

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

W.P No. 1453-2022

Muhammad Abbas

Versus

Marukh Ali and another.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(01)	26.04.2022	Mr. Muhammad Shoaib Butt and Barrister Muhammad Hassan Alam, Advocates for the petitioner.

MOHSIN AKHTAR KAYANI J. Through the instant writ petition, the petitioner has assailed the order dated 17.03.2022, passed by learned Judge Family Court (West), Islamabad, whereby application for additional evidence filed by the respondent Mst. Marukh Ali in the suit for jactitation of marriage was allowed.

2. Learned counsel for the petitioner contends that respondent Mst. Marukh Ali has filed a suit for Recovery of Dower (*Haq Mehr*), recovery of maintenance on 05.10.2017 on the basis of alleged *Nikhanama* dated 06.06.2014, which has been denied by the petitioner in categorical term including the *Haq Mehr*, therefore, he has separately filed a suit for jactitation of marriage on 15.12.2018, which has been clubbed with the earlier suit in the Family Court. The evidence has been completed to the extent of plaintiff/respondent Mst. Marukh Ali, but she filed an application for additional evidence without

referring the specific evidence, except the voice recording messages, which was allowed by the trial Court without any justifiable reasons. He further submits that the so-called additional voice note and documents, which are allowed to be presented are afterthought, as such the request has been filed after five (05) long years from the date of institution of the suit, therefore, the order impugned before this Court may be set-aside.

3. Arguments heard and record perused.

4. Perusal of record reveals that both the parties are locked in a dispute of marriage, which has been denied by the petitioner and respondent is claiming the rights attached with the marriage on the basis of alleged *Nikhanama* i.e. dower, car and house alongwith gold ornaments. However, the matter is now fixed for evidence of the petitioner/defendant, when the respondent has filed an application on the ground that she is now in possession of evidence to prove her plea in the case of jactitation of marriage, which was not earlier available, which includes the voice recording messages, though the said voice messages have not been appended with the case, but trial Court has rightly settled the question by allowing the application to avoid any technical knockout.

5. It is trite law that in such like cases, where intricate questions are involved, application for submission of additional evidence would be allowed liberally, both the parties should not feel deprived

from fair chance to prove their cases as held in 2020 YLRN 7 (The State vs. Muhammad Ayaz Khan), though in this case, the matter is pending for the last five (05) years before Judge Family Court, which speaks about the progress of the suit and the handling of the matter by the learned Trial Court.

6. When confronted the petitioner, as to what harm would be caused to him if such additional evidence (voice note messages) is presented in the Court, whereby no justiciable reason has been placed on record, especially when it has not been denied by the petitioner that he will be allowed to cross-examine any additional evidence or he has every right to check the veracity of the said messages through any mean in order to fulfill the requirement of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973.

7. In view of above, instant writ petition is misconceived and same is hereby DISMISSED IN LIMINE with the direction to the learned Trial Court to conclude the trial within next two (02) months positively under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE