

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR, CJ

MR. JUSTICE SH. AZMAT SAEED

MR. JUSTICE IJAZ-UL-AHSAN

CIVIL APPEAL NO.14-L OF 2013

(On appeal from the order dated 27.3.2012 of the Lahore High Court, Lahore, passed in W.P. No.4144 of 2010)

Saif-ur-Rehman

... Appellant

Versus

Addl. District Judge, Toba Tek
Singh and two others

... Respondent (s)

For the Appellant : Mr. Sarfraz Khan Gondal, ASC

For Respondent No.3 : Mian Shah Abbas, ASC

Date of Hearing : 17.04.2018

JUDGMENT

SH. AZMAT SAEED, J.- This Civil Appeal by leave of the Court is directed against the Order dated 27.03.2012, whereby a Constitutional Petition i.e. Writ Petition No.4144 of 2010, filed by the present Appellant, was partly accepted.

2. The brief facts necessary for adjudication of the *lis* at hand are that the Appellant and

Respondent No.3 were married but unfortunately, the matrimonial relationship between the parties collapsed, whereafter, Respondent No.3 filed a Suit for Dissolution of Marriage as well as the Suit for Return of Dowry Articles. The former Suit was decreed vide judgment and decree dated 01.02.2008 and the marriage dissolved. No challenge was thrown to it and such decree attained finality.

3. The Suit for Dowry Articles was also decreed by the learned Family Court for an amount of Rs.25,000/- vide judgment and decree dated 29.09.2009. Respondent No.3 filed an appeal before the learned First Appellate Court, which was allowed vide judgment and decree dated 27.01.2010 and the decretal amount was enhanced to Rs.4,00,000/-. In the above backdrop, the present Appellant invoked the Constitutional jurisdiction of the learned Lahore High Court, Lahore by filing Writ Petition No.4144 of 2010. After hearing the parties, vide impugned Order dated 27.03.2012, the Writ Petition filed by the present Appellant was partly accepted and the

amount in lieu of dowry articles was reduced to Rs.3,00,000/-.

4. The Appellant invoked the jurisdiction of this Court by filing Civil Petition bearing No.781-L of 2012, in which Leave to Appeal was granted vide Order dated 01.01.2013. The said Order is reproduced herein below for ease of reference:

“States, that the judgment and decree of the Family Court pertaining to the return of dowry articles was to the tune of Rs.25,000/- (rupees twenty five thousand), thus as per the provisions of Section 14(2)(b) of the West Pakistan Family Courts Act, 1964, no appeal was competent before the learned Additional District Judge, therefore, the appellate judgment which has been partly affirmed by the learned High Court is without jurisdiction. Besides, the list of dowry articles had not been proved by the respondent in terms of the law and there are many contradictions in those which are apparent on the face of the record. Leave is granted to consider the above.”

5. We have heard the learned counsel for the parties and examined the available record.

6. The learned Appellate Court, after examining the evidence available on the record, returned a finding that Respondent No.3 was entitled

to return of dowry articles and in lieu thereof she was entitled to a sum of Rs.4,00,000/-. The learned High Court, after examining the evidence, more particularly, the statement of Respondent No.3 as PW-1 concurred with the findings of the learned First Appellate Court that the said Respondent was entitled to the value of the dowry articles but the quantum thereof was reduced from Rs.4,00,000/- to Rs.3,00,000/-. The findings of the learned High Court appeared to be based on a fair and reasonable appreciation of the evidence. No misreading or non-reading of evidence has been pointed out at the bar. The reasoning does not appear to be perverse. Thus, no ground for interference, in this behalf, is made out.

7. The only other question, which floated to the surface and was asserted by the learned counsel for the Appellant is that the learned Family Court had granted a decree for a sum of Rs.25,000/- upon the claim of dowry, hence, in view of Section 14(2) of the Family Courts Act, 1964 (Act of 1964), no appeal was maintainable against the said judgment and

decree being less than the amount mentioned in the aforesaid provisions of law; hence, the judgment and decree of the learned First Appellate Court was wholly without jurisdiction. Consequently, the impugned Order of the learned High Court partly affirming the same was also liable to be set aside. Leave in the instant case has been granted to consider the aforesaid aspect of the matter.

8. The aforesaid contentions of the learned counsel for the Appellant have been controverted by the learned counsel for Respondent No.3. It has been contended that the embargo placed on the right of appeal being pressed into service by the learned counsel for the Appellant applies to the husband only and not to a wife, dissatisfied with the quantum or denial of relief.

9. It is Section 14 of the Act of 1964, more particularly, sub-section (2) thereof, which is required to be interpreted in order to adjudicate upon the divergent contentions, in this behalf, canvassed by the learned counsel for the parties at the bar.

10. Before proceeding further, it may be appropriate to contextualize the Family Courts Act, 1964 in general and Section 14(2), in particular. Out of the general canvass of the forum and procedure for adjudication of the claims and disputes, a jurisdiction has been carved out through the enactment of the Family Courts Act, 1964, creating a special forum i.e. the Family Court for adjudication of the family disputes in accordance with the special procedure as set forth in the aforesaid Act of 1964 and the Rules framed thereunder i.e. The West Pakistan Family Courts Rules, 1965. The purpose of this exercise is evident from the preamble of the Act of 1964 i.e. "expeditious settlement and disposal of disputes relating to marriage and family affairs". The nature of disputes which can be brought before the Family Court for adjudication have been set forth and enumerated in Part I of the Schedule referred to in Section 5 of the Act of 1964. It is now settled law that a purposive rather than a literal approach to interpretation is to be adopted while interpreting Statutes. An interpretation which advances the

purpose of the Act is to be preferred rather than an interpretation which defeats its objects. Reference, in this behalf, may be made to the judgments reported as Federation of Pakistan through Ministry of Finance and others v. M/s. Noori Trading Corporation (Private) Limited and 14 others (1992 SCMR 710) and Hudabiya Engineering (Pvt) Limited v. Pakistan through Secretary, Ministry of Interior, Government of Pakistan and 6 others (PLD 1998 Lahore 90).

11. The second aspect of the Family Courts Act, 1964 and the Rules framed thereunder as amended from time to time would reveal its gender sensitivity. A glance at Section 3 of the Act of 1964 reveals that women Judges are specifically catered for. The residence of the wife can be a determining factor for conferring territorial jurisdiction in certain Suits as is evident from the provisions of Rule 6 of the West Pakistan Family Courts Rules, 1965. There can be no escape from the fact that the tone and tenor of the Family Courts Act, 1964 and the Rules framed thereunder are beneficial in nature. It is an equally

settled law that beneficial provisions in a Statute must be interpreted liberally in a manner so that the benefit conferred is advanced rather than frustrated or subverted. Reference, in this behalf, may be made to the judgments of this Court reported as Lahore Development Authority through D.G., Lahore and another v. Abdul Shafique and others (PLD 2000 SC 207) and Pakistan Engineering Co. Limited, Lahore through Managing Director v. Fazal Beg and 2 others (1992 SCMR 2166).

12. Section 14(2) of the Family Courts Act, 1964, must necessarily be approached and interpreted in the above backdrop and in accordance with the aforesaid principles i.e. the purposive object thereof achieved and being beneficial in nature, the benefits so conferred are actualized.

13. Sub-section (1) of Section 14 of the Act of 1964, confers a right of appeal. However, by virtue of sub-section (2) of Section 14 of the Act of 1964, this right of appeal has been curtailed. The obvious purpose of curtailing the right of appeal is to avoid the benefits of any decree which may have been

passed being tied up in an appeal before a higher forum. It has also been noticed that in only three eventualities that even the right of first appeal has been curtailed. In all three eventualities, the decree would be for the benefit of the wife for dissolution of marriage under Clause (a), for dower or dowry under Clause (b) and for maintenance under Clause (c). The last may also be for the benefit of a minor. Thus, the only logical and reasonable interpretation, which is in accordance with the purposive of the Act and in line with the beneficial nature thereof would be that a judgment-debtor of a decree envisages in Clauses (a), (b) and (c) of sub-section (2) of Section 14 of the Act of 1964, would not have a right of appeal so that the disputes mentioned therein are resolved expeditiously and the benefits conferred through such decree reach the decree-holder without being frustrated. However, the said provision cannot be interpreted so as to exclude a right of appeal to a wife whose claim of dower or dowry has been partially or entirely declined. For such an

interpretation, would defeat the purpose and object of the Act of 1964 and frustrate its beneficial nature.

14. This Court while interpreting Section 14(2) of the Act of 1964, in its judgment reported as Tayyaba Yunus v. Muhammad Ehsan and others (2010 SCMR 1403) held that where a Suit for dower has been dismissed, the wife has a right of appeal under Section 14(2) of the above-said Act of 1964.

15. In a case pertaining to dissolution of marriage, this Court in the judgment reported as Abid Hussain v. Additional District Judge, Alipur, District Muzaffargarh and another (2006 SCMR 100) held as follows:

“The object behind non-provision of appeal in case of dissolution of marriage is to protect women, an under privileged and generally oppressed section of our society from prolonged and costly litigation. It aims to put a clog on the right of husband.”

16. Thus, the only possible purposive beneficial and rational interpretation of Section 14(2) of the Act of 1964, is that the right of appeal of a husband against whom a decree has been passed is curtailed,

if the amount awarded is less than the amount, which is mentioned in the said provision. However, in no event the right of the wife to file an appeal is extinguished if she is dissatisfied with any decree in a Suit for dower or dowry.

17. The aforesaid view incidentally has also been consistently enunciated by the learned Lahore High Court in the judgments reported as Ghulam Rasool v. Senior Civil Judge and 4 others (PLJ 2008 Lahore 531), Saeeda Alia v. Syed Ghulam Mursalin Naqvi and another (2004 MLD 306) and Mst. Neelam Nosheen and others v. Raja Muhammad Khaqaan and others (2002 MLD 784).

18. In this view of the matter, there is no denial of fact that the appeal of Respondent No.3 was validly filed and the learned First Appellate Court was vested with the jurisdiction to adjudicate thereupon and such jurisdiction was not barred under Section 14(2) of the Act of 1964. In view of the above, this Civil Appeal is totally devoid of merit and is liable to be dismissed.

19. These are the reasons of our short Order of even date, which is reproduced herein below:

“For reasons to be recorded later,
this appeal is dismissed.”

Chief Justice

Judge

Islamabad, the
17th April, 2018
‘Approved For Reporting’
Safdar & Mahtab

Judge