Form No: HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT LAHORE

(JUDICIAL DEPARTMENT)

Case No. W.P. No.39820/2026

Adeena Naz **Versus** *Judge Family Court/Guardian Judge Lahore, etc.*

Sr.No.of order/ Proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties or counsel, where necessary.

07.10.2026 Ch. Muhammad Yousaf Advocate, along with the petitioner.
Respondents No.2 & 3 are ex-parte.
Amicus curiae, Ms. Amber Qayyum, Advocate.
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Through the instant writ petition, the petitioner, Mst. Adeena Naz, has assailed the judgment and decree dated 14.05.2026 passed by the learned Judge Family Court, Lahore, whereby her suit for dissolution of marriage, originally instituted on the grounds of cruelty and non-maintenance, was decreed on the basis of *Khula*, subject to the return of dower. The grievance of the petitioner is that her claim founded upon statutory grounds was converted into a decree for *Khula*, carrying financial consequences, without proper consideration of the distinction between the two remedies and the implications of such conversion.

2. Learned counsel for the petitioner contends that the learned Family Court ought not to have treated the petitioner's expression of unwillingness to continue the marriage as a sufficient basis for depriving her of her right to dower. It is argued that the petitioner had approached the Court seeking dissolution on the grounds of cruelty and non-maintenance, but the consequences of electing *Khula*, particularly in relation to dower, were not adequately explained to her.

3. Despite service through the prescribed modes, respondents No.2 and 3 did not appear and were proceeded against ex parte vide order dated 20.07.2026.

4. Arguments heard. Record perused.

5. Perusal of the record reflects that the petitioner contracted marriage with respondent Muhammad Subhan on 24.12.2023 against dower of Rs.100,000/-, stated to have been paid at the time of *Nikah*. Subsequently, she instituted a suit for dissolution of marriage on the grounds of cruelty and non-maintenance. The proceedings for reconciliation before the ADR Centre, Lahore, remained un-successful. Thereafter, the learned Family Court recorded the statement of the petitioner, wherein she expressed her inability and unwillingness to live with the respondent, requested dissolution through *Khula*, and stated that she was ready and willing to return the dower. On the basis of the said statement, the marriage was dissolved through *Khula*, accompanied by a direction for restitution of dower.

6. The statement of the petitioner, as reproduced in the impugned judgment, reads as follows:

> *"Stated that I cannot live with defendant Muhammad Subhan at any cost. I have developed severe hatred against him. My suit for dissolution of marriage on the basis of Khula be decreed. I am ready and willing to return the dower to defendant.*"

7. The statement undoubtedly contains an express request for *Khula* and an offer to return the dower. It is, therefore, distinguishable from a case in which the Court, without any such request, converts a suit for dissolution on statutory grounds into one for *Khula*. However, the existence of an express statement does not dispense with the Court's responsibility to ensure that the election made by a litigant is voluntary and that its material legal consequences are understood. The question is not whether a woman is competent to choose *Khula*; she unquestionably is. The question is whether the Court has adequately safeguarded her

ability to make that choice with knowledge of the available alternatives and the consequences attached to them.

8. In ***Ibrahim Khan v. Mst. Saima Khan and others,*** reported as **PLD 2024 SC 645**, the Hon'ble Supreme Court of Pakistan explained the distinction between dissolution of marriage upon statutory grounds under the Dissolution of Muslim Marriages Act, 1939, and dissolution through *Khula*. The Court held that the two remedies operate in distinct legal domains and carry different consequences, particularly concerning dower. A Family Court cannot independently substitute *Khula* for a statutory claim when the woman has not unequivocally elected that remedy. Where the statutory grounds are established, section 5 of the 1939 Act protects the wife's right to dower. By contrast, *Khula* may entail restitution or relinquishment of dower in accordance with the applicable law.

The principle was reaffirmed by the Honourable Supreme Court in *Mst. Naila Javed and another v. Nasir Khan and others*, Civil Petition for Leave to Appeal No.3767 of 2025, decided on 12.01.2026 and reported as **PLD 2026 SC 302**. These authorities require the Court to respect the woman's election and not to treat the two remedies as interchangeable. The distinction is substantive: it concerns not merely the form of the decree, but the rights and liabilities that follow from it.

9. It follows that a woman who seeks dissolution on the grounds of cruelty or another statutory ground should not be presumed to have abandoned that claim merely because she expresses hatred, refuses reconciliation, or states that she cannot continue to live with her husband. Such expressions may be consistent with the allegations forming the basis of her suit. Equally, where a woman, after understanding the available remedies and their consequences, chooses *Khula* and offers the consideration required by law, her decision must be respected. The Court must neither impose *Khula* upon her nor obstruct her access to it by requiring unnecessary formalities.

10. The responsibility of the Family Court assumes particular importance because the choice is often made at a stage when the parties are under considerable emotional distress and are seeking an immediate resolution of their marital dispute. The Court is not required to persuade a woman to pursue statutory grounds, nor to dissuade her from seeking *Khula*. Its duty is to explain the distinction neutrally, ascertain her actual preference, and record that preference in clear terms. The Court must not assume that a litigant understands the financial consequences merely because she has used the expression *Khula* or has stated that she is willing to return the dower.

11. The expression *"informed choice"* does not mean that a woman must prove the intensity of her aversion or justify her decision to leave the marriage before she can seek *Khula*. Nor does it require the Court to conduct a lengthy inquiry in every case. It requires an explanation proportionate to the decision being made, in language understood by the woman, followed by a direct and unambiguous statement of her election. The explanation must be especially clear where the woman has already pleaded statutory grounds and the proposed change of remedy may affect her financial rights.

12. In the present case, the statement of the petitioner demonstrates that she expressly requested *Khula* and offered to return the dower. However, the impugned judgment does not sufficiently record whether she was informed that she could continue to pursue her original statutory claim, that the legal consequences concerning dower differ between the two remedies, or whether she understood those consequences before making her statement. The record reproduced before this Court does not permit a confident conclusion that these matters were explained. The Court cannot fill that evidentiary gap by presuming that an explanation must have been given merely because the petitioner's statement was recorded.

13. At the same time, the petitioner's express request for *Khula* cannot be disregarded, nor can the dissolution of marriage be treated as an involuntary act simply because the judgment does not record a detailed explanation. The proper course is to distinguish the petitioner's desire to terminate the marriage from the question whether the financial consequence attached to the selected remedy followed from a sufficiently informed election. In the circumstances of this case, the omission calls for a limited reconsideration rather than an automatic conclusion that the petitioner never sought *Khula*.

14. It is, therefore, considered appropriate to lay down the following procedural safeguards for the guidance of Family Courts. These safeguards are intended to give practical effect to the law declared by the Honourable Supreme Court, protect the autonomy of the woman, and ensure that the financial consequences of dissolution are determined according to law.

Guidelines for Family Courts

A. Identification of the remedy

(i) At the appropriate stage, the Family Court shall ascertain whether the wife seeks dissolution of marriage on statutory grounds, *Khula*, or *Khula* as an alternative remedy. Where the plaint alleges cruelty or another statutory ground, the Court shall not presume that the wife has abandoned that claim merely because she expresses an inability or unwillingness to continue cohabitation.

(ii) The Court shall explain that a wife may seek *Khula* without establishing matrimonial fault, whereas dissolution on statutory grounds requires determination of the grounds pleaded in accordance with law. The choice between these remedies belongs to the wife and shall not be made on her behalf by the Court.

B. Explanation of legal and financial consequences

(i) Before accepting an election of *Khula* in a case originally brought on statutory grounds, the Court shall explain, in a language understood by the wife, the material distinction between the remedies and their consequences concerning dower.

(ii) The Court shall clarify that a decree on an established statutory ground attracts the protection of section 5 of the Dissolution of Muslim Marriages Act, 1939, whereas *Khula* may

entail restitution or relinquishment of dower in accordance with the applicable law. The Court shall not state or imply that every form of dissolution necessarily requires the wife to return her dower.

(iii) Where dower is disputed, unpaid, partly paid, or paid in property, the Court shall ascertain the relevant facts and identify the applicable legal consequences. The amount or property proposed to be returned or relinquished shall be specified, and the Court shall not extend a general statement into a surrender of unrelated rights.

C. Recording of informed and voluntary choice

(i) After giving the explanation, the Court shall ask the wife to state whether she wishes to proceed with her statutory claim, elects *Khula*, or seeks *Khula* as an alternative. Her answer shall be recorded in her own words, as far as practicable.

(ii) The Court shall ensure that the decision is voluntary and is not the result of pressure, misunderstanding, or an impression that she has no alternative but to surrender dower to obtain dissolution. Where there is a genuine doubt regarding understanding or voluntariness, the Court shall give the wife a reasonable opportunity to obtain legal advice or clarify her position.

(iii) No rigid or lengthy formula is prescribed. The substance of the inquiry is that the wife understands the available choices, the material financial consequences, and the effect of the election she makes. A statement shall not be rejected merely because it does not follow prescribed wording, provided that the record establishes a clear and informed choice.

D. Adjudication and protection of rights

(i) Where the wife maintains her statutory claim, the Court shall proceed to determine that claim in accordance with law and the evidence, without converting it into *Khula* merely because reconciliation has failed or the wife has expressed aversion to her husband.

(ii) Where the wife knowingly and voluntarily elects *Khula*, the Court shall give effect to that election and determine the consequences concerning dower under the applicable law. It shall not require proof of cruelty as a precondition to *Khula*.

(iii) The Court shall state in its judgment the remedy elected by the wife, the material explanation provided, the statement demonstrating her election, and the legal basis for any direction concerning dower. The Court shall also make clear that *Khula* does not, by itself, extinguish independent claims relating to

dowry articles, personal belongings, or the maintenance of children.

(iv) These safeguards shall be applied in a manner that facilitates expeditious disposal. They shall not be used to prolong a marriage against the woman's wishes, to compel reconciliation, or to subject a woman seeking *Khula* to an unnecessary trial concerning matrimonial fault.

مندرجہ بالا عدالتی رہنما اصول برائے فیملی کورٹس کو مفادِ عامہ کی خاطر اُردو زبان میں بھی تحریر کیا جا رہا ہے۔

الف۔ مطلوبہ قانونی چارہ جوئی کی وضاحت

(i). فیملی کورٹ مناسب مرحلے پر خاتون سے یہ واضح کرے گی کہ آیا وہ شادی کے خاتمے کے لیے قانون میں مقرر کردہ بنیادوں پر دعویٰ کر رہی ہے، خلع چاہتی ہے، یا خلع کو متبادل چارہ جوئی کے طور پر اختیار کرنا چاہتی ہے۔ اگر دعویٰ میں ظلم و تشدد یا کوئی دوسری قانونی بنیاد بیان کی گئی ہو تو محض اس وجہ سے کہ خاتون شوہر کے ساتھ رہنے سے انکار کرتی ہے، یہ تصور نہیں کیا جائے گا کہ اس نے اپنی قانونی بنیاد سے دستبرداری اختیار کر لی ہے۔

(ii). عدالت خاتون کو غیر جانبدارانہ انداز میں سمجھائے گی کہ خلع کے لیے ازدواجی قصور ثابت کرنا ضروری نہیں، جبکہ قانون میں مقرر کردہ بنیاد پر نکاح کے خاتمے کے لیے متعلقہ قانونی بنیاد کا ثبوت اور اس کا تعین ضروری ہے۔ ان دونوں میں سے کسی ایک طریقۂ کار کا انتخاب خاتون کا اپنا حق ہے؛ عدالت اس کی جگہ یہ انتخاب نہیں کرے گی۔

ب۔ قانونی اور مالی نتائج کی وضاحت

(i). اگر خاتون نے ابتدا میں قانونی بنیادوں پر دعویٰ دائر کیا ہو اور بعد میں خلع اختیار کرنے کا ارادہ ظاہر کرے تو عدالت اس انتخاب کو قبول کرنے سے پہلے، خاتون کی سمجھ میں آنے والی زبان میں، دونوں طریقۂ کار کا فرق اور حقِ مہر پر ان کے اثرات واضح کرے گی۔

(ii) عدالت وضاحت کرے گی کہ ڈِسولوشن آف مسلم میرجز ایکٹ، 1939 کی دفعہ 5 کے تحت قانونی بنیاد پر نکاح ختم ہونے کی صورت میں حقِ مہر کا تحفظ حاصل ہے، جبکہ خلع کی صورت میں قابلِ اطلاق قانون کے مطابق حقِ مہر کی واپسی یا اس سے دستبرداری کا سوال پیدا ہو سکتا ہے۔ عدالت یہ تاثر نہیں دے گی کہ نکاح ختم کرانے کی ہر صورت میں حقِ مہر واپس کرنا لازمی ہے۔

(iii). اگر حقِ مہر کی ادائیگی، عدم ادائیگی، جزوی ادائیگی یا جائیداد کی صورت میں ادائیگی متنازع ہو تو عدالت متعلقہ حقائق معلوم کرے گی اور قابلِ اطلاق قانون کے مطابق فیصلہ کرے گی۔ واپس کیے جانے یا چھوڑے جانے والے حقِ مہر کی رقم یا جائیداد واضح طور پر بیان کی جائے گی۔ کسی عمومی بیان کو جہیز، ذاتی سامان یا دیگر غیر متعلقہ حقوق سے دستبرداری نہیں سمجھا جائے گا۔

ج۔ آزادانہ اور باخبر انتخاب کا اندراج

(i). وضاحت کے بعد عدالت خاتون سے دریافت کرے گی کہ آیا وہ اپنے قانونی دعوے کو جاری رکھنا چاہتی ہے، خلع اختیار کرتی ہے، یا خلع کو متبادل چارہ جوئی کے طور پر چاہتی ہے۔ جہاں تک ممکن ہو، اس کا جواب اسی کے اپنے الفاظ میں قلم بند کیا جائے گا۔

(ii). عدالت اطمینان کرے گی کہ انتخاب آزادانہ طور پر کیا گیا ہے اور کسی دباؤ، غلط فہمی یا اس تاثر کے نتیجے میں نہیں کہ نکاح ختم کرانے کے لیے حقِ مہر سے دستبرداری کے سوا کوئی راستہ موجود نہیں۔ اگر خاتون کی سمجھ یا رضامندی کے بارے میں حقیقی شبہ ہو تو اسے قانونی مشورہ لینے یا اپنا مؤقف واضح کرنے کا مناسب موقع دیا جائے گا۔

(iii). کسی طویل یا مخصوص الفاظ پر مشتمل فارمولے کی پابندی لازم نہیں ہو گی۔ بنیادی تقاضا یہ ہے کہ خاتون دستیاب قانونی راستوں، ان کے اہم مالی نتائج اور اپنے انتخاب کے اثرات کو سمجھتی ہو۔ اگر ریکارڈ سے آزادانہ اور باخبر انتخاب ثابت ہو تو محض مقررہ الفاظ استعمال نہ کرنے کی وجہ سے بیان کو مسترد نہیں کیا جائے گا۔

د۔ فیصلہ اور حقوق کا تحفظ

(i). اگر خاتون اپنے قانونی دعوے کو جاری رکھنا چاہے تو عدالت اس دعوے کا فیصلہ قانون اور شہادت کے مطابق کرے گی۔ محض مصالحت کی ناکامی یا شوہر کے لیے نفرت یا ناپسندیدگی کے اظہار کو خلع میں تبدیلی کی بنیاد نہیں بنایا جائے گا۔

(ii). اگر خاتون باخبر اور آزادانہ طور پر خلع اختیار کرے تو عدالت اس انتخاب کو مؤثر بنائے گی اور حقِ مہر کے متعلق نتائج کا تعین قابلِ اطلاق قانون کے مطابق کرے گی۔ خلع کے لیے ظلم و تشدد یا ازدواجی قصور ثابت کرنے کی شرط عائد نہیں کی جائے گی۔

(iii). فیصلے میں عدالت واضح کرے گی کہ خاتون نے کون سا قانونی راستہ اختیار کیا، اسے کیا وضاحت دی گئی، اس کے انتخاب کا کون سا بیان ریکارڈ پر موجود ہے، اور حقِ مہر کے متعلق حکم کس قانونی بنیاد پر صادر کیا جا رہا ہے۔ یہ بھی واضح کیا جائے گا کہ خلع بذاتِ خود جہیز، ذاتی سامان یا بچوں کے نان و نفقہ سے متعلق آزادانہ حقوق کو ختم نہیں کرتا۔

(iv). ان رہنما اصولوں پر عمل درآمد کرتے ہوئے مقدمات کو جلد نمٹانے کا تقاضا پیشِ نظر رکھا جائے گا۔ ان اصولوں کو نکاح زبردستی برقرار رکھنے، مصالحت پر مجبور کرنے یا خلع کی خواہش رکھنے والی خاتون کو ازدواجی قصور ثابت کرنے کے غیر ضروری مقدمے میں الجھانے کے لیے استعمال نہیں کیا جائے گا۔

15. The foregoing safeguards are intended neither to make the exercise of the right to *Khula* more difficult nor to presume that a woman is incapable of making her own decision. Their purpose is to ensure that the decision is “genuinely hers”. The Court must respect her autonomy while ensuring that a consequential judicial order is not founded upon an uninformed or misunderstood election. A brief, neutral explanation at the appropriate stage can prevent substantial injustice and avoid unnecessary subsequent litigation.

16. Applying these principles to the present case, the petitioner’s statement establishes that she expressly sought *Khula* and offered to return the dower. However, the available record

does not adequately establish that the distinction between *Khula* and dissolution on statutory grounds, together with the consequences for dower, was explained to her before the election was accepted. In the absence of such material, this Court is unable to sustain the financial direction merely by presuming informed consent. At the same time, the petitioner's recorded desire to end the marriage must be respected and the proceedings should not be prolonged unnecessarily.

17. Consequently, the instant writ petition is ***partly allowed***. The impugned judgment and decree dated 14.05.2026 are set aside to the extent that the petitioner's election of *Khula* and the consequential direction concerning return of dower require reconsideration in accordance with the foregoing guidelines. The matter is remanded to the learned Judge Family Court, Lahore, for a limited and expeditious inquiry into the petitioner's informed and voluntary election of remedy.

18. The learned Family Court shall explain to the petitioner, in a language understood by her, the distinction between *Khula* and dissolution on statutory grounds and the material consequences concerning dower. It shall thereafter record her clear and voluntary choice. If she elects *Khula* after such explanation, the Court shall determine the consequence concerning dower in accordance with the applicable law and the relevant facts. If she elects to pursue her original statutory claim, the Court shall proceed in accordance with law, affording the necessary opportunity to the parties and avoiding any presumption that the original claim was abandoned merely by reason of her earlier expression of aversion. The proceedings shall be concluded expeditiously, preferably within 30-days of receipt of this judgment, subject to the requirements of law and a fair opportunity to the parties.

19. The object of the remand is confined to ensuring that the remedy and its financial consequences reflect her informed and

voluntary choice. The learned Family Court shall pass a reasoned order in the light of the above directions.

(Mohsin Akhtar Kayani)
Judge

Approved for reporting

Judge

JahanZaib*