

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P.No.629/2021

Sajid Mehmood

vs.

ADJ, Islamabad and others.

Petitioner by: Mr. Shafqat Hussain Yasir, Advocate alongwith petitioner.

Respondent by: Mr. Alamzeb Khan, Advocate alongwith respondent No.3.

Date of Decision: 26.01.2022.

MOHSIN AKHTAR KAYANI, J: Through the instant writ petition, the petitioner has assailed the judgment and decree dated 04.01.2020, passed by learned Judge Family Court, Islamabad and maintained by learned Additional District Judge (MAC) (West), Islamabad, vide judgment and decree dated 25.01.2021, whereby the suit for Recovery of Dower Amount and Maintenance has been partially decreed in favour of respondent No.3.

2. Learned counsel for the petitioner contends that respondent No.3/Mst. Asmat Bibi was married to petitioner on 28.03.2004 in accordance with Muslim rite and ceremony, but later on, filed a suit for recovery of dowry articles and maintenance without any basis, rather refused to live in the matrimonial bond with the petitioner; that marriage has not yet been dissolved by respondent No.3 nor petitioner has divorced the said respondent; that both the Courts below have not appreciated the status of petitioner that he is working in Textile Mill and getting monthly salary of Rs. 27,000/- per month, in which he has to maintain the daughters from first wife and both the Courts below have passed the conditional decree against the petitioner on exorbitant rates of maintenance.

3. Conversely, learned counsel alongwith respondent No.3 contends that petitioner has not yet complied with the terms and conditions of the decree qua

due maintenance, though she is willing to live with the petitioner on the conditions referred by the Trial Court in the judgment and decree dated 04.01.2020; that decree for restitution of conjugal rights has also been granted to the petitioner with two conditions i.e. maintenance allowance and separate accommodation.

4. Arguments heard and record perused.

5. Perusal of record reveals that petitioner and respondent No.3 were married to each other on 28.03.2004 according to Muslim rites and ceremony against the dower of 20 Tolas of Gold Ornaments and Rs. 400,000/- cash and therefore, *Rukhsti* took place, though respondent No.3 claims that *Haq Mehr* has not yet been paid by the petitioner, however, initial relationship between the parties remained cordial, but later on, dispute emerged between the parties. The petitioner is working in Textile Mill and used to visit Harripur for a week in a month and in August, 2017, desertion took place on the primary reasons submitted by respondent No.3 that she is second wife of the petitioner, who was forced to live with other family members of the petitioner, especially his daughters from earlier marriage and she claims that petitioner has to provide a separate accommodation. The respondent No.3 has filed a suit for recovery of dower and maintenance and on the contrary, the petitioner has filed a suit for conjugal rights and as such issues were framed to that effect.

6. The petitioner and respondent No.3, when appeared before the Court in reconciliation proceedings, respondent No.3 has taken a stance that she is ready to join the matrimonial bond with the petitioner, but on the other hand, petitioner has not paid any maintenance to her till date, though the actual amount granted to respondent No.3 by the Courts below @Rs.15,000/- per month become Rs. 800,000/- approximately w.e.f. August, 2017, but only Rs. 154,000/- have been paid to respondent No.3 by the petitioner, this aspect has further been confirmed by the petitioner before this Court. The marriage is still

intact and respondent No.3 is willing to reconcile the matter and her attitude apparent in the Court, further discloses inclination to join matrimonial bond with two conditions referred in decree, but petitioner time and again reiterated his stance of low income but has not submitted any proof or plea in his written statement qua his low income, in such scenario, the question of fact qua the rate of maintenance, the date of desertion, the conduct of the parties have properly been appreciated by the Courts below in concurrent findings, therefore, at this stage, no other view could be taken in judicial review in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The petitioner has failed to persuade this Court to disbelieve the contention recorded by the Courts below in favour of respondent No.3, the wife, who is still ready to join the matrimonial obligation, with the condition that if petitioner provides the separate accommodation and maintenance, hence this Court has not seen any positive conduct of the petitioner, who is not serious to resolve the issues.

7. For what has been discussed above, instant writ petition is misconceived and same is hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

RAMZAN