

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3834 of 2021
Mst. Sidrah Shoukat and another
Versus
Additional District Judge, Islamabad (East) and others

Date of Hearing:	09.02.2023
Petitioner by:	Ch. Muhammad Ali Imran, Advocate for the petitioners in the instant petition as well as for respondents No.1 and 2 in W.P. No.3886/2021.
Respondents by:	Respondent No.3 in-person in the instant petition as well as petitioner in W.P. No.3886/2021.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment I propose to decide writ petitions No.3834 and 3886 of 2021 since they entail certain common features.

2. Writ petition No.3834/2021 has been filed by Mst. Sidrah Shoukat (“**Mst. Sidrah**”) and her minor daughter, Aaminah Azeem, against the consolidated judgment and decree dated 27.09.2021 passed by the Court of the learned Additional District Judge, Islamabad whereby the appeal filed by them against the judgment and decree dated 25.10.2019 passed by the learned Judge Family Court, Islamabad was dismissed. In the said judgment and decree dated 25.10.2019, the learned Judge Family Court had partially decreed the suit filed by the said petitioners for recovery of maintenance, dower, dowry, recovery of passport and gold ornaments. The decree was to the extent of maintenance at the rate of Rs.20,000/- per month to petitioner No.2, Aaminah Azeem with a 10% annual increase with effect from April 2017.

3. Through writ petition No.3886/2021, the petitioner, Major Azeem Ahmad (“**Major Azeem**”), impugns the consolidated judgment and decree dated 27.09.2021 passed by the Court of the learned Additional District Judge, Islamabad whereby the appeal filed by the said petitioner against the judgment and decree dated 25.10.2019 passed by the learned Judge Family Court was dismissed.

4. The record shows that Major Azeem and Mst. Sidrah got married on 10.05.2015. The couple were blessed with one daughter, Aaminah Azeem, who is presently six years of age. After the relations between the couple turned sour, Mst. Sidrah had to leave her matrimonial abode and live with her parents. This caused Major Azeem to file a suit for restitution of conjugal rights on 07.04.2018. In the reply to the said suit, Mst. Sidrah sought the dissolution of marriage. In the said reply, it was pleaded *inter alia* that Major Azeem had caused physical cruelty and mental torture to Mst. Sidrah. The proceedings culminated in the order dated 26.04.2018 whereby the suit for restitution of conjugal rights was dismissed and a decree for the dissolution of the marriage was issued on the basis of *khula*. There is nothing on the record to show that either of the contesting parties had assailed the said decree.

5. On 24.10.2017, Mst. Sidrah and Aaminah Azeem had filed a suit for recovery of maintenance etc. against Major Azeem before the learned Judge Family Court, Islamabad. The trial in the said suit culminated in the judgment and decree dated 25.10.2019 whereby the said suit was decreed only to the extent of maintenance at the rate of Rs.20,000/- payable to Aaminah Azeem with 10% annual increase with effect from April 2017. The said judgment and decree was assailed by Major Azeem as well as Mst. Sidrah and Aaminah Azeem in two separate appeals. Vide consolidated judgment and decree dated 27.09.2021, both the appeals were dismissed. Writ petition No.3834/2021 has been filed by Mst. Sidrah and Aaminah Azeem whereas writ petition No.3886/2021 has been filed by Major Azeem against the said consolidated judgment and decree dated 27.09.2021.

6. Learned counsel for Mst. Sidrah and Aaminah Azeem submitted that Mst. Sidrah in her reply to Major Azeem's suit for conjugal rights had specifically pleaded that she had been forced to leave matrimonial abode due to physical cruelty inflicted on her by Major Azeem; that since Mst. Sidrah had been forced to leave her matrimonial abode, the learned Judge Family Court should have passed a decree for the payment of the remaining dower amounting to Rs.2,00,000/- in her favour; that there was no proof on the record to show that other than Rs.10,000/- which was paid to Mst. Sidrah at the time of *nikah*, the remaining amount of Rs.2,00,000/- had been paid to her at any stage;

that the learned Courts below concurrently erred by not issuing orders for the return of Mst. Sidrah's gold ornaments and passport; that the learned Judge Family Court ought to have granted a decree for the payment of maintenance in favour of Mst. Sidrah until the expiry of the *iddat* period; and that the quantum of maintenance fixed by the learned Judge Family Court for Aaminah Azeem was too low and could not meet her needs at this day and age of rampant inflation. Learned counsel for Mst. Sidrah and Aaminah Azeem prayed for their writ petition to be allowed in terms of the relief sought therein and for writ petition of Major Azeem to be dismissed.

7. On the other hand, Major Azeem appeared in-person and submitted that the quantum of maintenance fixed by the learned Judge Family Court for his daughter was too high and unaffordable for him given his meager salary paid to him by the Pakistan Army; and that he had also to support his parents and new family from his salary. He prayed for the concurrent judgments of the learned Courts below to be modified and the quantum of maintenance for his own daughter to be reduced. He further submitted that the rejection of all other claims made in the suit for recovery of maintenance do not suffer from any jurisdictional infirmity.

8. In rejoinder, learned counsel for Mst. Sidrah and Aaminah Azeem submitted that the decree was for Rs.20,000/- with annual increment at the rate of 10% per annum but Major Azeem had not paid the incremental amount at any stage.

9. I have heard the contentions of the learned counsel for Mst. Sidrah and Aaminah Azeem as well as Major Azeem (who has appeared in-person) and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 4 to 5 above and need not be recapitulated.

10. The learned Courts below had concurrently concluded that since Mst. Sidrah had obtained a decree for dissolution of marriage on the basis of *khula* in terms of Section 10(4) of the West Pakistan Family Courts Act, 1964, she was under an obligation to return the dower received by her. This finding caused the learned Courts below to turn down Mst. Sidrah's claim for the recovery of dower amounting to

Rs.2,00,000/-. It is not disputed that the learned Judge Family Court, on 26.04.2018 (i.e., after the institution of the suit for recovery) had passed a decree for the dissolution of marriage on the basis of *khula*. Mst. Sidrah did not assail the said decree or assert that the marriage should have been dissolved on the basis of cruelty inflicted on her by Major Azeem. Therefore, I have no reason to interfere with the concurrent findings that Mst. Sidrah was not entitled to the recovery of deferred dower amounting to Rs.2,00,000/-.

11. The factual aspects regarding the recovery of gold ornaments and dowry articles have been adequately dealt with by the learned Courts below and warrant no interference.

12. As regards Mst. Sidrah's assertion that the quantum of maintenance for Aaminah Azeem should have been enhanced by the learned Appellate Court, suffice it to say that the maintenance is not just for Rs.20,000/- per month with effect from April 2017 but also with an annual increment of 10% per annum. Although given the present inflation, the said amount may not be sufficient for a school going six-year old child but since two *fora* below have endorsed the said maintenance, I am not inclined to interfere with the same. Major Azeem, however, remains bound to pay the maintenance to his daughter strictly in accordance with the judgments and decrees passed by the learned Courts below.

13. Since I do not find any jurisdictional irregularity in the concurrent judgments and decrees passed by the learned Courts below, both the writ petitions are dismissed with no order as to costs. Office is directed to transmit a copy of this order to the learned Executing Court.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 20.02.2023.

(JUDGE)