

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

Writ Petition No. 3146 of 2013,

Sara Noor

Versus

Addl. District Judge, Etc

Date of Hearing: -

5<sup>th</sup> December, 2013:

Petitioner By: -

Mr. Musharaf Khan, Advocate

Respondents By:-

Mr. Muhammad Sanaullah, Advocate.

**JUDGMENT**

**MUHAMMAD ANWAR KHAN KASL CJ:**

The petitioner namely Sara-Noor [plaintiff in main suit for dissolution of marriage] through instant constitutional petition assails Orders & Decrees dated 22.10.2012 and 15.06.2013, passed by learned Judge Family Court & learned ADJ Islamabad respectively, whereby her suit for dissolution of marriage was decreed on the basis of her statement subject to payment of dower amount and her appeal against the order of learned Trial Court also met with failure.

2- The facts, relevant for disposal of this petition, are that the parties were married to each other but subsequently their relations turned hostile which resulted into litigation through suit for dissolution of marriage wherein the petitioner on 22.10.2012 got recorded statement to the effect that she is ready to forego her dower in lieu of Khula. On the basis of her statement, the learned Trial Court vide order dated 22.10.2012 decreed her suit but with stipulation to return dower consideration, which, in the present case, is gold ornaments to the tune of seven tolas.

3- Feeling aggrieved by the order, the petitioner went in appeal but it was also dismissed. Her grievance is that at the time of desertion in August, 2012, gold ornaments were snatched and this fact is also evident from Para 2 of her plaint, therefore, in such state of affairs, when the ornaments were already in possession of the respondent there was no justification to burden her with condition of its return. It was also stipulated in the plaint that she would file a suit for return of the same but after deciding to get Khula opted to relinquish her claim but the learned courts misunderstood her statement which, otherwise, was very specific as she had forgiven the dower claim and did not undertake to return the same. She had specifically used the word '*forego*' rather '*return*'.

4- Learned counsel for the respondent-defendant repelled the above arguments by stating that the petitioner cannot escape from

her liability if she intends and wishes to get divorce. The law on the subject is very specific and she had to return the consideration in lieu of Khula divorce. If it is not the case, she cannot be held entitled to decree for dissolution of marriage on the condition of Khula, until & unless it is established that with whom the dower consideration lies.

5- Heard and record perused.

6- The pivotal question which requires determination is as to what will be the impact upon a decree for dissolution of marriage on the basis of Khula, when it is passed subject to return of dower consideration, when the custody of dower consideration is disputed?

7- The dispute is with regard to the possession of gold ornaments/dower consideration. The petitioner alleges that the same are in custody of the respondent whereas the respondent denies this assertion, therefore, this controversial issue, cannot be settled without affording opportunity to both the sides to adduce their respective evidence, but while doing this exercise, the decree for dissolution of marriage on the basis of Khula, cannot be revoked and will remain intact. This view is fortified by the law set in case of **Doctor Akhlaq Vs. Kishwar Sultana [PLD 1983 SC 169]** wherein it is held that "non payment of stipulated consideration for Khula does not invalidate the dissolution of marriage by Khula. Once the Family Court came to the conclusion cannot remain within the limits of God and the dissolution of marriage by Khula must take place, the inquiry into the terms on which such dissolution shall take place does not effect the conclusion but only creates civil liabilities to the benefits to be returned by the wife to the husband and does not effect the dissolution itself".

8- Following the wisdom laid down in the case referred above, it is concluded that the proper course in this case would be to frame an issue respecting claim & counter claim of the parties with regard to gold ornaments, by recording evidence of both the sides and to decide the case accordingly. The decree for dissolution of marriage pronounced vide Order dated 22.10.2012 shall remain intact and further proceedings with regard to divorce shall be conducted pursuant to provisions of family laws that includes sending of notice to the concerned union council. Here it is also made clear that in case the petitioner succeeds in her claim regarding possession of gold ornaments with the respondent-defendant, she will not be entitled to recover the same pursuant to her undertaking/statement dated 22.10.2012, whereby she had forgiven dower consideration and if the situation is vice-versa,

then the respondent-defendant would be entitled to recover the same as a civil liability. It is once again made clear that in both the eventualities the decree for dissolution of marriage on the basis of Khula has become absolute on the day of passing i.e. 22.10.2012 when the petitioner got recorded her statement that she is not ready to live with the respondent defendant at any cost.

9- In view of above, both the impugned orders dated 22.10.2012 and 15.06.2013 and the execution petition and proceedings conducted there-under are set-aside with direction to the learned Trial Court to commence the proceedings from the stage where it had been on the date of 22.10.2012, after framing necessary issues, recording evidence and to proceed with the suit in accordance with law and observations made hereinabove. The exercise should be culminated within shortest possible time preferably within three months of the receipt of this Judgment. Parties to bear their own costs.

(CHIEF JUSTICE)

M.Suhail  
05.12.2013

APPROVED FOR REPORTING

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