

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Writ Petition No.38567/2022

Syed Sibt Hassan Vs. Saba Batool etc.

Date of hearing	19-02-2024
Petitioner by	Mr. Farrukh Shehzad Kamboh, Advocate.
Respondents No.1 & 2 by	Mr. Shahzad Hussain Goraya, Advocate.

ABID AZIZ SHEIKH, J. This judgment will also decide the connected Writ Petition No.75369/2021 (*hereinafter referred to as connected Petition*), as both these Petitions are between the same parties and against the same impugned judgment and decree dated 27.10.2021 (**impugned judgment & decree**) passed by the Appellate Court.

2. Relevant facts are that respondents No.1 & 2 in this Writ Petition, who are also petitioners in connected Petition, (*hereinafter referred to as respondents*) filed a family suit for recovery of maintenance allowance, dowry articles, delivery expenses and dower against the petitioner, who is also respondent No.1 in connected Petition (*hereinafter referred to as petitioner*) on 19.06.2017. The said suit was decreed by the Trial Court, *vide* judgment and decree dated 01.03.2019 (**judgment & decree of Trial Court**), awarding monthly maintenance allowance @ Rs.2,000/- for respondent No.1 (wife) from September 2016 till *Iddat* period, maintenance allowance @ Rs.5,000/- per month for respondent No.2 (minor-daughter) from her date-of-birth till marriage with 10% increase *per annum* and the alternative price of dowry articles at Rs.350,000/- and delivery expense of Rs.25,000/- to respondent No.1, however, the claim of respondent No.1 for dower was dismissed. The petitioner did not challenge the judgment & decree of Trial Court, however, in Appeal (filed by the

respondents), the Appellate Court increased the amount of delivery expenses to Rs.33,778/- and upheld the judgment & decree of the Trial Court to the extent of remaining claims, *vide* judgment and decree dated 12.07.2019 (**judgment & decree of Appellate Court**). The petitioner again did not challenge the above-noted judgment & decree, however, the respondents filed Constitutional Petition (WP No.51624/2019), wherein the matter was remanded back to the Appellate Court, *vide* order dated 01.06.2021 (**remand order**), to decide the question of dower while recording the finding about validity and effect of the Agreement dated 21.01.2017 (Exh.P2) (*hereinafter referred to as Agreement*). In post-remand proceedings, the Appellate Court while upholding the validity of the Agreement, through the impugned judgment & decree, awarded amount of Rs.4,000,000/- in favour of respondent No.1 as dower. The petitioner being aggrieved of the impugned judgment & decree has filed this Constitutional Petition, whereas the respondents have also filed connected Writ Petition claiming enhancement of the maintenance allowance or alternative price of the dowry articles.

3. Learned counsel for the petitioner submits that the petitioner got a stamp-paper issued for renewal of license of medical store but the same was stolen by respondent No.1 and she got the Agreement inscribed thereon. Further submits that in any case the condition of Agreement to pay dower amount of Rs.4,000,000/- in case of divorce, being a stringent condition on divorce, is not sustainable. Reliance in this regard is placed on “Muhammad Bashir Ali Siddiqui Vs. Mst. Sarwar Jahan Begum and another” (**2008 SCMR 186**) and “Muhammad Asif Vs. Mst. Nazia Riasat and 2 others” (**2018 CLC 1844**).

4. Learned counsel for the respondents, on the other hand, submits that the Agreement was duly proved and it was not to impose stringent condition to remain in marriage bond rather same is for enhancement of dower amount, which is permissible under

the law. He submits that the respondents only want to contest this Writ Petition and will not press their connected Petition filed for enhancement of maintenance allowance or the alternative price of dowry articles.

5. Arguments heard. Perusal of the record demonstrates that in previous round of litigation, the petitioner did not challenge the judgments and decrees of the Trial Court and Appellate Court impugning the maintenance allowance, alternative price of dowry articles and the delivery expenses, therefore to that extent the findings of the courts below in aforesaid judgments have already attained finality against the petitioner. Similarly, today the respondents have not pressed their connected Petition for enhancement of maintenance allowance or alternative price of dowry articles, therefore, these issues being not under challenge need not be examined in this judgment. Now the only question needs determination is regarding the issue of dower on the basis of Agreement, which was remitted back by this Court *vide* remand order and has been allowed by the Appellate Court through the impugned judgment & decree.

6. In above context, the Issue No.4 relates to recovery of the dower amount. This Court, *vide* order passed in Writ Petition No.51624/2019, remanded the matter to the Appellate Court *firstly* to decide the validity or otherwise of the Agreement and *secondly* its effect qua the claims of the subject-matter, in case the same is held valid and enforceable in law. Regarding validity of the Agreement, no doubt under Section 17 of the Family Courts Act, 1964 (**Act**), the Qanun-e-Shahadat Order, 1984 (QSO) and the Code of Civil Procedure, 1908 (CPC) are not applicable in family matters, however, as the respondents were beneficiary of the Agreement, initially the burden of proof was on them to prove the execution of the Agreement. In this behalf, respondent No.1 herself appeared as PW-1 and besides producing the Agreement as Exh.P2,

she also repeated the contents of the Agreement in her affidavit i.e. Exh.P1. During the cross-examination, not only she remained consistent but was not specifically cross-examined that whether the Agreement was executed in her favour or not or whether this is a forged document or was stolen by her. She also produced two marginal witnesses of the Agreement i.e. *Shahid Naeem* and *Waseem Raza*, who appeared as PW-2 & PW-3 respectively and supported the claim of respondent No.1. The petitioner while appearing as DW-1 admitted that he purchased a stamp-paper, however, claimed that same had been stolen and used against him subsequently. However, during cross-examination he categorically admitted that the stamp-paper of Agreement was got issued by him and signatures on front side as well as backside thereof were also made by him. Further, on backside of the Agreement it is specifically recorded that this is for an agreement between the petitioner and respondent No.1 (**parties**) and petitioner's signature and his CNIC number are also mentioned there. No doubt, the scribe and the vendor of Exh.P2 were not got examined but their absence actually goes against the petitioner, who had to prove that the stamp-paper was got issued for renewal of the license of medical store and not for Agreement between the parties. Further, the petitioner never sought cancellation of the stamp-paper or got FIR lodged or got *rapat* diarized if at all his stamp-paper was stolen, as claimed by him. The above oral and documentary evidence proved beyond doubt that the Agreement was lawfully executed between the parties.

7. Now coming to the next question that whether under the Agreement respondent No.1 is entitled for dower amount of Rs.4,000,000/- . There is no cavil with the proposition settled by the Supreme Court in case of 'Muhammad Bashir Ali Siddiqui' *supra*, followed by this Court in case of 'Muhammad Asif' *supra* (relied upon by petitioner's counsel) that a stringent condition cannot be

imposed to keep the parties in marriage bond. However, perusal of the Agreement (Exh.P2) shows that the petitioner agreed to pay Rs.4,000,000/- as dower in case of divorce. This stipulation in the Agreement is not stringent condition imposed to keep the parties in marriage bond rather it is enhancement of the dower amount by the husband, which is not only permissible but also executable as discussed below.

8. Under Para-287 of the “Principles of Mahomedan Law” by DF *Mulla*, the dower may be fixed either before or at the time of marriage or after marriage and can also be increased after marriage. The afore-noted Para is reproduced hereunder:-

“287. Dower may be fixed after marriage. The amount of dower may be fixed either before or at the time of marriage or after marriage and can be increased after marriage.”

The Supreme Court of Pakistan in “Ghania Hassan Vs. Shahid Hussain Shahid and another” (**2016 SCMR 2170**) affirmed the above legal position and held as under:-

“An overview of the above reveals that it is not a settled proposition of law that the dower can be fixed before marriage and at time of marriage or thereafter. Furthermore, the dower once settled can always be increased by the husband or by an agreement between the parties.”

The Apex Court also in case of “Mst. Naziran Begum through Legal Heirs Vs. Mst. Khurshid Begum through Legal Heirs” (**1999 SCMR 1171**) held as under:-

“It is well-settled that under Hanfi Law a husband is entitled to fix any amount of dower either at the time of marriage or even subsequently and also provide for mode of its payment.”

9. This Court in case of “Mst. Zainab Khatoon Vs. Amir Abdullah Khan” (**PLD 2004 Lahore 330**) observed as under:-

“9. Agreement dated 26-03-1985 is not in restraint of marriage but is a contingent document

*increasing amount of prompt dower, in case petitioner is divorced against her wishes or respondent contracts second marriage. Section 26 of the Contract Act, 1872 does not cover documents creating partial or indirect restraints on marriage, in the sense that it does not restrict marriage though it may adversely makes liable to do some thing or pay some amount, in lieu of marriage. Thus an agreement to pay a woman a specified amount, in case of divorce or remarriage, is not in restraint of marriage and cannot be considered, as void, being violative of the provisions of section 26 of the Act of 1872 (*ibid*). In a Division Bench judgment given in the case of *Muhammad Ali v. Ayesha Khatun* (AIR 1916 Calcutta 761) husband authorized his wife to divorce him, in case of his entering into tie of second marriage, it was held that agreement does offend section 26 of the Contract Act, 1872. Husband under law is competent to increase dower amount, after marriage and this document is of this nature and could be enforced against the respondent. Thus the judgment and decree impugned herein is tainted with material irregularity and illegality, thence is not sustainable at law.”*

The same view was also expressed by the Division Bench of this Court in “Mst. Shahida Adeeb and another Vs. Nauman Ejaz and another” (**2007 CLC 1160**) in following words:-

*“It is settled principle of law that in case of Muhammadan women it is open to husband to fix the dower amount at any time before or after the marriage. It is further open to the husband to increase the amount of the dower at any time during the continuance of the marriage. For purpose of increasing dower declaration by husband is sufficient. Reliance has been placed on the case reported as *Chan Pir v. Fakar Shah* AIR 1940 Lah. 104.”*

The same view was also expressed by this Court in case of “Junaid Ahmad Khan Shahzad Vs. District Police Officer, Muzaffargarh and 5 others” (**2021 YLR 869**).

10. For reasons recorded above, no illegality is found in the impugned judgment and decree for interference in this Constitutional Petition, whereas the respondents have made request for withdrawal of their connected Petition, as already noted above.

11. In view of the above discussion, both these Writ Petitions are **dismissed.**

**(ABID AZIZ SHEIKH)
JUDGE**

Approved For Reporting.

JUDGE

Arsalan