

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. NO: 2079/2013
JOODAT KAMRAN ALVI –VS-ADJ ETC

Serial No. of order of proceeding.	Date or order of proceedings	Order with signatures of judge, and that of parties or counsel, where necessary.
1	2	3

16.5.2013

Mr. Adnan Haider Randhawa Advocate.

ORDER
MUHAMMAD ANWAR KHAN KASI, CJ:

The petitioner has challenged the Judgments & decrees dated 19.5.2012 and 15.11.2012 passed by Mr. Rasool Buksh Mirjat, learned Civil Judge/Judge Family Court and Miss. Rukhshanda Shaheen, learned ADJ-West, Islamabad respectively, whereby the suit of the respondent/plaintiff was decreed to the extent of dower amount i.e 60-tolas gold, which was maintained in appeal.

It is inter alia contended that impugned judgments are based on misreading and non-reading of evidence as well as available material on record.

It is further submitted that the dower being deferred dower of 50-tolas of gold is payable only in the eventuality of death or divorce.

It is his case that the respondent/plaintiff does not want to live with him as wife and, therefore, she be made liable to compensate the petitioner by paying back the dower amount i.e 10-tolas of gold and Rs.10,000/-, which she has already received.

In support of his submissions, the learned counsel relied upon case laws **PLD 1980 Karachi 477** and **1996 CLC 272**, which are on the point that the dower is a right which comes into existence with the contract itself except that in case the dower is deferred its enforcement is held in abeyance till a certain event, i.e dissolution of marriage by divorce, occurs and prompt dower would be payable on demand while deferred dower is payable on dissolution of marriage by death or divorce.



Heard and record perused.

According to the record, the respondent/plaintiff had filed a suit for dissolution of marriage and recovery of dower amount in the shape of 50-tolas of gold on 18.7.2011 in the Court of learned Civil Judge/Family Judge, Islamabad, which was contested by the petitioner through written-statement and the learned trial Court framed the following issues:-

- (1) Whether the plaintiff is entitled to get the decree for dissolution of marriage on the basis of khula on the grounds of hatred as well as physical torture ?OPP
- (2) Whether the plaintiff is entitled to get a decree for recovery of dower amount in lieu of 50-tolas gold ornaments on the ground mentioned in the plaint ?OPP
- (3) Whether the plaintiff has no cause of action and locus standi to file the instant suit ?OPD
- (4) Whether the suit of the plaintiff is not maintainable in its present form ?OPD
- (5) Whether the plaintiff has not come to Court with clean hands and has filed this suit just to blackmail the defendant ?OPD
- (6) Relief.

The parties produced their respective evidence and the learned Trial Court after discussing the issues in the light of evidence and arguments dismissed the suit of respondent/plaintiff to the extent of dissolution of marriage and decreed it to the extent of dower amount i.e 60-tolas of gold by holding that the plaintiff is entitled to receive the remaining dower amount as mentioned in nikah-deed.

The Judgment/decreed was assailed before the learned ADJ-West, Islamabad and after hearing the parties, the learned Appellate Court dismissed the appeal by observing that the contents of nikah nama are not denied by the present petitioner and as a substantial piece of evidence, it clearly shows an entry in column No.13 that 60-tolas of gold and Rs.10,000/- were fixed as dower, while column No.14 mentions that 10-tolas of gold and Rs.10,000/- were prompt dower, while the rest was payable on demand.

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The contention of the petitioner that amount of deferred dower cannot be claimed till divorce between the parties or death of the husband, has got no force because the deferred dower is payable on demand and wife has got every sharai and legal right to demand the deferred dower, whenever she wants. The payment of deferred dower after divorce or death is nowhere mentioned in Islamic jurisprudence or applicable laws and the petitioner is under legal obligation to satisfy the decree.

The explanation and the command has been given in Ayat 04 of "Sura-al-Nisa" :-

And give unto the women (whom marry) free gift of their marriage pertains, but if they of their own accord remit unto you a part thereof, then, you are welcome to absorb it (in your wealth) (English translation by Marnaduke Pickthall by Taj Company Ltd.

Urdu translation

”اور عورتوں کو ان کے مہر خوشی سے دے دو، اگر وہ اپنی خوشی سے اس میں سے کچھ تم کو چھوڑ دیں تو اسے فراق رسوئی سے کھالو۔“

The explanation has again been given in **Hidaya Nikah** at Page 303 that prompt dower is payable before consummation of marriage, while deferred dower is payable on demand.

As far as the case laws referred by learned counsel for petitioner are concerned, it lays down that even after death of the husband or in case of dissolution of marriage, the right to receive deferred dower remains in the field and women is entitled to receive it from the legacy of the deceased husband.

The learned Trial as well as Appellate Court has already discussed the evidence and the material available on record. This Court while exercising powers Under Article 199 of the Constitution cannot enter into exercise of reassessment of the evidence. The findings of both the



learned Courts do not suffer from any illegality or material irregularity warranting interference by this Court.

For the foregoing reasons, the petition being devoid of merits is dismissed in limine.

M.Suhail
16.5.2013

(CHIEF JUSTICE)

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APPROVED FOR REPORTING