

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
(JUDICIAL DEPARTMENT)

W.P. No.4012/2018

Liaqat Ali Mir

Versus

Dilshad Bibi & 2 others

Petitioner by : Mr Zahid Ayub Rathore, Advocate.

Respondent No.1 by : Mr Ali Hussain Bhatti, Advocate.

Dates of Hearing : **02.03.2023**

Arbab Muhammad Tahir, J.- The petitioner, Liaqat Ali Mir, through the instant petition has assailed judgments and decrees, dated 20.05.2017 and 25.01.2018, passed by the learned Judge Family Court and the learned Additional District Judge (West), Islamabad, respectively.

2. Succinctly, the facts are that the respondent No.1, *Dilshad Bibi*, got married to the petitioner on 15.05.2011 against dower amount of Rs.50,000/-, three tolas gold ornaments (*Mua'jjal*) and one house consisting of two rooms with kitchen and bath or its price i.e. Rs.500,000/-. The pleadings reveal that the relationship between the spouses remained strained. Respondent No.1 has asserted in the plaint that she was forcibly ousted by the petitioner on 18.07.2012 from their matrimonial abode. Respondent No.1 filed a suit wherein she had prayed for a decree in her favour for recovery of (i) maintenance allowance at the rate of Rs.10,000/- per month; monthly pocket money at the rate of Rs.5,000/- for the month of November, 2012; medical expenses i.e. Rs.150,000/-; Rs.500,000/- as penalty for contracting second marriage; residential house as per Nikahnama

or in alternate its value i.e. Rs.500,000/-; dowery articles mentioned in the list (Exh.P-6) and a decree for restitution of conjugal rights. Earlier the suit was decreed ex-parte vide ex-parte judgment and decree, dated 19.02.2013. However, later on application of the petitioner, the ex-parte judgment and decree were set aside. The suit was thereafter contested by the petitioner. The learned trial court framed eleven (11) issues. Total 04 PWs recorded statement in support of the claim of the plaintiff / Respondent No.1, out of which PW-2 was later given up. The plaintiff corroborated her version by adducing documentary evidence including nikahnama (Exh.P-5) and list of dowery articles (Exh.P-6). The petitioner/defendant produced 03 DWs and adduced documentary evidence including attested receipts of payments Exh.D-7, Exh.D-8. After recording of evidence and affording an opportunity of hearing to the parties, the learned trial court passed judgment and decree, dated 20.05.2017. The petitioner preferred an appeal, which was partially allowed by the learned Additional District Judge vide judgment and decree, dated 25.01.2018, by setting aside the decree to the extent of medical charges.

3. The learned counsel for the petitioner has argued that; the impugned judgments and decree are not tenable in law; the learned Family Court acted without jurisdiction; the decree to the extent of residential house was passed on the basis of forged document; one of the witnesses Munir Ahmed Abbasi (PW-2) was given up, which shows that his statement might have favoured the petitioner; the nikahnama shows the agreed amount of maintenance as Rs.3,000/- per month and any deviation therefrom is illegal; the findings/reasoning of the learned trial court with regard to the residential house are based on presumptions and conjectures; the petitioner had divorced the plaintiff/ respondent No.1, therefore, the suit was filed through concealment of facts; the learned trial court erred by decreeing the

dowery articles because no receipts of purchase and witnesses in support thereof were produced.

4. On the other hand, the learned counsel for the respondent has argued that; the impugned judgments and decrees are well reasoned and in accordance with law; the petitioner could not prove his stance regarding divorce through documentary evidence; the residential house mentioned in Column No.16 of nikahnama was unpaid dower, hence it was rightly decreed; the petitioner took the stance that he had contracted the second marriage with prior permission of his wife; the petitioner could not prove that he had maintained respondent No.1 after separation; admittedly the petitioner has contracted a second marriage.

5. Heard. Record perused.

6. The plaintiff/respondent No.1 had filed the recovery suit against the petitioner seeking recovery of dower, dowery articles, expenses, penalty, etc. and restitution of conjugal rights. The parties led their respective evidence, wherein the date of divorce has been admitted by the plaintiff as 10.12.2014. The petitioner, however, took the stance that he had divorced plaintiff/respondent No.1 on 04.06.2012 but failed to prove this fact. The petitioner failed to prove that he had maintained his wife during the period of separation/desertion till expiry of the period of *iddat* after divorce. The decree to the extent of medical expenses has been rightly set aside by the learned appellate court on the ground that no documentary proof of the quantum of expenses was adduced in evidence by the plaintiff/respondent No.1. The plaintiff/respondent No.1 had prayed for a decree of Rs.500,000/- as penalty for contracting second marriage on the basis of Iqrarnama Abadi (Exh.P-8). The learned trial court while addressing issue No.3 relating to recovery of penalty for contracting second marriage by the petitioner, had concluded that the

said claim of the plaintiff/respondent No.1 was outside the scope and jurisdiction of the learned Family Court in terms of the Schedule to the Family Courts Act, 1964.

7. The petitioner during trial took the stance that the entry in Column No.16 of the Nikahnama with regard to residential house consisting of two rooms, kitchen and bath, was forged. He adduced in evidence the video footage of nikah ceremony i.e. Exh.D-10, to establish that at the time of solemnizing nikah, the agreed dower was three tolas gold ornaments and Rs.50,000/- cash. He tried to lend support from the entry in Column No.15, which shows that the agreed dower was *Mua'jjal* and stood paid instantly. However, he failed to show on the basis of record that the entry in Column No.16 was forged. Perusal of the Nikahnama (Exh.P-5) shows that nikah was solemnized by *Qari Muhammad Afzal (nikahkhwan)* and registered by *Syed Waheed Ahmed Shah (Nikah Registrar)*. The petitioner failed to prove that the official record maintained by *Nikahkhwan* and *Nikah Registrar* is different from the one produced in evidence by the plaintiff/respondent No.2 before the learned Family Court. The claim of the plaintiff/respondent No.2 relating to the residential house mentioned in Column No.16 of the nikahnama remained un-rebutted. The petitioner although alleged forgery, but failed to contradict the version of the plaintiff/respondent No.2 on the basis of cogent evident.

8. The learned courts below have properly appreciated the evidence brought on record by the parties. The learned counsel for the petitioner, despite his able assistance, could not point out any legal infirmity, jurisdictional defect or incorrect appreciation of evidence by the learned courts below.

9. The power of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to interfere with concurrent findings of the learned courts below is, therefore, limited to the inquiry whether the learned courts below have acted or undertaken the proceedings in accordance with law. It is, therefore, settled law that a writ of certiorari cannot be used as a substitute of appeal or revision as its scope is limited. Reliance is placed on the cases titled "*Rahim Shah v. The Chief Election Commissioner of Pakistan and another*" [PLD 1973 Supreme Court 24] and "*Muhammad Azim Khan Afridi v. The President of Pakistan through Principal Secretary and others*" [2023 SCMR 68].

10. For what has been discussed above, the instant petition is without merit and is, therefore, accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)  
JUDGE

Announced in the open Court on \_\_\_\_\_

JUDGE