106437 - Her parents refuse to let her go back to her husband who divorced her by khula’

the question

A man divorced his wife in the court once due to her father’s pressure on him. This divorce was in 8-2-1428H and the date is 28-6-1428H now. The divorce was in return for some financial settlement. This man actually wants to return to his wife, and she wants the same. Especially that they lived together for 14 years and he was spending on her treatment inside and outside the KSA. No one now spending on her treatment and her health is getting worse, and she wants to return to her husband.

Detailed answer

Praise be to Allah.

If the divorce was done in return for some compensation then this is khula’, which is similar to an irrevocable divorce. If the husband and wife want to get married again, then he has to do a new marriage contract with her.

If they get married then she may go back to him with the remaining number of divorces. Two divorces (talaaq) remain, and the khula’ is not counted as a talaaq.

Shaykh Ibn ‘Uthaymeen (may Allaah have mercy on him) said: Any wording which implies separation in return for compensation is khula’, even if the word talaaq is used, such as if he says “I divorced my wife (talaaq) in return for compensation of one thousand riyals.” We say: This is khula’. It was narrated from Ibn ‘Abbaas (may Allaah be pleased with him) that everything in which compensation is involved is not talaaq. ‘Abd-Allaah ibn al-Imam Ahmad said: My father said concerning khula’ that which ‘Abd-Allaah ibn ‘Abbaas (may Allaah be pleased with him) said: i.e., it is an annulment regardless of the words used, and it is not counted as a talaaq.

An important issue stems from this: If a man divorces his wife by talaaq on two separate

occasions, then khula' takes place using the word talaaq, then according to the view of those who say that khula' using the word talaaq is talaaq, it is an irrevocable divorce and she is not permissible for him unless she marries another husband. But according to the view of those who say that khula' is an annulment even if it uses the word talaaq, she becomes permissible for him with a new marriage contract even during the 'iddah. This view is more correct, but we nevertheless advise those who record cases of khula' not to say that he divorced (tallaqa) his wife in return for compensation worth such and such an amount, rather they should say: He separated from his wife (khaala'a) in return for compensation worth such and such an amount, because most judges in our country, and I think in other countries too, think that if khula' occurs using the word talaaq then it is a talaaq, and this adversely affects the woman, because if it is a final talaaq then she is irrevocably divorced, and if it is not a final talaaq it is still counted as a talaaq. End quote from al-Sharh al-Mumti' (12/450).

Secondly:

If her guardian (her father) refuses to give her in marriage, and the husband is compatible with her, and she wants to marry him, then he is preventing her marriage, and guardianship passes to the next closest guardian. The woman may refer her case to the judge so that he may order the guardian to give her in marriage, or he himself may give her in marriage if her guardians refuse.

This problem should be addressed first of all by good and righteous people who should try to convince the guardian to agree, so long as the husband is religiously committed and of good character.

It was concerning such cases that Allaah revealed the words (interpretation of the meaning):

"do not prevent them from marrying their (former) husbands, if they mutually agree on reasonable basis"

[al-Baqarah 2:232].

Al-Bukhari (5130) narrated that Ma'qil ibn Abi Yasaar (may Allaah be pleased with him) said: A

sister of mine married a man, then he divorced her. When her ‘iddah was over he came and proposed marriage to her (again), and I said to him: “She married you, was intimate with you and honoured you, then you divorced her, and now you come to propose marriage again! No, by Allaah, she will never go back to you.” He was a man with whom there was nothing wrong, and she wanted to go back to him. Then Allaah revealed these words (interpretation of the meaning):

“do not prevent them from marrying”

[al-Baqarah 2:232]

I said: Now I will do it, O Messenger of Allaah. He said: So he married her to him.

Our advice to the father of this woman is to let her go back to her husband, so that he will not end up doing that which Allaah has forbidden.

And Allaah knows best.