

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

W.P. No.334/2012

Shakeel Hussain Shah
Versus
Bushra Hameed etc.

Petitioner by:	<u>Jan Muhammad Khan Advocate</u>
Respondent No.1 by:	<u>Syed Wajid Ali Gillani, Advocate</u>
Date of hearing:	<u>21-02-2013</u>

Riaz Ahmad Khan J: This judgment is directed to dispose of
W.P. No. 334/2012.

2. Brief facts of the case are that petitioner Shakeel Hussain Shah married respondent No.1 Bushra Hameed on 22-04-2009. Unfortunately, after the marriage, the relations became strained and in May 2010, the respondent wife left the house of the petitioner. According to respondent wife, she was mal-treated and was given beatings, so she had to leave the house, whereas contention of the petitioner husband is that the respondent wife had left the house at her own sweet-will. Respondent wife thereafter filed suit for recovery of dower amount Rs.3,00,000/- and maintenance allowance at the rate of Rs. 4000/- per month. Afterwards prayer regarding recovery of dowry articles was also added to the plaint. Whereas, the defendant husband filed suit for restitution of conjugal rights. The respondent/plaintiff appeared as her own witness and against that defendant husband appeared as sole witness.

Learned trial Court after hearing the parties, passed the decree regarding dower amount as well as maintenance allowance, however, the suit regarding dowry articles was dismissed. The suit regarding restitution of conjugal rights was also decreed. Both the parties filed appeals before learned Additional District Judge. In appeal, the decree regarding dower amount as well as maintenance allowance was maintained. The claim regarding dowry articles was dismissed. However, suit regarding restitution of conjugal rights was also dismissed. Feeling aggrieved of the same, the petitioner husband filed the present writ petition.

3. Learned counsel for the petitioner submitted that petitioner/husband had paid dower amount on the wedding night to the respondent/wife and the petitioner/husband had stated the same fact before the Court. The wife as such, was required to produce evidence to disprove the claim of the husband. It was further submitted that the allegation of cruelty was not proved against the husband. The wife had left the house of her husband at her own sweet-will and therefore, she is not entitled to maintenance allowance. Learned counsel also submitted that since there is no suit for dissolution of marriage, the dower amount had been paid, therefore, the petitioner husband was entitled to decree for restitution of conjugal rights.

4. On the other hand, learned counsel for respondent wife submitted that the dower amount was never paid, the

respondent wife was subjected to physical torture and in that respect, medical report is available. The respondent wife had been living in the house of her parents since 11-05-2010 and she is, therefore, entitled to maintenance allowance.

5. I have heard learned counsel for the parties and have also perused the record.

6. Admitted position in the present case is that dower amount fixed at the time of marriage was Rs.3,00,000/-. It is also admitted that the maintenance allowance, agreed at the time of Nikkah was Rs.4000 per month. Nikkah-nama in this respect is also available on record. Contention of the petitioner husband is that he had paid the dower amount on the wedding night and in this respect had deposed before the learned trial Court. Mere statement before the Court cannot be considered as a proof in its own-self. The petitioner husband is bound to prove the payment of dower amount through evidence. In absence of cogent evidence, simple statement cannot be considered as a proof and in such case, the onus would not shift to the wife to disprove the claim of the husband. Mere statement that dower was paid on the wedding night, is not sufficient to prove the payment of dower. Infact, such a statement cannot even be considered as evidence. The payment of dower as such has not been proved.

7. Dower infact is a debt against the husband and in case the dower amount is not paid, the wife would have a right to

refuse the performance of her marital obligations. Once it is proved that the dower has not been paid, the wife would be entitled to stay away from the husband and the husband would be bound to pay maintenance to his wife. In the present case, there is no evidence to prove that the husband had paid the dower amount and therefore, the wife is entitled to receive maintenance allowance.

8. As far as amount of maintenance allowance is concerned, the same was fixed in the Nikkah-nama as Rs.4,000/- per month, so both the learned lower Courts had rightly fixed the said amount as maintenance allowance of the respondent wife. Regarding restitution of conjugal rights, the learned counsel for the respondent wife submitted that the respondent wife is prepared to live with the petitioner husband provided the dower amount as well as the maintenance allowance is paid to the wife and house for residential purpose is provided to the respondent wife. The allegation of cruelty has not been proved, therefore, the petitioner husband is entitled to the decree for restitution of conjugal rights subject to payment of dower. The writ petition in respect of dower and maintenance allowance is therefore, dismissed, whereas in respect of restitution of conjugal rights is accepted subject to payment of dower.

(Riaz Ahmad Khan)
Judge

Wajid