

JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

W. P. No. 38446 of 2016

Mst. Aniza and another **VERSUS** Additional District Judge and 02
others

W. P. No. 35820 of 2016

Nasir Mehmood **VERSUS** Aniza and 03 others

JUDGMENT

Date of Hearing	23.05.2023
Petitioners by:	Mr. Irfan Ghaus Ghuman, Advocate
Respondent No. 3 by:	Rana Ahmad Tayyab Shahid, Advocate

ABID HUSSAIN CHATTHA, J. This consolidated Judgment shall decide the titled Writ Petitions since they are directed against the same impugned Judgments & Decrees dated 21.01.2016 and 30.09.2016 passed by Judge Family Court, Pasrur and Additional District Judge, Pasrur, District Sialkot, respectively.

2. For ease of reference, throughout this Judgment, Mst. Aniza shall hereinafter be referred to as (the “**Petitioner**”), Muhammad Awais as (the “**Minor**”) and Nasir Mehmood as (the “**Respondent**”).

3. Brief facts of this case are that the Petitioner and the Minor instituted a suit for recovery of maintenance allowance and dower, whereas, the Respondent filed a suit for restitution of conjugal rights. After submission of contesting written statements, both the suits were tried together and consolidated issues were framed. The Family Court after evaluating the evidence on record concluded that the Petitioner was the legally wedded wife of the Respondent and there was no dispute regarding the paternity of the Minor. Accordingly, the Petitioner and the Minor were held entitled to receive maintenance allowance @ Rs. 3,000/- and Rs. 6,000/- per month, respectively with 10% annual increment from 10.02.2014 till their legal entitlement. The suit of the Respondent for restitution of conjugal rights was

conditionally decreed subject to payment of maintenance allowance to the Petitioner.

4. Importantly, the claim of the Petitioner to recover her dower amount of Rs. 500,000/- was declined by the Family Court by relying upon an inquiry report dated 01.09.2014 (the “**Inquiry Report**”) ordered by the District Coordination Officer upon an Application filed by the Respondent against the *Nikah Khuwan*. It was held that although the *Nikahnama* (Ex. P-1) was an admitted document yet the particular entry has been declared false and frivolous in the Inquiry Report and thus, cannot be admitted. Moreover, the disputed dower entry has been inserted in column Nos. 13 & 14 which were not relevant columns for listing of dower.

5. The parties preferred cross Appeals against each other against the decision of the Family Court. However, both the Appeals were dismissed based upon the same premises and reasons. These constitutional Petitions were pressed by the parties to the extent of quantum of maintenance allowance and the entitlement of the Petitioner to recover dower of Rs. 500,000/- as per stipulation in the *Nikahnama* which were couched in issues No. 1 and 9(a) framed by the Family Court.

6. Learned counsel for the Petitioner and the Minor submitted that the impugned Judgments and Decrees are result of misreading and non-reading of evidence on record. The quantum of maintenance allowance was inadequate to meet the basic needs of the Petitioner and the Minor and was liable to be enhanced on the basis of evidence on record. Further, the Petitioner had established her entitlement to receive the dower of Rs. 500,000/- as it was clearly stipulated in the *Nikahnama* and the Inquiry Report did not conclusively establish that entry to that effect was false. The Courts below declined the desired relief based upon assumptions by giving precedence to oral evidence over the admitted *Nikahnama* between the parties. Hence, the impugned Judgments are liable to be modified.

7. Conversely, learned counsel for the Respondent submitted that quantum of maintenance allowance was exorbitant and excessive as the income of the Respondent at the relevant time was Rs. 30,000/- per month and he has also to maintain his mother and sister. Further, the claim of

dower of the Petitioner was based on manipulated and false entry in the *Nikahnama* and the same was rightly declined by the Courts below.

8. Arguments heard. Record perused.

9. The impugned Judgments were evaluated in the light of evidence on record. The financial status and capacity of the Respondent was duly considered by the Courts below while determining the quantum of maintenance allowance for the Petitioner and the Minor which was neither exorbitant nor excessive or harsh in this era of price hike and inflation. No piece of evidence was shown to this Court that was misread or non-read while determining the quantum of maintenance allowance and accordingly, the concurrent findings rendered by the Courts below to the extent of fixation of maintenance allowance are maintained.

10. The real point of determination is regarding the entitlement of the Petitioner to recover her claimed dower amount. It was specifically pleaded in the plaint that an amount of Rs. 1,000 and Rs. 500,000/-, respectively was fixed as dower at the time of marriage in the *Nikahnama* in the presence of witnesses. It was specifically alleged and prayed that the Petitioner was entitled to receive Rs. 500,000/- as dower from the Respondent. Conversely, the stance of the Respondent was that at the time of marriage, Rs. 1,000/- was fixed as dower which was paid at the spot but later, an entry of Rs. 500,000/- was inserted in the *Nikahnama* by the Petitioner and her parents in connivance with the *Nikah Khuwan*, namely, Mukarab Ali. The Respondent also filed an Application before the District Coordination Officer which was decided in his favour and the license of Mukarab Ali was cancelled.

11. The Petitioner as PW-1 and her witness as PW-2 deposed in line with the pleadings of the plaint. The claim of dower was specifically asserted by them. It was admitted that entries with respect to dower were not incorporated in the relevant columns of the *Nikahnama*. A suggestion was denied to the effect that the entry regarding Rs. 500,000/- was for deferred dower. PW-3, *Nikah Khuwan* entered in the witness box and confirmed the fact of *Nikah* and registration of *Nikahnama*. He also confirmed that an amount of Rs. 1,000 and Rs. 500,000/- were incorporated in the *Nikahnama*. He deposed that *Nikah Registrar* had died. The word “deferred” was not written anywhere in the *Nikahnama*. He admitted that he was in possession

of two different pens at the time of marriage with blue and black ink. He confirmed that the entire document was scribed by him. He deposed that an Application was filed against him by the Respondent which was decided in his absence.

12. The Respondent appeared as DW-1 and admitted the fact of *Nikah* with the Petitioner and the scribing of *Nikahnama* in the presence of witnesses. However, he denied the entry of Rs. 500,000/- incorporated in the *Nikahnama*. He asserted that the Inquiry Report has been concluded in his favour which proves that the disputed entry of dower was false and was incorporated subsequently. He was specifically questioned regarding 4 *Perts* of *Nikahnama* to which he replied that he was not aware of this legal requirement. DW-2 admitted that he has executed all 4 *Perts* of the *Nikahnama* though one *Pert* was dully filled while the others were blank, when he signed the same.

13. The Petitioner and her witness unequivocally deposed regarding the entitlement of the Petitioner to receive the dower amount based upon the *Nikahnama*. The Petitioner also produced the *Nikah Khuwan* who candidly deposed that the *Nikah* was solemnized and all the entries contained therein were filled by him including disputed entry of Rs. 500,000/-. After discharging the initial onus of proof by the Petitioner regarding her entitlement of dower, the burden to prove that disputed entry of dower was false or subsequently incorporated in the *Nikahnama* shifted upon the Respondent. He could not produce any evidence to establish his stance taken in his written statement but merely relied upon the Inquiry Report to prove his version. Importantly, admitted *Nikahnama* was placed on record as Ex. P-1. It clearly stipulates in column No. 16 that Rs. 500,000/- was fixed as dower. The word “deferred” is not written therein. Section 10 of the Muslim Family Laws Ordinance, 1961 stipulates that where no details about the mode of payment of the dower are specified in the *Nikahnama*, the entire amount of dower shall be payable on demand. There is no cutting in the said entry and it does not look different in writing than the rest of the entries in the document to the naked eye. More conspicuously, the Inquiry Report relied upon by the Courts below itself states that during inquiry, it transpired that a suit on the subject was pending between the parties and as the same

was *sub judice* before the Court of competent jurisdiction, therefore, the Respondent was directed to seek his remedy from the concerned forum. With the aforesaid advice, mere reference in the Inquiry Report that the dower amount of Rs. 500,000/- was subsequently incorporated loses significance particularly when the proceedings of the Inquiry Report were never brought on record and the Inquiry Officer was not produced as a witness for cross-examination. Further, Writ Petition No. 6468 / 2016 was filed before this Court against the impugned Inquiry Report which was accepted by holding that it was beyond the jurisdiction of the Deputy Commissioner to determine the correctness or otherwise of an entry in the *Nikahnama* which was the prerogative of the Family Court. Intra Court Appeal No. 474 of 2016 filed against the Order dated 23.05.2016 passed in the referred Writ Petition was also dismissed on 20.04.2016. As such, the Inquiry Report lost its ground. There was no reason as to why the admitted *Nikahnama* in the shape of documentary proof was not given due weight over the oral depositions with respect to the relevant columns of *Nikahnama* especially when the Respondent could not bring on record any other *Pert* of the *Nikahnama* which was contradictory to Ex. P-1. Hence, the Respondent failed to prove that contesting dower entry was false or manipulated.

14. The issue regarding the incorporation of different entries in the *Nikahnama* has been recently dealt with by the Hon'ble Supreme Court of Pakistan in case titled, "Haseen Ullah v. Mst. Naheed Begum and others" (**PLD 2022 Supreme Court 686**). The Apex Court while interpreting the entries in column Nos. 13 to 16 of the *Nikahnama* held as follows:-

"Needless to say that Nikahnama is a deed of marriage-contract entered into between the parties, husband and wife, and the contents of its clauses / columns, like clauses of other contracts, are to be construed and interpreted in the light of intention of parties.³ The High Court has rightly ascertained the intent of the parties for mentioning four Kanal agriculture land in column No. 16 of the Nikahnama, irrespective of its placement in a particular column. It is a matter of common knowledge that the persons who solemnize Nikah or the Nikah Registrars are mostly laymen, not well-versed of legal complications that may arise from mentioning certain terms agreed to between the parties in any particular column of the Nikahnama. Therefore, it becomes the foremost duty of courts dealing with disputes arising out of the terms entered in the Nikahnama, to ascertain the true intent of the parties and give effect thereto

accordingly, and not be limited and restricted by the form of the heading of the particular columns wherein those terms are mentioned.”

15. Therefore, it is manifestly evident that the findings of the Courts below while denying the amount of dower of Rs. 500,000/- to the Petitioner were clearly result of misreading and non-reading of evidence on record which cannot be sustained.

16. In view of the above discussion, Writ Petition No. 38446 of 2016 is **partially accepted** and in consequence thereof, the impugned Judgments & Decrees dated 21.01.2016 and 30.09.2016 are modified in the manner that the Petitioner is held entitled to recover her dower of Rs. 500,000/- from the Respondent, whereas, Writ Petition No. 35820 / 2016 filed by the Respondent stands **dismissed**. The rest of the findings of the Courts below are upheld.

(Abid Hussain Chattha)
Judge

Approved for reporting.

Judge

Abu Bakker