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OP(FC) No.375/2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

THURSDAY, THE 24TH DAY OF SEPTEMBER 2026 / 2ND ASWINA, 1948

OP (FC) NO. 375 OF 2026

OP NO.1211 OF 2025 OF FAMILY COURT, MALAPPURAM

PETITIONER/PETITIONER/RESPONDENT:

BY ADVS.
SRI.JAMSHEED HAFIZ
SMT.T.S.SREEKUTTY
SMT.FATHIMA NASREEN S.

RESPONDENT/RESPONDENT/PETITIONER:



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BY ADVS.
SHRI.K.JAYESH MOHANKUMAR
SRI.PUSHPARAJAN KODOTH
SMT.VANDANA MENON
SRI.VIMAL VIJAY

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
07.09.2026, THE COURT ON 24.09.2026 DELIVERED THE FOLLOWING:



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“CR”**JUDGMENT**Shoba Annamma Eapen, J.

This original petition has been filed by the respondent/husband in OP No. 1211 of 2025 on the files of the Family Court, Malappuram, challenging Exts.P9 to P11 orders passed in IA Nos. 2, 3 & 4 of 2026 respectively in OP No. 1211 of 2025.

2. For brevity, the parties are referred to as they are arrayed before this Court.

3. The petitioner and the respondent herein were husband and wife respectively. Their marriage was solemnized on 25.12.2023 by performing 'nikah' in accordance with the Islamic religious rites in the presence of a Quazi of Khidmathul Islam Sangham Padapparamba Juma Masjid Mahallu. The respondent filed OP No. 1211 of 2025 before the Family Court, Malappuram for declaration of 'khula'. The petitioner also filed OP No. 1252 of 2025 before the Family Court, Tirur, for declaring that the 'khula' is void, for return of diamond ornament and for compensation for mental agony.

4. The petitioner further filed IA No. 2 of 2026 in OP No.



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1211 of 2025, seeking to have the issue of 'whether khula is legally valid' heard as a preliminary issue, IA No. 3 of 2026 seeking permission to produce documents and examine witnesses, and IA No. 4 of 2026 seeking to keep OP No. 1211 of 2025 in abeyance. Objections were filed by the respondent; and finally, the Family Court dismissed IA Nos. 2, 3 & 4 of 2026 by Exts.P9 to P11 orders. According to the petitioner, the Family Court ought to have permitted the petitioner to lead evidence in the case and ought to have held that the inquiry in a case filed seeking declaration of 'khula' involves the question of evidence as to the return of mahar and the attempt of mediations done by the parties, which, allegedly, are the mandatory requirements for pronouncing 'khula'. Thus, the petitioner has come up before this Court challenging Exts.P9 to P11 orders.

5. The respondent filed a counter affidavit, relying on the judgments of this Court in **X and Others v. Y and Others** [2021 (2) KLT 967] and **Asbi K. N. v. Hashim M. U.** [2021 (6) KLT 292], and contending that the inquiry stated therein is only summary in nature treating it as an uncontested matter. It was further contended that all conditions stipulated in **X** (*supra*) had been complied with by the respondent and that there is no provision enabling the petitioner to contest or seek a stay of the proceedings in OP No. 1211 of 2025.



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According to the respondent, an application seeking for declaration of 'khula' cannot be objected by the husband; and if there is any grievance for the husband, his remedy is to contest the order declaring 'khula' in an appropriate manner known under the law; and the Family Court is not entitled to adjudicate upon such extra judicial divorce unless it is called upon to decide its validity in an appropriate manner. It was pointed out that in **Asbi** (*supra*), this Court specifically held that the Family Court shall only peruse the recital of the 'khula' and ascertain whether there was a valid pronouncement. The respondent further contended that though she had filed a sworn statement and the case was posted several times for the sworn statement of the petitioner/husband, the petitioner purposefully sought adjournments contending that he was not ready for inquiry. According to the respondent, even if 'khula' is declared by the Family Court, the petitioner has every right to challenge the effectiveness of 'khula' in an appropriate manner known under law. Therefore, she prayed for a dismissal of this original petition.

6. We have heard the learned counsel for the petitioner as well as the respondent.

7. The learned counsel for the petitioner argued that the



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Family Court failed to appreciate the dictums laid down in **X** (*supra*), **Shamim Ara v. State of U & Others** [2002 (3) KLT 537] and **Shayara Bano v. Union of India & Others** [2017 (4) KHC SN 19], and that any form of 'talaq/khula' to be pronounced must be pleaded and proved, and if he/she fails, the plea ought to have been treated as failed. It was also argued that the apex court emphasizes fairness and hearing the other side, before declaring any form of 'talaq/khula' and that the judgment in **Shamim Ara** (*supra*) was later affirmed by the Constitutional Bench of the apex court in **Shayara Bano** (*supra*), holding that 'talaq-e-biddat' was unconstitutional. The learned counsel further argued that the Family Court ought to have found that the finding of the apex court that this form of 'talaq' is 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 and that, this form of 'talaq' must, therefore, be held to be violative of fundamental right contained under Article 14 of the Constitution of India.

8. It was the main argument of the learned counsel for the petitioner that the Division Bench of this Court, in **Asbi** (*supra*), totally misinterpreted the observations of this Court in paragraph No.76 of the judgment in **X** (*supra*), which reads as follows:



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"76. VII. JURISDICTION OF FAMILY COURT IN MATTERS RELATED TO EXTRA JUDICIAL DIVORCE:

The Family Courts Act, 1984 provides for the establishment of the Family Courts to exercise the jurisdiction exercisable by District Courts or any subordinate Civil Courts under law in regard to the matters specifically referred to in S.7 of the Family Courts Act. Explanation (d) of S.7(d) of the Family Courts Act, confers the Family Court with the jurisdiction to declare the matrimonial status of any person. Therefore, there is no difficulty for the Family Court to endorse an extra - judicial divorce to declare the matrimonial status of a person. In the matter of talaq, khula, mubaraat, talaq - e - tafwiz, the Family Courts shall entertain such applications moved by either of the parties or both parties to declare the marital status of such parties. In the matter of unilateral dissolution of marriage, invoking khula and talaq, the scope of inquiry before the Family Courts is limited. In such proceedings, the court shall record the khula or talaq to declare the marital status of the parties after due notice to other party. If any person want to contest the effectiveness of khula or talaq, it is open for such aggrieved person to contest the same in appropriate manner known under law. In the matter of mubaraat and talaq - e - tafwiz, on being satisfied that the dissolution is being effected on mutual consent, the Family Court without further inquiry shall declare the marital status. We notice Family Courts are overburdened with large number of cases. The Family Court therefore, shall restrain from adjudicating upon such extra judicial divorce unless it is called upon to decide its validity in appropriate manner. The Family Court in such matters shall endeavour to dispose the cases treating it as uncontested matter, without any delay by passing a formal order declaring the marital status."

The learned counsel for the petitioner further argued that the petitioner ought to be given an opportunity to contest the matter on facts and to ascertain whether the unilateral divorce is legally valid for want of mandatory requirement of law, after adducing evidence in the case. It was also submitted that no person should be judged without a fair hearing, in which each party is given the opportunity to respond to the evidence against them and that, in the extra judicial divorce pronounced by the wife, the same is always subject to judicial review in a proceeding



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where the validity of the divorce is under challenge and that, there cannot be any *prima facie* enquiry alone to declare the marital status and that, the husband should be given a chance to contest the same on merit. Hence, the learned counsel for the petitioner submitted that the finding in **Asbi** (*supra*) is contrary to the judgments of the apex court in **Shamim Ara** (*supra*) and **Shayara Bano** (*supra*), wherein it was held by this Court that the seal of the court is not necessary to the validity of any of these modes of extra judicial divorce and is *per incurium* or requires consideration by a Larger Bench.

9. On the other hand, the learned counsel for the respondent, mainly relying on the judgments of this Court in **X** (*supra*) and **Asbi** (*supra*), submitted that a detailed enquiry is neither essential nor desirable in a proceeding initiated by either of the parties to get an extrajudicial divorce endorsed and the marital status declared. It was further argued that if the husband has any grievance, he has the right to challenge the declaration of 'khula' in an appropriate manner known under the law.

10. We have considered the rival contentions raised on both sides. The challenge in this original petition is against Exts.P9 to P11 orders, whereby the applications filed by the petitioner to hear the



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plea 'khula is not legally valid' as a preliminary issue, to permit the petitioner to produce documents and to call witnesses, and to keep the original petition filed by the respondent in abeyance, are dismissed. On a perusal of the documents produced and the proceedings of the Family Court, it is seen that the original petition was filed by the respondent for declaration of 'khula' and a sworn statement was also filed by her as directed by the Family Court. However, though a counter affidavit was filed by the petitioner, he failed to file a sworn statement in spite of giving several postings; and without filing the sworn statement, he filed IA Nos. 2, 3 and 4 of 2026.

11. The issue to be decided in this original petition is whether a detailed enquiry is required for declaration of 'khula' or the petitioner should be given an opportunity to produce documents and to call for witnesses. According to the petitioner, though the respondent filed the petition for declaration of 'khula', the petitioner should be given a proper opportunity to contest the same by adducing evidence. Moreover, it is the petitioner's case that he had filed another petition as OP No. 1252 of 2025 before the Family Court, Tirur, for declaring that the 'khula' is void, for return of diamond ornament and for compensation for mental agony.



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12. The learned counsel for the petitioner mainly relied on the judgments of the apex court in **Shamim Ara** (*supra*) and **Shayara Bano** (*supra*). It is relevant to note that those two judgments are in respect of instantaneous talaq/triple talaq and it is triple talaq that the apex court found to be unconstitutional. Here, the issue pertains to the pronouncement of 'khula' by the respondent, which stands on an entirely different footing. The said issue was considered in detail by this Court in **X** (*supra*), which was followed in **Asbi** (*supra*) as well. According to the petitioner, **Asbi** (*supra*) is *per incuriam* as this Court failed to consider the judgments in **Shamim Ara** (*supra*), **Shayara Bano** (*supra*) and **X** (*supra*) while rendering the same. On a perusal of **Asbi** (*supra*), it is seen that it was rendered by one among the judges who rendered the judgment in **X** (*supra*). In **X** (*supra*) also, this Court, finding that the detailed enquiry is not necessary in 'khula', held as follows:

"75. In the absence of any secular law governing khula, we hold that khula would be valid if the following conditions are satisfied:

- (i). A declaration of repudiation or termination of marriage by wife.
- (ii). An offer to return dower or any other material gain received by her during marital tie.
- (iii). An effective attempt for reconciliation was preceded before the declaration of khula."

It was also held in **X** (*supra*) that a 'khula' is also a unilateral dissolution



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of marriage and when 'khula' is invoked, the scope of inquiry before the Family Court is limited. It was further held that in such proceedings, the court shall record the 'khula' or 'talaq' to declare the marital status of the parties after due notice to other party, and that if any person wants to contest the effectiveness of 'khula' or 'talaq', it is open for such aggrieved person to contest the same in appropriate manner known under law. Thus, direction was given to the Family Court to restrain from adjudicating upon such extra judicial divorce unless it is called upon to decide its validity in appropriate manner. In **Asbi** (*supra*), this Court referred to the judgment in **X** (*supra*) and held that unilateral extrajudicial divorce under Muslim Personal Law is complete when either of the spouse pronounce/declare 'talaq', 'talaq-e-tafweez' or 'khula', as the case may be, in accordance with Muslim Personal Law. It was also held that the seal of the court is not necessary to the validity of any of these modes of extrajudicial divorce. It was further held that the Family Court has to simply ascertain whether a valid pronouncement/declaration of 'talaq' or 'khula' was made and it was preceded by effective attempt of conciliation and that, in the case of 'khula', it has to be further ascertained whether there was an offer by the wife to return the 'dower'. The judgment in **Asbi** (*supra*) is not misinterpreted and cannot be said to be *per incuriam*. This Court has



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considered the judgment in **X** (*supra*) while rendering the judgment in **Asbi** (*supra*). The very same judgment was followed by two different Division Benches of this Court in **Sudheer v. Surumiya** [2024 KHC OnLine 1269] and **Muhammed Ashar K. v. Muhsina P.K.** [2025 (7) KHC 119]. In the afore judgments, this Court reiterated that scope of inquiry before the Family Court is limited, and that the Family Court is only required to record 'khula' to declare the marital status of the parties after due notice to other party, and that if any person wants to contest the effectiveness of 'khula' or 'talaq', it is open for such aggrieved person to contest the same in appropriate manner known under law. In **Sudheer** (*supra*), this Court held that the endorsement of extrajudicial divorce and consequential declaration of the status of parties by Family Court invoking Section 7(d) is contemplated only to have a public record of extrajudicial divorce.

13. In **Asbi** (*supra*), the guidelines to endorse an extrajudicial divorce under the Muslim Personal Law and to declare the marital status of the parties to the marriage were formulated, which read as follows:

"(i) On receipt of the petition, the Family Court shall issue notice to the respondent.

(ii) After service of summons or appearance of the respondent, as the case may be, the Family Court shall formally record the statement of



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both parties. The parties shall also be directed to produce *talaq nama / khula nama* (if pronouncement / declaration is in writing) / *mubaarat* agreement.

(iii) The Family Court shall thereafter on perusal of the recitals in *talaq nama / khula nama* / communication of *talaq, khula* or *talaq - e - tafweez* (if available) and the statement of the parties, ascertain whether there was valid pronouncement of *talaq / khula / talaq - e - tafweez*. In the case of *mubaarat*, the Family Court shall ascertain whether the parties have executed and signed *mubaarat* agreement.

(iv) On *prima facie* satisfaction that there was valid pronouncement of *talaq, khula, talaq - e - tafweez*, as the case may be, or valid execution of *mubaarat* agreement, the Family Court shall proceed to pass order endorsing the extrajudicial divorce and declaring the status of the parties without any further enquiry.

(v) The enquiry to be conducted by the Family Court shall be summary in nature treating it as an uncontested matter.

(vi) The Family Court shall dispose of the petition within one month of the appearance of the respondent. The period can be extended for valid reasons.

(vii) If any of the parties is unable to appear at the Court personally, the Family Court shall conduct enquiry using video conferencing facility."

14. 'Khula' is the form of divorce conferred upon the wife similar to 'talaq' conferred upon the husband. The recognition of 'khula' as a form of divorce is directly available from the Holy Quran. In Chapter II Verses 228-229, Quran confers rights on both husband and wife to unilaterally divorce the spouse. The husband cannot refuse to accede to the request of the wife. The validity of 'khula' does not depend upon the acceptance or consent of the husband; rather, it constitutes a right available to the wife for dissolution of the marriage. The



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significance of invoking 'khula' is absolute. Hence, the Family Court need only look into whether the ingredients mentioned in paragraph No.75 of the judgment in **X** (*supra*) have been complied with.

15. In view of the observations as above, we are inclined to follow the judgments in **X** (*supra*), **Asbi** (*supra*), **Sudheer** (*supra*) and **Muhammed Ashar K.** (*supra*), and hold that a detailed inquiry is neither essential nor desirable in a proceeding initiated by either of the parties for endorsement of an extrajudicial divorce. The Family Court is required only to consider whether the three ingredients stated in **X** (*supra*) have been complied with. Accordingly, we hold that the impugned Exts.P9 to P11 orders are in order and do not warrant any interference by this Court.

Accordingly, the original petition is dismissed.

Sd/-
J. NISHA BANU
JUDGE

Sd/-
SHOBA ANNAMMA EAPEN
JUDGE

bka/-



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APPENDIX OF OP (FC) NO. 375 OF 2026

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE O.P. NO. 1211/2025 BEFORE THE FAMILY COURT, MALAPPURAM DATED 19.09.2025 AND ITS ENGLISH TRANSLATION.
Exhibit P2	TRUE COPY OF THE COUNTER IN O.P. NO. 1211/2025 BEFORE THE FAMILY COURT, MALAPPURAM DATED 20.01.2026 AND ITS ENGLISH TRANSLATION
Exhibit P3	TRUE COPY OF THE I.A 2/2026 IN O.P. NO. 1211/2025 BEFORE THE FAMILY COURT, MALAPPURAM DATED 20.01.2026 AND ITS ENGLISH TRANSLATION
Exhibit P4	TRUE COPY OF THE COUNTER IN I.A 2/2026 IN O.P. NO. 1211/2025 BEFORE THE FAMILY COURT, MALAPPURAM DATED 06.02.2026 AND ITS ENGLISH TRANSLATION.
Exhibit P5	TRUE COPY OF THE I.A 3/2026 IN O.P. NO. 1211/2025 BEFORE THE FAMILY COURT, MALAPPURAM DATED 20.01.2026 AND ITS ENGLISH TRANSLATION.
Exhibit P6	TRUE COPY OF THE COUNTER IN I.A 3/2026 IN O.P. NO. 1211/2025 BEFORE THE FAMILY COURT, MALAPPURAM DATED 06.02.2026 AND ITS ENGLISH TRANSLATION.
Exhibit P7	TRUE COPY OF THE I.A 4/2026 IN O.P. NO. 1211/2025 BEFORE THE FAMILY COURT, MALAPPURAM DATED 20.01.2026 AND ITS ENGLISH TRANSLATION.
Exhibit P8	TRUE COPY OF THE COUNTER IN I.A 4/2026 IN O.P. NO. 1211/2025 BEFORE THE FAMILY COURT, MALAPPURAM DATED 06.02.2026 AND ITS ENGLISH TRANSLATION.
Exhibit P9	TRUE COPY OF THE ORDER IN I.A 2/2026 IN O.P. NO. 1211/2025 BEFORE THE FAMILY COURT, MALAPPURAM DATED 16.03.2026
Exhibit P10	TRUE COPY OF THE ORDER IN I.A 3/2026 IN O.P. NO. 1211/2025 BEFORE THE FAMILY COURT, MALAPPURAM DATED 16.03.2026
Exhibit P11	TRUE COPY OF THE ORDER IN I.A 3/2026 IN O.P. NO. 1211/2025 BEFORE THE FAMILY COURT, MALAPPURAM DATED 16.03.2026
Exhibit P12	TRUE COPY OF THE POWER OF ATTORNEY DATED 08.10.2025



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RESPONDENT EXHIBITS

EXHIBIT R1 (A)	A TRUE COPY OF THE JUDGMENT 2021(2) KLT 967 PASSED BY THIS HON'BLE COURT DATED 09.04.2021
EXHIBIT R1 (C)	A TRUE COPY OF THE JUDGMENT 2021 (6) KLT 292 PASSED BY THIS HON'BLE COURT DATED 12.10.2021
EXHIBIT R1(B)	A COPY OF THE KHULA NAMA DATED 08.08.2025 ALONG WITH ENGLISH TRANSLATION