

(Judgment Sheet)
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.4563 of 2013

Aamir Naseer
Versus
Mst.Sobia Bibi & others

Petitioner by: Mr. Zamin Abbas Malik, Advocate.

Respondent No.1 by: Mirza Irfan Ghazanfar, Advocate.

Date of Hearing: 12.11.2020

Ghulam Azam Qambrani, J: Through this petition, the petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer:-

“It is, therefore, respectfully prayed that the instant writ petition may kindly be accepted and the judgments of learned Appellate Court dated 08.10.2013 as well as learned Trial Court dated 02.05.2013 may kindly be set aside, in the interest of justice.

Any other relief which this Hon’ble Court deems fit and proper may also be awarded to the petitioner.”

2. Briefly stated, facts of the instant petition are that marriage between petitioner and respondent No.1 was solemnized on 28.11.2010, at Islamabad according to Muslim Rites against a dower consideration of Rs.1000/-. However, in Column No. 17 of the Nikkah Nama, a special condition was incorporated that in case of matrimonial dispute, Gold ornaments weighing three (03) Tolas and an amount of Rs.1,00,000/- in cash will be given to respondent No.1 by the petitioner. Unfortunately, differences cropped up between the couple, owing to which the wife/ respondent No.1 filed two suits i.e. one for recovery of dowry articles and dower amount; and second for recovery of maintenance allowance at the rate of Rs.20,000/- per month, gold ornaments weighing 03-tolas and Rs.1,00,000/-. Both the suits were contested by the petitioner by filing written statement.

The learned Judge Family Court after recording evidence passed a consolidated judgment dated 02.05.2013 by declaring respondent No.1 to be entitled to the dowry articles, which could be collected in the presence of the Court Bailiff on her pointation from the house of the petitioner. She was also held entitled for the recovery of dower amounting to Rs.1000/-. According to column No.17 of Nikkah-nama, petitioner was ordered to pay Rs.1,00,000/- to respondent No.1. Suit of the respondent No.1 to the extent of her monthly maintenance allowance and three tolas gold ornaments was dismissed.

3. Feeling aggrieved, both the parties filed appeals before the learned District Judge, Islamabad-West, which were marked to learned Additional District Judge-II, Islamabad. The learned appellate Court vide the impugned judgment and decree, partly accepted the appeal filed by respondent No.1 and held her entitled to recover amount of dower Rs.1000/-, 3 tolas of gold ornaments and an amount of Rs.1,00,000/- in accordance with column No. 17 of 'Nikahnama'. Her remaining claims were refused. The learned appellate Court also remanded the case qua dowry articles to the learned Judge Family Court with the direction to record evidence and give finding on issue "*As to what specific dowry articles/items, the respondent No.1 is entitled to recover from the petitioner*". The appeal filed by petitioner was dismissed, hence this petition.

4. Learned counsel for the petitioner has contended that the impugned judgments passed by the learned Trial Court as well as learned appellate Court are illegal and against the facts and evidence, therefore, the same are liable to be set aside; that the impugned judgement and decree dated 08.10.2013 of learned appellate Court while not dismissing the suits of respondent No.1 are result of misreading and non-reading of evidence. Lastly, prayed for acceptance of the instant petition.

5. Conversely, learned counsel for the respondent No.1 has opposed the contentions raised by the learned counsel for the

petitioner with the contention that the petitioner failed to produce any evidence during the trial to establish that he had already paid everything to respondent No.1 and nothing was outstanding against him. Except his bald statement, no other oral or documentary evidence was produced by the petitioner in support by of his stance; that there was a special condition incorporated in the Nikah Nama/ Ex.P.1 that in case of "Ghair-abadi"/desertion, the husband will pay Rs.1,00,000/- and gold ornaments weighting 03 tolas; that the learned appellate Court has rightly appreciated the facts of the case and the passed a decree in favour of respondent No.1, which is exactly in accordance with law and facts of the case.

6. I have given anxious consideration to the respective arguments advanced by learned counsel for the parties and have perused the material available on record.

7. From perusal of record the facts, which come to light are that the petitioner and respondent No.1 were married on 28.11.2010 against a dower consideration of Rs.1000 and a Nikkah Nama Ex.P.1 was duly executed in this behalf. According to Colum No.17 of the Nikah Nama a special condition was incorporated that in case of "Ghair-abadi", the husband is bound to pay an amount of Rs.1,00,000/- and Gold ornaments weighing 03 Tolas to the wife. Unfortunately, differences cropped between the couple owing to which respondent No.1 deserted the house of the petitioner and opted to file suits for recovery of dower, dowry articles, maintenance as well as Rs.1,00,000/- and 3 tolas gold ornaments. The said suits were contested by the petitioner/defendant with the plea that he had already paid the cash and gold ornaments to respondent No.1 and further that since she had herself deserted the house for petitioner, therefore, she was not entitled to any maintenance. With regard to the dowry articles, it was claim of the petitioner that no dowry articles were given to her by her parents, therefore her claim in that behalf was not genuine.

8. A careful scrutiny of the record divulged that the claim of the petitioner that he has already paid Rs.1,00,000/- and 03 tolas gold ornaments to respondent No.1, in accordance with the contents of Column No.17 of the Nikah Nama (Ex.P.1) not only seems to be against the record rather ridiculous one because it was special condition in the Nikah Nama (Ex.P.1) that in case of Ghair-abadi, the husband will be bound to pay the aforesaid amount and gold ornaments to the wife, which means that obligation to pay the same had to start from the date of Ghair-abadi. It is not case of either of the party that even earlier at any occasion, the respondent No.1 had left the house of the petitioner or deserted him due to in-cordiality, therefore, no occasion has arisen for payment of the same to the respondent No.1. Then how the petitioner can claim that he had already paid the same to respondent No.1 and that nothing was outstanding towards him. The learned lower appellate Court has thus rightly decreed the suit of respondent No.1 to this extent. The findings of the learned lower appellate Court, in this behalf are exactly in consonance with the entry in Colum No.17 of the Nikah Nama Ex.P.1 and the same do not call for any interference.

9. So far as the claim of respondent No.1 with regard to dowry articles is concerned, though her suit was decreed by the learned trial Court, but the learned appellate Court accepted the appeal to that extent and remanded the matter to the learned Family Court to determine as to what extent the plaintiff was entitled to recover dowry articles. The said findings were never assailed by respondent No.1, before any higher forum, hence the same attained finality. Even learned counsel for the petitioner failed to point out any mis-reading or non-reading in this behalf on the part of the learned lower appellate Court.

10. Similarly, the claim of respondent No.1 qua recovery of maintenance has already been turned down by the learned Judge Family Court and appeal filed against the same also failed, hence the said chapter also stood closed, like past and closed transaction.

11. For the aforesaid reasons, the instant writ petition is devoid of any merits, hence the same is **dismissed**.

(Ghulam Azam Qambrani)
Judge

Announced in Open Court, on this 29th day of January, 2021.

Judge

S.Akhtar