

Ex parte order in UAE not valid in India

UAE residents can file for divorce and custody of children in the courts in any emirate



LEGAL VIEW Ashish Mehta

I am an Indian national and Hindu by religion, and have been married for 16 years, from which I have two 13-year-old children. I wish to file for divorce and the custody of my children. The marriage was certified by the Indian consulate in Dubai. My wife was an Indian national at the time of the marriage, but has taken French citizenship. I hold a visa from Ajman.

My wife has chosen not to attend the court proceedings. I would like to know, in which emirate can I file the case and what to do if she is not willing to attend the court hearings or accept the ruling? What happens to the children? Is there a possibility of having to pay alimony?

Pursuant to your questions, since your marriage is certified by the Indian Consulate in Dubai, the marriage is binding under the provisions of the 'Foreign Marriage Act of 1969' of India.

If your wife is a resident of the UAE, you may file a divorce petition before the courts of any emirate, which has jurisdiction in accordance with provisions of Federal Law No.28 of 2005 of UAE related to Personal Status which also applies to non-citizens. According to Article 1 (2) of the law "The provisions of this law shall apply on citizens of the United Arab Emirates State unless non-Muslims among them have special provisions applicable to their community or confession. They shall equally apply to non-citizens unless one of them asks for the application of his law."

Since you are an Indian and marriage was registered with the Indian Consulate, Dubai, the provisions of Foreign Marriage Act of 1969 of India may be applied by the Personal Status Courts for granting the decree of divorce and custody of children. But since you have mentioned that your wife is not willing to attend the proceed-

ings in the UAE Courts, if the court passes an ex parte order (in absentia of your wife) in your favour, it will be valid in the UAE but may not be valid in India and the Courts in India may not accept an in absentia judgement passed by the UAE Courts. The foreign judgements related to personal status are recognised by Indian Courts if the below mentioned criteria are fulfilled:



Know the law

In case of marriages registered with the Indian Consulate, Dubai, the provisions of Foreign Marriage Act of 1969 of India may be applied by the UAE's Personal Status Courts for granting divorce and custody of children.

1. If the judgement of divorce is under the grounds of mutual consent of the parties;

2. The parties to the case have submitted to the jurisdiction of the foreign courts voluntarily and the judgement passed by the foreign courts is as per natural justice;

3. The parties to the case in foreign courts have applied the personal laws under which they are married in their home country or abroad.

In furtherance, Section 13 of the Civil Procedure Code of India 1908 (the 'CPC of India') states the grounds under which the foreign court judgements are not valid. It reads as below:

"A foreign judgement shall be conclusive as to any matter there-

by directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except -

(a) where it has not been pronounced by a Court of competent jurisdiction;

(b) where it has not been given on the merits of the case;

(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;

(d) where the proceedings in which the judgement was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in India."

If your wife does not attend and contest the proceedings in the UAE Court then the UAE Court may grant divorce and custody of children to you if you requested both. The court would determine payment of alimony to your wife.

Further, your wife has to accept the court orders passed in the UAE. Anyhow you may file a divorce petition in India once you obtain the judgement from the UAE court stating that your wife has not attended the court hearings in the UAE even though she was in the country and that you fear she may not even attend the court hearings in India as she is now a French national or for any other reason. Therefore you can request the Court in India to pass an order in your favour or ratify the judgement pronounced in the UAE Court.

Terminating limited term contract before expiry
I joined a company in October 2015 as a cost controller. There was a probation period of three months on my two-year contract (Limited). I am a qualified cost & management accountant (CMA) and part qualified chartered accountant (ACCA).

I am considering changing my job after eight months. As per



Know the law

In case of fixed-term contract, if the employer does not agree for mutual termination, the employee may resign after giving 3 months' notice to the employer or by terminating the contract immediately by paying the employer a gross salary for 3 months.

my visa my profession is 'messenger' but I am a qualified accountant and postgraduate.

I have heard that the company can deduct 45 days' salary and has the right to issue a one-year ban if I don't complete my two-year contract. And I also heard that for accountants there will not be any ban but in my case my visa profession is not an accountant. In that case, would any ban be applicable to me?

Pursuant to your queries, your employer may deduct 3 months' salary in accordance with new labour enactments which came into force from January 1, 2016.

According to Article 1 (1) of the 'Ministerial Order Decree No. 765 of 2015 on Rules and Conditions for Termination of Employment Relations':

"An employment relation between employer and worker may be terminated as follows:

1 - In the case of fixed-term contracts (approved by the Ministry for a term of no more than two years), an employment relation is terminated if any of the following instances occurs:

1- The term of the contract expires and the contract is not renewed.

2. Employer and worker mutually consent to terminate the contract during the course of its term.

3. Either party (employer or worker) acts unilaterally to terminate the contract and complies with the legal steps that are described in clause (4) of this article. The terminating party bears any legal consequences of early termination.

4. Either party (employer or worker) acts unilaterally to terminate a renewed term contract, whether renewal has occurred before or after this decree enters into effect, provided the terminating party complies with the following legal steps:

a. Notify the other party in writing of its intent to terminate the contract in accordance with the notice period to be agreed to by the two parties, not to be less than one month and not to exceed three months. If renewal occurred before this decree enters into effect and the parties had not agreed to a notice period, this notice period shall be three months.

b. Indemnify the other party to the level that was agreed to by both parties, not to exceed equivalent of three months of gross wages. If renewal occurred before this decree enters into effect and the parties had not agreed to the amount of indemnification, this indemnification shall be the equivalent of three months of gross wages.

5. Either party (employer or worker) acts unilaterally to terminate the contract without complying with the legal steps that are described in clause (4) of this article, and for no reason of non-compliance by the other party; in this case the terminating party bears any legal consequences of early termination.

6. The Employer acts to terminate the contract of a worker who commits any of the violations that are described in Article 120 of the Federal Labour Law."

Based on the aforesaid, you and your employer may mutually consent to terminate the contract before the expiry of the term. In case the employer does not agree for mutual termination you may resign

from your employment giving 3 months' notice to the employer or by terminating your contract immediately by paying the employer a gross salary for 3 months.

Further, if you and your employer agree to terminate your employment contract mutually or upon fulfilling the legal obligations towards the employer then there should be no labour ban as you have completed more than six months of employment with your employer. Further, the automatic labour ban of six months is waived if the employee has skills or professional levels classified as level 1, level 2 and level 3 by the Ministry of Labour. Since you are a graduate you fall under the purview of the first professional level, under which Dh12,000 monthly salary is required to take up new employment before expiry of your contract period. It is assumed that your educational certificates are duly attested as per the requirements of the Ministry of Labour.

Article 4 of the Ministerial Order No. 1186 of 2010 states that: "As an exception to the provision of the Item No.2 of Article 2 of this Resolution the Ministry may issue a work permit to an employee without requiring the two-year period in the following cases:

a) In the event that the employee is starting his new position at the first, second or third professional levels after fulfilling the conditions for joining any of these levels according to the rules in force at the ministry, and provided that his new wage is not less than Dh12,000 at the first professional level, Dh7,000 at the second professional level and Dh5,000 at the third professional level."

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