

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Writ Petition No. 350 of 2020

SADIA ARIF.

VERSUS

ADNAN SHAHID, ETC.

Petitioner by: Mian Muhammad Zafar Iqbal, Advocate.

Respondent by: Mr. Ejaz Ahmed, Advocate.

Date of Hearing: 23.02.2021.

LUBNA SALEEM PERVEZ; J: Through instant petition, the petitioner [Sadia Arif] has assailed judgment dated 05.11.2019, passed by learned Additional District Judge, West-Islamabad (*hereinafter referred to as the Appellate Court*) in Appeal No. 113/2019, whereby the ex-parte judgment dated 22.05.2019, passed by the Judge Family Court, West-Islamabad (*hereinafter referred to as the Family Court*) was partially modified.

2. Facts as per petition are that the *Nikkah* of the petitioner with Respondent No.1 was solemnized on 19.11.2016 on a dower of 5.7 tola gold ornaments and *rukhsati* took place on 03.02.2018. The marriage between the parties did not last long and allegedly the Petitioner was forcefully dropped at her parents' house on 21.03.2018 by Respondent No.1. She thus filed suit against the Respondent No. 1 on 22.12.2018, for dissolution of marriage and recovery of dower & dowry articles, gold ornaments and for past and future maintenance, before the Family Court, which proceeded ex-parte against him due to non-attendance of Respondent No.1 and passed judgment by recording the statement of the Petitioner appearing as the only plaintiff witness / PW-1. Vide judgment dated 22.05.2019, the Leaned Family Court decreed the suit to the extent of granting Khula subject to relinquishment of dower and directed recovery of maintenance at the rate of Rs. 3,000/- per month from April 2018 till the period of *iddat*, while dismissing the

remaining the claims in the suit. The Petitioner filed appeal against the judgment and decree dated 22.05.2019, before Learned Appellate Court which, vide judgment dated 05.11.2019, accepted the appeal to the extent of increasing the amount of maintenance from Rs. 3,000/- to Rs.5,000/- for the period determined by Learned Family Court, whereas, declined to allow the remaining claims in the suit. The petitioner being dissatisfied challenged both the decisions dated 22.05.2019 and 05.11.2019 before this court in the instant writ petition.

3. Learned Counsel for the Petitioner argued that amount of dower was fixed at 5.7 *tolas* of gold to be given at the time of *rukhsati* which was paid to the Petitioner but after the *rukhsati* all the gold ornaments were taken back by Respondent No. 1 on the pretext of placing it in the safe locker of the bank and never returned the same to the Petitioner thereafter; that after dissolution of marriage by way of Khula, the Respondent No. 1 also pronounced divorce, vide Divorce Deed dated 22.06.2019 on the basis of which the divorce effectiveness certificate was issued on 27.09.2019, therefore, the marriage between the parties has been dissolved by way of divorce and not by way of Khula, the Petitioner, therefore, in appeal requested to withdraw her suit to the extent of Khula; that appeal was turned down by the Learned Appellate Court for the reason that the marriage between the parties has been dissolved by the court on 22.05.2019 on the basis of Khula, therefore, subsequent pronouncement of divorce through Divorce Deed dated 22.06.2019 has no legal effect. He assailed the judgment of the Learned Appellate Court, against the finding that no appeal lie against the decree of Khula under section 14(2)(a) of the West Pakistan Family Court Ordinance, 1964, except for the reasons specified in section 2(d)(viii) of Dissolution of Muslim Marriages Act 1939. Learned counsel submitted that on the basis of wrong interpretation of the provision of law, the Leaned Appellate Court has refused permission to the Petitioner to withdraw the suit to the extent of dissolution of marriage on the basis of khula and submitted that subsequent pronouncement of *talaq* will prevail over the decree of khula. With regard to the claim of the Petitioner for maintenance was for Rs. 30,000/- per month and dowry articles including gold received in dowry, learned counsel submitted that list of articles and

gold was appended with the suit, but the same have also been discarded on irrelevant grounds by the both the courts below. He relied on the judgments reported as *Malik Tahir Ayub versus Additional District Judge, Rawalpindi (PLD 2015 Lah 57)*, *Chanzeb Versus Mst. Yasmeen Bibi (2015 MLD 1140)*, *Faiz Noor versus Dilawar Hussain (1995 CLC 1319)*, *Abid Hussain Versus Additional District Judge, Alipur, District Muzaffargarh (2006 SCMR 100)* and *Naila Azmat versus Judge Family Court (1999 MLD 3090)*.

4. On the other hand, learned Counsel for Respondent No. 1, strongly contested the averments made on behalf of the petitioner and submitted that the Petitioner has fraudulently obtained the ex-parte judgment and decree dated 22.05.2019 by intentionally mentioning wrong address on the suit thus, notices have been issued by the court but received back un-served yet he accepted the judgment of the Learned Family Court and did not file appeal against it; that issues including the dissolution of marriage and return of dowry articles were amicably resolved between the parties through *Jirga*, however, the Petitioner filed the suit for Khula and recovery of dower and dowry articles with mala-fide intentions; that since, the court pronounced dissolution of marriage by way of Khula thus, the pronouncement of *talaq* would not prevail over it; that the claim of gold is based on false accusation as the gold ornaments were never given to Respondent No.1; that she could not prove the allegation of handing over of gold ornaments to Respondent No.1 on wedding night, in the trial proceedings despite the fact that she managed to get the case decided ex-parte against Respondent No. 1; that all the dowry articles have already been returned to the Petitioner which has not been denied; that the list of dowry articles cannot be considered as the bridal gifts as the list of dowry article attached with the suit describes the items given to the relatives and Respondent No.1 as the wedding gifts. He supported the concurrent judgments of the Courts below and prayed for dismissal of the petition.

5. Arguments of the parties have been heard and the record has been perused with the assistance of the learned counsel for the parties.

6. Petitioner due to domestic disputes and unhappy matrimonial relations with Respondent No. 1 filed family suit before the Trial Court for dissolution of marriage by way of *Khula*, recovery of dower & dowry articles and maintenance allowance. Perusal of the suit filed before the Family Court revealed that she has claimed 5.7 *tolas* of gold ornaments from Respondent No. 1 on account of dower, however, perusal of *Nikkah Nama* / Ex-P/2, shows that the dower of 5.7 *tolas* of gold ornaments has been given to the petitioner in the shape of gold ornaments at the time of *Nikkah*. Her claim that dower of 5.7 *tolas* gold ornaments and 7.5 *tolas* of precious gold ornaments given to her in dowry / *jahaiz* was taken by Respondent No.1 for putting in the bank locker due to security reason remained unsubstantiated. It is pertinent to mention that the Trial Court had passed ex-parte judgment against Respondent No.1 and the petitioner was the only PW to present the evidence which was un-rebutted due to non-attendance of the Respondent No.1, but she was unable to convince the learned Trial Court with any material evidence or witness to justify her contention during trial proceedings, as such, was rejected which findings were upheld by the learned Appellate Court. In addition to the claim of dowry the petitioner had claimed maintenance at the rate of Rs.30,000/- per month from March, 2018, but failed to persuade the learned Trial Court that she was forcibly deserted by Respondent No.1 from his house. She was rather unable to establish the sound financial status of Respondent No. 1 mandatory for deciding the maintenance, therefore, the learned Trial Court found her entitled for monthly maintenance of Rs. 3,000/- from April, 2018 till the period of *iddat*. However, the learned Appellate Court found the amount of Rs. 3,000/- to be meager and insufficient, therefore, enhanced the amount to Rs. 5,000/-. As regards the dowry articles, list of which was also attached with the record of the petition [page 41 of the petition (Ex-P/3)] appears to be the items purchased for Respondent No. 1 as wedding gifts, some items of the petitioner's personal use and the dresses for his family members, presented to them as gifts. Record shows that the petitioner in support of the claim could not produce the receipts / proof of purchase of articles as per list Ex-P/3. Moreover, during the arguments, learned counsel for the petitioner has admitted the fact that all the dowry articles of personal use have been returned back to the petitioner after the decision of *Jirga*. Thus, the learned

Trial Court was justified in declining the petitioner's claim of dowry articles which finding has been affirmed by learned Appellate Court, vide impugned judgment dated 05.11.2019.

7. Another issue which has been raised by the petitioner in this petition is in respect of findings of the learned Appellate Court, given in response to the submissions regarding withdrawing of her suit to the extent of Khula in view of the pronouncement of *talaq* through divorce deed dated 22.06.2019 i.e. after the issuance of decree of Khula on 22.05.2019, which request was rejected in the following words:-

*“Perusal of record shows that the suit of the appellant/plaintiff for dissolution of marriage was decreed on the basis of Khula, vide impugned ex parte judgment and decree on 22.05.2019. After that pronouncement of divorce by the respondent / defendant vide divorce deed dated 22.06.2019 was of no legal effect. Moreover, as per provision of **section 14(2)(a) of West Pakistan Family Courts Act 1964** no appeal shall lie from a decree passed by a family court for dissolution of marriage, except in the case of dissolution for reasons specified in **clause (d) of items (viii) of the Dissolution of Muslim Marriages Act, 1939**. Hence the appellant/plaintiff cannot be allowed to withdraw her suit to the extent of dissolution of marriage on the basis of Khula. However, if the dissolution of marriage is decreed subject to any conditions then an appeal lies only to the extent of conditions but not against the dissolution of marriage on the basis of khula itself.”*

8. Learned counsel for the petitioner is of the view that despite the issuance of decree of khula dated 22.05.2019, the dissolution of marriage is to be treated through divorce/*talaq* pronounced by Respondent No. 1, vide divorce deed dated 22.06.2019. He also referred the certificate issued by Chairman, Arbitration Council dated 25.09.2019, which was also issued on the basis of pronouncement of divorce by Respondent No. 1.

9. Muslim Law provides for dissolution of marriage by way of act of parties i.e. husband & wife themselves or by a decree of the court of law. When the parties or anyone of them arrive at the decision that they cannot continue to live together within the limits prescribed by Al-mighty Allah then they may proceed to dissolve the contract of marriage. The husband has been granted the right to give *talaq*/divorce to his wife on his own initiative, by following the principles according to the Muslim Family Laws legislated on the basis of Quran and Sunnah and by paying the benefits and the amount of dower/*mehar* fixed as per Nikkah nama at the time of Nikkah. The Muslim Law also grants right to the wife to end the bond of marriage by way

of “Khula” through court of law. This right is not dependent on the consent of husband. It is when she came to the conclusion that it is not possible for her to live with her husband and observe religious obligation of marriage within the bounds prescribed by sharia then she is permitted to invoke her right and seek dissolution of marriage through court of law by filing suit for decree of Khula. In such event the wife is required to return the benefits as well as the *mehar*/dower received in lieu of Nikkah, to the husband as held in the cases re: *Syed Muhammad Ali Versus Mussarat Jabeen* (2003 MLD 1077 Karachi), *BIBI Anwar Khatoon Versus Gulab Shah* (PLD 1988 Karachi 602), *Bibi Feroza Versus Abdul Hadi* (2014 CLC 60 Baluchistan) and *Mst. Shagufta Jabeen versus Javed Iqbal* (1988 MLD 1207 Karachi).

10. In the present case, the petitioner has invoked her right for seeking dissolution of marriage through a suit and obtained the decree of Khula on 22.05.2019. However, the Respondent No. 1 pronounced *talaq-e-salasa* through divorce deed dated 22.06.2019. The petitioner while assailing the judgment of Trial Court dated 22.05.2019, to agitate dismissal of suit for rejecting the claim of dower, maintenance & dowry Articles and also made a request to the Appellate Court to allow her to withdraw the suit to the extent of claim of Khula. As per record, after obtaining the decree of Khula on 22.05.2019, petitioner did not approach the concerned Arbitration Council for issuance of divorce effectiveness certificate which has been issued in response to application filed by Respondent No.1. It is worth mentioning that dissolution of marriage through Khula is neither revocable nor appealable. Whereas, in the present case the petitioner instead of relinquishment of dower as a result of Khula has sought withdrawal of her suit only to the extent of dissolution of marriage through Khula on the pretext of pronouncement of triple *talaq* by Respondent No.1. I am of the opinion that her request has rightly been declined by the learned Appellate Court as per findings reproduced in para 8 above being absurd and legally not possible. Reliance in this regard can safely be placed on the case law reported as *Shah Hussain versus Mst. Nadia Khan and others* (2018 YLR 2663) and *Bibi Feroza and others versus Abdul Hadi and another* (2014 CLC 60). Even otherwise, when proceedings in the Trial Court has been concluded and decree has been issued, then the question of withdrawal of the

suit does not arise. Thus, I am of the considered opinion that once the marriage has been dissolved at the instance of petitioner / wife, by the learned Trial Court duly granting her right of Khula through decree dated 22.05.2019, the subsequent pronouncement of *talaq-e-salasa*/triple *talaq* has no legal effect and the concurrent findings of the learned Courts' below in this regard are lawful and justified and does not call for any interference by this Court.

11. For what has been discussed above, present writ petition, being devoid of any merit, is hereby dismissed.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in open Court on this ____ day of March, 2021.

JUDGE

Approved for Reporting
Blue Slip added.