

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : W.P. NO.4095-2017

Abdul Sattar

Vs.

Salma Ramzan & Another

Petitioner by : Mr. Zahid Ayub Rathore, Advocate
Respondent by : Mr. Misbah ul Mustafa Safir, Advocate
Date of hearing : 03.02.2021

AAMER FAROOQ J. Respondent No.1 entered into Nikah with the petitioner on 08.06.2016 against the dower of Rupees One Million, the payment of which, was to be made promptly on demand. Respondent No.1 filed a suit for dissolution of marriage on the basis of Khula, which was allowed vide judgment and decree dated 20.02.2017 with the condition that respondent No.1 shall relinquish the dower. Respondent No.1 filed an appeal before the learned District Judge, which was allowed vide judgment dated 03.10.2017, whereby condition of relinquishment was removed.

2. Learned counsel for the petitioner *inter alia* contended that petitioner had paid dower of Rupees One Million to respondent No.1, hence she had to relinquish/payback the same for dissolution of marriage to be effective as required under the law.

3. Learned counsel for respondent No.1 *inter alia* contended that no dower was paid by the petitioner to respondent No.1; even-otherwise, respondent No.1 now has contracted Nikah; that judgment impugned does not suffer from any illegality or jurisdictional error.

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

5. The factual background, leading to filing of instant petition, is mentioned hereinabove therefore need not be reproduced.

6. The claim of respondent No.1 is that dower was never paid and in this behalf, during course of trial, she also led evidence.

7. The assertion of respondent No.1 remained un-rebutted inasmuch as petitioner was proceeded ex parte and eventually, ex parte judgment and decree was passed against him on 20.02.2017.

8. There is nothing on record to controvert the position of respondent No.1, whereby she had categorically stated in the plaint as well as in the evidence that dower amount of Rupees One Million had not been paid to her. The petitioner, though in the reply to the suit, asserted that dower amount had been paid yet he was proceeded ex parte and no evidence was led to the effect.

9. The petitioner never made any attempt to have the ex parte judgment and decree set aside and even challenge ex parte judgment and decree dated 20.02.2017. Even, in the instant petition, no such request was made.

10. Section 10 (4) of the West Pakistan Family Courts Act, 1964 reads as follows:-

“10(4)..... If no compromise or reconciliation is possible the Court shall frame the issues in the cases and fix a date for the recording of the evidence;

Provided that notwithstanding any decision or judgment of any Court of tribunal, the Family Court is a suit for dissolution of marriage, if reconciliation fails, shall pass decree for dissolution of marriage forthwith and also restore

the husband the Haq Mehr received by the wife in consideration of marriage at the time of marriage”.

Under the referred provision, where the Court passes the decree for dissolution of marriage on the basis of Khula, the husband is to be restored or paid back Haq Mehr received by the wife in consideration of marriage at the time of marriage.

11. In the instant case, there is nothing on record that petitioner paid the dower amount hence learned appellate court rightly concluded that since no dower had been received, so the question of its relinquishment does not arise.

12. The judgment impugned does not suffer from any illegality or jurisdictional error warranting interference in the instant writ petition.

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

(AAMER FAROOQ)
JUDGE

Announced in Open Court on 29.04.2021

JUDGE