

JUDGMENT SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.5278/2021

Samina Vs. Additional District Judge etc.

JUDGMENT

Date of hearing	24-05-2023
Petitioner by	Mr. Muhammad Ikram Ullah Khan, Advocate.
Respondent No.3 by	Mr. Aftab Hussain Qureshi, Advocate.

ABID AZIZ SHEIKH, J. Through this Constitutional Petition, the petitioner has challenged judgment and decree dated 23.02.2019, passed by learned Judge Family Court only to the extent of quantum of maintenance allowance, and the judgment and decree dated 11.09.2020, passed by learned Appellate Court in toto (**impugned judgment & decree**).

2. Relevant facts are that the petitioner filed a suit for recovery of maintenance allowance and dower amount of Rs.500,000/- (**dower**) against the respondent No.3 (**respondent**) during subsistence of marriage. The said suit was decreed on 23.02.2019 for the dower amount of Rs.500,000/- and for maintenance allowance @ Rs.5,000/- per month with 10% increase per annum. The petitioner did not challenge the said decree, however, the respondent filed Appeal. The learned Appellate Court, vide impugned judgment and decree dated

11.09.2020, dismissed the Appeal against entitlement of maintenance allowance, however, accepted the Appeal against dower and declined the same on the ground that the dower being deferred cannot be claimed during subsistence of marriage. The respondent did not challenge the said judgment and decree, however, the petitioner being aggrieved has filed this Constitutional Petition.

3. Learned counsel for the petitioner submits that the maintenance allowance of Rs.5,000/- per month is inadequate. He further submits that the dower mentioned in Column No.13 of the *Nikahnamma* (Exh.P1), being payable on demand, is prompt and not deferred dower, therefore, the impugned judgment & decree is not sustainable. He placed reliance on “MUHAMMAD QAYYUM ANJUM Vs. ADDITIONAL DISTRICT JUDGE, MUZAFFARGARH and 2 others” (2022 MLD 416) and “MUHAMMAD SAJJAD Vs. ADDITIONAL DISTRICT AND SESSIONS JUDGE and 2 others” (PLD 2015 Lahore 405).

4. Learned counsel for the respondent, on the other hand, submits that as no specific time for payment of the dower was stipulated, therefore, the dower being deferred is only payable on dissolution of marriage either by death or divorce. He placed reliance on “Dr. NOOR MUHAMMAD SALEEMI SAGGU Vs. ADDITIONAL DISTRICT JUDGE and another” (2020 MLD

1008) and “SAADIA USMAN and another Vs. MUHAMMAD USMAN IQBAL JADOON and another” **(2009 SCMR 1458).**

He further submits that the petitioner herself gave affidavit dated 02.06.2017 (Exh.D4) to the effect that the dower was not agreed in *Nikahnamma*, therefore, the same is not recoverable.

5. Arguments heard. Record perused. So far as the claim of petitioner for enhancement of maintenance allowance is concerned, admittedly the petitioner did not challenge the quantum of maintenance allowance @ Rs.5,000/- determined by learned Judge Family Court, vide judgment & decree dated 23.02.2019 at the relevant time, therefore, the said amount has already attained finality and cannot be challenged by the petitioner at this stage. Similarly, the plea of respondent that claim of the dower was abandoned by the petitioner in her affidavit (Exh.D4) cannot be urged, as the learned Appellate Court did not accept the said plea rather by treating the dower as deferred held that petitioner is not entitled for the dower during subsistence of marriage. The said finding of learned Appellate Court being not challenged by the respondent, he cannot argue that the dower is not payable at all in view of Exh.D4.

6. However, the only question which requires determination in this case is that whether the dower amount is prompt or deferred. In this context, perusal of Column No.13 of the

Nikahnamma shows that the dower of Rs.500,000/- is *عند الطلب* (*Ind-at-Talab*). The word “*Ind-at-Talab*” is the word of Urdu language and its English translation is “on demand” as per “OXFORD Urdu—English Dictionary” of Oxford University Press as well as “FEROZSONS Urdu—English Dictionary” of Ferozsons (Pvt.) Ltd. The Urdu to Urdu Dictionary i.e. “فیروز اللغات” defines the word “*Ind-at-Talab*” in following terms:-

| "عند الطلب: مانگنے کے وقت۔ مطالبے پر۔" |

The above dictionary meanings/translations of “*Ind-at-Talab*” make it abundantly clearly that the dower in-question is payable on demand.

7. Now the next ancillary question is that whether dower payable on demand is prompt or deferred dower. In this regard, Para-290 of the Muhammadan Law defines “Prompt” & “Deferred” dower as under:

*“290 “Prompt and Deferred” dower. --- (1)
the amount of dower is usually split into two
parts, one called “prompt” which is
payable on demand, and the other called
“deferred” which is payable on dissolution
of marriage by death or divorce.”*

The august Supreme Court of Pakistan in *Saadia Usman*’s case *supra*, after detailed discussion while interpreting the ‘prompt & deferred’ dower, held as under:

“Thus, we are of the opinion that prompt

dower is payable on demand during the subsistence of marriage tie whereas the deferred dower is payable on the time stipulated between the parties, but where no time is stipulated, it is payable on dissolution of marriage either by death or divorce. But, the deferred dower does not become “prompt” merely because the wife has demanded it.”

In terms of Para-290 of Muhammadan Law and the law settled by Hon’ble Supreme Court in *Saadia Usman’s* case *supra*, the “prompt dower” is payable on demand, whereas “deferred dower” is payable on dissolution of marriage either by death or divorce unless time is stipulated between the parties for payment of deferred dower.

8. In the present case, Column No.13 of the *Nikahnamma* does not specifically mention that Five Hundred Thousand Rupees was prompt dower or deferred rather only mentions that same is dower payable on demand, which means that it is not deferred dower, payable only on dissolution of marriage either by death or divorce, but same is payable at time of demand even before dissolution of marriage. When under Para-290 of Muhammadan Law, prompt dower is payable on demand, then it will be a fallacy to argue that the dower payable on demand is deferred dower and payable only on dissolution of marriage by death or divorce. Learned High Courts repeatedly treated the “dower payable on demand” as prompt dower and not deferred

dower, payable on dissolution of marriage due to death or divorce in the following case laws:-

- i- “MUKHTAR AHMAD Vs. DISTRICT JUDGE and others” (2023 YLR 193)
- ii-, “MUHAMMAD RAFIQUE Vs. ADDITIONAL DISTRICT JUDGE SIALKOT and others” (2022 YLR 2067),
- iii- “MUHAMMAD SAJJAD Vs. ADDITIONAL DISTRICT AND SESSIONS JUDGE and 2 others” (PLD 2015 Lahore 405),
- iv- “ADAM Vs. Mst. ABIDA and 2 others” (PLD 2015 Balochistan 26),
- v- “Mst. SALMA BIBI and another Vs. MUHAMMAD IQBAL and 2 others” (PLD 2014 Peshawar 60).
- vi- “Mst. KULSOOM BIBI through Attorney Vs. MUHAMMAD WASEEM and 3 others” (2015 YLR 2375).

9. The above interpretation is also supported by Section 10 of the Muslim Family Laws Ordinance, 1961 (Ordinance), according to said provision where no detail about the mode of payment of dower is spelled out by the parties in *Nikahnamma* or marriage contract, the entire amount of dower shall be presumed to be payable on demand and not necessarily means payable on dissolution of marriage by death or divorce. The learned Appellate Court has misconstrued the dower payable on demand, as deferred dower payable only on dissolution of marriage either by death or divorce. The dower being payable on demand could be claimed by the petitioner even during subsistence of marriage.

10. In view of above discussion, this petition is partially **allowed** to the extent that the petitioner shall be entitled for the dower amount of Rs.500,000/- from the respondent. The impugned judgment and decree is modified accordingly.

(ABID AZIZ SHEIKH)
JUDGE

Approved for reporting.

JUDGE

Arsalan