

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 3468 of 2020

Sohail Safdar
Vs
Abeer Iftikhar, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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13.03.2023.

Mr Azhar Yousaf Advocate for the Petitioner.
Syed Gohar Ali Zaidi Advocate for the Respondents
No. 1 and 2.

1. The learned counsel for the Petitioner has apprised this Court regarding case history of the instant matter whereby Respondent No. 1 filed a suit for recovery of maintenance allowance claiming Rs.15,000/ for herself and Rs.15,000/- for the Respondent No. 2 as well as her dower amount of Rs.500,000/-. The learned Family Court dismissed the suit to the extent of dower by holding that admittedly the Respondent No. 1 had relinquished her entitlement to the dower amount as per an affidavit. It also dismissed the claim of maintenance allowance for the minor in view of the fact that the minor is admittedly not the real son of the Petitioner and also in view of the fact that the minor is receiving maintenance allowance from his biological father. However, the suit was allowed to the extent of maintenance allowance of Rs.15,000/- to the Respondent No. 1 from the date of marriage till the date of divorce. Both the parties filed appeals. The Petitioner's appeal to the extent of maintenance allowance of Rs.15,000/- granted to the Respondent No. 1 was dismissed. Whereas, the appeal filed by the Respondent No. 1 to the extent of claim of maintenance of the Respondent No. 2 as well as dower was allowed on the ground that the Petitioner had knowingly agreed by way of

Nikah Nama to provide maintenance to the Respondent No. 2 and that the affidavit of relinquishment of dower did not inspire confidence and as such is not believable in the circumstances of the case.

2. The learned counsel for the Petitioner submits that such findings of the learned Appellate Court are perverse to the facts and circumstances of the case as the affidavit of relinquishment has never been denied by the Respondent No. 1, which is also evident from the fact the Respondent No. 1 filed a suit for cancellation of the affidavit which, however, was dismissed for lack of evidence. He further highlights that the affidavit was executed soon after the marriage when the relations between the parties were cordial and as such there is no reason to doubt that the affidavit was executed by the Respondent No. 1 of her own free will. He submitted that it is also noteworthy that the claim of dower was filed only after divorce and never during the subsistence of the marriage even though she could have in case the relinquishment was not of her own free will. With regard to the maintenance of the minor/Respondent No. 2 the learned counsel has drawn attention of this Court to the suit filed by the Respondent No. 2 against his biological father and also the agreement executed between the parties pursuant to which the minor is getting maintenance allowance from his biological father. In any event he has pointed out that the Impugned Judgment and Decree has allowed the Respondent No. 2's claim for maintenance from the date of desertion till the date of divorce. However, the date of desertion is same as the date of divorce which may be seen from the Divorce Effectiveness Certificate which is also available on record.

3. He, however, seeks time to assist this Court by relying upon the relevant case law to shed light upon the sanctity of

the clause of the Nikah Nama and its effectiveness whereby the Petitioner had agreed to maintain the Respondent No. 2.

4. Since the matter is now part heard, therefore, in order not to complicate the matter and in the interest of justice the Impugned Judgment and Decree shall remain suspended till the next date of hearing.

5. Relist on 06.04.2023 for further arguments of the Petitioner's side as well as the arguments of the Respondents and rebuttal if any.

(SAMAN RAFAT IMTIAZ)
JUDGE

Tanveer Ahmed/*