

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**WRIT PETITION NO. 3703 OF 2020.**

**MARRIYAM KHALID AND ANOTHER**

**Vs.**

**WIQAS MHI UD DIN AND OTHERS**

**Petitioners by : Mr. Muhammad Ahmed Tariq Fani, Advocate.**

**Respondents by : Mr. Naseer Anjum Awan, Advocate.**  
(for Respondents No.1 to 3)

**Date of Hearing : 27.04.2022.**

**SAMAN RAFAT IMTIAZ, J.:-** Through the instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the Petitioners have assailed the concurrent Judgments & Decrees dated 14.10.2019 and 06.10.2020 ("Impugned Judgments and Decrees") passed by the learned Senior Civil Judge, (West) Islamabad ("Trial Court") and learned Additional District Judge (West) Islamabad ("Appellate Court"), respectively.

2. Brief facts as per the Memo of Petition are that the Petitioners filed a Suit for Recovery of Maintenance at the rate of Rs.50,000/- each, Recovery of Past Maintenance of Petitioner No.1/Plaintiff No.1 at the Rate of Rs.50,000/- per month with effect from June 2017 to April 2018, Recovery of Future Maintenance, Recovery of Gold Ornaments and Recovery of Delivery/Medical Expenses. It was stated that the Petitioner No.1/Plaintiff No.1 and the Respondent No.1/Defendant No.1 were married on 12.12.2016 against dower of (a) Rs.10,000/- and (b) learning by heart Ten Paras of Holy Quran and recitation of the same during Nimaz-e-Taraweeh. It was further alleged that Petitioner No.1 was ousted by the Respondent No. 1 on 19-06-2017.

3. The learned Trial Court framed issues and recorded evidence after which the suit of the Petitioners was partially decreed as under:-

*I. The plaintiff No.1 is held entitled for recovery of Rs.20,000/- (Twenty Thousand) as monthly maintenance allowance besides other household expenses which will be responsibility of defendant No.1 to bear. The amount so fixed shall be payable to the plaintiff No.1 from the date of her joining defendant No.1 as wife.*

*II. That plaintiff No.2 is held entitled for maintenance allowance at the rate of Rs.10,000/- (Ten Thousand) per month from the date of her birth till her marriage with 10% annual increase. The amount paid as interim maintenances shall be adjusted towards arrears of maintenance allowance.*

*III. That the plaintiff No.1 is held entitled for recovery of Rs.57761/- (Fifty seven Thousand Seven Hundred Sixty One) as consultancy, medicine and baby care charges from the defendant No.1*

*The suit of plaintiff No.1 for recovery of dower amount is also dismissed because as per nikahnama Ex.P2 the dower of plaintiff No.1 was fixed as Rs.10,000/- which has been paid at the time of her marriage. So far, recitation of Holy Quran is concerned, there is nothing in that which could be given to the plaintiff No.1. The said clause incorporated in column of dower cannot be termed as dower in strict sense of the dower. The suit of plaintiff for recovery of delivery charges of Rs.2,50,000/- gold ornaments of fifteen (15) tolas is also dismissed. The suit of plaintiff No.1 for recovery of ten (10) tolas gold has already been dismissed vide order dated 21.09.2019 on the basis of special oath taken by defendant No.3.*

4. Feeling aggrieved the Petitioners filed appeal which was dismissed vide Impugned Judgment and Decree dated 06.10.2020.

5. The Petitioners is aggrieved by both the Impugned Judgments and Decrees dated 14.10.2019 and 06.10.2020, hence instant petition.

6. The learned counsel for the Petitioners argued that the Impugned Judgments and Decrees are against the law and facts of the case; that the findings of the learned Trial Court are the result of gross misreading, non-reading, non-appreciation and misapplication of evidence available on the record, which has also not been appreciated by the learned Appellate Court. He submitted; that the Petitioner alleged in her plaint that on 19.06.2017 the Respondent threw out the Petitioner from his house on petty household matter and since then the Petitioners have been living with the Petitioner No.1's parents and all the expenses of Petitioners have been borne by them while Respondent No.1 has not paid a penny toward the Petitioners' maintenance. It is also argued that the learned Family Court did not fix maintenance for Petitioner No.1 on account of her nursing the Petitioner No.2 who is suckling baby; that the learned Trial Court never considered while deciding the Issue No.4-A that payment of Haq Mehar is prime responsibility of husband; that the Impugned Judgments and Decrees are against the law and facts and also dictum laid down by the superior courts of the Pakistan on the subject; that the learned Trial Court has not gone through the record of the case, which has been produced before him and decided the case in arbitrary manners. Learned counsel prayed for acceptance of instant petition on behalf of the Petitioner and to set aside the Impugned Judgments and Decrees dated 14.10.2019 and 06.10.2020 and to pass an order to modify the Judgment and Decree of trial court as per prayed for mentioned in the suit of the petitioner/plaintiff.

7. On the other hand the learned counsel for the Respondent No. 1 to 3 contended that the Petitioner No.1/Plaintiff No.1 is not entitled to any maintenance

because she is disobedient wife, who had been living at the house of her parents without the consent of the Respondent No.1/Defendant No.1. On behalf of the Respondents No.1 to 3, the learned counsel prayed for dismissal of instant petition.

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

9. It is noted at the very outset that both counsel have apprised this Court that the Respondent No. 1 pronounced divorce upon Petitioner No. 1 after the passage of the Impugned Judgment dated 06.10.2020 passed by the learned Appellate Court and as such the parties are no longer married to each other.

10. Before I go into merits, it has to be borne in mind that this Court in exercise of Constitutional jurisdiction does not act like a Court of appeal. As such, the Court cannot embark upon a reappraisal of evidence. It is settled law that a High Court in such jurisdiction cannot substitute the concurrent findings of the courts below with its own findings solely on the ground that another view was possible on the same evidence. A party approaching the High Court under Article 199 of the Constitution has to demonstrate that there is a gross misreading or non-reading of evidence or jurisdictional error or such legal infirmity that has caused miscarriage of justice.

11. Learned counsel for the Petitioner has only raised objection to the conclusions reached in respect of Issues No.1 and 4-A which pertain to past maintenance of Petitioner No.1 and deferred dower of recitation of 10 paras of the Holy Quran.

12. The Petitioner No.1 prayed for Rs.50,000/- per month from June, 2017 till April, 2018 aggregating to Rs.600,000/- as past maintenance from the time when she was allegedly ousted by the Respondent No.1. The learned Trial Court concluded that the Petitioner was not ousted by the Respondent No. 1 based on her statement in her cross examination which roughly translates as *“It is correct that despite compliance of all the conditions as per reconciliation, I did not join the Defendant and am residing with my parents”*. The learned counsel for the Petitioners contended that reliance on this statement is erroneous as the reconciliation referred therein is the pretrial reconciliation that was carried out as part of the proceedings before learned Family Court as such does not have any

bearing on the Petitioner No.1's allegation that she was ousted by respondent No. on 19.06.2017, which was prior to filing the suit.

13. However, perusal of the Impugned Judgment shows that apart from relying on the said statement, the learned Trial Court concluded that the Petitioner No.1 was not living at her parents' house due to any cruel treatment on the part of Respondent No. 1 rather she has been living with parents of her own will and accord. Therefore, she was held not entitled to past maintenance as per settled law that a wife is not entitled to maintenance where there is no ouster/desertion.

14. The learned counsel is unable to point out any non-reading or misreading of evidence or any other illegality or infirmity in the Impugned Judgments and Decrees in respect of this issue. Therefore, we are not compelled to exercise the discretionary jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 to disturb concurrent findings of fact.

15. As far as Issue No.4-A is concerned it has been pointed out that learned counsel for the Respondent that at the time of filing of the suit the parties were still married whereas dower concerning recitation of 10 paras of Holy Quran was deferred. According to learned counsel for the Respondents such prayer at that time was premature since the parties were still married to each other. However, now that they have divorced, the Petitioner No.1 may file fresh proceedings to claim deferred dower if she so wishes. On the other hand learned counsel for the Petitioner stated that deferred dower is payable on demand at any time.

16. The submissions of the learned counsel for the Respondent appears to be correct in light of the pronouncement of Honourable Supreme Court in the case titled *Saadia Usman Vs. Muhammad Usman Iqbal Jadoon*, 2009 SCMR 1458, wherein it was held that prompt dower is payable on demand during the subsistence of the marriage whereas deferred dower is payable at the time stipulated between the parties but where no time is stipulated, it is payable on dissolution of marriage either by death or divorce. Further that deferred dower does not become prompt merely wife demands that. In view thereof the Petitioner No.1 is not entitled to claim deferred dower in the suit filed by her as admittedly the parties were married to each other at such time and no time was fixed for payment of deferred dower.

17. The learned counsel for the Petitioners also claimed that both the lower courts failed to grant maintenance to the Petitioner No. 1 on account of her nursing the Petitioner No. 2. However, he was unable to point out any prayer in the suit to such affect from the plaint.

18. In view of the foregoing, no reasonable grounds have been made out for interference with the concurrent findings of the Courts below in exercise of writ jurisdiction. As such, the instant petition is **dismissed** as being devoid of merit.

**(SAMAN RAFAT IMTIAZ)**  
**JUDGE**

**Announced in the open Court on 28<sup>th</sup> of April, 2022.**

**JUDGE**