

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Writ Petition No.3896 of 2015

Aimen Ibrar and another.

Versus

Muhammad Ibrar Jadoon and another.

Petitioners By : Mr. Ali Hussain Bhatti and Mr. Zulfiqar Ahmed Sial, Advocates.

Respondents By : Mr. Baber Saeed Butt, Advocate for Respondent No.1.

Date of Hearing : 25.09.2019

AAMER FAROOQ, J. - The instant petition calls in question the judgments dated 29.04.2015 and 23.06.2015, passed by respondent No.2 and Additional District Judge (West), Islamabad.

2. The facts, in brief, are that petitioner No.2 filed a suit seeking remedy of maintenance for herself and petitioner No.1, recovery of dowry articles as well as, *inter-alia*, Rs.5,00,000/- as damages for divorce by respondent No.1. Out of divergent pleadings, issues were framed and one of the issue was whether plaintiff No.2 is entitled to recover dowry articles, gold ornaments and Rs.5,00,000/- as prayed for. The learned Trial Court as well the Appellate Court turned down the claim of Rs.5,00,000/- by petitioner No.2 on the ground of jurisdiction.

3. Learned counsel for the petitioners, *inter-alia*, contended that under the facts and circumstances, the Family Court does have the jurisdiction to entertain claims of such nature. Reliance was placed on cases reported as "Mst.

Yasmeen Bibi Vs. Muhammad Ghazanfar Khan and others" (PLD 2016 SC 613) as well as *"Muhammad Bashir Ali Siddiqui Vs. Mst. Sarwar Jahan Begum and another" (2008 SCMR 186).*

4. Learned counsel for the respondent submitted that since the matter does not fall within the Schedule-I to the Family Courts Act, 1964, hence Family Court had rightly held that it has no jurisdiction in the matter. Reliance was placed on cases reported as *"Muhammad Akram Vs. Mst. Hajra Bibi and 2 others" (PLD 2007 Lahore 515)*, *"Syed Mukhtar Hussain Shah Vs. Mst. Saba Imtiaz and others" (PLD 2011 SC 260)*, *"Muhammad Masood Abbasi Vs. Mst. Mamona Abbasi" (2004 YLR 482)* and *"Mst. Zeenat Bibi Vs. Muhammad Hayat and 2 others" (2012 CLC 837).*

5. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

6. In clause 19 of the *Nikahnama*, a condition was imposed that in case respondent No.1 pronounced divorce to petitioner No.2, he shall pay her compensation/ damages in the sum of Rs.5,00,000/-. The sole question for the Court is whether claim for Rs.5,00,000/- could have been filed before the Family Court or for the same the petitioners had to agitate the matter before the Courts of plenary jurisdiction. The Hon'ble Supreme Court of Pakistan while interpreting a clause in the *Nikahanama* in case reported as *"Mst. Yasmeen Bibi Vs. Muhammad Ghazanfar Khan and others" (PLD 2016 SC 613)* observed as follows:-

"17. As in this case the landed property, given to the wife, or the undertaking given in the "Nikah Nama", to be transferred to her name is conclusive in nature and may be construed as a part of dower or a gift in consideration of marriage therefore, it was falling within the exclusive domain of the Family Court at Multan, as the wife was/is residing

there, which has not been denied by the respondent, therefore, in our considered view, the District Appeal Court and the learned Judge in Chamber of the High Court, Multan Bench, Multan fell into legal error by holding the view to the contrary. Any departure made from the true object and spirit of law, enacted by the Legislature would defeat the same, which is not permissible under any cannon of justice and principle of law, nor the Courts are having any authority or powers to import their own opinion therein, defeating the clear intention of the Legislature and when the provisions of Ss. 16 to 20 of the C.P.C. stand excluded from the proceedings before the Family Court then, the question of its territorial jurisdiction would never arise, provided that the Family Court where the wife resides, shall have the exclusive jurisdiction over all such matters for the sake of convenience because Rule 6 of the West Pakistan Family Court Rules, 1965 so provides.

7. Under Similar facts and circumstances, the Hon'ble Supreme Court of Pakistan in case titled "Syed Mukhtar Hussain Shah Vs. Mst. Saba Imtiaz and others" (**PLD 2011 SC 260**) observed as follows:-

3. Heard. We have deemed proper to decide this matter in the terms whether the family Court has jurisdiction to entertain and adjudicate the claim of the respondent/plaintiff and not on account of the noted judgment of the Supreme Court. In this regard, it is specified that the Aci is a special law which is meant to cater for a specific object and special kind of cases strictly covered by the items mentioned in the schedule thereto. It is settled law that the civil courts are the courts of inherent and plenary jurisdiction competent to adjudicate all the disputes of the civil nature between the litigating parties. However, such jurisdiction stands ousted in terms of section 9, C.P.C., either expressly or by necessarily implication. But in order to evaluate whether such jurisdiction has been taken away, the special law under which it is so done, must not only be strictly constructed but also be accordingly applied. Therefore, if in the above context the provision of section 5 of the Act are read with the entries

of the schedule, there shall be no confusion or ambiguity about the cases falling within items Nos. 1 to 8 thereto. Entry No.9, which has been incorporated in the original schedule, by way of an amendment through Ordinance No.LV of 2002 reads as "personal property and belonging of the wife" and while considering and interpreting this (entry) for the purposes of jurisdiction in the case (Nasrullah 'supra) having almost the same facts and the claim, it has been held:--

"Now the said condition by all means vests the respondent lady with a right to bring an action against the petitioner to claim the said amount upon proof that she was divorced without any reason attributable to her. This being so, the respondent lady is vested with a right of action or what is termed as "actionable claim" in the Transfer of Property Act, 1882. Now the moment the said condition becomes operative the petitioner became indebted to the respondent in the said amount. Even if such debt or beneficial interest so accruing is conditional or contingent, falls within the meaning of actionable claim which is a property and transferable as such. In my humble opinion claim of respondent wife to the said amount accruing to her upon an unjustified divorce by all means a property and clearly falls within Item No.9 of the Schedule read with section 5 of Family Courts Act, 1964."

Whereas, in the other judgment from the Lahore jurisdiction i.e. Muhammad Akram (supra), the proposition has been dealt conversely in the following manner:--

"As regards the question, whether the suit is competent before the Family Court, it is the case of respondent No.1, and also held by the learned Additional District Judge that the matter falls within the Entry No.9 of the Schedule to section 5, i.e. "personal property and belonging of the wife". I feel amazed to note as to how the amount of Rs. 1,00,000 allegedly payable by the petitioner on account of the divorce or bad relations between the parties, is the 'personal property or belonging of respondent No.1, so as' to bring the case within the jurisdiction of the

Family Court. Such personal property or belonging referred to in Entry No.9, in my considered view, is a residuary provision, which enables the wife to recover through the process of the Family Courts Act, 1964, whatever property she has acquired during the subsistence of the marriage, which is not the part of her dowry, through her own independent means or even through the means provided by the husband, such as her clothes, ornaments and items of personal use and nature, this may also include anything which has been gifted to the wife by the husband or any of his or her relatives or the friends; such property and belonging may be the one acquired by the wife out of the money given to her by the husband, her saving from household allowance, or pocket money, from the money provided by her parents and relatives. But definitely the aforesaid entry does not cover any amount which is not yet the property of the wife and she only has a claim to recover from the husband on the basis of any special condition incorporated in the Nikahnama. I am not convinced by the argument that the amount in question is covered under the rules of actionable claims as envisaged by section 130 of the Transfer of Property Act, 1882. The term "actionable claim" in general means, a claim for which an action will lie, furnishing a legal ground for an action and according to section 3 of the Transfer of Property Act, a claim towards a debt. On account of both the meanings such claim cannot be equated as a "personal property and belonging of the wife." Resultantly, in my considered view, the family Court has no jurisdiction in the matter and the suit in this behalf before the said Court was not competent."

4. In both the afore-mentioned conflicting legal opinions, the key proposition is about the applicability or otherwise of the term/concept "actionable claim". In one judgment, it has been strenuously relied upon and used as foundational for the interpretation of Entry No.9, while in the other it is completely discarded. Therefore, in order to resolve

the matter, it seems expedient to ascertain, what is the true connotation of the said expression, in: its general terms; as defined in section 3 of the TPA and the application of this definition for the interpretation of the said entry. Besides it is also important to dilate-upon and express if the definition provided by a statute can be resorted to for the interpretation of another statute, though in the latter there is no mention or reference of such a definition or the expression at all.

5. *In the above context, firstly I shall embark on to find out if such a concept is available in foreign legal systems. In English and American jurisprudence the concept "actionable claim" as such, is not prescribed or provided; but to an extent it may be equated with their terms i.e. "chooses in action" or "chooses of action". Therefore, it shall be germane and significant to comprehend as to what does that mean. In Words and Phrases, permanent edition, it is propounded that the words "chooses of action" mean nothing more and can have no broader signification than the words "rights of action" which in other word means as a personal right not reduced into possession but recoverable by a law suit.*

According to Halsbury's Law of England fourth edition "the expression 'choose in action' or 'thing in action' in the literal sense means a thing recoverable by action as contrasted with a chose in possession, which is a thing of which a person may have not only the ownership but also the physical possession". The meaning of the expression is also used to describe all personal rights of property which can only be claimed or enforced by an action, and not by taking physical possession. In English Law, as per classification the "chooses in action" are of two kinds, 'legal chooses in action' and 'equitable chooses in action' the former are those which could be recovered and/or enforced by an action at law, as for instance a debt, bill of exchange, or a claim on an insurance policy etc, whereas the equitable choose of action though again enforceable through the process of Courts, but in connection with the rights, share or interest relating to partnership, trust funds, legacy, under the will, right of the mortgagee to any surplus proceeds of the sale etc. However the subject matter, in both the categories of actions

aforementioned (the suit) which may even be for the recovery of a "debt", by itself shall not be the personal property of the claimants until and unless the claim in the legal action has been allowed by the Court and a decree to that effect has been passed. It is thus clear from the preceding discussion that for interpreting the entry no help can be drawn from the foreign concept.

6. *In our country, the noted term has not been provided in the Family Courts Act, 1964. It is also not defined in the General Clauses Act, 1897, which is the law applicable to all central legislations and is meant for the interpretation and provides guiding principles thereof, unless in a specific statute itself the provisions are available to supply the interpretative guidance to that legislation. It may be pertinent to mention here that some Parliaments of the world do pass one Act that is meant to provide definitions that are to be read into most other statutes. An Act of this nature is known as Interpretation Act and our General Clause Act in some ways resemble thereto. But as mentioned earlier' the expression 'actionable claim' is not defined therein, which could buttress for such an interpretation.*

7. *The only statute in which the definition of "actionable claim" has been provided is the TPA and it reads as:*

"Actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession either actual or constructive, of the claimant, which the Civil Court recognize as affording grounds for relief, whether such debt or beneficial interest be existence, accruing conditional or contingent:

It is settled law that definition clause or a section in a statute is meant generally to declare what certain words or expressions used in that statute shall mean, the obvious object of such a clause is to avoid the necessity of frequent repetition in describing all the subject matter to which the word or expression so defined is intended to apply. It is a rule

of interpretation of laws that when a word/expression is given a definite meaning in one Act of Parliament (statute) it does not mean that it shall ipso facto have the same meaning in another Act of the Parliament, except in the cases in which Parliament has declared that two or more Acts be read together as one Act, or where on the rule/principle of legislation by reference, a definition of any earlier law may be borrowed or adopted as the definition for constructing the operative provisions of the later law. A definition thus appearing in one Act cannot be used to interpret the same word appearing in another Act, until it is specifically so referred and borrowed with a clear command of law. Because, the context, the purpose, the object and the requirements of every statute may vary from other; the definition of a word from one statute can not be safely imported to another, which if so resorted to without ascertaining the clear intention of the legislation by following the rules of interpretation, just as a matter of routine and course, it shall not only be hazardous, rather may distort and frustrate the object of the law and violate the legislative intent which is absolutely impermissible in law.

8. *The definition of "actionable claim" in the TPA is strictly and exclusively relatable to the operative provisions of Chapter VIII of that Act, which by virtue of Sections 130 to 137 thereof inter alia, prescribes the requirements and the broad mechanism for the transfer and the assignment of the "actionable claims" so defined in section 3. It has no application beyond the tact even if any general concept emerges on account of the expression, it is restricted to the law it forms part and cannot be stretched to apply to any other law of the land, including the Family Courts Act, 1964, thus the interpretation of entry No.9 ibid as provided by Muhammad Akram v. Mst. Hajra Bibi and 2 others (supra) is the correct explication of law, which is hereby approved. However adding thereto, it may be held that if the ratio of Nasrullah dictum (supra) which is entirely and solely founded on the noted concept/ definition is taken to be correct, than a suit for Specific Performance, declaratory suits of any nature, or any other civil legislation between a*

wife and husband shall be amenable to the special jurisdiction of the family Court, which is not intent of the law. Because according to the literal approach of reading a statute, the statute has to be read literally by giving the words used therein, ordinary, natural and grammatical meaning. Besides, the addition and subtraction of a word in a statute is not justified, except where for the interpretation thereof the principle of reading in and reading down may be pressed into service in certain cases; thus when in Entry No.9 'actionable claim' has not been provided by the legislature, it' shall be improper and shall impinge upon the legislative intent and the rules of interpretation to add this expression to the clause/entry."

In light of the above judgment of the august Apex Court, the words of the statute are to be interpreted in such away as not to defeat the intention of the legislature. The jurisdiction is conferred upon a Family Court under Section 5 of the Family Courts Act, 1964, read with Schedule-I to the Act. Schedule-I provides list of the claims, which can be agitated before the Family Court. The suit in the nature of damages for divorce by the husband, as was the case in **"PLD 2011 SC 260"** supra is not envisaged in the Act of 1964. The judgments handed down by the Family Court as well as the Appellate Court do not suffer from any error of law in this behalf.

8. For the above reasons, the instant petition is without merit and is accordingly **dismissed**.

(AAMER FÁROOQ)
JUDGE

Announced in Open Court this 27th day of November, 2019.

JUDGE