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Judgment Sheet
LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

10

WRIT PETITION NO.4132 of 2023

NASIR SHARIF

versus

SABEELA IMTIAZ and another

JUDGMENT

Dates of hearing: **09.10.2024 & 11.11.2024**

Petitioner by: Mr. Haroon Irshad Janjua,
Advocate.

Respondent No.1 by: Khawaja Khalid Farooq,
Advocate.

Mr. Khalid Ishaq, Advocate General, Punjab.

MIRZA VIQAS RAUF, J. The petitioner was married to respondent No.1 (hereinafter referred to as “respondent”) on 13th August, 2018. On account of some differences, “respondent” left the house of the petitioner on 24th September, 2022 which prompted the petitioner to institute a suit for restitution of conjugal rights. In order to resist the suit, the “respondent” submitted her written statement wherein she also claimed maintenance. On 21st November, 2023, a preliminary objection was raised by the “respondent” with regard to maintainability of suit for restitution of conjugal rights on the ground that the petitioner is residing abroad and he is precluded to institute a suit for restitution of conjugal rights. On the contrary, the petitioner also raised an objection with regard to claim of maintenance in response to suit for restitution of conjugal rights but while holding the suit maintainable, Family Court also observed that claim of the

“respondent” for recovery of maintenance is tenable and adjourned the proceedings for 28th November, 2023. On that date, learned Senior Civil Judge (Family Division), Chakwal proceeded to fix the interim maintenance of the “respondent” which order is now under challenge in this constitutional petition.

2. The petition was admitted for regular hearing on 12th December, 2023 in response to which, the “respondent” arranged her representation on 24th January, 2024 and following order was passed:-

“This petition arises out of order dated 28th November, 2023, whereby the learned Senior Civil Judge (Family Division), Chakwal proceeded to fix the interim maintenance of respondent No.1 (wife) in a suit for restitution of conjugal rights instituted by the petitioner.

2. This petition was admitted for regular hearing by way of order dated 12th December, 2023 with the following observations:-

“This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 calls in question the vires of order dated 28th November, 2023, whereby the learned Senior Civil Judge (Family Division), Chakwal proceeded to fix the interim maintenance of respondent No.1 in a suit of restitution of conjugal rights instituted by the petitioner.

2. Learned counsel for the petitioner inter-alia contends that the petitioner instituted a suit for restitution of conjugal rights, which was resisted by respondent No.1, who in response thereof claimed maintenance. While making reference to section 9(1b) of the Family Courts Act, 1964, learned counsel emphasizes that while resisting the suit for restitution of conjugal rights, a wife can only make a claim for dissolution of marriage including khula but she cannot claim maintenance in response thereto. Submits that though to this effect specific objection was raised but the learned Judge Family Court proceeded to pass the order of interim maintenance, which is illegal.

3. Points raised need consideration. Admit. Notice.

4. Re-list on 24.01.2024.

C.M.NO.1 OF 2023

5. Subject to notice, the proceedings before the trial Court may continue, however, final judgment shall not be announced, in the meanwhile.”

3. Today learned counsel for respondent No.1 while placing reliance on AKHTAR KAMAL versus Mst. SAMREEN AKHTAR and 2 others (2018 CLC 887), SHEHERYAR GUL versus Mst. SADAF BIBI (2016 MLD 200) and RASHID IQBAL versus Mst. UZMA KHAN and 2 others (2010 YLR 3246) submits that the wife can raise the claim of maintenance while responding a suit for restitution of conjugal rights instituted by the husband and the scope of sub-section (1b) of Section 9 of the Family Courts Act, 1964 is not restricted only to the claim of dissolution of marriage including Khula.

4. Conversely, learned counsel for the petitioner while making reference to schedule part I item 1 contends that the import of sub-section (1b) of Section 9 of the Act *ibid* is restricted to clause 1 of the schedule only.

5. Though there are precedents with regard to the matter in issue but in my humble view, sub-section (1b) of Section 9 of the Family Courts Act, 1964 needs deliberation and interpretation, especially with regard to the words used make a claim of “*dissolution of marriage including Khula*”.

6. Since matter of interpretation of a provision of law is involved, a notice under Order XXVIIA of the Code of Civil Procedure (V of 1908) is also issued to the learned Advocate General Punjab.

7. In view of previous views of this Court as well as the Peshawar High Court which are apparently against the basic provision of law, office is directed to place this matter before the **Hon'ble Chief Justice** for constitution of a larger Bench.

In furtherance to the above, by orders of the Hon'ble Chief Justice, the matter is now before us.

3. Learned counsel for the petitioner contended that a suit before the Family Court can be instituted by presentation of plaint in terms of Section 7 of The Family Courts Act, 1964 whereas by virtue of Sub-Section (1b) of Section 9, a defendant (wife), while resisting a suit for restitution of conjugal rights, filed by the husband, may make a claim for dissolution of marriage, including *khula* in her written statement, which shall be treated as a plaint. He added that wife cannot raise any other claim in the written statement, while replying the suit for restitution of conjugal rights, as in the present case. Learned counsel emphasized that the interim maintenance of “respondent” was thus fixed in transgression of the lawful powers.

Learned counsel contended with vehemence that the impugned order is not tenable at all.

4. Conversely, learned Advocate General, Punjab submitted that the object of The Family Courts Act, 1964 is to ensure expeditious disposal of the family disputes. He added that the procedure provided for the trial of the suit in the Code of Civil Procedure (V of 1908) cannot be pressed into service in a suit tried under The Family Courts Act, 1964. Learned Law Officer, while making reference to Section 7 of the Act, *ibid*, argued with vehemence that there is no bar in joining all the claims in one suit. While making reference to Section 9(1b) of The Family Courts Act, 1964, learned Advocate General, Punjab submitted that it has wider impact and while defending a suit filed by the husband, wife can raise any claim permissible under the Act, *ibid*. It is argued that the aim of The Family Courts Act, 1964 is to short circuit the procedural technicalities. In order to supplement his contentions, learned Advocate General, Punjab placed reliance on Mst. YASMEEN BIBI versus MUHAMMAD GHAZANFAR KHAN and others (PLD 2016 Supreme Court 613), Sayed ABBAS TAQI MEHDI versus Mst. Sayeda SABAHAT BATool and others (2010 SCMR 1840) and Major MUHAMMD KHALID KARIM versus Mst. SAADIA YAQUB and others (PLD 2012 Supreme Court 66).

5. On the other hand, learned counsel for the “respondent” submitted that counter claim in maintenance is not prohibited under The Family Courts Act, 1964, while resisting the suit for restitution of conjugal rights by a wife. It is argued with vehemence that the impugned order is unexceptionable.

6. We have heard learned counsel for the parties as well as learned Advocate General, Punjab and perused the record as well.

7. The matter in issue stems from a suit for restitution of conjugal rights, instituted by the petitioner against the “respondent”, being his wife. While resisting the suit, the “respondent” submitted her written statement wherein she also claimed the maintenance. Though an

objection was raised by the petitioner before the Family Court that “respondent” cannot raise a claim of maintenance, while responding suit for restitution of conjugal rights but it was turned down and the Family Court by way of the order dated 28th November, 2023 fixed Rs.12,000/- as interim maintenance allowance of the “respondent”. It would be apposite to observe that though the impugned order is interim and ordinarily this Court exercises restraint to interfere with the interim or interlocutory orders in exercise of constitutional jurisdiction but when some patent illegality is apparently floating on the surface of record or petition raises some substantial question of law, exercise of constitutional jurisdiction cannot be abdicated. This was the reason that the petition was admitted for regular hearing and ultimately on account of involvement of important legal question, the matter was referred to the Hon’ble Chief Justice for constitution of a Larger Bench.

8. At the very outset, we do not feel any hesitation to observe that in order to make provision for the establishment of Family Courts for the expeditious disposal, settlement and disposal of the disputes relating to marriage and family affairs and for the matters connected therewith, The Family Courts Act, 1964 (hereinafter referred to as “Act, 1964”) was promulgated and enforced *w.e.f.* 02nd November, 1965. It is obvious from the preamble of the “Act, 1964” itself that its prime object was to ensure expeditious settlement and disposal of the disputes relating to marriage and family affairs and the matters connected therewith. For carrying out the purpose and object of the “Act, 1964”, Family Courts were established in each district by virtue of Section 3 of the “Act, 1964”, which were vested with exclusive jurisdiction to entertain, hear and adjudicate upon the matters specified in Part I of the Schedule of the “Act, 1964”. We deem it apt to observe that before promulgation of the “Act, 1964”, all such matters were dealt with by the civil courts under the Code of Civil Procedure (V of 1908), which was a cumbersome, lengthy and tiring process. This was the reason that after the promulgation of the

“Act, 1964” through Ordinance LV 2002, Section 12-A was inserted whereby Family Court was bound down to dispose of the cases, including suit for dissolution of marriage, within a period of six (06) months from the date of institution. To this effect, judgment in the case of **Mst. Yasmeen Bibi** (*supra*) is of significance importance, relevant extract from the same is reproduced below:-

“9. The preamble of the West Pakistan Family Courts Act, 1964 is to the following effect:

"Preamble.- WHEREAS it is expedient to make provisions for the establishment of Family Courts for the expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected therewith."

In the schedule amended upto date, the matrimonial disputes include:

- (i) dissolution of marriage [including Khula]
- (ii) dower
- (iii) maintenance
- (iv) restitution of conjugal rights
- (v) custody of children [and visitation rights of parents to meet them]
- (vi) guardianship
- (vii) jactitation of marriage
- (viii) dowry
- (ix) personal property and belongings of wife

10. Before promulgation and enactment of the **Muslims Family Laws Ordinance, 1961**, and the **West Pakistan Family Courts Act, 1964**, such matters were dealt with by the Civil Courts or Criminal Courts with regard to the maintenance allowance, which was a cumbersome, lengthy and tiring procedure. For getting the final relief of her grievances, the wife had to wait for years for recovery of dower, maintenance and other ancillary matters. In cases of dissolution of marriage, it had to consume years and after getting the decree by that time, majority of the wives had to become grey haired and much beyond the remarriage-able age, beside incurring heavy expenses on getting the relief with regard to a meager amount of maintenance, dower etc.

It was in the above background that the Legislature felt essential to provide for establishment of Family Courts to deal with all matrimonial disputes, mentioned above, in an expeditious manner, curtailing the life of litigation in such cases. To curb and suppress the mischief of delaying tactics on the part of unscrupulous husbands, several amendments were introduced to the **Family Court Act, 1964**. Some amendments bearing striking features may be cited below:-

"S.12-A. Case to be disposed of within a specified period. A Family Court shall dispose of a case, including a suit for dissolution of marriage, within a period of six months from the date of institution:

Provided that where a case is not disposed of within six months either party shall have a right to make an application to the High Court for necessary direction as the High Court may deem fit."

"S. 17-A. This newly enacted provision was with the object to curb the mischief of delaying tactics and the Family Court was brought under obligation to pass interim order, directing the husband to pay interim maintenance allowance to the children and the wife after filing written statement or at any stage thereafter."

"The provision of S.21-A was also added to the Family Court Act, conferring power upon Family Court to preserve and protect any property, which is in dispute in a suit or any other property of a party to the suit for the future satisfaction of the decree."

To further accelerate and expedite the disposal of such cases, the District Appeal Court and the High Court, orders staying the proceedings before the Family Court, shall cease to be effective on expiring of thirty days time. Again, under section 14, through amendment, it was made mandatory for the Court of Appeal to decide the case positively within four months.

11. Keeping in view the clear and manifest intention and object of the Legislature by drastically amending the provisions of the Family Courts Act, a Division Bench of the Peshawar High Court, after elaborately dealing with the same held that, "by now, the Family Court alone has exclusive jurisdiction to deal with all the matrimonial disputes of whatever nature, irrespective of territorial jurisdiction, provided that the Family Court where the wife resides shall have the jurisdiction to entertain such suits/claims [see. Muhammad Tariq v. Mst. Shaheen (PLD 2006 Peshawar 189)]. The view held by the Division Bench of the Peshawar High Court was not set aside by the Supreme Court thus, the same had attained finality and has got strong persuasive effects, which cannot be lightly ignored.

12. Keeping in view the agonies of the parties, particularly the wife, in matrimonial disputes to curtail the mischief of delay and to shorten the life of litigation in such cases, the Law and Justice Commission of Pakistan recommended to the Federal Government and all the Provincial Governments to establish Family Courts in each District and Tehsil Headquarter, which shall be preferably presided over by a female Judge so that the wives who are not well acquainted and familiar with the court

proceedings are provided maximum protection and friendly environments.

13. To provide quicker relief to the wife, amendments were also made in the relevant provisions, where dissolution of marriage is sought on the basis of "Khula", that on failure of conciliation efforts made by the Family Court at preliminary stage, the Family Court is invested with powers to dissolve the marriage there and then, without subjecting the wife to unending litigation.

14. It is demonstrably clear from these drastic amendments made in the **Family Courts Act** including the new provisions added therein, that the Legislature was well aware of the miseries and plight of the wives, seeking relief through the obsolete law then in vogue thus, to minimize the same not only all matrimonial disputes were brought under one and the same umbrella of the Family Court but also provided for the target date, both for the Family Court and for the Appeal Court, by which such cases shall be decided conclusively. The jurisdiction and powers of all other courts thus stand excluded in these matters much less Civil Court therefore, pushing one or the other party to the Civil Court would be in clear violation of the mandatory provision of the law on the subject and would amount to reverse the efficacious remedies available to them under the new scheme of law."

9. In the case of Sayed ABBAS TAQI MEHDI versus Mst. Sayeda SABAHA BATTOOL and others (2010 SCMR 1840), while outlining the object and scope of the "Act, 1964", the Supreme Court of Pakistan held as under:-

"7. It is pertinent to mention here that Family Court had dismissed the applications for setting aside ex parte decree on merits as well being time-barred as is evident from the orders dated 10-5-2004. Similarly first appellate court had dismissed the appeals vide orders dated 11-11-2004 on merits. The concurrent conclusions arrived by the courts below were upheld by the learned High Court vide impugned judgments. It is also admitted fact that provisions of Evidence Act and Code of Civil Procedure are not applicable qua the proceedings before the Judge, Family Court, in terms of section 17 of West Pakistan Family Courts Act, 1964, therefore, under West Pakistan Family Courts Act, 1964, the Family Court has to regulate its own proceedings in accordance with the provisions of this Act and in doing so it has to proceed on the premises that every procedure is permissible unless clear prohibition is found in law meaning thereby that the Family Court can exercise its own powers to prevent the course of justice being deflected from the path. Keeping in view the circumstances of the case in hand the learned Judge, Family Court, had rightly come to the conclusion that service of the appellant/defendant was effected in view of the remarks on the registered A/D which was sent by the Family Court to the appellant/defendant. The finding

is based on logic. It is also in consonance with Order V, Rule 17 of C.P.C. As mentioned above C.P.C. is not applicable but the Judge, Family Court, is not debarred to follow the principle of C.P.C. coupled with the fact that Haji Wali Muhammad Khan, Advocate, had appeared before the Court twice who could not appear unless and until he had received instructions on behalf of appellant/defendant either directly or through his agent which is also in consonance with Order III, Rule 4(5), C.P.C. There is, no conflict between Order III, Rule 4(5), C.P.C. and provisions of West Pakistan Family Courts Act, 1964. The purpose and object to make provision for the establishment of Family Courts for the expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected therewith as is evident from the preamble of the said Act. It is settled principle of law that Act be read as a whole then it is crystal clear that what the Family Courts Act has done is that it has changed the forum, changed the method of trial and empowered the court to grant better remedies. ...”

10. In case of a family dispute, a suit shall be instituted by presentation of a plaint or in such other manner or in such court as may be prescribed and the plaint shall contain all material facts relating to the disputes and shall contain a schedule giving number of witnesses intended to be produced in support of the plaint, the names and addresses of the witnesses and brief summary of the facts to which they will depose. In terms of proviso to Section 7 of the “Act, 1964”, a plaint for dissolution of marriage may contain all claims relating to dowry, maintenance, dower, personal property and belongings of wife, custody of children and visitation rights of parents to meet their children. On presentation of a plaint, a Family Court is required to fix a date of not more than fifteen (15) days for appearance of the defendant. For this purpose, Section 8 of the “Act, 1964” is very pertinent. Section 9 of the “Act, 1964” lays down the procedure for submission of written statement by the defendant in the suit. Sub-Sections (1a) and (1b) are since relevant, so Section 9 of the “Act, 1964” to that extent is reproduced below:-

S.9. (1) Written statement. On the date fixed under Clause (a) of sub-section (1) of section 8, the plaintiff and the defendant shall appear before the Family Court and the defendant shall file his written statement, and attach therewith list of his witnesses alongwith a precise of the evidence that each witness is expected to give.

- (1a) A defendant husband may, where no earlier suit for restitution of conjugal rights is pending, claim for a decree of restitution of conjugal rights in his written statement to a suit for dissolution of marriage or maintenance, which shall be deemed as a plaint and no separate suit shall lie for it.
- (1b) A defendant wife may, in the written statement to a suit for restitution of conjugal rights, make a claim for dissolution of marriage including khula which shall be deemed as a plaint and no separate suit shall lie for it.

(Underlining supplied for emphasis)

Before moving further, we feel it necessary to observe that in order to understand the scope of Section 9(1b) of the “Act, 1964”, one cannot ignore Section 7 and more specifically its proviso, which read as under:-

“S.7. Institution of suits. (1) Every suit before a Family Court shall be instituted by the presentation of a plaint or in such other manner and in such Court as may be prescribed.

(2) The plaint shall contain all [material] facts relating to the dispute and shall contain a Schedule giving the number of witnesses intended to be produced in support of the plaint, the names and addresses of the witnesses and brief summary of the facts to which they would depose:

Provided [further] that the parties may, with the permission of the Court, call any witness at any later stage, if the Court considers such evidence expedient in the interest of justice.

[Provided that a plaint for dissolution of marriage may contain all claims relating to dowry, maintenance, dower, personal property and belongings of wife, custody of children and visitation rights of parents to meet their children and]

[(3) (i) Where a plaintiff sues or relies upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time, deliver the document or a copy thereof to be filed with the plaint.

(ii). Where he relies on any other document, not in his possession or power, as evidence in support of his claim he shall enter such documents in a list to be appended to the plaint [giving reasons of relevancy of these documents to the claim in the plaint.

(4) The plaint shall be accompanied by as many duplicate copies thereof including the Schedule and the lists of documents referred to in sub-section (3), as there are defendants in the suit, for service upon the defendants.

(Underlining supplied for emphasis)

From joint reading of proviso to Section 7 and Sub-Section (1b) of Section 9 of the “Act, 1964”, it can safely be inferred that scope of latter is not limited or confined but wider enough.

11. To discover the theme of above provisions, we can make reference to AKHTAR KAMAL versus Mst. SAMREEN AKHTAR and 2 others (2018 CLC 887), relevant portion from the same is reproduced below:-

“9. The apparent intention in promulgating the West Pakistan Family Courts Act, 1964 appears to be that it is a beneficial legislation enacted for the facilitation of the parties and expeditious justice as could be practicable. The insertion of subsections (1a) and (1b) and Section 9 of the West Pakistan Family Courts Act, 1964 are one of the steps in this direction of speedy justice. It is reproduced for convenience as under:-

S.9. (1) Written Statement.--- On the date fixed under clause (a) of subsection (1) of section 8, the plaintiff and the defendant shall appear before the Family Court and the defendant shall file his written statement, and attach therewith list of his witnesses along with a precise of the evidence that each witness is expected to give.

(1a). A defendant husband may, where no earlier suit for restitution of conjugal rights is pending, claim for a decree of restitution of conjugal rights in his written statement to a suit for dissolution of marriage or maintenance, which shall be deemed as a plaint and no separate suit shall lie for it.

(1b). A defendant wife may, in the written statement to a suit for restitution of conjugal rights, make a claim for dissolution of marriage including khula which shall be deemed as a plaint and no separate suit shall lie for it:

Provided that the proviso to subsection (4) of section 10 shall apply where the decree for dissolution of marriage is to be passed on the ground of khula]

- (2)
- (3)
- (4)
- (5)
- (a)
- (b)
- (6)

(7)

(underlines supplied)

By the insertion of the above subsection either party may submit their claim in the written statement. Though in subsection (lb) of the West Pakistan Family Court Act, 1964, the relief of only dissolution of marriage and Khula is mentioned as a claim to be set up by the wife, however, in the subsection the word "including khula" is used which has enlarged its scope.

10. In the case of *Emperor v. Jiand and another* AIR 1928 Sind 149, while interpreting the word "includes" the Full Bench held that:-

"It is well-known rule of interpretation that the word "includes" is used as a word of enlargement and ordinarily implies that something else has been given beyond the general language which precedes it to add to the general clause a species which does not naturally belong to it."

Similarly, in AIR 1932 Madras 474 titled *Madras Central Urban Bank, Ltd. v. Corporation of Madras*, the Division Bench held that.-

"when it is mentioned that a particular definition 'includes' certain things, it should be taken that the legislature either intended to settle a difference of opinion on the point or wanted to bring in order matters that would not properly come within the ordinary connotation of the word or expression or phrase in question".

11. In the case of *Malik Muhammad Inam and others v. Federation of Pakistan and others* 2006 SCMR 1670, the august Supreme Court of Pakistan while interpreting the word 'include' or 'included' in a statute held as under: -

Where in defining any, the Legislature uses the word "included" or "includes", the rule of interpretation is that it is used as a word of enlargement and it ordinarily implies that something else has been included, which falls outside the general meaning of the word. It may also be used to give a comprehensive description that includes what is not obvious, what is uncertain and what, in the ordinary sense, is not impossible."

In the case of *Mushtaq Ahmad v. The State*, 1991 SCMR 543, the august Supreme Court of Pakistan also commented upon the expression "includes" as under:-

The word "includes" is very generally used in interpretation clauses in order to enlarge the meanings of the words or phrases occurring in the body of the Statute; and when it is so used these words or phrase must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause that they shall include. But the word "include" is susceptible of another construction which may

become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include' and in that case it may afford an exhaustive explanation of the meaning which for the purpose of Act, must invariably be attached to these words or expressions.

12. Thus merely specifying the word Khula and dissolution would not mean that the wife can claim only these two reliefs in her written statement but the word "including" used in Section 9(lb) would enlarge its scope and the wife is not supposed to file separate suit for maintenance and custody of minor etc instead all these claims can be joined in the written statement. The word used in the concluding para (lb) are also very relevant which support the case of the respondent No. 1, i.e. "*shall be deemed as a plaint and no separate suit shall lie for it*" and it further strengthens the case of the respondent No.1, and whatever she claimed in her written statement would be considered as if she has filed a separate suit to this effect.

13. This view also finds support from the case titled Rana Ahsan Mahmood Ahid v. Judge Family Court, Faisalabad and 2 others 2010 YLR 3264 and from the judgment of the Division Bench of this Court rendered in the case of "Sheheryar Gul v. Mst. Sadaf Bibi" 2016 MLD 200. The arguments on this point to the contrary advanced by the learned counsel for the petitioner are thus repelled."

12. Before us, a contention is raised by learned counsel for the petitioner that custody matters are entirely different from rest of the claims under the "Act, 1964" and Schedule I appended thereto; we are mindful of the fact that initially the matter relating to guardianship and custody of the minors were to be dealt with by the Guardian Courts under the Guardians and Wards Act, 1890 but such matters were later on also made part of Schedule I to the "Act, 1964" so as to avoid unnecessary delay and procedural rigors. Guidance to this effect can be sought from Major MUHAMMAD KHALID KARIM versus Mst. SAADIA YAQUB and others (PLD 2012 Supreme Court 66). Relevant excerpt from the same is reproduced below:-

"5. Heard. Prior to the enforcement of Family Courts Act, 1964, the disputes, relating to and concerning the family affairs (except guardianship etc.) such as the dissolution of marriage, recovery of dower, dowry, maintenance, enforcement of conjugal rights and jactitation etc. (subject to the amendment of the schedule to the Act 1964 from time to time) were within the jurisdiction of ordinary civil court. Whereas, the issues about the guardianship and custody of the minors were the subject matter of the Guardian Courts constituted

under Guardians and Wards Act, 1890. It seems that on account of delays, in the adjudication of this class of cases, which possibly was due to the complexity of procedure and the rush of work in such courts, but undoubtedly was adversely affecting the family union and comity, the legislature in order to prevent the above enforced the Act, 1964. It is so clear from the preamble of the Act that this law was enforced with a vivid object to take out the matters falling within the ambit thereof from the ordinary regime qua dispensation of justice, and for the expeditious disposal of such matters, special forum was created in which the rigors of procedural implications and the requirements of the Evidence Law (Qanun-e-Shahadat Order, 1984) were either dispensed with or were simplified; with an addition of a statutory mechanism, enabling the parties for an amicable settlement of their disputes, through the courtesy of the Court was provided. Therefore, to achieve the aforesaid object, section 5 of the Act, 1964 conferred exclusive jurisdiction to the Family Court to entertain, hear and adjudicate upon matters specified in Part-I of the schedule to the Act. It may be pertinent to refer here, that if the original Act, 1964 is examined there were six entries/items to the schedule, relating to the matters about dissolution of marriage, dower, maintenance, restitution of conjugal rights, custody of the children and guardianship. However, these items have been increased from time to time e.g. khula' is added to the dissolution cases; the custody issues also involve visitation rights of the parents to meet the minors; jactitation of marriage, dowry, personal property and personalbelongings of the wife have also been made part ther eof and subjected to the jurisdiction of the Family Court. Furthermore, Subsections (4) & (5) to Section 1 of the Act 1964 were added which read:--

"(4). Nothing in this Act shall apply to any suit, or any application under the Guardians and Wards Act 1890, pending for trial or hearing in any Court immediately before the coming into force of this Act, and all such suits and applications shall be heard and disposed of as if this Act were not in force.

(5). Any suit, or any application under the Guardians and Wards Act, 1890, which was pending for trial or hearing in any Court immediately before the coming into force of this Act, and which has been dismissed solely on the ground that such suit or application is to be tried by a Family Court established under this Act, shall, notwithstanding anything to the contrary contained in any law, on petition made to it in that behalf by any party to the suit or application be tried and heard by such Court from the stage at which such suit or application had reached at the time of its dismissal."

Whereas, section 20 confers powers upon the Family Court to exercise all powers of Judicial Magistrate of first class under the Code of Civil Procedure. Likewise, under section 25 of the Act, 1964, it is enunciated "a Family Court shall be deemed to be a District Court for the purpose of the Guardians and Wards Act, 1890, and notwithstanding anything contained in this Act, shall in dealing with the matter specified in that Act, follow the procedure prescribed in that Act". Besides, for the purposes of inter alia the 'territorial jurisdiction'

of the Family Court, the Family Court Rules, 1965 were enforced; the Rule 6 whereof prescribes the Court shall have the jurisdiction to try a suit will be that within the local limits of which :-

- (a) the cause of action wholly or in part has arisen; or
- (b) where the parties reside or last resided together:

Provided that in suits for dissolution of marriage or dower, the Court within the local limits of which the wife ordinarily resides shall also have jurisdiction.

13. After having threadbare discussion and going through the principles laid down in the precedents noted, hereinabove, we feel no reason to differ with the opinion of the Division Bench of Peshawar High Court, Peshawar in the case of SHEHERYAR GUL versus Mst. SADAF BIBI (2016 MLD 200) to the following effect:-

"5. Section 9(1) and (2) are relevant to resolve the controversy emerged from the impugned order which read as under:--

9. WRITTEN STATEMENT

- (1) On the date fixed under clause (a) of sub-section (1) of section 8, the plaintiff and the defendant shall appear before the Family Court and the defendant shall file his written statement, and attach therewith list of his witnesses alongwith a precise of the evidence that each witness is expected to give.
- (2) Where a defendant relies upon a document in his possession or power, he shall produce it or a copy thereof in the Court alongwith the written statement".

6. After insertion of above provisions of law, the written statement had attained the status of plaint. So, as provided in section 7(2) of the Family Courts Act that a plaint shall contain all material facts relating to the dispute and shall contain a schedule giving the number of witnesses intended to be produced in support of plaint, names and addresses of the witnesses and brief summary of the facts to which they would depose. The proviso to the above section also empower the Court to allow either of the parties to call any of the witnesses at any later stage if it considers such evidence expedient to the interest of justice."

14. The nutshell of above discussion is that we are of the unanimous view that a wife while resisting a suit for restitution of conjugal rights can raise any of the permissible claims covered under the "Act, 1964" but in such a case the Family Court would be obliged to provide opportunity to the husband (plaintiff) to file a rejoinder in

response thereto, which shall be treated as written statement on his behalf. After arriving at this conclusion, we have noticed that though the Family Court allowed the “respondent” to raise her claim of maintenance while responding in the suit for restitution of conjugal rights, filed by the petitioner but without affording the latter an opportunity to submit rejoinder, as observed hereinabove and proceeded to fix interim maintenance of the “respondent” which even otherwise, to our mind, is negation of Section 17-A of the “Act, 1964”. To this effect there is a consensus amongst all in attendance.

15. On account of above reasons, we allow this petition and set-aside the order dated 28th November, 2023 with the direction to the Family Court to permit the petitioner to file his rejoinder to the claim of maintenance, raised by the “respondent” in her written statement and on receipt of the same, if so filed, proceed to fix interim maintenance, strictly in accordance with law, with no order as to costs.

(SADAQAT ALI KHAN)
JUDGE

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