

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

W.P. No. 4917 of 2022

IHSAN ULLAH.

VS

MST. IRUM HASSAN AND ANOTHER.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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31.01.2023

**Syed Taimoor Shah, Advocate for the
Petitioner.**

Through the instant writ petition, the Petitioner [Ihsan Ullah] has assailed the Order and Decree dated 03.09.2022 (**“Impugned Order and Decree”**) passed by the learned Judge Family/Guardian Court, West-Islamabad (**“Family Court”**) to the extent of its findings regarding the dower.

2. The learned counsel for the Petitioner, contended that the Petitioner is not challenging the decree of dissolution of marriage by way of Khula as it is settled law that such decree is neither revocable nor appealable under Section 14 of the Family Courts Act, 1964 (**“Act”**). However, the Petitioner is aggrieved by the Impugned Order and Decree to the extent that the suit of the Respondent No.1 has been decreed without determination of payment of dower and its return as consideration for Khula which requires recording of evidence. He submitted that when suit is decreed on the ground of Khula the learned Family Court is required to proceed to the next issue of return of dower/benefits. However, in this case, the Impugned Order has granted Khula in lieu of dower (subject to return of dower

if paid and relinquishment of unpaid dower) instead of recording evidence as to whether or not the dower was paid.

3. I have heard the learned counsel for the Petitioner at some length and have also perused the available record including the Impugned Order and Decree.

4. At the very outset this Court questioned the maintainability of the instant petition given that the Petitioner has not availed the alternate remedy available at law i.e. appeal to the District Court under Section 14 of the Act. The learned counsel for the Petitioner submitted that no appeal lies from a decree passed by the Family Court for dissolution of marriage by way of Khula pursuant to Section 14(2)(a) of the Act.

5. The said contention is misconceived as the said provision of law does not debar either party from challenging decree passed by the Family Court by way of appeal to the District Court to the extent of dower provided that the amount does not exceed Rs. 100,000/-. In this case, the Impugned Order and Decree consists of two parts: (i) a decree for dissolution of marriage; and (ii) decision regarding dower. The bar contained in Section 14(2)(a) of the Act does not apply to the Impugned Order and Decree to the extent of part (ii) thereof provided that the amount of dower does not come within the limit stipulated in Section 14(2)(b) of the Act. Reliance is placed on *Fazal Rehman and others versus Mst. Fahmida and others*, PLD 2022 Peshawar 1, whereby it has

been held that an appeal would lie against the grant or refusal of dower when it is made along with or without dissolution of marriage.

6. In view of the foregoing, the Petitioner is not precluded from filing an appeal against the Impugned Order and Decree to the extent of dower as long as the dower was more than the amount stipulated in Section 14(2)(b) of the Act. Since, the Petitioner has admittedly not filed any appeal against the Impugned Order and Decree, I find that the instant petition not maintainable for failure to avail the adequate alternate remedy available at law.

7. For what has been discussed above, instant petition stands **dismissed in limine** as being not maintainable.

(SAMAN RAFAT IMTIAZ)
JUDGE