine the presumption of regularity of public record and under Section 114(e) of Evidence Act, regularity in public records is to be presumed, but however we cannot over look the law or bypass the law as it exists and cannot also overlook the evidences placed before the Court.

Let us take a look into the provision of Section 7(3) of Muslim Family Laws Ordinance, 1961 where from we can derive an idea of the preconditions of revocation. Section 7(3) of Muslim Family Laws Ordinance,1961 reads as under;

> *"Save as provided in sub-section (5), a talaq, unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice*

under sub-section (1) is delivered to the Chairman"

From a perusal of the above, it appears before us that revocation of a divorce is not confined to only "expressly" or directly by revoking the notice of Talaq or divorce following the prescribed procedures. Besides, "express" revocation, the Muslim Family Laws Ordinance, 1961 has also provided for revocation "otherwise", The definition of the expression 'otherwise' in its ordinary sense and as we also find in Oxford Learner's Dictionary generally means in circumstances different from those present or considered. Accordingly, perceptibly so,"otherwise" connotes and entails a wide range of circumstances by which divorce may be presumed or understood to have been revoked.

Upon our research in to the prescribed pre-conditions of revocation and the position of the existing laws in this context, we have found it pertinent to examine the position of the relevant law as it stood prior to the enactment of Muslim Family Laws Ordinance 1961. We have perused the provisions of divorce including the pre-conditions provided for revocation of divorce prior to the enactment of Muslim Family Laws Ordinance 1961, as stated in Mulla's Principles of Mahomedan Law. For our purposes we are quoting from the provision of Section 312 of Mulla's Principles of Mahomedan Law Nineteenth Edition which reads thus;

> Until a talak becomes irrevocable, the husband has the option to revoke it which may be done either expressly, or implied as by resuming sexual intercourse.
> : Hedaya 103-104; Baillie-287-288

From a perusal of the proviso above, as the source of which is Hedaya 103-104 and Baillie 207-208, it is evident that the history of the law of revocation of a divorce or Talak is that previously the position, according to Sharia Law was that a revocation had to be "express" or "implied as by resuming sexual intercourse". Accordingly it is evident that before Muslim Family Laws Ordinance 1961 came into force, the pre-conditions of revocation was confined within a narrow sphere of "express" revocation or by "resuming sexual intercourse". No other modes of revocation was contemplated in the Muslim Law as it stood then. But with the enactment of Muslim Family Laws Ordinance 1961, the position of the law changed and the legislature significantly brought about a much broader perspective to revocation. The word "otherwise" provided for in Section 7(3) of the Muslim Family Laws Ordinance, 1961 clearly comes to our aid in appreciating the intention of the legislators to broaden the scope of revocation and the other conditions of revocation from the confines of "express" revocation or by resuming sexual intercourse only. The use of word 'otherwise'

clearly shows that the new law, that is the Muslim Family Law Ordinance, 1961 provided that a revocation of divorce could be presumed or concluded by taking into consideration any other reasonable conduct of the parties subsequent to granting the divorce, either explicit or implicit whatsoever and which is evident and clear by the insertion of the word "otherwise". For our purpose to determine the primary and substantive issue over which the parties are before us, that is what was the marital status as between the plaintiff and the deceased Manzar Hasan at the time of the death of Manzar Hasan, we have undergone a scrutiny and interpretation of Section 7(3) of the Muslim Family Law Ordinance, 1961 and upon an interpretation of Section 7(3) of Muslim Family Laws Ordinance,1961, and especially upon an analysis of the word 'otherwise' as it appears in the statute of the Muslim Family Laws Ordinance,1961. Parallelly, for our purposes we have also examined and taken into consideration the documentary evidences produced as exhibits before the Trial Court showing relevant and material proof that actually the plaintiff and the deceased Manzar Hasan lived together as husband and wife following the Divorce Notices issued by the plaintiff.

And it is our view, that these documentary evidences provide ample material proof that the Talaq or divorce in the instant case was "otherwise" revoked through the conduct of the parties in accordance with the provisions of the Muslim Family Law Ordinance,1961. As is appears ex-facie from the records, these evidences include copy of Hotel bills produced by the plaintiff as exhibits 4-4Kha, Copy of Bill of Hotel Tourist Limited produced as Exhibits-5, Copy of Bill of Medical Research Foundation produced as Exhibit-6, Some Envelope and Letters produced as Exhibits 7, 7(ka), 8, 9, 10 etc. among others. And relying upon these evidences by drawing inference from the plaintiff's conduct subsequent to the granting of divorce, we may safely conclude that the plaintiff's conduct itself speaks of her intentions to revoke the divorce and continue her marital life with the deceased Manzar Hasan.

In this context we also feel it necessary to make an observation that by subsequent conduct of any person or party granting the divorce and which subsequent conduct may infer or imply revocation of such a divorce notice, it is to be understood that such subsequent conduct means any act, conduct or even omission to act, passive or impassive, verbal or not verbal etc, which can in all fairness granting the divorce of the person by general standards of behavior of

the person either social or personal may be deemed as reasonable under the particular circumstances of the case. Further the insertion of the word "otherwise" in section 7(3) of the Muslim Family Laws Ordinance 1961 has widened the scope and the horizon of a conduct or any number of conduct which might indicate revocation and therefore contemplates a wide range of conduct by which an act of revocation of divorce may be concluded.

The learned Advocate for the plaintiff-respondent in his submissions also raised the issue of compulsory registration of divorce and contended that in this case the divorce was not registered and registration of divorce is "compulsory" in accordance with the provisions of Marriages and Divorce Registration Act, 1974.

We have examined the relevant Laws with relation to registration of divorce under the provisions of Marriages and Divorce Registration Act, 1974, where section 6 is the relevant part and applicable to our case, Section 6(1) of the Marriages and Divorce Registration Act, 1974 provides for the necessity of the divorce being registered upon an application by the spouse who is granting the divorce and it can be either the husband or it can be the wife by dint of delegated power under the purview of "*Talaq-i-tafweez*".

Section 6(1) of the Marriages and Divorce Registration Act, 1974 reads as under;

> *"A Nikah Registrar may register divorce effected under Muslim Law within his jurisdiction on application being made to him for such registration"*

Upon queries made by us, the learned Advocate for the plaintiff-respondent persuaded that the word "may" in Section 6(1) actually implies the mandatoriness of registration of divorce. He asserts that from a close reading of Section 6 of the Marriage and Divorce Registration Act,1974, it is to be understood that the statute calls for compulsory registration of divorce. In pursuance of the submissions made by the learned Advocate we also embark upon an examination of the said Section 6 of the Marriages and Divorce Registration Act, 1974. For our purposes of a proper analysis the whole of Section 6 is quoted below;

Registration of divorce(1) A Nikah Regsitrar may register divorce effected under Muslim Law within his jurisdiction on application being made to him for such registration.

(2) An application for registration of a divorce shall be made orally by the person or persons who has or have effected the divorce :

Provided that if the woman be a *paradanashin,* such application may be made by her duly authorized Vakil.

(3) The Nikah Registrar shall not register a divorce of the kind known as *Talaq-i-tafweez* except on the production of a document registered under the Registration Act, 1908, by which the husband delegated the power of divorce to the wife or of an attested copy of any entry in the register of marriages showing that such delegation has been made.

(4) Where the Nikah Regsitrar refuses to register a divorce, the person or persons who applied for such registration may, within thirty days of such refusal, prefer an appeal to the Registrar and the order passed by the Registrar on such appeal shall be final.

The learned Advocate for the defendant-appellants took us to Section 6 (1) of the Marriages and Divorces Registration Act, 1974 and drew our attention to the word ‘may’ and tried to impress upon us that by using the word ‘may’ the legislators implied that registration of divorce is not mandatory, and is only a matter of choice of option of the concerned party. But, after examination of the whole statute, our considered view is that the argument of the learned Advocate for the appellants surrounding the interpretation of the word ‘may’ as in Section 6(1) is not correct. As a general principle of rules of interpretation in order to derive the true meaning of any part or portion of a statute, apart from the plain and ordinary meaning of a word the entire statute has to be read in whole and neither in part nor in an isolated manner. One section of a statute cannot be read

or understood in isolation of other sections of the particular statute and we do not wish to digress from the settled principles of interpretation. In keeping with such principles and upon scrutinizing Section 6, our interpretation of the law is that Section 6(1) by inserting the word 'may' means that a Nikah registrar is empowered to register a divorce only "on application being made to him for such registration" The word 'may' used in Section 6(1) entails that short of an "application" for registration by the "person" or "persons" effecting the divorce, the Nikah Registrar is not empowered to register the divorce, and it has to be only in the event of an application made by the person or persons effecting the divorce that such an application may be entertained. We have been able to arrive at this interpretation only after a careful perusal of sub-sections following sub-section 6(1) in particular in pursuance of a careful scrutiny of Section 6(2) of the Marriages and Divorce Registration Act, 1974.

From the language of sub-section (2) of Section 6, from the use of the word 'shall' it is clear that following a divorce or divorce notice and after completion of the statutory 90 days for the divorce to be effective, an application for registration of such divorce is mandatory, and it shall be made orally by the person or persons who has or have affected the divorce. Therefore, as is evident

from the language the use of the word 'shall' in Section 6(2) expresses the mandatoriness of an application for registration of divorce by the parties effecting the divorce. An application for registration is mandatory and to express the legislative intent, the legislators used the word 'shall' to import certainty as to their intent of compulsory registration following a divorce. And upon perusal and examination of the statute, it is also clear that upon receiving an application under Section 6(2), the Nikah Registrar is legally duty bound to register the same. As to our finding that the Nikah Registrar is to compulsorily register the divorce under Section 6(1) following an application for registration under Section 6(2) made by the parties effecting the divorce, the legislative intent of compulsory registration becomes more transparent upon a perusal of Section 8 of Marriage and Divorce Registration Act, 1974 which comes to our aid in strengthening our finding and interpretation of the law. Section 8 of Marriages and Divorce Registration Act, 1974, reads as under;

> **Registers-** Every Nikah Registrar shall maintain separate registers of marriages and divorces in such forms as may be prescribed and all entries in each such register shall be numbered in a consecutive series, a fresh series being commenced at the beginning of each year.

Significantly, in Section 8 of the Act, the word 'shall' appears twice expressing the intention of the law regarding the mandatoriness of registration and which shall be material proof of divorce.

Keeping in mind the facts and circumstances of the case in hand, we also find Section 6(3) relevant for our purpose. Likewise, we opine that the submissions of learned Advocate for the plaintiff-respondent and upon interpretation of the whole of section 6, it is our considered view that registration of divorce with the Nika Registrar is actually mandatory upon an application made to him by a party granting the divorce and without such registration, divorce will not be lawfully effective. In arriving at such a finding we have compared section 6(1) with section 6 (3) of Marriages and Divorce Registration Act, 1974. Section 6(3) of Marriages and Divorce Registration Act, 1974 reads as below;

> *"The Nikah Registrar shall not register a divorce of the kind known as "Talaq-i-tafweez" except on the production of a document registered under the Registration Act, 1908, by which the husband delegated the power of divorce to the wife or of an attested copy of any entry in the register of marriages showing that such delegation has been made.*

Therefore, Section 6(3) quite expressly states that in the event of "*Talaq-i-tafweez*" the divorce shall be registered, The language used in section 6(3) entails that an application for registration may be entertains only upon the production of a document registered under the Registration Act, 1908 by which the wife is empowered to grant divorce by virtue of a delegated power and delegated by the husband. Since in the case in hand the grantor of the divorce is the wife by dint of delegated power, therefore, we found it relevant to discuss the subsection 3 and in this case the Nikah registrar could only register the divorce upon production of the registered document required for the purpose.

It is a general rule of interpretation that the true intent of a statute to be construed is must be read wholly and not in part, and, therefore, we also here do not have any scope to interpret the statute by reading it only in part, and in this case we have read and examined the Sections and sub-sections all together. Sections 6(1) and 6(3) of Marriages and Divorce Registration Act, 1974 lead us to draw our conclusion that under the provisions of this section a divorce has to be mandatorily registered before a Nika Registrar just as a marriage has to be compulsorily registered under the provision of the Act. Section 8 of the same

Act provides for maintenance of separate registers of marriages and divorces in prescribed forms and procedures. Section 8 reads as under :

> **Registers-** Every Nikah Registrar shall maintain separate registers of marriages and divorces in such forms as may be prescribed and all entries in each such register shall be numbered in a consecutive series, a fresh series being commenced at the beginning of each year.

Upon a perusal of Section 8 of the Act, we find that there is a provision for maintaining separate register for marriages and divorce and that every Nikah Registrar 'shall' maintain such registers. Upon interpretation of the word 'shall' in section 8 of the Act, we may safely come to the finding that no discrimination or difference has been made by the legislators upon the mandatoriness of registration either marriage or divorce, whatsoever, the case may be.

As against the appellant's assertion of presumption of regularity provided under section 114(e) of the Evidence Act, 1872. In the case before us, the issue of presumption as to regularity of a public record arises, primarily inferring to the regularity of the order passed by the Arbitration council dated 27.02.2003 in pursuance of the provisions of Section 7 of Muslim Family Laws Ordinance, 1961. We have examined the records including the order dated 27.02.2003 passed by the concerned authorities and we do not here question the "regularity"

of such order, presuming that the Order passed was neither irregular nor debatable. Our considered view is that, since the parties, that is the plaintiff and the deceased Manzar Hasan did not appear before the Arbitration Council, they arrived at the conclusion that the divorce was not revoked and they relying upon such presumption proceeded with the Order dated 27.02.2003. In so doing they were performing their official functions as per their procedural Rules, and we do not find any irregularity in their action which led to the Order dated 27.02.2003. But, whatever procedural Rules they might follow, these cannot circumvent or bypass the law, nor can it circumvent or prevail over the substantive issue, that is whether the divorce was actually revoked or not. Such issue can be addressed only by resorting to the relevant laws especially the Muslim Family Laws and Ordinance, 1961 and the acts of the parties as they appear before us by evidences adduced during Trial. The Trial Court also observed that the concerned Advocate Mr. Shah Alam who had allegedly sent the divorce notice was not even brought in the Court as a witness and had observed that the onus of bringing the said Advocate as a witness lay upon the defendant- appellants.

Besides, as we discussed hereto above, we have taken into consideration the relevant laws and the material evidences produced before the Court as

exhibits in proof of revocation and we cannot over look either the law or the documentary evidences. The Trial Court in its Judgment relied primarily upon the evidences placed before it showing material proof of the continuance and subsistence of the marriage between the plaintiff and the deceased till death of the deceased. The Trial Court however, arrived at his finding relying primarily upon the evidences produced before it. But while the case is before us, we first looked into and examined the relevant laws which we have elaborated upon and analyzed elsewhere in this Judgment and to corroborate our findings and conclusion, in support, we have also placed our reliance upon the documentary evidences produced before the Trial Court.

However, keeping in mind the evidences also we arrived at our findings from a different point of view from that of the Trial Court. As we discussed earlier above any divorce under Muslim Law to be effective in the eye of law must be mandatorily registered with in the statutory provisions of section 6(1) of the Marriages and Divorce Registration Act, 1974, but in this case this was not done. Our considered view is that if the plaintiff-respondent had been consistent in her decision and intention to divorce and the consequence of the divorce to be effective, after the completion of ninety days and upon complying with other

procedural duties she would have taken steps to register the divorce, but her inaction in this case proves otherwise. Our finding are strengthened by the material exhibits produced before the Trial Court showing subsistence of the marriage after issuance of the divorce notice, and, therefore, we may safely conclude that in all practicalities she actually by various explicit and implicit conduct revoked the divorce within the provision of section 7(3) of Muslim Family Laws Ordinance, 1961.

We do not find it necessary to elaborate or analyze the factual submissions or statements made by the parties as to their contention regarding the marital status between the plaintiff and the deceased at the time of the death of the deceased Manzar Hossain. We may draw our conclusion placing reliance on the related and relevant laws and corroborated by the documentary evidences produced by the plaintiff.

Therefore, under the facts and circumstances we arrive at our finding that the divorce notice which was allegedly issued by the plaintiff-respondent was ultimately revoked and which is apparent from various subsequent actions and inactions of the plaintiff-respondent. On a perusal of the judgment, we are of the opinion that the Trial Court correctly arrived upon a proper finding upon scrutiny

of the records and upon proper examination of the deposition and other materials available before it, in conformity with the provisions of law and under the foregoing facts and circumstances and taking into consideration the records available before us, we find that the impugned judgment and decree dated 09.08.2011 do not call for any interference by this court and hence we do not find any substance in this appeal.

As such this appeal is hereby dismissed and the judgment and decree dated 09.08.2011 passed in Title Suit No. 383 of 2006 by the Learned Joint District Judge, 3rd Court, Dhaka is hereby affirmed.

However, there will be no order as to costs.

Send down the Lower Court's Record along with a copy of this judgment to the Court concerned immediately for information and necessary action.

Syed Muhammad Dastagir Husain, J,

I agree.

Mannan/B.O.