

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Writ Petition No.1329/2019

Muhammad Mudassar

versus

Additional District Judge (West), Islamabad & 3 others

Petitioner by: Ch. Yasir Azeem, Advocate.

Respondents by: Ch. Qaisar Nazir Sipra, Advocate for
Respondents No.2 to 4.

Date of Decision: 30.01.2020.

MOHSIN AKHTAR KAYANI, J: Through the instant writ petition, the petitioner has called in question judgment and decree of the learned Judge Family Court (West), Islamabad dated 13.10.2018 as well as the judgment of the learned Additional District Judge (West), Islamabad dated 11.02.2019, whereby Respondents No.2 to 4 have been declared entitled for recovery of maintenance allowance along with dower in shape of 7 ½ Tola gold ornaments.

2. Brief facts referred in the instant writ petition are that the Mst. Sadaf Bibi/Respondent No.2 filed a suit for recovery of maintenance allowance and dower against the petitioner on the pleas that the petitioner and respondent No.2 contracted marriage on 23.05.2010 against dower amount of 7½ Tola gold ornaments, which was not paid by the petitioner at the time of Nikah. The said spouses have been blessed with children i.e. Respondents No.3 & 4 but the matrimonial bond became tense with time, resulting into ousting of Respondents No.2 to 4 from the abode of petitioner. Consequently, Respondent No.2 filed the suit for recovery of dower and maintenance allowance, which was contested by petitioner by way of filing written statement denying the allegations leveled against him and the learned trial Court pursuant thereof framed six (06) issues, to which both the parties produced their respective evidence, on the basis of which the learned Trial Court partially decreed the suit vide impugned judgment

and decree dated 13.10.2018 and declared that Respondent No.2 is entitled for recovery of dower in shape of 7½ Tola gold ornaments as well as declared the minors i.e. Respondents No.3 & 4 each to receive maintenance allowance @ Rs.5,000/- per month with 10% annual increase. Feeling aggrieved thereof, the petitioner as well as Respondents No.2 to 4 preferred their respective appeals, whereby the learned first Appellate Court vide impugned judgment and decree dated 11.02.2019 accepted the appeal of Respondents No.2 to 4 and declared that Respondent No.2 is entitled to receive maintenance allowance @ Rs.4,000/- per month, whereas Respondent No.3 & 4 were declared to be entitled for the maintenance allowance @ Rs.5,000/- per month each with 10% annual increase till attaining their age of majority and marriage, respectively, from the date of filing of suit till the payment of prompt dower, whereas the appeal filed by the petitioner was dismissed. Hence, the instant writ petition.

3. Learned counsel for petitioner contends that the impugned judgment and decree to the extent of grant of prompt dower and maintenance allowance to respondents has been passed in fanciful and slipshod manner as Column No.14 of the Nikahnama reveals that dower was prompt and paid at the time of marriage; that the passing of impugned judgment and decree of both the Courts below is the result of misreading and non-reading of evidence; that both the Courts below have not properly appreciated the evidence available on record and resorted to passing the impugned judgment and decree, rather the Courts below have relied upon oral assertions of the respondents, therefore, by accepting the instant writ petition the impugned judgment and decree dated 13.10.2018 of the learned trial Court and judgment of the first Appellate Court dated 11.02.2019 may be set-aside.

4. Arguments heard, record perused.

5. Perusal of record reveals that Mst. Sadaf Bibi/respondent No.2 filed a suit for recovery of maintenance allowance and dower along with claim of maintenance of minors i.e. Respondents No.3 and 4 against the petitioner. The suit was contested by the petitioner by way of filing written statement denying the stance of plaintiff/respondent No.2 with the plea that Respondent No.2 being a disobedient and arrogant wife herself left the house along with minors and refused to join the petitioner for performance of matrimonial obligation. The petitioner has also taken the stance that he has paid the dower at the time of Nikah in shape of 7½ Tola gold ornaments and respondent No.2 is not entitled for dower as claimed by her in her plaint.

6. The diverse pleadings of the parties led to framing of six (06) issues, relating to which evidence of the parties was recorded and pursuant thereof the learned trial Court vide impugned judgment and decree dated 13.10.2018 has partially decreed the suit in favour of Respondents No.2 to 4 directing the petitioner to pay the dower in shape of gold ornaments or its equivalent amount along with maintenance allowance @ Rs.5,000/- per month to each minor with 10% annual increase, whereas the claim of respondent No.2 (plaintiff wife) to the extent of her maintenance was turned down.

7. Both the parties feeling aggrieved thereof preferred their cross appeals, whereby appeal of respondent No.2 was allowed and maintenance of Rs.4,000/- per month was granted in her favour, while the appeal filed by the petitioner was dismissed vide impugned judgment dated 11.02.2019.

8. In order to resolve the controversy, I have gone through the testimony of respondent No.2, who has taken the categorical stance that her *Haq Mahar* fixed in the Nikahnama (Exh.P4) in Column No.13 was of 7½ Tola gold ornaments, which was not paid, although she acknowledged the terms referred in the Nikahnama in her testimony. Respondent No.2 also produced *Nikah-Khawan*

namely Nasir Farooq, who reiterated the stance of respondent No.2 through Exh.P2 by stating before the Court that *Haq Mahar* was fixed as 7½ Tola gold with further acknowledgment that:

"شادی کے وقت میں موجود تھا۔ مدعی نمبر 1 کہ حق مہر کے زیورات نہ دیے گئے تھے۔"

The said *Nikah-Khawan* despite being cross examined at length remained consistent in his testimony, who is also an independent witness and acknowledged that he has referred word "موجل" in relevant column of Exh.P4, but he explains that gold jewelry was not paid, therefore, the contrary evidence brought on record by the petitioner by way of his witness namely DW-2 Naeem has no significance and both the Courts below have rightly adjudicated upon the matter and awarded the dower of 7½ Tola of gold ornaments to plaintiff wife.

9. The second objection raised by the petitioner is regarding the maintenance allowance of Respondent No.2 as he contended that respondent No.2 is a disobedient wife and not willing to resume the matrimonial bond. However, this factor has properly been appreciated by both the Courts below, in which the conduct of petitioner is not above board, who is not willing to settle the matrimonial relationship with his wife as he is neither providing the maintenance allowance nor he is paying the dower, therefore, he could not rectify this position and could not prove the stance of disobedient wife in any manner.

10. It is settled law that dower was obligatory on husband, which is entitlement of wife as consideration of marriage and once it has been proved on record that the same was not paid, the wife can refuse to live in the matrimonial bond, whereas the burden of proof lies upon the husband to prove that he had paid full dower and nothing is due against him. Reliance is placed upon 2014

CLC 15 (Abdul Sattar vs. Mst. Shagufta Bano). As such, the petitioner has failed to prove that he has paid the dower in shape of gold ornaments as agreed by him at the time of *Nikah*.

11. Furthermore, the concept of dower in favour of wife is based on the Quranic injunction referred in Verse:24 of *Surah An-Nisa* in the following manner:

“And those of whom ye seek content (by marrying them), give unto them their portion as a duty.”

12. As such, the Quranic injunction referred above does not permit the withholding of payment of dower till dissolution of marriage. Even otherwise, there is no concept of defer or prompt dower in the Quranic injunction referred in *Surah An-Nisa*, rather it is the obligation of a husband to pay the same. Reliance is placed upon PLD 1998 Lahore 52 (Dr. Anees Ahmad vs. Uzma).

13. In the above referred position, when the husband is neither paying maintenance allowance to wife, nor providing due protection and security in shape of separate residence facility, he could not claim that wife is disobedient, rather he is not performing his obligation. The stance taken by petitioner in his pleadings as well as in his evidence is not justified despite the fact that burden to proof the payment of dower is on husband.

14. This Court has put a serious effort for reconciliation of the parties on five different dates of hearing as the marriage between the parties is still intact and respondent No.2 is taking care of the minors on her own without any support from the petitioner in shape of maintenance allowance, however, reconciliation could not be effected. Moreover, the petitioner despite making promise has failed to arrange separate kitchen and washroom in the house for his wife i.e. respondent No.2, therefore, at this stage, the petitioner has failed to prove any illegality in the findings of the Courts below and as such, the concurrent findings

could not be interfered with in the constitutional jurisdiction, even otherwise, the evidence has properly been appreciated by both the Courts below, hence, the instant constitutional petition is misconceived and the same is hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.