

Judgment Sheet

**IN THE LAHORE HIGH COURT,  
MULTAN BENCH MULTAN.  
JUDICIAL DEPARTMENT**

**W.P.No.355 of 2023**

**Ahsan Nawaz  
Vs.  
Judge Family Court, etc.**

**JUDGMENT**

Date of hearing	15.03.2023
Petitioner By:	Mahar Ghulam Shabbir Aaheer, Advocate
Respondents By:	Mr. M. Shakeel Anjum, Advocate.

**Faisal Zaman Khan, J:-** Through this petition, judgment and decree dated 18.10.2022 passed by respondent No.1 has been assailed, by virtue of which a suit for recovery of maintenance allowance and dower filed by respondent No.2 against the petitioner has been decreed to the extent of maintenance allowance.

2. Facts giving rise to the present petition are that *Nikah* between the petitioner and respondent No.2 was solemnized on 30.01.2018, however, the *Rukhsati* never took place. Since the petitioner neither endeavored to ask for *Rukhsati* nor performed his marital obligations/conjugal rights for a long time, therefore, a suit for recovery of maintenance allowance and dower was filed by respondent No.2 against the petitioner in which the latter filed his written statement. Out of divergent pleadings of the parties, 04 issues were framed, evidence *pro* and *contra* was led, whereafter, through judgment and decree dated 18.10.2022 the suit was decreed to the extent of maintenance allowance, therefore, this petition.

3. Learned counsel for the petitioner submits that since marriage between the spouses was not consummated as no *Rukhsati* had taken

place, therefore, respondent No.2 was not entitled to any maintenance allowance.

4. Replying to the above, learned counsel for respondent No.2 supports the impugned judgment and decree.

5. Arguments heard. Record perused.

6. The question which requires determination by this Court is that where a Nikah between the spouses has been performed, however, the marriage is not consummated as the *Rukhsati* has not taken place, in such an eventuality, whether a wife is entitled to maintenance allowance?

7. Under section 5 of the Muslim Family Laws Ordinance 1961 (**Ordinance**), every marriage solemnized under the Act has to be registered and once a man and a woman enters into a marital bond they become **HUSBAND** and **WIFE**. Section 9 of the Ordinance spells out that where a HUSBAND fails to maintain his WIFE, she in addition to seeking other legal remedies (as contemplated in West Pakistan Family Courts Act 1964) can also seek maintenance allowance. It shall not be out of place to mention here that no condition of Rukhasti or consummation of marriage has been mentioned therein.

8. Section 9 of the Ordinance has been interpreted by the Supreme Court of Pakistan in judgment reported as "Muhammad Najeeb v. Mst. Talat Shahnaz and others" (**1989 SCMR 119**) wherein it has been held that for the purposes of recovery of maintenance allowance, the said provision makes reference to a HUSBAND and a WIFE and does not refer to the fact that whether marriage between them has been consummated or *Rukhsati* has taken place.

9. While further elaborating the above concept in judgments reported as "Muhammad Arif v. Additional Sessions Judge-VIII, Karachi West and 2 others" (**2020 YLR 1586**) and "Khudai Noor v.

District Judge, Pishin and 2 others" (2017 YLR 2349) and "Mst. Shamim Akhtar v. Additional District Judge, Sialkot and another" (1991 CLC 1142), it has been held that the claim of maintenance by the WIFE is not conditional with the RUKHSATI or CONSUMATION of marriage. It has also been elaborated that in such circumstances the conduct of the spouses will be of utmost importance while granting a claim of maintenance.

10. In a latest judgment passed by the Supreme Court of Pakistan reported as Haseen Ullah v. Mst. Naheed Begum and others (PLD 2022 SC 686), in paragraph No.7 it has been held as follows:-

***"A wife who is willing to, but cannot, discharge her marital obligations for no fault of her own, rather is prevented to do so by any act or omission of her husband is legally entitled to receive her due maintenance from her husband, and the latter cannot benefit from his own wrong."***

11. Keeping the above in view, a perusal of the plaint would show that *Nikah* was solemnized between the spouses on 30.01.2018, however, since the petitioner was not taking any further action, as he neither was asking for *Rukhsati*, nor was performing his marital obligations/conjugal rights despite the fact that respondent No.2 was willing to do the same, thus, due to delinquency on part of the petitioner, she became entitled to maintenance allowance, hence she rightly filed the suit on 15.07.2021 seeking maintenance allowance.

12. Oppose to the above, as per written statement filed by the petitioner delay caused in *Rukhsati* has been attributed to the family of respondent No.2.

13. In the above backdrop, since it was imperative for the petitioner to have proved that he was not at fault as it was his contention that it was the parents of respondent No.2 who had been delaying the *Rukhsati*, hence the onus to prove the same was on him, however, a further perusal of the available record would show that no evidence, whatsoever, has been produced by the petitioner wherefrom this could be ascertained that he has been making efforts

to seek *Rukhsati* or to perform the marital obligations/conjugal rights.

14. In view of the above factual matrix, it is clear and obvious that the delinquency as to not seeking *Rukhsati* or not performing the marital obligations/conjugal rights is on part of the petitioner as respondent No.2 was ready and willing to perform her marital obligations/conjugal rights being the lawfully wedded wife of the petitioner, thus, she has rightly been held entitled to maintenance allowance from the period when the *Nikah* was solemnized.

15. Another aspect which further weakens the stance of the petitioner is that instead of approaching a court of law for seeking performance of conjugal rights, he without any reason and after two years of *Nikah* divorced respondent No.3 on 18.12.2020

16. For what has been discussed above, since the learned counsel for the petitioner has not been able to highlight any jurisdictional defect or procedural impropriety in the impugned judgment and decree, therefore, no ground for interference is made out, as a sequel to which, this petition fails and the same is dismissed.

(FAISAL ZAMAN KHAN)  
JUDGE

Shafaqat Ali\*

Approved for Reporting

(JUDGE)