101080 - Ruling on buying a house with riba in a kaafir country

the question

I am a married woman. A while ago my husband work circumstances have improved a lot, Alhamdulillah. Instead of thanking Allah for this favour, may Allah correct him, he insists on buying a house by an interest-based mortgage. He says that many scholars have permitted this for who lives in a non-Muslim country. Shall I ask for divorce, or stay with him while the whole sin in on him? Will I be sinful if I intentionally choose an expensive house so that he feels unable to pay big installments and changes his mind? Please do not neglect this question as it is very important. Shall I ask for divorce or what? Please advise me I am very confused as we have a son.

Detailed answer

Praise be to Allah.

Firstly:

It is not permissible to buy a house or anything else by means of riba, whether that is in a Muslim country or non-Muslim country, because of the general meaning of the evidence which forbids riba and curses the one who consumes it and the one who pays it. This is the view of the majority of scholars.

The Hanafis are of the view that it is permissible to take riba from non-Muslims in dar al-harb, and that every contract or transaction that benefits a Muslim is valid so long as it is based on mutual consent and does not involve any kind of deceit or treachery.

Al-Kasaani said in Badaa'i' al-Sanaa'i' (7/132): Based on this, if a Muslim or a dhimmi enters dar al-harb peacefully, and enters into a contract with a non-Muslim or any contract that is invalid according to Islamic rulings, that is permissible according to Abu Haneefah and Muhammad (may Allah have mercy on them). The same applies if he is a prisoner being held by them or he became

Muslim in dar al-harb and did not migrate to join us, and he entered into a contract with a non-Muslim. The basis for their view is that taking riba comes under the heading of consuming wealth, and consuming the wealth of a harbi non-Muslim is permissible. That is because there is no protection for the property of a harbi non-Muslim. So the Muslim may take it provided there is no treachery or betrayal; and if the other party gives his consent there is no betrayal. End quote.

Ibn al-Hammaam said in Fath al-Qadeer (7/39): It seems that it is permissible for the Muslim to deal with riba-based transactions provided that it is the Muslim who is going to gain. End quote.

See: Tabyeen al-Haqaa'iq (4/97); al-'Inaayah Sharh al-Hidaayah (7/38); Haashiyat Ibn 'Aabideen (5/186).

It is clear from this that the Hanafis regard it as permissible to take riba from a kaafir who is a harbi – in dar al-harb – because his wealth is basically permissible, so it is permissible to take it with his consent by means of riba.

But as for a Muslim paying riba to a kaafir, that is not permissible.

Thus it is clear that those who issue fatwas saying that it is permissible for Muslims to pay riba in kaafir lands, based on the Hanafi view, are mistaken.

In fact all riba is haraam, and it makes no difference whether it is between two Muslims or between a Muslim and a kaafir. The one who consumes riba and the one who pays it are both issued a stern warning. Allah says (interpretation of the meaning):

"O you who believe! Fear Allah and give up what remains (due to you) from Ribaa (from now onward) if you are (really) believers.

279. And if you do not do it, then take a notice of war from Allah and His Messenger but if you repent, you shall have your capital sums. Deal not unjustly (by asking more than your capital sums), and you shall not be dealt with unjustly (by receiving less than your capital sums)"

[al-Baqarah 2:278-279]

And Muslim (1598) narrated that Jaabir (may Allah be pleased with him) said: The Messenger of Allah (peace and blessings of Allah be upon him) cursed the one who consumes riba and the one who pays it, the one who writes it down and the two who witness it, and he said: they are all the same.

Ibn Qudaamah (may Allah have mercy on him) said in al-Mughni (4/47): The prohibition on riba in dar al-harb is the same as the prohibition on riba in dar al-Islam. This is the view of Maalik, al-Awzaa'i, Abu Yoosuf, al-Shaafa'i and Ishaaq. … because Allah says (interpretation of the meaning):

"[Allah has] forbidden Riba"

[al-Baqarah 2:275]

"Those who consume Riba will not stand (on the Day of Resurrection) except like the standing of a person beaten by Shaytaan (Satan) leading him to insanity"

[al-Baqarah 2:275]

"O you who believe! Fear Allah and give up what remains (due to you) from Ribaa"

[al-Baqarah 2:278]

And the Prophet (peace and blessings of Allah be upon him) said: "Whoever pays something extra or asks for something extra has engaged in riba."

And there are other ahaadeeth.

What is forbidden in dar al-Islam is also forbidden in dar al-harb, such as riba between two Muslims. End quote.

Secondly:

If your husband insists on dealing in riba, then the sin is on him and that will not harm you so long

as you hate his action. Hence you should not ask for a divorce, but you should carry on advising him and warning him against falling into this grave major sin. Remind him that that which is with Allah is better and more lasting, and that living in rented accommodation, even if the rent is high, is better than owning a house by means of riba.

There is nothing wrong with using the trick that you mentioned, of appearing keen to buy an expensive house that he cannot afford to pay the instalments for, so as to divert him from riba.

We ask Allah to help and guide you both, and to enable you to be content, and to divert you from riba, its burden of sin, its worry and its evil consequences.

And Allah knows best.