

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1563/2020

Asim Sabir Qureshi

versus

Additional District Judge (East), Islamabad and others.

Petitioner by: Mr. Hasan Rashid Qamar, Advocate.

Respondents No. 3 & 4 by: Mr. Muhammad Ramzan, Advocate
alongwith respondents No. 3 & 4.

Date of Decision: 18.02.2021

JUDGMENT

MOHSIN AKHTAR KAYANI, J:- Through this writ petition, the petitioner has assailed the judgment and decree dated 17.07.2019, passed by learned Senior Civil Judge (Guardian) (East), Islamabad, whereby suit for Recovery of Maintenance, Dower Amount, Dowry Articles and Personal Belongings filed by the respondents No. 3 & 4 have been decreed in their favour. Against the said judgment and decree, petitioner has filed an appeal before learned Additional District Judge-VI (East), Islamabad, whereby the same has been dismissed and maintained the decision of the Trial Court vide judgment and decree dated 23.10.2019.

2. Brief facts referred in the instant writ petition are that petitioner Asim Sabir Qureshi entered into marriage with Mst. Javeria Riaz on 10.11.2012 against dower of Rs. 500,000/-, whereafter parties started living together and they have been blessed with one daughter namely Feeha Asim minor born on 14.11.2013, however, both the parties lived together till November, 2013, whereafter respondents No. 3 & 4 have been deserted from the house of the petitioner. The respondent No.3/Mst. Javeria Riaz has filed a suit for Recovery of Maintenance, Dower Amount, Dowry Articles and Personal Belongings against the

petitioner. On the other hand, petitioner has also filed a suit for Restitution of Conjugal Rights against respondent No.3. Respondent No.3 after receiving the notice from the Court has also filed second suit for dissolution of marriage on the basis of Khulla against the petitioner, which was decreed on 28.10.2017 in terms of Section 10(4) of Family Courts Act, 1964, whereas the suit for maintenance and dower has been decreed by the Judge Family Court vide judgment and decree dated 17.07.2019, whereby it was declared that respondent No.3/Mst. Javeria Riaz is entitled to receive past maintenance at the rate of Rs. 15,000/- per month w.e.f. November, 2013 till her *Iddat* period and respondent No.4/Feeha Riaz is also entitled to receive maintenance at the rate of Rs. 25,000/- per month w.e.f November, 2013 till her legal entitlement with 10% annual increase. At the same time, Judge Family Court has also awarded decree for dowry articles as per list Ex.P-5/1-6. Petitioner feeling aggrieved with the judgment and decree of the learned Family Court has filed the appeal before learned Additional District Judge, whereby the decree has been maintained vide judgment and decree dated 23.10.2019, hence this writ petition.

3. At the very outset, learned counsel for the petitioner contends that petitioner confines his claim only to the extent of maintenance allowance awarded to Mst. Javeria Riaz/respondent No.3/ex-wife of the petitioner and the other claims qua the maintenance of the minor as well as dowry articles have been conceded by the petitioner and he has no dispute over it. He further contends that both the Courts below have not considered the claim of the petitioner, whereby the petitioner has filed the suit for Restitution of Conjugal Rights in order to resolve the dispute with Mst. Javeria Riaz/respondent No.3 and as such the gesture extended by the petitioner has to be resolved in his favour and respondent No.3

would be declared disobedient wife, who is not entitled for maintenance awarded by the Judge Family Court w.e.f. November, 2013 till expiry of *Iddat* period after passing of the decree.

4. Conversely, learned counsel alongwith respondents No. 3 & 4 contend that the petitioner has never maintained the respondent No.3 in any manner, even the maintenance fixed by the learned Trial Court to the extent of minor has not been paid regularly through the banking channel. It has been contended by respondent No.3/Mst. Javeria Riaz that she is Doctor by profession and the entire dowry articles awarded by the Family Court are still in possession and custody of the petitioner and as such respondents have been dragged into this litigation without any justifiable reasons. She further submits that despite the desertion by the petitioner in November, 2013, she filed a suit for dissolution of marriage after four (04) long years in order to reconcile the matter, but petitioner was not interested to settle the family bond, even he has not paid a single penny to them.

5. I have heard the arguments and perused the record.

6. Perusal of record reveals that petitioner is aggrieved with the concurrent findings of the learned Family Court as well as learned First Appellate Court, whereby the suit for Recovery of Maintenance, Dowry Articles and Maintenance of the minor has been decreed concurrently. The respondents No. 3 & 4, plaintiffs of the suit filed their claim before learned Family Judge mainly on the ground that they were thrown out from the abode in the month of November, 2013 by the petitioner and he being husband and father of the minor is not paying the maintenance till now, even a dowry articles list has been placed on record referred as Ex.P-5/1-6. The Judge Family Court has passed the decree of maintenance in favour of respondents No. 3 & 4 while considering the

entire evidence and as such there is no denial to the proposition that Father is responsible to maintain the minor in all circumstances and same is the case with husband, who is responsible to look after the affairs of the wife and it is his responsibility to maintain her in all manners. The petitioner at the very outset conceded the claim of respondents to the extent of handing over the dowry articles referred in the list as well as the maintenance of the minor Mst. Feeha Riaz, who was born from this wedlock, therefore, the only question left for determination of this Court in judicial review is to the extent of maintenance of respondent No.3/Mst. Javeria Riaz (ex-wife), who has filed a suit for dissolution of marriage on the basis of *Khulla*, as a result whereof, the suit was decreed vide judgment and decree dated 28.10.2017, passed by Judge Family Court (East), Islamabad and as such there is no denial to the fact that respondent No.3 was deserted by the petitioner in the month of November, 2013 and till the passing of the decree of dissolution of marriage, she was maintaining herself at her own without any payment on the part of maintenance by the petitioner, although the petitioner has taken a categorical stance before this Court that he had filed suit for Restitution of Conjugal Rights to reconcile the matrimonial relationship with the respondent No. 3 at that time, this aspect further demonstrates that if the petitioner is interested to reconcile the matrimonial bond then he was liable to pay the maintenance at all costs and as such the respondent No.3 could not be declared as disobedient wife, who has highlighted the conduct of the petitioner, in which, she would not be able to live in the matrimonial relationship and as such her entire claim of dissolution of marriage is based upon equality attributed to the petitioner. In these circumstances, the petitioner is not able to demonstrate any illegality in the concurrent findings of the Courts below.

7. The scope of judicial review in such type of cases is very limited as such no illegality has been observed as the Trial Court as well as First Appellate Court has rightly adjudicated upon the question of maintenance of respondent No.3 within four corners of law.

8. For what has been discussed above, instant writ petition is misconceived and same is hereby DISMISSED. However, respondent No.3 may receive the Dowry Articles as per list Ex.P5/1-6 through any Authorized person as and when she desires, as the petitioner has conceded the same before this Court and further contends that the said dowry articles are lying at his home in Quetta.

(MOHSIN AKHTAR KAYANI)
JUDGE

RAMZAN