

Form No: HCJD/C-121.  
JUDGEMENT SHEET  
IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
JUDICIAL DEPARTMENT

**WRIT PETITION NO. 1460 OF 2021**

Amjad Khan

Vs

Learned ASJ West Islamabad, etc.

PETITIONERS BY: Mr. Tariq Mehmood Mughal, Advocate.

RESPONDENT No. 3 BY: Mr. Mazhar Iqbal, Advocate

DATE OF HEARING: 29.11.2021.

=====

**BABAR SATTAR, J.-** This judgment will decide the instant writ petition and W.P No. 3729 of 2021 titled "*Mst. Sumbal Shaheen Vs. Additional District Judge, etc.*" as the subject matter and parties in both petitions are the same.

2. Through W.P No. 1460/2021 Amjad Khan (hereinafter referred to as the "**Petitioner**") has impugned the judgment and decree passed by the learned Additional District Judge (West), Islamabad, dated 05.01.2021 to the extent of payment of maintenance to respondent No. 3 i.e. Mst. Sumbal Shaheen (hereinafter referred to as the "**Respondent**"). The Respondent has filed W.P No. 3729/2021 challenging the above said judgment and decree to the extent of dismissal of her claim for payment of deferred dower.

3. The learned counsel for the Petitioner stated that the learned Family Court had rightly found that the Petitioner had not

deserted the Respondent and she was living in her parents' house of her own volition and was therefore not entitled to maintenance. He relied on **Mohammad Sajjad and 2 others Vs. Neelum Shaheen and another (2017 YLR 2481 Shariat Court AJK)** and **Majid Hussian Vs. Farah Naz (2019 MLD 1999 High Court Azad Kashmir)** for the proposition that a wife living separately without the consent of her husband is not entitled to grant of maintenance.

4. Learned counsel for the Respondent submitted that the Respondent was not a disobedient wife and had been forced to leave the house of the Petitioner due to his abusive behavior. He submitted that there was no infirmity in the impugned judgment to the extent of grant of maintenance to the Respondent.

5. The question of right of wife to maintenance came before this Court in ***W.P No. 2355/2015*** titled "***Shahab Saqib Vs. Sadaf Rasheed***". This Court after discussing the law laid down by the august Supreme Court had held the following:

*35. On the question of maintenance Section 9 of the MFLO is unequivocal and its language does not open the provision to multiple interpretations with regard to affixing the obligation of a husband to maintain his wife. There are no conditions prescribed therein that need to be satisfied prior to establishing the eligibility of the wife, who remains in the bond of marriage, to maintenance and none can be imported into it on the basis of commentaries in various treatises on the principles of Mohammedan Law. Section 9 of the MFLO simply states that, "if any husband fails to maintain his wife adequately," the wife can apply to Chairman Arbitration Council for enforcement of the obligations or seeking any other legal remedy available such as before the Family Court etc.*

*38. As already stated above, Section 9 of the MFLO is not ambiguous and consequently conditions for grant of maintenance to a wife cannot be read into it by virtue of erstwhile Section 488 of Cr.P.C. or Section 2 of the Muslim Personal Law (Sharia) Application Act, 1937, or case law evolved at a time when such statutory provisions were in the field. In this view of the matter, the respondent is entitled to maintenance for the entire period that she remained married to the petitioner unconditionally, and no preconditions can be imposed the satisfaction of which would be a prerequisite to assert her entitlement to maintenance. The learned ADJ therefore made no mistake in law in granting maintenance to the respondent.*

6. In view of the law as elucidated above, maintenance cannot be denied to a wife on the basis of assertion that the wife was disobedient. In view of the above, writ petition No. 1460/2021 is **dismissed**.

7. The Respondent has also impugned the Judgment and decree dated 05.01.2021 to the extent that deferred dower has not been granted to the Respondent. The basic contention of the learned counsel for the Respondent was that the Petitioner had remarried and consequently the deferred dower was payable in view of section 6(5) of Muslim Family Laws Ordinance, 1961 (**"Ordinance"**). The learned counsel for the Petitioner, on the other hand, stated that there was no finding by the learned trial court that the Petitioner had remarried. He submitted that the Respondent was attempting to mislead this Court as the arbitration council has already ruled that the Petitioner had not remarried.

8. In view of the fact that there is no finding by the arbitration council or a court of competent jurisdiction that the petitioner has remarried without seeking permission of the

arbitration council, provision of section 6(5) of the Ordinance is not attracted.

9. The law on the due date of payment of deferred dower was clarified by the august Supreme Court in Saadia **Usman Vs. Muhammad Usman Iqbal Jadoon (2009 SCMR 1458)**, wherein it was held that:

*"Deferred dower is payable on the time stipulated between the parties, but where no time is stipulated, it is payable by dissolution of marriage either by death or divorce."*

10. In view of the above, given that the impugned has held that the differed dower is not due as the marriage between the Petitioner and the Respondent is still subsisting there is no infirmity in the impugned order. Consequently Writ Petition No. 3729 of 2021 is **dismissed**.

(BABAR SATTAR)  
JUDGE

Announced in the open Court on **14.12.2021**.

JUDGE

Saeed.