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W.P.(MD)NO.23879 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.09.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.23879 of 2025

Mohamed Harish

... Petitioner

Vs.

The Sub Registrar,
O/o.the Sub Registrar Office,
Ramnagar, Devakottai,
Sivagangai District.

... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the respondent vide his proceedings in Na.Ka.No.89/2025 dated 08.08.2025 and quash the same as illegal and consequently to direct the respondent to register the marriage solemnized between the petitioner and Mrs.Thamjith Nihar on 07.06.2023 and issue the certificate of registration, within the time that may be stipulated by this Court.

For Petitioner : Mr.H.Mohammed Imran,
for M/s.Ajmal Associates.

For Respondent : Mr.G.V.Vairam Santhosh,
Additional Government Pleader.

* * *

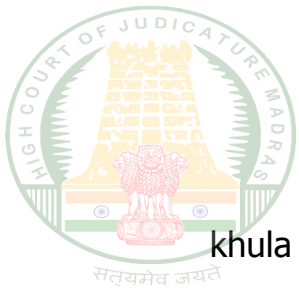
**ORDER**

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Heard both sides.

2.The writ petitioner's marriage with one A.Aisha was dissolved through Court process on 21.01.2021. Thereafter, the petitioner got married to one Thamjith Nihar on 07.06.2023 as per Muslim rites and customs. The said Thamjith Nihar was also a divorcee. She had earlier married one Syed Abuthahir on 23.08.2021 and the said marriage was dissolved through Khula as evidenced vide deed dated 20.06.2022. When the petitioner herein wanted to register his marriage with Thamjith Nihar, the respondent declined to do so on the ground that no proof has been submitted to show that Thamjith Nihar had obtained dissolution of her marriage through Court. Challenging the said refusal check slip dated 08.08.2025 issued by the respondent, this writ petition has been filed.

3.Under Shariat Law, marriage can be dissolved by mutual consent between the husband and wife and this mutual consent may take the form of khula or mubara'at **(2024 SCC OnLine All 7373 (Arshad Husain Vs. Shahneela Nishat))**. A reading of Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 indicates that



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khula has been statutorily recognized and that when questions involving khula arise, the applicable law will be Shariat. Khula is a form of extra judicial divorce that can be invoked at the instance of the wife. As per Muslim personal law, marriage can be dissolved either through court or outside the court. A copy of the khula deed executed between Thamjith Nihar and Syed Abuthahir has been enclosed in the typed set of papers. It can be seen therefrom that the first marriage of Thamjith Nihar had been dissolved consensually without judicial intervention. It is very much legal. The respondent is not right in his assumption that a Muslim woman can secure dissolution of her marriage only through judicial intervention or the process of Court. I, therefore, hold that the impugned refusal check slip is liable to be quashed. It is accordingly quashed. The petitioner is permitted to represent the application for filing the memorandum of marriage. It shall be registered by the respondent.

4.The learned counsel appearing for the writ petitioner also relied on the decision of the Hon'ble Division Bench of the Kerala High Court reported in **2022 SCC OnLine Ker 5512**. It was held therein that the right of a Muslim woman to invoke khula at her own will, will have to be respected. The Hon'ble High Court affirmed its earlier ruling



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that the right to terminate the marriage at the instance of a Muslim wife

is an absolute right and is not subject to the acceptance or the will of her husband. This judgment authored by His Lordship Mr. Justice A. Muhamed Mustaque is undoubtedly progressive and deserves celebration. The judgment declares that such a right has been conferred by the Holy Quran. It is also in tune with the current developments in Islamic jurisprudence world wide. I too feel like endorsing it in toto. But what comes in the way is the judgment of the Hon'ble Supreme Court in ***Zohara Khatoon v. Mohd. Ibrahim (1981) 2 SCC 509***. It was held therein that khula is a form of divorce initiated by the wife and comes into existence if the husband gives consent to the agreement and releases her from the marriage tie. Where both the parties agree and desire a separation resulting in a divorce, it is called Mubara' at. The gist of these modes (Khula and Mubara' at) is that it comes into existence with the consent of both the parties, particularly, the husband, because without his consent, this mode of divorce would be incapable of being enforced. In ***Jorden Diengdeh v. S.S. Chopra (1985) 3 SCC 62***, it was observed that Mohammaden Law provides for a decree for divorce known as Khula and Mubara' at by agreement of parties. ***Zohara Khatoon*** is by a Three Judges Bench. The standard text books (Mulla and A.A.A FYZEE)



also say that consent of the husband is necessary and there cannot be

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any unilateral dissolution of marriage at the instance of the wife. Mulla

and Fyzee are jurists of the highest order. The first edition of Mulla

came in 1905. Fyzee came out with his work in 1949. These pre-

Constitution books have influenced the judicial thinking of the Supreme

Court. I came across an article Islamic Law of Khula practice in India

by Shri.Muhammed Shakeel Ahmed of Aligarh University lamenting that

Indian muslim women are unlucky in the sense that till date the courts

are following the erroneous ruling that the consent of the husband is

mandatory in case of Khula. There is also a doctoral thesis by one

Mohd.Wasim Ali titled "Dissolution of Marital Tie by Muslim Wife: Rights

and Limitations". Divorce by Khula has been described as a privilege

and power of Muslim wife. Time has come to accept the view taken by

Justice A.Muhammed Mustaque.

5.This writ petition is allowed. No costs.

02.09.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes/ No

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The Sub Registrar, Ramnagar, Devakottai, Sivagangai District.



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G.R.SWAMINATHAN, J.

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