

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUSHIR ALAM

MR. JUSTICE DOST MUHAMMAD KHAN

Civil Petitions No.357 and 358 of 2016

(On appeal from the judgment dated 3.12.2015
passed by the Lahore High Court, Multan Bench,
Multan in W.P. No.7117 of 2011)

Mst. Yasmeen Bibi

....Petitioner in both

VERSUS

Muhammad Ghazanfar Khan & others

....Respondents in both

For the petitioner:

Mr. Muhammad Waseem Shahab, ASC
Syed Rifaqat Hussain Shah, AOR

For the respondents:

Mr. Saleem Ullah Ranazai, ASC
Mr. Mehmood A. Sheikh, AOR

Date of hearing:

28.4.2016

JUDGMENT

Dost Muhammad Khan, J. — Leave to appeal is sought against the judgment of the learned single Judge in Chamber of the Lahore High Court, Multan Bench, Multan dated 3.12.2015.

Arguments of the learned ASCs for the parties heard, impugned judgments of the Judge Family Court, the District Appeal Court and the one under consideration, of the Lahore High Court were carefully perused.

2. Brief facts of the controversy are that the petitioner, Mst. Yasmeen Bibi entered into wedlock with the respondent namely, Muhammad Ghazanfar Khan on 8.5.1994. The dower deed (Nikah Nama) was duly exhibited as Ex.PW-1/1 wherein, it was stipulated that dower in cash, amounting to Rs.1,00,000/- fixed, shall be payable on demand.

3. In column No.17 it was further undertaken by the respondent that he would pay Rs.1000/- to the petitioner as pocket money, besides the land measuring 200 Kanal situated in Moza Amir Shah, Tehsil and District D.I. Khan shall also be transferred in the name of the petitioner-wife and she would be exclusively owner of the same. The parties were blessed with two male children however, during the happy wedlock, the marital relationship received a sudden serious jolt and the petitioner was deserted from the home.

4. During the above period a written divorce (Ex.P-5/1) was sent on her address, which she received. The divorce deed squarely shows that it was irrevocable divorce because it was pronounced on 1.3.2005 three times in the written divorce deed in presence of the witnesses.

5. It was in the above background that the petitioner was paddled up for litigation and she brought two separate suits, one for recovery of arrears of maintenance allowance, recovery of dower and the other for the recovery of dowry articles in the Family Court, Multan on 17.6.2005. While as a counterblast, the respondent, Muhammad Ghazanfar Khan instituted a suit on 18.11.2005 for restitution of conjugal rights on the plea that the divorce given, was revocable and was not final.

It may be stated here that the respondent has also contracted second marriage in the meanwhile.

6. Keeping in view the sky high rocketing prices of daily commodities and needs of life, the Trial Court decreed the suit for arrears of maintenance @ Rs.10,000/- till the time of 'Iddat' and also decreed the suit for recovery of Rs.1,00,000/- as dower. Besides, the

landed property described in the column of "*Nikah Nama*" was also decreed after holding that it was within the jurisdiction of the Family Court as the petitioner-plaintiff was residing at Multan within the jurisdiction of the Court. Further, decree for the recovery of dowry articles was also granted on the basis of evidence and because of the admission made by the respondent-defendant that the dowry articles were lying with him, albeit, these were earlier denied by him in his written statement.

7. The District Appeal Court while seized of the two cross appeals, modified the decree by setting aside the decree of the Judge Family Court with regard to the land measuring 200-K in District DI. Khan and also the decree with regard to the dowry articles. The order of the District Appeal Court is absolutely sketchy being bereft of reasons, much less cogent one and is also against the statutory law on the subject.

8. The learned Judge in Chamber of the Lahore High Court, Multan Bench vide impugned judgment, without going through the scheme of **Family Court Act**, amended upto date, jumped at the conclusion that all the issues, involved in the case were beyond the jurisdiction of the Family Court and in this regard the learned Judge without any care and caution to observe, relied on the view held in the case of **Muhammad Akram v. Mst. Hajira Bibi and two others** (PLD 2007 Lahore 515), which view is based on the judgment of the learned Single Judge of the Lahore High Court, Rawalpindi Bench where similar view was held in the case of **Allauddin Arshad v. Mst. Nelofer Tareen** (1984 CLC 3369).

9. The preamble of the **West Pakistan Family Court, Act, 1964** is to the following effect:

"Preamble.— WHEREAS it is expedient to make provisions for the establishment of Family Courts for the expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected therewith."

In the schedule amended upto date, the matrimonial disputes include:

- (i) dissolution of marriage [including Khula]
- (ii) dower
- (iii) maintenance
- (iv) restitution of conjugal rights
- (v) custody of children [and visitation rights of parents to meet them]
- (vi) guardianship
- (vii) gactitation of marriage
- (viii) dowry
- (ix) personal property and belongings of wife

10. Before promulgation and enactment of the **Muslims Family Laws Ordinance, 1961**, and the **West Pakistan Family Court Act, 1964**, such matters were dealt with by the Civil Courts or Criminal Courts with regard to the maintenance allowance, which was a cumbersome, lengthy and tiring procedure. For getting the final relief of her grievances, the wife had to wait for years for recovery of dower, maintenance and other ancillary matters. In cases of dissolution of marriage, it had to consume years and after getting the decree by that time, majority of the wives had to become grey haired and much beyond the remarriage-able age, beside incurring heavy expenses on getting the relief with regard to a meager amount of maintenance, dower etc.

It was in the above background that the Legislature felt essential to provide for establishment of Family Courts to deal with all

matrimonial disputes, mentioned above, in an expeditious manner, curtailing the life of litigation in such cases. To curb and suppress the mischief of delaying tactics on the part of unscrupulous husbands, several amendments were introduced to the **Family Court Act, 1964.**

Some amendments bearing striking features may be cited below: -

“S.12-A. Case to be disposed of within a specified period.. A Family Court shall dispose of a case, including a suit for dissolution of marriage, within a period of six months from the date of institution:

Provided that where a case is not disposed of within six months either party shall have a right to make an application to the High Court for necessary direction as the High Court may deem fit.”

“S. 17-A. *This newly enacted provision was with the object to curb the mischief of delaying tactics and the Family Court was brought under obligation to pass interim order, directing the husband to pay interim maintenance allowance to the children and the wife after filing written statement or at any stage thereafter.”*

“The provision of S.21-A was also added to the Family Court Act, conferring power upon Family Court to preserve and protect any property, which is in dispute in a suit or any other property of a party to the suit for the future satisfaction of the decree.”

To further accelerate and expedite the disposal of such cases, the District Appeal Court and the High Court, orders staying the proceedings before the Family Court, shall cease to be effective on expiring of thirty days time. Again, **u/s 14**, through amendment, it was made mandatory for the Court of Appeal to decide the case positively within four months.

11. Keeping in view the clear and manifest intention and object of the Legislature by drastically amending the provisions of **the Family Court, Act**, a Division Bench of the Peshawar High Court, after

elaborately dealing with the same held that, *"by now, the Family Court alone has exclusive jurisdiction to deal with all the matrimonial disputes of whatever nature, irrespective of territorial jurisdiction, provided that the Family Court where the wife resides shall have the jurisdiction to entertain such suits/claims [see. Muhammad Tariq v. Mst. Shaheen (PLD 2006 Peshawar 189)]*. The view held by the Division Bench of the Peshawar High Court was not set aside by the Supreme Court thus, the same had attained finality and has got strong persuasive effects, which cannot be lightly ignored.

12. Keeping in view the agonies of the parties, particularly the wife, in matrimonial disputes to curtail the mischief of delay and to shorten the life of litigation in such cases, the Law & Justice Commission of Pakistan recommended to the Federal Government and all the Provincial Governments to establish Family Courts in each District and Tehsil Headquarter, which shall be preferably presided over by a female Judge so that the wives who are not well acquainted and familiar with the court proceedings are provided maximum protection and friendly environments.

13. To provide quicker relief to the wife, amendments were also made in the relevant provisions, where dissolution of marriage is sought on the basis of *"Khula"*, that on failure of conciliation efforts made by the Family Court at preliminary stage, the Family Court is invested with powers to dissolve the marriage there and then, without subjecting the wife to unending litigation.

14. It is demonstrably clear from these drastic amendments made in the **Family Court Act** including the new provisions added therein, that the Legislature was well aware of the miseries and plight

of the wives, seeking relief through the obsolete law then in vogue thus, to minimize the same not only all matrimonial disputes were brought under one and the same umbrella of the Family Court but also provided for the target date, both for the Family Court and for the Appeal Court, by which such cases shall be decided conclusively. The jurisdiction and powers of all other courts thus stand excluded in these matters much less Civil Court therefore, pushing one or the other party to the Civil Court would be in clear violation of the mandatory provision of the law on the subject and would amount to reverse the efficacious remedies available to them under the new scheme of law.

15. In the case of dissolution of marriage on the basis of “*Khula*” a full Bench of the High Court in the case of **Dr. Fakhr-ud v. Mst. Kausar Takreem and another** (PLD 2009 Peshawar 92) while interpreting and construing all these new provisions introduced in the **Family Court Act** held that the relevant provisions of the **Family Court Act, 1964** and that of **Muslim Family Laws Ordinance, 1961** were ultra-vires to the extent that the wife has to return the dower in case of dissolution of marriage on the basis of “*Khula*” because under the Islamic injunction and according to the relevant verses of Holy Qura’an the wife has only to return the other benefits, given to her by way of gift etc. and not the dower amount because that is most essential consideration for valid contract of marriage being a civil contract, which cannot become binding and valid unless the consideration is paid. In the said judgment, many guidelines and principles have been laid down and till date the said judgment holds the field, which needs to be followed and regarded without any exception unless and until it is set aside by the Supreme Court.

16. Under the provision of S.17 of **the Act, 1964**, all the provisions of **Qanun-e-Shahadat Order, 1984** and that of **Civil Procedure Code** (except Ss.10 and 11) have been expressly excluded in its application to the cases tried by the Family Courts, thus, pushing the wives to the Civil Courts in view of the ouster clause in the above provisions, would be against the statutory law, binding in nature and any judgment of any Court in conflict of the statutory law, shall be ineffective to that extent, because, the latter occupies the high pedestal and unless it is declared ultra-vires of the Constitution, on the touchstone of the relevant provisions thereof, it shall have overriding and superimposing effects on the judgment of any Court.

17. As in this case the landed property, given to the wife, or the undertaking given in the "*Nikah Nama*", to be transferred to her name is conclusive in nature and may be construed as a part of dower or a gift in consideration of marriage therefore, it was falling within the exclusive domain of the Family Court at Multan, as the wife was/is residing there, which has not been denied by the respondent, therefore, in our considered view, the District Appeal Court and the learned Judge in Chamber of the High Court, Multan Bench, Multan fell into legal error by holding the view to the contrary. Any departure made from the true object and spirit of law, enacted by the Legislature would defeat the same, which is not permissible under any canon of justice and principle of law, nor the Courts are having any authority or powers to import their own opinion therein, defeating the clear intention of the Legislature and when the provisions of Ss. 16 to 20 of the CPC stand excluded from the proceedings before the Family Court then, the question of its territorial jurisdiction would never arise, provided that the Family Court where the wife resides, shall have the

exclusive jurisdiction over all such matters for the sake of convenience because Rule 6 of the **West Pakistan Family Court Rules, 1965** so provides.

18. In view of what has been discussed above, these petitions are converted into appeal and the same are allowed. However, the learned High Court has not decided the matter on merit, therefore, these cases are remanded to the learned High Court, Lahore, Multan Bench to decide the case in light of the above findings, observations and guidelines.

Keeping in view the long history of these case, it is expected that the High Court would decide these cases on merit within a minimum possible time for the sake of substantial justice.

19. Before parting with this judgment, it is essential to state that these petitions are barred by 2 & 4 days respectively, however, keeping in view the important law points of public importance, involved and because right to dower, dowry articles and maintenance is involved, which cannot be lightly ignored, therefore, the delay of 2 and 4 days respectively, in filing these petitions is condoned.

Appeals are allowed in the above terms.

Judge

Judge

Islamabad, the
28th April, 2016
'Nisar/-'

Approved For Reporting.