

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE ANWAR ZAHEER JAMALI, CJ  
MR. JUSTICE SH. AZMAT SAEED  
MR. JUSTICE UMAR ATA BANDIAL

**CIVIL PETITION NO.1088 OF 2016**

*(On appeal from the judgment dated  
19.2.2016 of the Lahore High Court, Multan  
Bench passed in FAO No.159 of 2010)*

Ghania Hassan wife of  
Muhammad Hassan Ahmad ... Petitioner

Versus

Shahid Hussain Shahid son of  
Khadim Hussain and another ... Respondents

For the Petitioner : Syed Riaz-ul-Hassan Gillani, ASC  
Ch. Akhtar Ali, AOR (absent)

For Respondent No.1 : Mr. Muhammad Kokab Iqbal,  
AOR/ASC

Respondent No.2 : N.R.

Date of Hearing : 22.09.2016

**JUDGMENT**

**SH. AZMAT SAEED, J.-** This Civil Petition for  
Leave to Appeal is directed against the Judgment dated  
19.02.2016 of the learned Lahore High Court, Multan  
Bench, whereby FAO No.159 of 2010, filed by the  
present Petitioner, was dismissed.

2. The brief facts necessary for adjudication of  
the *lis* at hand are that Respondent No.1 filed a Suit for

recovery of Rs.1,48,50,000/- against Respondent No.2 under Order XXXVII CPC on the basis of four cheques issued by Respondent No.2 in favour of Respondent No.1. The Suit was decreed. Such decree has attained finality. Respondent No.1 initiated execution proceedings against Respondent No.2, during the course whereof, the present Petitioner, who was claiming to be the wife of Respondent No.2, filed an Objection Petition asserting therein that she had married with Respondent No.2 on 20.12.2003 and the dower, as settled between the parties, reflected in the *Nikahnama* including some immovable property. It was further contended that by a subsequent arrangement/agreement arrived at between the spouses on 12.06.2007, the dower amount was increased so as to include 282 *kanals* and 5 *marlas* of land, hence, the immovable property mentioned as dower in *Nikahnama* as well as the immoveable property mentioned in the subsequent agreement dated 12.06.2007 purporting to enhancement of the dower was not the property of the Judgment Debtor/Respondent No.2, hence, could not be attached or sold in execution of the decree in favour of Respondent N.o.1. The said Objection Petition was

dismissed by the learned Executing Court vide Order dated 29.06.2010. Aggrieved, the Petitioner filed an Appeal i.e. FAO No.159 of 2010, which was dismissed vide impugned Judgment dated 19.02.2016.

3. It is contended by the learned counsel for the Petitioner that the impugned Judgment is based on an erroneous assumption of law that the dower was agreed between the parties and mentioned in the *Nikahnama* could not be enhanced by the husband. It is further contended that the dispute *inter se* the parties could only be resolved through recording of evidence and not in a summary manner. The learned counsel further contended that there could be no dispute with regard to the property mentioned as dower in the *Nikahnama* and the said property cannot be subjected to execution of a decree against Respondent No.2.

4. The learned counsel for the contesting Respondent No.1/Decree Holder did not seriously dispute the legal proposition canvassed at the bar by the other side that the dower, as settled between the spouses can be increased subsequently. The learned counsel for Respondent No.1 further stated that the Decree Holder has no intention of executing the decree

against the immovable property mentioned in the *Nikahnama*. However, it was his case that the property mentioned in the subsequent document dated 12.06.2007 was liable to be executed as the same vested with Respondent No.2/Judgment Debtor and the contentions of the Petitioner to the contrary are neither borne out from the record nor supported by the law. In fact, it is an obvious attempt to frustrate the execution of the decree in favour of Respondent No.1

5. Heard and perused the available record.

6. At the very outset, it has been noticed that by way of the impugned Judgment a passing reference has been made, which may be interpreted to mean that a dower once agreed between the parties could not be subsequently increased by the spouses. Such a proposition would be contrary to the settled law.

7. In the Principles of Mohammadan Law by DF Mulla (Pakistan Edition), it has been stated as follows:

**"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: 15 can be increased after marriage. 16"

(emphasis supplied)

In the Mahommedan Law Vol II (Containing the Law Relating to Succession and Status Compiled from Authorities in the Original Arabic) by Syed Ameer Ali, it has stated as follows:

**“Dower may be increased after marriage:-**

The Muslim Law accepted in the matter the more liberal principle of the pre Islamic Arab customs. Under the Islamic system there is no community of goods between husband and wife. She is absolute owner of her own property and of whatever the husband settles on her as dower. The terms of the settlement are agreed to before marriage, but when these have been omitted, they may be settled subsequently. The terms of the contract may be varied at any time during the continuance of the marriage by mutual consent. The wife has the power either to relinquish the whole dower-debt, or make an abatement in her husband's favour: whilst the husband, similarly, has the power of making additions to her settlement or dower.

The amount of the dower, as already pointed out, is either settled by the contract of marriage or by custom, or in the case of *tafwiz* or *tahkim*, by a subsequent agreement between the parties, or by an order of the Judge, or arbitrators.”

(emphasis supplied)

In Hedaya (2<sup>nd</sup> Edition Vo.1 page 45) Commentary on the Muslim Law, it is stated that:

“Case of an addition made to the dower after marriage.—if a man makes any addition to the dower in favour of his wife

subsequent to the contract, such addition is binding upon him.”

8. The question of addition of dower came up before this Court in the judgment, reported as Mian Aziz A. Sheikh v. The Commissioner of Income Tax Investigation, Lahore (PLD 1989 SC 613), wherein after examining the classical text books on the subject and the previous judgments of the Sub-continent on the matter in issue, it was observed as follows:

“19. It would have been seen that an acknowledgement in any form including declaration by the husband with regard to increase of dower is, as held by the Lahore High Court in Chan Pir’s case, “quite sufficient” to prove the same under Muslim Law. ...”

A similar view was taken by this Court in the judgment, reported as Ameer Ali Khan v. Kishwar Bashir and another (PLD 2004 SC 746).

An overview of the above reveals that it is now 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.

9. In the instant case, some immoveable property now being subjected to the execution was mentioned in

the *Nikahnama* as dower. The learned counsel for Respondent No.1/Judgment Debtor has stated at the bar that such property shall not be subjected to the attachment or sale in execution, therefore, no question in respect thereof remains to be adjudicated upon.

10. The only question requiring adjudication is the validity and effect of the document dated 12.06.2007.

11. Respondent No.1 filed a Suit against Respondent No.2 under Order XXXVII CPC. The said Suit was based on four cheques given by Respondent No.2 in favour of Respondent No.1. The Suit was decreed. Such decree attained finality. The execution proceedings were initiated, during the course whereof, the present Petitioner, the spouse of Respondent No.2, surfaced with the Objection Petition relying, *inter alia*, upon the document dated 12.06.2007. Respondent No.2, as informed by the learned counsel for the Petitioner, is a fugitive from law. The Petitioner has also filed a Suit seeking enforcement of her rights in the property subject matter of the document dated 12.06.2007.

12. In the above backdrop, the learned Executing Court was not satisfied with the *bona fides* of the Petitioner with regard to the Objection Petition and

declined to allow the same at the stage prior i.e. to the final adjudication by the learned Family Court upon the Suit filed by the present Petitioner. The learned Appellate Court by way of the impugned Judgment concurred with the findings returned by the learned Executing Court. In the facts and circumstances of the case, we are also not persuaded to interfere in the matter. Consequently, this Civil Petition must fail subject to the observations made herein above. Furthermore, in view of the statement of the learned counsel for Respondent No.1, the decree shall not be executed against the immovable property mentioned in the *Nikahnama*.

13. For the foregoing reasons, this Civil Petition is dismissed and leave declined.

Chief Justice

Judge

Bench-I  
Islamabad, the  
22<sup>nd</sup> September, 2016  
Not approved for reporting  
*Safdar/\**

Judge