

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

FRIDAY, THE 24TH DAY OF SEPTEMBER 2021/2ND ASWINA, 1943

MAT. APPEAL NO.223 OF 2021

AGAINST THE JUDGMENT DATED 15.2.2021 IN O.P.NO.2662/2019
OF FAMILY COURT,ERNAKULAM

APPELLANT/PETITIONER IN OP:

A.SAJANI
AGED 59 YEARS
W/O.DR.B.KALAM PASHA,
MAJNOOR, MUNDAKKAL,
KOLLAM-681001.

BY SMT.A. SAJANI (PARTY-IN-PERSON)
BY ADV SMT.M.VANAJA

RESPONDENT/RESPONDENT IN OP:

DR.B.KALAM PASHA
AGED 58 YEARS
S/O BADUSHAH,
HIDAYA HOUSE,
FATHIMA CHURCH LANE,
ERNAKULAM-682020.

BY ADVS.SRI.BABU KARUKAPADATH (CAVEATOR)
BY SRI.T.KRISHNANUNNI (SR.), AMICUS CURIAE
BY ADVS.SRI.P.U.VINOD KUMAR
SRI.ARYA RAGHUNATH
BY ADVS.SMT.M.A.VAHEEDA BABU
SMT.VAISAKHI V.
SRI.T.M.MUHAMMED MUSTHAQ
SRI.KARUKAPADATH WAZIM BABU

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION
ON 15.09.2021 ALONG WITH MAT.APPEAL.NO.227/2021, THE COURT
ON 24.09.2021 DELIVERED THE FOLLOWING:

Mat. Appeal.Nos.223 & 227/2021

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

FRIDAY, THE 24TH DAY OF SEPTEMBER 2021/2ND ASWINA, 1943

MAT.APPEAL NO.227 OF 2021
AGAINST THE JUDGMENT DATED 15.2.2021 IN O.P.NO.675/2019
OF FAMILY COURT,ERNAKULAM

APPELLANT/PETITIONER IN OP:

A.SAJANI
AGED 59 YEARS
W/O.DR.B.KALAM PASHA, MAJNOOR, MUDAKKAL,
KOLLAM 681 001.

BY SMT.A. SAJANI (PARTY-IN-PERSON)
BY ADV.SMT.M.VANAJA

RESPONDENTS/RESPONDENTS IN OP:

- 1 DR.B.KALAM PASHA
AGED 58 YEARS
S/O.BADUSHAH, HIDAYAA HOUSE, FATHIMA CHURCH LANE,
ERNAKULAM 682 020.
- 2 JUVILY,
AGED 27 YEARS
FATHER'S NAME NOT KNOWN, HIDAYA HOUSE, FATHIMA CHURCH LANE,
ERNAKULAM 682 020

BY ADVS.SRI.BABU KARUKAPADATH (CAVEATOR)
BY SRI.T.KRISHNANUNNI (SR.), AMICUS CURIAE
BY ADVS.SMT.M.A.VAHEEDA BABU
SRI.P.U.VINOD KUMAR
SMT.ARYA RAGHUNATH
SMT.VAISAKHI V.
SRI.T.M.MUHAMMED MUSTHAQ
SRI.MOHAMED HISHAM P

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION
ON 15.09.2021 ALONG WITH MAT.APPEAL.NO.223/2021, THE COURT
ON 24.09.2021 DELIVERED THE FOLLOWING:

'C.R.'

J U D G M E N T

A.K. Jayasankaran Nambiar, J.

These MAT Appeals arise from a common judgment dated 15.02.2021 of the Family Court Ernakulam in O.P.Nos.675/2019, 2662/2019 and M.C.No. 297/2019. The OP's and MC were preferred by Smt. A.Sajani against her husband Dr. B. Kalam Pasha, a serving judicial officer in the State of Kerala. While the prayer in the OP's were for a declaration that the talaq pronounced against her by her husband was void and invalid, and for a consequential decree for restitution of conjugal rights, the prayer in the MC was for maintenance in terms of Section 125 of the Code of Criminal Procedure [hereinafter referred to as the 'Cr.PC'] on the premise that the marriage continued to subsist in the eyes of law. The court below, by the common judgment aforementioned, dismissed the OP's and consequently the MC as well. While the two appeals preferred by the appellant before us are against the common judgment of the Family Court in the OP's mentioned above, for reasons best known to the appellant, no appeal/revision has been

carried against the common judgment insofar as it dismisses the MC filed for maintenance.

Proceedings before the court below:

2. The case pleaded by the appellant in O.P.No.675/2019 was that her marriage with the respondent was solemnised at Ernakulam on 05.04.2009 and they stayed together as husband and wife at various places where her husband was posted as a judicial officer. At the time of her marriage with the respondent, he was a widower with two children from his first marriage. The appellant stated that, while there were no issues born to her from the marriage with the respondent, she took good care of the respondent's daughters from his earlier marriage and their life together was cordial in nature. While so, in September, 2016, while they were residing in their house at Ernakulam, the respondent took her to her home in Kollam and left her there and told her not to return to their matrimonial home or contact him any more. Later she received a Talaqnama dated 01.03.2017 (*the year is mistakenly shown as '2018' in the document*), to which she preferred a reply dated 09.03.2017 denying the existence of circumstances that would permit a pronouncement of talaq against her. To the said letter, the respondent sent a reply to her dated 09.03.2017. She later came to know that the respondent had contracted another

marriage with a younger girl, impleaded as the second respondent in the OP, and that he had kept the said fact a secret owing to his position as a judicial officer. On the said factual pleadings, the appellant contended that the talaqnama was not a valid one in law since (i) it was post dated and the date was corrected by the respondent only subsequently through his letter dated 09.03.2017 and the said correction was not attested by any witness, (ii) there was only a single pronouncement of talaq and it was made irrevocable thereby rendering it illegal and void going by the law laid down in **Shayara Bano v. Union of India - [(2017) 9 SCC 1]** (iii) that no valid grounds had been established by the respondent that would have enabled him to divorce her. The prayer in the OP was for a declaration that the talaq pronounced by the respondent was illegal and void, that she continued to be the sole living wife of the respondent and that the second respondent was not the legally wedded wife of the respondent.

3. O.P.No.2662/2019 was preferred, invoking Section 9 of the Family Courts Act, based on substantially the same factual pleadings as above to claim a decree of restitution of conjugal rights on the contention that there was no valid talaq pronounced by the respondent that had the effect of dissolution of their marriage. M.C.No.297/2019 was filed under Section 125 of the Cr.PC claiming maintenance from the respondent on the contention that, in the

absence of a valid talaq, the petitioner continued to be the legally wedded wife of the respondent, whom he had deserted since September, 2016. Taking into account the income of the respondent and the amount required to meet her living expenses, she claimed maintenance @ Rs.1 Lakh per month from the respondent.

4. In his objections to the OP's and MC above, the respondent alleged that he had married the petitioner pursuant to a matrimonial advertisement that showed her age as 38 years when, in fact, she was 48 years at the time of their marriage. He continued with the marital relationship, however, for the sake of his family. That right from the beginning, the petitioner exhibited behavioural defects and she was forever suspecting his fidelity. She also took a hostile attitude towards his children from his first marriage as also towards his late wife's mother. Owing to this, he was forced to shift the latter to another place. To address her behavioural issues, he had taken her to a Psychiatrist in Trivandrum at the instance of her own sister but she refused to cooperate with the treatment. On account of her hostility towards his daughters, he was forced to admit his younger daughter in a boarding school in Trichur and also get his older daughter married when she was still a student in the Engineering college. On account of her hostile attitude as also suspicious nature, their marital life suffered greatly and he found it extremely difficult to lead a normal family life with the petitioner.

Further, even despite serious and genuine attempts at mediation and reconciliation, at the instance of family elders of both the parties, on 01.10.2016 and 25.11.2016, the petitioner was not willing to change her attitude towards him and his family. It was thus, when left with no other option, that he chose to pronounce the talaq on 01.03.2017 in the presence of two witnesses with a view to dissolve the marriage with the petitioner. The fact of pronouncement of talaq was intimated to the petitioner through the talaqnama dated 01.03.2017, accompanied by a payment of Rs.30,000/- into her mother's bank account towards maintenance for the Iddat period. That on discovering that the date mentioned in the talaqnama was mistakenly typed as 01.03.2018, he intimated her of the typographical mistake through another letter dated 09.03.2017. That while the petitioner accepted the payment of Rs.30,000/- by withdrawing the said amount from the bank account, she subsequently questioned the validity of the talaq with the sole intention of harassing him. The respondent maintained that what he had pronounced was a '*Talaq Ahsan*' and the use of the word 'irrevocably' was only to alert the petitioner of the seriousness of the decision and to indicate that it was not to be taken lightly. It is stated that notwithstanding the pronouncement of talaq, the respondent was ready and willing to revoke the talaq if the petitioner was willing to amicably resolve the issues between them, and this is evidenced by the reconciliatory talks that took place in

the presence of mediators on 18.05.2017. The petitioner, on the other hand, treated the marriage as dissolved and, through a letter dated 14.07.2017 demanded a huge amount from him towards maintenance on the understanding that the talaq had already taken effect by then. It was contended by the respondent that inasmuch as the talaq dated 01.03.2017 had effectively dissolved his marriage with the petitioner on the expiry of the Iddat period, he married the 2nd respondent on 25.02.2018.

The findings of the court below:

5. After considering the oral testimony of the witnesses, as also the documents marked in evidence before it, the court below framed as many as ten issues in the matter, six of which were in relation to the validity of the talaq pronounced by the respondent. The other issues framed were in relation to the claim for restitution of conjugal rights and maintenance. The preliminary contention raised as regards the alleged discrepancy in the date mentioned in the talaqnama was rejected on the finding that it was merely a typographical mistake and the subsequent correspondence between the parties itself indicated that it was inconsequential. The talaq was found to have been pronounced on 01.03.2017. Dealing with the contention of the petitioner that the talaq was invalid insofar as there was only one pronouncement made, and that too 'irrevocably',

the learned judge found that the denouncement by the supreme court of the practice of triple talaq, applied as such only to talaqs effected through three pronouncements all made together. As in the case before it, there had been only a single pronouncement, it had to be seen as a Talaq Ahsan, notwithstanding the express use of the word 'irrevocably' in the talaqnama. It was also found significant that there had been reconciliation attempts, at the instance of elder family members of either party on 01.10.2016 and 25.11.2016, before the pronouncement of talaq on 01.03.2017 and thereafter on 18.05.2017 as well. These attempts at reconciliation clearly suggested that the pre-requisites for a valid talaq were complied with and, further, that notwithstanding the use of the term 'irrevocably' in the talaqnama, the respondent had attempted a reconciliation with the petitioner in order to keep the marriage alive. The learned judge then referred to the depositions of the petitioner during cross-examination and her subsequent conduct in court during arguments to observe that her psychotic and suspicious behaviour was sufficient to establish that the marital bond between the petitioner and the respondent was irretrievably broken and beyond reconciliation. The talaq was accordingly held to be a *talaq ahsan* and valid and the prayer for restitution of conjugal rights was denied. Further, in view of the finding that the talaq pronounced was a valid one, the prayer for maintenance in terms of Section 125 of the Cr.PC was rejected and the petitioner relegated

to her remedy of preferring a claim under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

The proceedings before us:

6. Before we examine the law on the subject and its application to the facts presented before us, we may observe that on a perusal of the appeal memoranda we found that it was very poorly drafted and did not contain all the grounds that could have been taken in a challenge against the judgment of the Family Court. That apart, the petitioner -Smt.Sajini - sought to appear in person before us to argue the appeals. While the petitioner is stated to be a law graduate in her own right, we were given to understand that she did not have any active practice before the subordinate courts and further, we noticed that the court below had recorded its exasperation with her through observations regarding her immaturity, emotional instability and improper conduct in court. Taking note of the above, we thought it fit to arrange for her legal representation and, accordingly, the services of Smt. Vanaja Ramaswamy legal aid counsel, was arranged for her. Considering the seriousness of the issue, and with a view to ensuring the complete safeguarding of her rights in these proceedings, we also requested Sri. Krishnan Unni, a learned Senior Advocate of this court, who has many years of experience in dealing with such

matters, to assist the court as *amicus curiae*. It was only thereafter that we proceeded to hear Smt. Vanaja Ramaswamy, learned counsel for the appellant, Sri. Babu Karukapadath, the learned counsel for the respondent and the learned *amicus curiae* *in extenso* on the various issues that arise for consideration. We might observe that while we have had the benefit of hearing some erudite submissions from learned counsel on either side, we would be failing in our duty if we do not acknowledge and express our gratitude to the learned senior counsel for the invaluable assistance rendered to this court.

The law governing talaq and maintenance:

7. A five judge bench of the Supreme Court in **Shayara Bano v. Union of India - [(2017) 9 SCC 1]** considered the question as to whether Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 (*hereinafter referred to as the "Shariat Act, 1937"*), to the extent it recognised and enforced Triple Talaq was unconstitutional and void? The final order of the court, signed by all the five judges, states the majority view of the court as holding that '*the practice of "Talaq-e-Biddat" - Triple Talaq is set aside.*' The reasons contained in the different opinions recorded in the case to reach the above conclusion are, however, different. What is important to note for the purposes of the instant case, however, is

the nature and characteristic features of a triple talaq or *talaq-ul-biddat* that was found objectionable by the court and which led the court to hold the practice as bad in law. Referring to Mulla, *Principles of Mahomedan Law* (20th Edn), the court noticed the forms of divorce recognised in Islamic Law as under:

“311. Different modes of talak. – A talak may be effected in any of the following ways:-

(1) *Talak ahsan.* – This consists of a single pronouncement of divorce made during a tuhr (period between menstruations) followed by abstinence from sexual intercourse for the period of iddat .

When the marriage has not been consummated, a talak in the ahsan form may be pronounced even if the wife is in her menstruation.

Where the wife has passed the age of periods of menstruation the requirement of a declaration during a tuhr is inapplicable; furthermore, this requirement only applies to a oral divorce and not a divorce in writing.

Talak Ahsan is based on the following verses of Holy Quran: “and the divorced woman should keep themselves in waiting for three courses.” (II:228).

“And those of your woman who despair of menstruation, if you have a doubt, their prescribed time is three months, and of those too, who have not had their courses.” (LXV: 4).

(2) *Talak hasan-* This consists of three pronouncements made during successive *tuhrs*, no intercourse taking place during any of the three *tuhrs*.

The first pronouncement should be made during a *tuhr*, the second during the next *tuhr*, and the third during the succeeding *tuhr*.

Talak Hasan is based on the following Quranic injunctions:

“Divorce may be pronounced twice, then keep them in good fellowship or let (them) go kindness.” (II: 229).

“So if he (the husband) divorces her (third time) she shall not be lawful to him afterward until she marries another person.” (II: 230).

(3) *Talak-ul-bidaat or talak-i-badai*. - This consists of –

(i) Three pronouncements made during a single *tuhr* either in one sentence, e.g., “I divorce thee *thrice*,” - or in separate sentences e.g., “I divorce thee, I divorce thee, I divorce thee”, or

(ii) a *single* pronouncement made during a *tuhr* clearly indicating an intention irrevocably to dissolve the marriage, e.g., “I divorce thee irrevocably.”

Talak-us-sunnat and talak-ul-biddat:- The Hanafis recognized two kinds of talak, namely, (1) *talak-us-sunnat*, that is, *talak* according to the rules laid down in the *sunnat* (traditions) of the Prophet; and (2) *talak-ul-biddat*, that is, new or *irregular talak*. *Talak-ul-biddat* was introduced by the Omeyyade monarchs in the second century of the Mahomedan era. *Talak-ul-sunnat* is of two kinds, namely, (1) *ahsan*, that is, most proper, and (2) *hasan*, that is, proper. The *talak-ul-biddat* or *heretical divorce* is *good in law, though bad in theology* and it is the most common and prevalent mode of divorce in this country, including Oudh. In the case of *talak ahsan* and *talak hasan*, the husband has an opportunity of reconsidering his decision, for the *talak* in both these cases does not become absolute until a certain period has elapsed (Section 312), and the husband has the option to revoke it before then. But the *talak-ul-biddat* becomes irrevocable immediately it is pronounced (S.312). The essential feature of a *talak-ul-biddat* is its irrevocability. One of tests of irrevocability is the repetition *three times* of the formula of divorce *within one tuhr*. But the triple repetition is not a necessary condition of *talak-ul-biddat*, and the intention to render a talak irrevocable may be expressed even by a single declaration. Thus if a man says “I have divorced you by a *talak-ul-bain* (irrevocable divorce)”, the *talak* is *talak-ul-biddat* or *talak-i-badai* and it will take effect immediately it is pronounced, though it may be pronounced but once. Here the use of the expression “*bain*” (irrevocable) manifests of itself the intention to effect an irrevocable divorce.” [emphasis supplied]

What was found objectionable and illegal by the majority on the bench, as regards the practice of triple talaq or *talaq-ul-biddat*, was

its instant irrevocability that rendered the practice 'manifestly arbitrary' in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it (Nariman & Lalit JJ) and 'anti-quaranic and bad in theology' (Kurian Joseph J).

8. In our view, the feature of instant irrevocability takes in two independent features - instantaneousness and irrevocability - both of which contribute to making the practice legally odious. The Supreme Court in **Shamim Ara v. State of UP - [(2002) 7 SCC 518]**, while endorsing the views taken in two decisions of the Gauhati High Court, spelt out the requirements of a valid talaq as (i) that the talaq must be for a reasonable cause; and (ii) that it must be preceded by attempts at reconciliation between the husband and the wife by two arbiters - one chosen by the wife from her family and the other by the husband from his family. If their attempts fail, talaq can be effected. A division bench of this court in **Kunhimohammed v. Ayishakutty - [2010 (2) KLT 71]**, went further to clarify that if an attempt for reconciliation by two arbiters has taken place, and they have not succeeded in bringing about a reconciliation, it can be held that there is a reasonable cause for pronouncement of talaq, and the specific reason for divorce need not be established before the court and further, the specific reason will not be justiciable also.

The court reasoned that Muslim law – either through Quaranic injunctions or through the Sunnahs or Ahadis – did not enumerate causes for divorce that are reasonable or causes that are unreasonable. It was found that Islamic Law did not obligate a man to give reasons for the divorce or satisfy anyone else of such reasons. As regards the non-justiciability of the reasons, it was observed that if courts were to look into the reasonableness of the cause for divorce, there would be as many interpretations about the reasonableness of the cause for divorce as there are judges, making the law of divorce in Muslim law uncertain, vague and confusing. Thus, the test for ruling out the vice of instantaneousness is to see whether there were genuine attempts at reconciliation between the husband and the wife, by two arbiters – one chosen by the wife from her family and the other by the husband from his family. If such reconciliation attempts have in fact taken place, then, notwithstanding that such attempts proved futile, the pronouncement of talaq must be seen as valid and for a reasonable cause. That, however, is just one aspect of the matter.

9. As noticed above, the talaq must also be free of the other feature viz. irrevocability. The valid forms of talaq recognised in Islamic Law viz. the *Talaq Ahsan* and *Talaq Hasan*, both contemplate a period, immediately after the pronouncement of talaq, whether

such pronouncement is only once, or thrice over three successive lunar months, when the husband can revoke the talaq. This procedure, in our view, is intended to give the husband an opportunity to reflect upon his action (of having pronounced the talaq) and to try and restore the marital relationship if possible, while at the same time affording the wife a further opportunity to convince her husband that their marriage can still be saved. Such instances may arise for eg. If the wife discovers that she is pregnant during the three-month period aforementioned. There may be myriad other reasons that could prompt a husband to reconsider his decision, and it is for enabling the husband to undo his action, and to ensure that it is not one taken irrationally, that the procedure prescribed for a valid talaq has an in-built component of introspection, that postpones the stage of irrevocability of the talaq to a period after three lunar months. We are of the view that this aspect of a pronouncement of talaq is also of great significance and purpose and a non-adherence to it could render the pronouncement invalid.

10. As regards the right of a divorced Muslim wife to get maintenance from her husband, the division bench of this court in *Kunhimohammed (Supra)* observed that the provisions of Section 125 of the Cr.PC must be interpreted in the light of the fact that the

Muslim husband, unlike the husbands in any other religion, has a unilateral right to divorce his wife without intervention of the court. It was considering the vulnerability of such a wife that the Muslim Women (Protection of Rights on Divorce) Act, 1986 was enacted to confer on the divorced Muslim wife higher and superior rights than her counterparts in other religions. Accordingly, a larger and superior right is available to the Muslim wife who faces the vulnerability of arbitrary and unilateral divorce at the hands of her husband without intervention of any court. Even when she is able to maintain herself, she can claim capitalised amounts under Section 3 of the Act. It is also significant that the rights of the divorced woman under Section 125 of the Cr.PC do not get extinguished on account of the larger rights conferred under Section 3 of the Act. If the divorced Muslim woman chooses to claim amounts under Section 3 of the Act, only on such payments being actually made either voluntarily or in response to an order of the court does Section 127 (3)(b) of the Cr.PC get attracted to extinguish the liability of the husband under the Cr.PC. Till then, or till she remains a divorced Muslim wife, she will be entitled to claim maintenance from her divorced husband. Death, remarriage or actual payment of the amounts payable under Section 3 of the Act alone shall extinguish her right under Section 125 Cr.PC to claim maintenance.

Our analysis and findings:

11. When we apply the law as enumerated above to the facts in the appeals before us, we cannot but notice that inasmuch as there is no dispute that reconciliation efforts were pursued at the instance of two arbiters one chosen from the side of the appellant's family and one chosen from the side of the respondents family, and the meetings on 01.10.2016 and 25.11.2016 failed to result in any reconciliation, the pre-requisites for the pronouncement of a valid talaq were fulfilled in this case. This would be the finding that flows from the decision of the division bench of this court in **Kunhimohammed v. Ayishakutty - [2010 (2) KLT 71]**, that went further to clarify that if an attempt for reconciliation by two arbiters has taken place, and they have not succeeded in bringing about a reconciliation, it can also be held that there is a reasonable cause for pronouncement of talaq, and that the specific reason for divorce need not be established before the court since the same would not be justiciable. The talaq in the instant case has to be taken as pronounced after due consideration and not instantaneousness owing to the reconciliation efforts pursued by the parties before its pronouncement.

12. The question then arises as to whether, even if valid grounds for its pronouncement existed, the pronouncement of the talaq satisfied the feature of revocability for a period of three lunar

months immediately following the pronouncement? As already noticed, this is the sheet anchor of the appellant's contention - that the use of the word 'irrevocably' in the talaqnama rendered the pronouncement of talaq illegal since it clearly evidenced the intention of the respondent that he was not ready to reconsider his decision during the period of three lunar months that were to follow. Here we find that the use of the word 'irrevocably' in the talaqnama is certainly suggestive of an intimation by the respondent to the appellant, that he was not ready to reconsider his decision. We have to bear in mind that the choice of words is that of the respondent who is a serving judicial officer of the State and it cannot be presumed that he had used the word 'irrevocably' without understanding its significance. Had it not been for subsequent events that unfolded, we would have certainly held the pronouncement of talaq as illegal on this ground. However, we notice from the evidence before us that, even after the pronouncement of talaq, there were in fact, efforts at reconciliation, albeit unsuccessful, that were pursued on 18.05.2017, in which family members of either party participated. The conduct of the parties suggest that they never considered the talaq pronounced on 01.03.2017 as irrevocable from that date onwards. We also find that within a year after the pronouncement of talaq, the respondent married another woman on 25.02.2018. Under the said circumstances, therefore, we feel that the ends of justice would be

served by treating the lapse on the part of the respondent as a mere irregularity in the mode of pronouncement of the talaq, that could be regularised by postponing the effective date of dissolution of marriage by the period of three lunar months required in the case of a *Talaq Ahsan*. We hold therefore that, notwithstanding the use of the word 'irrevocably' in the talaqnama, the respondent must be seen as having pronounced a *talaq ahsan*, that became irrevocable only on the expiry of the period of three lunar months immediately following the single pronouncement of the talaq.

13. While our findings as above would have sufficed to dismiss the appeals preferred by the appellant, we felt that notwithstanding that there was no claim for maintenance in terms of Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, we would permit the appellant to claim a fair and reasonable amount from the respondent in the spirit of settlement, and subject to the condition that on payment of the said amounts to her, she would accept the same in full and final settlement of all claims, present and future, against the respondent. Towards this end, we asked both parties and their counsel, along with the learned amicus curiae, to hold discussions to try and arrive at a settlement figure that could then be communicated to us. In the *in camera* proceedings that followed, we also interacted with the appellant for

about two hours to try and convince her that a settlement of the nature suggested above would be in her best interest. The appellant, however, was not amenable to any settlement unless the settlement amount was fixed at Rs.1.20 crores, the basis of computation of which figure she was not able to show us. As against the above, the figure that we had arrived at, based on various factors such as the present age of the appellant, the probability of her remarrying, the standard of living that she was used to when she was the respondent's wife, her future expenses and the income and average expenses of the respondent, was Rs.12 Lakhs {Rs.10,000/- per month x 120 months (ten years)} with interest @ 9% per annum for the period from 01.03.2017 till date of payment. This amount would have been payable to the appellant after reducing therefrom, the Rs.30,000/- already paid to her by the respondent for the iddat period. We might clarify that in arriving at the said computation we were guided by the observations of the Supreme Court in **Danial Latifi v. Union of India - [(2001) 7 SCC 740]** - that "the purpose of the Muslim Women (Protection of Rights on Divorce) Act, 1986 appears to be to allow the Muslim husband to retain his freedom of avoiding payment of maintenance to his erstwhile wife after divorce and the period of iddat. However a careful reading of the provisions of the Act would indicate that a divorced woman is entitled to a reasonable and fair provision for maintenance. Parliament seems to intend that the divorced woman gets sufficient means of livelihood

after the divorce, and therefore, the word “provision” indicates that something is provided in advance for meeting some needs. In other words, at the time of divorce the Muslim husband is required to contemplate the future needs and make preparatory arrangements in advance for meeting those needs. Reasonable and fair provision may include provisions for her residence, her food, her clothes and other articles.”

As already noticed above, the appellant was not ready to accept the amounts offered to her and insisted that she would not settle for any amount less than Rs.1.20 crores. Under the circumstances, we are left with no other alternative than to dismiss the appeals as devoid of merit. We do so, but not without a tinge of despair at the unfortunate turn of events.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
MOHAMMED NIAS C.P.
JUDGE