

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

W.P No. 1734 of 2021

Nazakat Ali

Versus

Neelam Akhlaq, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	25.11.2022	Mr. G. Shabbir Akbar Advocate for petitioner, Mian M. Zafar Iqbal Advocate for respondent No.1.

ARBAB MUHAMMAD TAHIR J: Through the instant writ petition, petitioner namely *Nazakat Ali* impugns Judgments and Decrees dated 13.01.2020 & 16-01-2021 passed by the learned Judge Family Court and the learned Additional District Judge, West-Islamabad respectively, whereby respondent No. 1 namely *Neelam Akhlaq* was held entitled to recover dower and dowry articles except a gold ring gifted to the petitioner at the time of wedding, in case of default, the petitioner shall pay its market value prevailing at the time of execution, the respondent No. 1 also held entitled to get Rs. 5000/- per month as maintenance allowance till the completion of her Iddat period whereas the minor son was held entitled to get maintenance allowance @ Rs. 6000/- per month since March, 2017 till his legal entitlement with 10% annual increase. In appeal, the judgment and decree of the learned trial Court was modified to the extent that period of maintenance for minor was fixed from July, 2017 instead of March, 2017 with 10% annual increase till his legal entitlement.

2- The learned counsel argued that the quantum of maintenance determined and fixed for the minor does not commensurate with the financial position of the petitioner whose monthly income is Rs. 16193/- and in such meager amount, has to maintain his other wife and mother as well; that both the learned Courts failed to appreciate the affidavit Ex. D/4 sworn by the respondent No.1 in its true perspective and that the

impugned judgments and decrees being against the law and facts are liable to be set aside.

3. On the other hand, learned counsel for the respondent No.1 repelled the above submissions by contending that there are concurrent findings on facts by the two learned Courts, that the claim of respondent No.1 for the recovery of dower, dowry articles and maintenance allowance has been established through un-rebutted evidence therefore, petition is liable to be dismissed.

4. Heard, record examined.

5. Perusal of record reveals that the marriage between the petitioner and respondent No. 1 was solemnized in October, 2009. It lasted for about seven years (2009-2016) and ultimately led to separation by way of divorce on 03.10.2016. *Rehan Ali*, the minor is son of ex-spouses. Nikah Nama Ex. P/2 is an admitted document and as per its column No. 13, gold ornaments weighing three Tola were given to the respondent No.1 in lieu of dower amount.

6. As per version of the respondent No.1 in her suit for declaration cancellation of affidavit dated 26.06.2015, permanent injunction, under paragraph No. 7 she maintained that *she filed suit for recovery of dowry articles, dower three Tola in the shape of gold ornament which is in possession of the defendant, maintenance allowance to the plaintiff till Iddat period and past and future maintenance to her minor son which is pending before the Judge Family Court, Islamabad and the defendant misused the same alleged affidavit against the plaintiff which is absolutely wrong and illegal*. On the contrary, the petitioner pressed his stance on the basis of affidavit dated 26.06.2015 Ex. D/4 whereby the respondent No.1, statedly had forgiven claim of dower of three Tola gold ornaments.

7. It is significant to note that the learned trial Court had specifically framed issue No. 1, to the effect that whether affidavit dated 26.06.2015 is a product of fraud and the onus to prove the said issue had been upon the plaintiff/respondent No. 1. Issue No.1 along with issue No. 7 disposed of being not pressed. It is thus obvious that the question of validity or otherwise of the affidavit Ex. D/4 remained undecided as the respondent No.1 opted not to press the said issue, might be for the reason that she had already filed a separate suit for declaration in respect of the said affidavit Ex. D/4 as it being product of fraud. The petitioner, on the other hand, in order to substantiate Ex. D/4 got examined one Shaukat as DW-2, who asserted regarding execution of Ex. D/4 by the respondent No. 1 in affirmation. In such state of affairs when the respondent No. 1 herself opted not to discharge onus to prove issue No. 1 and herself filed the suit questioning the Ex. D/4, there was no justification to render any observation on the validity of Ex. D/4, as was done in paragraph No. 11 of the judgment by the learned trial Court to the effect that “*that production of Ex. D/4 by the defendant is sufficient to show that dower in question is not in possession of the plaintiff No. 1*” Likewise, tentative observation to the effect that *Ex. D/4, if executed then it was on account of undue influence.*

8. For reasons mentioned above, the findings of the two learned Courts on the issue of recovery of dower amount are not legally sustainable as the question of validity or otherwise of Ex. D/4 is the subject matter of the Suit, *subjudice* before the learned Civil Court which action, the respondent No1 herself initiated and in the family suit opted not to press the relevant issue.

9. However, the concurrent findings of the two learned Courts on the aspect of recovery of dowry articles, maintenance of Iddat period and the maintenance for the minor at the rate of 6000/- per month from July, 2017 with 10% annual increase appear to be in accordance with evidence on record.

10. In view of above, impugned judgments and decrees to the extent of dowry articles, maintenance of the minor and for the Iddat period as well are not open to any exception and are accordingly **upheld** while the judgment and decree to the extent of dower amount are not legally sustainable and are accordingly **set aside**. The suit to that extent shall be deemed pending, to be decided afresh, after the decision of the suit of the respondent No. 1 for declaration, cancellation of Ex. D/4 permanent injunction. The suit bearing No. 200 titled “*Neelam Akhlaq v. Nizakat Ali*” pertains to the years 2019, therefore, the learned trial Court shall make every endeavor to conclude the trial within shortest possible time preferably within a period of one month from the receipt of this order.

11. The instant writ petition is **disposed of** in the above terms.

(ARBAB MUHAMMAD TAHIR)
JUDGE