

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P.No.3433/2021

Babar Shabbir

vs.

Asia Mehboob & 02 others

and

W.P. No.3451/2021

Babar Shabbir

vs.

Zahra Fatima & 02 others

Petitioner by: Mr. Kamran Yousaf Kiani, Advocate.

Respondents No.1 & 2 by: Mr. Ahmed Abdul Rafay, Advocate.

Date of Decision: 12.05.2022

MOHSIN AKHTAR KAYANI, J: By way of this common judgment, this Court intends to decide the captioned writ petitions having similar questions of law and involving similar parties.

2. Brief and consolidated facts are that petitioner Babar Shabbir and Asia Mehboob (respondent wife) married on 23.06.2019 and were blessed with a baby girl on 19.04.2020, who was suffering from Atrial Septal Defect (ASD) and Secundum (hole in the heart), as a result whereof, the relationship between the spouses became strained and ultimately the petitioner announced divorce upon respondent wife on 20.08.2020 without handing over back the gold ornaments weighing eight Tolas or maintenance of the minor to meet the medical expenditures, as such, this compelled the respondent wife to file a suit for recovery of maintenance allowance, dowry articles and gold ornaments, which was partially decreed vide impugned ex-parte judgment and decree dated 18.01.2021 to the extent of maintenance of minor @ Rs.5,000/- per month and Rs.10,000/- per month for respondent wife w.e.f. April, 2020 till expiry of

her Iddat period, whereas the suit was dismissed to the extent of dowry articles and gold ornaments. Feeling aggrieved thereof, the petitioner preferred an appeal, which has been dismissed vide impugned judgment and decree dated 14.07.2021 declaring the same as time barred. Hence, instant writ petition.

3. Learned counsel for petitioner contends that the both the Courts below have not appreciated the documentary evidence available on record, rather resorted to pass the impugned judgment and decree in a slipshod manner; that the respondents with malafide intention mentioned wrong address of the petitioner in order to attain ex-parte judgment and decree, as a result whereof the petitioner also learnt about passing of the ex-parte judgment and decree at belated stage, but the learned first Appellate Court has not taken into account such dubious conduct on the part of respondents and dismissed the appeal filed by the petitioner, even otherwise, the respondent wife was self-deserted lady, therefore, she was not entitled for past maintenance.

4. Conversely, learned counsel for respondents No.1 and 2 stressed that the petitioner having orthodox attitude was annoyed with respondent No.1 (wife) for giving birth to a daughter (respondent No.2), who was otherwise suffering from Atrial Septal Defect (ASD) and Secundum, as such, the petitioner instead of taking care of the minor announced a divorce upon the respondent wife on 20.08.2020 and deserted her without giving her the personal belongings and gold ornaments weighing 08 Tolas given at the time of marriage as gift, per se, both the Courts below have rightly appreciated the overall circumstances of the case and right decreed the suit.

5. Arguments heard, record perused.

6. Perusal of record reveals that petitioner Babar Shabbir and respondent Asia Mehboob were married to each other on 23.06.2019 in accordance with

Muslim rites and ceremony, whereas 08 Tolas Gold have been given to the wife, specifically provided in Column 17 of the *Nikahnama*, Ex.P2. Both were blessed with daughter namely Zahra Fatima, who is presently in custody of real mother, but later, on parties have developed acute disparity, which resulted into divorce pronounced by the petitioner through Ex.P3 on 20.08.2020. During the period of desertion of the respondent wife, the same has been transmitted through Ex.P4, the birth registration certificate Ex.P5, date of birth of minor as 19 April, 2020 available on record. Respondent ex-wife Asia Mehboob has filed a suit for recovery of maintenance allowance, dowry articles and gold ornaments, which has been decided through ex-parte judgment and decree in her favour on 18.01.2021, whereby she has been granted relief of maintenance alongwith minor's expenditure w.e.f. April, 2020 to the extent of minor @Rs.5,000/- per month till her legal entitlement with 10% annual increase and maintenance to the extent of respondent wife at the rate of Rs.10,000/- per month was also passed w.e.f April, 2020 till expiry of her *Iddat* period, but the gold jewelry has not been referred in the impugned judgments, as a result whereof, she filed an appeal before District Judge to that extent, whereas petitioner has also filed an appeal before District Judge, against the same judgment.

7. Both the matters were decided by learned Additional District Judge vide judgments and decrees dated 14.07.2021 and 04.09.2021 separately, whereby the appeal filed by the petitioner has been dismissed being time barred, though the petitioner has taken a stance that he has been proceeded ex-parte and he has not received any notice from the trial Court, which aspect has been deprecated by learned Additional District Judge on the ground that the application for condonation of delay is silent qua any justifiable reasons, on the other hand, the respondent ex-wife was awarded 08 Tolas of Gold

jewelry, which is part and parcel of *Nikahnama*. However, at this stage, the petitioner has conceded that he has not objected to the maintenance of the minor in any manner, therefore, the same was upheld. However, he is only challenging the 08 Tolas of gold and petitioner has been confronted to the extent of 08 Tola Gold, which he conceded that the same has been mentioned in Column 17 of the *Nikahnama*, whereas he has not contested the suit at the relevant time nor any rebuttal evidence is available on record, in such scenario, his plea is not entertainable before the High Court. The factual aspects have already been appreciated by both the Courts below on the basis of unrebutted evidence brought on record by the respondent ex-wife Asia Mehboob, therefore, in such scenario, High Court cannot in its limited constitutional jurisdiction, interfere with concurrent findings of fact supported by evidence as held in 1980 SCMR 933 (Ghulam Muhammad and another vs. Mst. Noor Bibi and 5 others). Even otherwise, the petitioner at the same time, filed an application for setting-aside the ex-parte decree before the Judge Family Court and also adopted to challenge the judgment and decree of the first appellate Court and now raised the question in the constitutional jurisdiction, in such scenario, the doctrine of election also comes into play as held in PLD 2020 Islamabad 361 (Chairman, National Highway Authority and another vs. Messrs Moon Traders and another), PLD 2018 Supreme Court 828 (Trading Corporation of Pakistan vs. Development Sugar Mills Limited and others), 2019 CLC 640 [Lahore (Multan Bench)] (Muhammad Boota vs. Judge Family Court and others), 2005 CLC 525 [Lahore] (Zafar and 2 others vs. Ghulam Muhammad and 9 others).

8. In view of above position, the factual aspect has properly been appreciated by the Courts below and concurrently been held against the petitioner where he has not challenged the vires of maintenance part of the

judgments and decree and conceded the claim that extent, only agitated the matter to the extent of 08 Tola Gold against whom, nothing is available on record, adverse to the respondent claim, therefore, both writ petitions are misconceived and same are hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

RAMZAN