

**ORDER SHEET.**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

WP No. 607 of 2011  
ATTA ULLAH SHAH  
Vs  
ADJ, ISB & Others

S. No. of order / proceedings	Date of order / Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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02  
11.12.2014

Sardar Tariq Mehmood, Advocate for petitioner,  
Mr. Tahir Ishaq Mughal, Advocate for respondent No.3

**ORDER**  
**MUHAMMAD ANWAR KHAN KASI, CJ:** Petitioner [defendant in main

suit filed by respondent No.3] is aggrieved by Ex-Parte Judgment & Decree dated 21.04.2010 and Judgment & Decree dated 3.2.2011, whereby learned Judge Family Court decreed the suit of respondent No.3 for recovery of dower and maintenance allowance while appeal there-against was dismissed as being time barred.

2- Precisely, facts giving rise to filing of this petition, are that respondent No.3 filed a suit for recovery of dower and maintenance allowance which was initially contested by the petitioner through written statement but after failure of reconciliation proceedings, he was proceeded ex-parte vide order dated 15.04.2010 and ultimately suit was decreed ex-parte vide Judgment & Decree dated 21.04.2010.

3- On coming to know of it, petitioner filed an application under Section 9(6) of the Family Court Act 1964 which was dismissed vide order dated 28.07.2010 and thereafter he moved the Hon'ble Lahore High Court, Rawalpindi Bench through Writ Petition No. 4117 of 2010 which was also dismissed in limine vide order dated 27.09.2010 by observing that proceedings of the learned Trial Court did not support his version of having no knowledge about proceedings after failure of reconciliation proceedings and that he had to prefer an appeal against the Judgment & Decree.

4- At this stage, the petitioner filed appeal against the Judgment & Decree of learned Trial Court but it was dismissed vide Judgment dated 3.2.2011 by observing that request for setting aside ex-parte proceedings had already been turned down by Hon'ble Lahore High Court, Rawalpindi Bench vide order dated 27.09.2010 and, therefore, the court had no power to set aside the same and that no sufficient reason had been advanced to allow the petitioner to adduce his case. Hence, this petition assailing both the orders together with original order dated 15.04.2010 whereby ex parte proceedings were initiated against him.

5- Learned counsel, *inter-alia*, pressed this petition by submitting that if an order, on the face of it, is result of mis-reading & non reading of the material available on record, this Court has ample power to set it aside. It is

further contended that both the learned courts failed to consider the important objection regarding Nikah-Nama relied upon by the respondent No.3.

6- Learned counsel for respondent No.3, on the other hand, repelled the above submissions. He submits that it is quite evident from order sheets that after failure of reconciliation proceedings, learned counsel for petitioner had been appearing and thereafter ex parte proceedings were initiated against which a writ petition was also filed by him but it was dismissed in limine, therefore, the matter cannot be reopened. He added that both the courts have addressed the grounds advanced by the petitioner and the petition due to having no question of law is liable to be dismissed.

7- Heard & record perused.

8- In order to seek setting aside ex-parte proceedings initiated on 15.04.2010, petitioner has failed to advance any cogent, convincing and authentic reason of his absence from proceedings before the learned Trial Court. His earlier request has already been turned down by the Hon'ble Lahore High Court, Rawalpindi Bench, Rawalpindi, vide Judgment dated 27.09.2010.

9- Findings to the extent of recovery of maintenance allowance at the rate of Rs. 4000/- per month with effect from May 2008 till subsistence of marriage in the light of evidence available on record were well justified and do not call for any interference.

10- Adverting to main ground of mis reading & non reading of material facts, record reveals that respondent No.3 in her plaint mentioned that at the time of Nikah, dower was fixed as seven tola gold ornaments which are still unpaid and to verify the fact she annexed Nikah-Nama that had been made basis for awarding decree in her favour. The petitioner in his written-statement had taken a specific stance together with copy of Nikah-Nama that dower of seven tola gold ornaments had been paid and it is mentioned as such in Nikah Nama and that Nikah Nama relied upon by the respondent No.3 is not genuine and a forged one. Copies of both these documents containing distinct entries against column No. 13 are available on file which read as under:

د ۱۳ - منہر کی رقم - سات ٹولہ سونا جو طلائی زینوارات کی صورت میں ادا کیا گیا

RELIED BY PETITIONER

د ۱۳ - منہر کی رقم - سات ٹولہ سونا جو طلائی زینوارات کی صورت میں ادا کیا گیا

RELIED BY RESPONDENT NO. 3

11- The learned Trial-Court at the time of passing ex-parte Judgment & Decree did not consider this important aspect and simply relied upon copy of Nikah-Nama tendered by respondent No.3 by treating the same as correct & genuine without ascertaining its authenticity through the record of concerned Union Council as there was a specific allegation of it being forged with another copy of Nikah-Nama. It is settled principle that court while

deciding an issue of fact is under obligation to ascertain its veracity but in this respect no such effort was made and the suit was decreed on the basis of document tendered by respondent No.3 without taking into consideration the objection contained in written statement coupled with copy of Nikah Nama having distinct & divergent entry. It was obligatory for the learned Trial-Court to consult the record of concerned union council for ascertaining authenticity of the two documents before passing a decree.

12- The above important aspect skipped the sight of learned Trial as well as Appellate Court which require rectification in order to do substantial justice. If the orders are arbitrary and result of non reading and mis reading of evidence or proper exercise of jurisdiction, this Court under Article 199 is competent to annul the same in order to meet the ends of justice.

13- In view of above, while maintaining order of ex-parte proceedings dated 15.04.2010, Ex-Parte Judgment & Decree dated 21-04-2010 and Judgment & Decree dated 3.2.2011 of the Appellate Court to the extent of Issue No.01 are set-aside and the matter is remanded to the learned Trial Court, which shall be decided afresh in the light of observations contained hereinabove within a period of fortnight under intimation to this Court through the Registrar for perusal in Chambers after giving due audience to both the sides. No orders to costs.

**[CHIEF JUSTICE]**

Approved for reporting.

Aamir

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