

Stereo. H C J D A 38.
JUDGMENT SHEET
LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

Writ Petition No. 15918/2021

Muhammad Ali Khan *Versus* Additional District Judge etc.

JUDGMENT

Date of Hearing:	06.02.2024
Petitioner by:	Malik Javaid Akhtar Wains, Advocate.
Respondent No.3 by:	Mr. Shahbaz Murtaza Ansari, Advocate.

Anwaar Hussain, J. The present as well as connected constitutional petitions bearing W.P. No.3387/2022 and W.P. No.8708/2023 are so factually inter-related and interconnected that they are simultaneously being adjudicated through this common judgment.

2. Briefly stated facts of the case are that respondent No.3, namely, Mst. Aaisha Zafar (“**the respondent**”) instituted suit for recovery of dower as well as maintenance allowance whereas the petitioner instituted a suit for restitution of conjugal rights. Through consolidated judgment and decree dated 30.06.2021, the suit of the respondent was decreed in the terms that she was held entitled to maintenance allowance at the rate of Rs.15,000/- per month till subsistence of marriage with the observation that when the petitioner will transfer property measuring 12 acres of land forming Haq-ul-Mehar of the respondent in favour of the latter, she will be entitled to maintenance allowance with 10% annual increase subject to performance of her matrimonial obligations. Through the said judgment and decree, the suit of the petitioner for restitution of

conjugal rights was also decreed. The findings were upheld by the Appellate Court below *vide* judgment and decree dated 20.09.2021.

3. The present constitutional petition is directed against the impugned judgments and decrees of the Courts below passed in favour of the respondent, *inter alia*, in respect of dower recorded in column No.16 of her *nikahnama* with the petitioner. The respondent initiated execution proceedings wherein, *vide* order dated 11.02.2022, the respondent has been held entitled to maintenance allowance till delivery of possession of the property to the respondent which had been transferred in her favour in compliance of the impugned judgment and decree dated 30.06.2021. Order dated 11.02.2022 passed in execution proceedings has been upheld by the Additional District Judge, Multan, *vide* order dated 22.02.2022, and the said orders are under challenge in connected constitutional petition bearing W.P. No.3387/2022. In the execution proceedings, the petitioner also filed an application seeking direction to the respondent to submit surety bond against payment of the maintenance allowance to the respondent till decision in the present petition, which was dismissed *vide* order dated 07.02.2023 by the Executing Court and the said order was upheld by Additional District Judge, Multan in appeal, *vide* order dated 18.04.2023, which have been assailed in connected constitutional petition bearing W.P. No.8708/2023.

4. Learned counsel for the petitioner submits that the entry recorded in column No.16 of the *nikahnama* was false and fictitious, however, specific issue was not framed in this regard by the Trial Court and no finding has been rendered as well. Contends that the interpolation in the entry recorded against column No.16 of the *nikahnama* was made in the terms that the property measuring 2 acres (ایکٹھ) was made to be read as 12 acres (ایکٹھ) by inserting the number “1” immediately before the number ‘2’. Adds that the original *nikahnama* by the respondent has not been produced. Further

states that even otherwise, the entry recorded against column No.16 reflects that the property to be given was also recorded in a stamp paper bearing No.2095, however, the said stamp paper was never brought on record by the respondent and this aspect of the matter has been ignored by the Courts below. Regarding payment of maintenance to the respondent, submits that she is a disobedient wife as she refused to co-habit with the petitioner, therefore, she is not entitled to any maintenance. Adds that as per the impugned judgment and decree, the petitioner was only obligated to transfer the property and not to deliver the possession of the same or give share of produce, therefore, orders forming subject matter of connected petition bearing Writ Petition No.3387/2022 are not sustainable. Further contends that since the property stands transferred in the name of the respondent, therefore, the respondent is not entitled to any maintenance allowance unless she co-habits with the petitioner. Concludes that the Courts below have erred in not procuring the surety bond from the respondent for the maintenance already paid by the petitioner to the respondent.

5. Conversely, learned counsel for the respondent has fully supported the impugned judgments and decrees as well as orders of the Courts below passed in execution proceedings. Adds that though the property has been transferred in the name of the respondent, however, possession of the same has not been handed over to her, therefore, she cannot get her due share in the produce from the property transferred in her name and hence, she has rightly been held entitled to maintenance allowance till delivery of possession of the property to the respondent. Avers that the impugned orders forming subject matter of connected petitions are interlocutory in nature, therefore, the connected petitions are not maintainable.

6. Arguments heard. Record perused.

7. The petitioner has questioned the veracity and credibility of the entry recorded in column No.16 of the *nikahnama* between the parties. Needless to mention that presumption of truth is attached to a registered *nikahnama* and the same can only be rebutted if a defendant (groom/petitioner in the instant case) puts forth some cogent evidence. The petitioner, in his written statement filed in the suit instituted against him, has categorically denied that any such entry pertaining to 12 acres land against column No.16 of the *nikahnama* was agreed between the parties at the time of their *Nikah*. However, when the petitioner appeared as DW.1 and was cross-examined, he did not deny the said entry and never asserted that the disputed entry is result of forgery. The petitioner stated as under:

”میری تعلیم گریجوائشن ہے۔ نکاح نامہ Ex P4 پر میرے دستخط ہیں۔ نکاح نامہ Ex.P4 کے کالم نمبر 16 میں تحریر لکھی ہوئی ہے کہ دلہا کی طرف سے 12 اکیڑ رعی اراضی واقع موضع جھوک گاؤ ضلع ملتان اسلام نمبر 2095 - 14553 / 1920 حصہ متعلقہ 96 کنال دہن کی ملکیت ہوئی (محل)۔ میں نے مذکورہ بالا 12 اکیڑ حق المہر تاحال مدعی کے نام مقتول نہ کیا ہے۔“

(Emphasis supplied)

Statement of the petitioner that he has not transferred the said land in the name of the respondent depicts that he realizes his obligation in terms of the entry recorded against column No.16 of the *nikahnama*. This aspect of the matter further gets traction as the petitioner also deposed as under:

”مذکورہ حق المہر 12 اکیڑ اراضی غیر محل حق المہر ہے اس لیے میں نے مذکورہ اراضی کی پیداوار آج تک مدعی کو نہ دی ہے۔ مذکورہ حناف نمبر 16 میں لفظ محل بعد میں سازباز سے لکھا گیا ہے۔ میں نے آج تک لفظ محل کی منسوخی کیلئے کوئی الگ دعویٰ دائر نہ کیا ہے البتہ جواب دعویٰ میں موقف لیا ہے۔“

(Emphasis supplied)

A careful perusal of the above-quoted statement reveals that the petitioner is not denying the factum of settlement of 12 acres land as dower of the respondent but is merely asserting that the said dower was deferred in nature (*ghair moajjal*). Hence, the averment that the entry was result of interpolation is misconceived and accordingly discarded. In view of the said stance of the petitioner, there was no need to produce stamp paper referred in column No.16 of the *nikahnama*. Similarly, the argument that the dower was originally settled as “*ghair moajjal*” that was converted into “*moajjal*” is devoid of any persuasion. Bare perusal of the *nikahnama* depicts that there is no cutting and/or overwriting on the *nikahnama* converting the term “*ghair moajjal*” into “*moajjal*” as the same cannot happen without cutting and/or overwriting as one has to cut and/or erase the term “*ghair*” from already written word “*ghair moajjal*” to make it “*moajjal*”.

8. Similarly, arguments of learned counsel for the petitioner that issue *qua* forgery has not been framed and hence, entire trial offends due process rights of the petitioner is also misconceived inasmuch as there is no explanation as to why an application for framing of additional issues/proper issues was not filed by the petitioner before the Trial Court or the Appellate Court below. Moreover, the petitioner, knowing the controversies, condensed in issues framed, led the evidence and both the Courts below have concurrently held against him and hence, he cannot now take a plea that proper issues were not framed. Even otherwise, said argument loses its significance and lacks persuasion on account of the fact that on the one hand, the petitioner stated that entry recorded in column No.16 is completely fabricated and result of forgery and on the other hand, while appearing as DW.1 stated that forgery was effected by making the term “*ghair moajjal*” into “*moajjal*” and further contradicted the stance by asserting that the words ‘2-acres’ have been made as ’12-acres’. As a matter of fact, the case of the petitioner squarely falls

within clutches of the legal maxim “Allegans Contraria Non Est Audiendus” (A person who alleges things contradictory to each other is not to be heard) disentitling the petitioner to any relief. Therefore, this Court is of the opinion that the present petition is devoid of any force and merits dismissal.

9. In the connected case bearing W.P. No.3387/2022, the petitioner is taking up a rather ingenuine position that the judgment and decree under execution has been implemented satisfactorily by transferring the property measuring 12 acres land in the name of the respondent and the said judgment never mandated the petitioner to deliver possession of the said property, to the respondent. Suffice to observe that a wife has a right to claim the dower and if such dower is in the form of immovable property, she is not only entitled to transfer of said immovable property in her name but also to utilize the same. Failure on part of the petitioner to handover possession of the property, transferred in the name of the respondent, pursuant to the impugned decree means that the said resource (property/dower of the respondent) would remain in the hands of the petitioner and the respondent has no control over how and when (and/or upon whom) it could be spent. Therefore, this Court is of the opinion that unless possession of the immovable property constituting dower of a wife is given to her, and/or the share of the produce thereof is paid, in essence, the obligation to pay the dower has not been discharged by the husband, which precisely is the position in the present case. The conduct of the petitioner of delaying the payment of the agreed dower and denying possession of the dower property and/or usufruct in form of the produce thereof, on the ingenuine and shallow plea that he was obligated only to transfer the land and not the possession reveals the contumacious conduct of the petitioner as to further protract and linger on the matter by involving, rather dragging, the respondent in uncalled for litigation that cannot be countenanced by this Court in constitutional jurisdiction. In case reported as “Haseen Ullah v. Mst. Naheed Begum and others” (PLD

2022 SC 686), the Supreme Court of Pakistan has held that once the dower is fixed, the husband in a marriage contract cannot resile from the same while observing that our society is male dominating and the men in discharge of their matrimonial duties often forget the commands of the religion when it comes to their own obligations and are more concerned about their rights. The present case appears to be a classical example where the payment of the dower due in favour of the respondent is being delayed by the petitioner on one or the other pretext. Therefore, the connected petition bearing W.P No.3387/2022 has also no force.

10. In view of the above discussion, the present as well as connected petition bearing W.P No.3387/2022 are **dismissed**. In the connected matter bearing W.P. No. 8708/2023, the petitioner has prayed that till pendency of the present Writ Petition No.15918/2021, surety bond regarding payment of maintenance allowance by the petitioner to the respondent be procured from the latter. Since the present petition has been dismissed and the impugned judgments and decrees have been upheld, therefore, the connected petition bearing W.P. No.8708/2023 has become infructuous, and hence, the same is also **dismissed**. The petitioner is obligated to bear the cost of litigation throughout.

(ANWAAR HUSSAIN)
Judge

Approved for reporting.

Judge

Akram