

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 3087 OF 2019

Ch. Muhammad Shakoor
Vs.
Mst. Raheela Bibi, etc

Petitioner by : Mr. Khurram Mahmood Qureshi, Advocate.

Respondent by : Mr. Ahmad Nawaz Bhatti, Advocate.

Date of hearing : 15.07.2020.

LUBNA SALEEM PERVEZ, J. Through this petition, Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of Pakistan, 1973, for seeking following prayer:-

“In view of the above circumstances, it is most respectfully prayed that the impugned order dated 05.07.2019 may kindly be set aside and the plaint of the plaintiff may kindly ordered to be rejected being barred by law in the interest of justice.

Any other relief in favour of appellant which this Honorable Court deems just and proper may also be granted in the interest of justice.”.

2. Facts of the case are that the marriage between the petitioner and respondent was solemnized on 21.07.2018 against the dower of Rs. 1,50,000/- and 2 tolas gold ornaments to be given by the petitioner, however, due to unpleasant and strained relations, parties were constrained to live apart. The respondent then filed suit for recovery of dower and maintenance allowance as per Nikhanama. The petitioner in return challenged the maintainability of the suit under Muslim Family Law Ordinance, 1961 by filing application for rejection of plaint u/o 7 Rule 11 CPC on the ground that both the parties are nationals of Azad Jammu & Kashmir, hence, ousted from the jurisdiction of Muslim Family Law Ordinance, 1961 (hereinafter referred to as Ordinance, 1961). Learned Judge, Family Court dismissed the said application vide order dated 05.07.2019, hence, present petition.

3. Learned counsel for the petitioner assailing the impugned order dated 05.07.2019 submitted that the learned Judge, Family Court has not appreciated the important aspect that both the parties are nationals of Azad Jammu & Kashmir having permanent residence at Post office Chikothi, Tehsil & District Hatianbala AJK, therefore, they cannot be considered as residents of Pakistan. Learned counsel referred Section 1(2) of the Ordinance, 1961 and submitted that according to its Section 1 it is

only applicable to Muslim citizens of Pakistan; that to determine the jurisdiction of Courts in Pakistan, Section 5 along with schedule and sections 6, 7 & 26(1)(2) of the Family Courts Act, 1964 (hereinafter referred to as Act, 1964) are to be read together. He then referred to Section 5 of the Act, 1964 which defines the jurisdiction of Family Court. He further argued that Nikahnama and CNIC, issued by Government of Pakistan on 16.12.2014, also contains petitioner's National Identity Card number i.e. 82202-5649633-3 and family No. X634N2 and also reflects petitioner's permanent address as of AJK; that learned Judge Family Court has exercised its jurisdiction arbitrarily and has passed the impugned order without applying his judicious mind and therefore, the impugned order is liable to be set-aside. Learned counsel for petitioner in support of his contentions relied on judgments reported as *Majid Hussain Vs. Farrah Naz nd others* (2017 YLR 84 (Islamabad) and *Rehmat Ullah Vs. Mst. Shamim Akhtar and another* (1997 CLC 2019 (Peshawar).

4. Learned counsel for the respondent, *inter alia*, contended that the marriage between the parties has been solemnized and registered with Union Council Bhara Kahu, Islamabad; that the petitioner's CNIC has also been issued by NADRA, Government of Pakistan for Azad Hakoomat Riasat Jammu & Kashmir; that the parties are living in Bhara Kahu, Islamabad before their marriage and have same residential address in their official documents, hence, the laws of Pakistan relating to family matters are duly applicable to their dispute as such the learned Judge, Family Court competently exercised the jurisdiction in Pakistan under the Act, 1964 in the matter. He lastly submitted that the learned Judge, Family Court has rightly and legally dismissed the application for rejection of plaint filed u/o 7 Rule 11 CPC as the intention behind filing of this application was to harass the present respondent/plaintiff in the suit.

5. Arguments heard. Record perused.

6. The case of the petitioner is that since both the parties are citizens of Azad Jammu & Kashmir, therefore, the case of the parties is outside the scope of the family laws prevailing in Pakistan namely The Muslim Family Law Ordinance, 1961 and the Family Courts Act, 1964, etc.. Learned counsel for petitioner in this regard emphasized on section 1 (2) of the Ordinance, 1961, according to which the Ordinance, 1961, *extends to the whole of Pakistan, and applied to all Muslim citizens of Pakistan, wherever they may be*. As per his arguments the subject of Azad Jammu & Kashmir being not citizens of Pakistan are out of the ambit of Ordinance, 1961 and Act, 1964. Learned counsel for the petitioner pressed the following sections of

Ordinance, 1961 and Act, 1964 to explain the extent of jurisdiction of Family Courts in Pakistan:-

The Muslim Family Law Ordinance, 1961:

1. Short title, extent, application and commencement.—(1) This Ordinance may be called the Muslim Family Laws Ordinance, 1961.

(2) It extends to the whole of Pakistan, and applies to all Muslim citizens of Pakistan, wherever they may be.

5. Jurisdiction.—[(1)] Subject to the provisions of the Muslim Family Laws Ordinance, 1961, and the Conciliation Courts Ordinance, 1961, the Family Courts shall have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in [Part I of the Schedule].

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the Family Court shall have jurisdiction to try the offences specified in Part II of the Schedule, where one of the spouses is victim of an offence committed by the other.

(3) The High Court may with the approval of the Government, amend the Schedule so as to alter, delete or add any entry thereto.]

26. Power to make rules. (1) Government may, by notification in the official Gazette, make rules to carry into effect the provisions of this Act.

(2) Without prejudice to the generality of the provisions contained in subsection (1), the rules so made may, among other matters, provide for the procedure, which shall not be inconsistent with the provisions of this Act, to be followed by the Family Courts.

Schedule to Section 5

[Part I]

1. Dissolution of marriage including Khula.
2. Dower.
3. Maintenance.
4. Restitution of conjugal rights.
5. Custody of children and the visitation rights of parents to meet them.
6. Guardianship.

The West Pakistan Family Courts Rules, 1965:

6. The Court which shall have jurisdiction to try a suit will be that within the local limits of which-

- (a) the cause of action wholly or in part has arisen, or
- (b) where the parties reside or last resided together:

Provided that in suits for dissolution of marriage or dower, the Court within the local limits of which the wife ordinarily resides shall also have jurisdiction.

7. (1) Suits triable under the act shall be instituted, and be heard and tried by, the Court of the civil judge, having jurisdiction as provided in rule 6, and where in any district there is no such Court, such suits shall be instituted in and be heard and tried by the Court of the District Judge or the Additional District Judge.

(2) Notwithstanding anything contained in sub-rules (1) the Court of District Judge may send for the record and proceedings of any suit pending for

trial in the Court of the any court and hear and try the suit itself or refer it for trial to any other Court within the District, and thereupon the court of District Judge or the Court to which such suit is so transferred, as the case may be, shall have jurisdiction to hear and try the suit."

7. All the above provisions of law have already been discussed at length in various judgments of the Hon'ble Supreme Court as well as Hon'ble High Courts. This Court in the case titled as ***Majid Hussain vs. Farrah Naz (2017 YLR 84)*** has also elaborated all the above provisions as well as all the case law concerning the issue. The facts of Majid Hussain's case *ibid* are that both husband and wife were citizens of Azad Jammu & Kashmir; got married in Azad Jammu & Kashmir; when relations turned sour the wife filed suit for Dissolution of Marriage by way of Khula before the Senior Civil Judge, Islamabad; the husband filed application u/s 1 (2) and 5 of Family Courts Act, 1964, read with Rule 5 of Family Courts Rules, 1965, to contest the *Khula* case on the ground that parties are permanent resident of AJ&K and their marriage is solemnized over there and the suit for conjugal rights by the Husband is also pending at Rawalakot. His application was dismissed by the learned Judge Family Court which order was challenged by way of Petition before this Court. This Hon'ble Court, on the above facts, relied on Hon'ble Supreme Court's judgment passed in *Inamul Haq vs. Chairman, FPSC, Islamabad (2005 SCMR 622)* held that *since the wife came from AJ&K after her marriage broke down to live in Islamabad would not make her the citizen of Pakistan u/s 14B ibid*. The Hon'ble High Court while concluding the judgment held as under:-

"25. Now, if any one or both the parties to a suit under the provisions of the West Pakistan Family Courts Act, 1964, are not citizens of Pakistan, that may not be reason enough to return the plaint or to dismiss the suit if a part of the **cause of action accrued** to the plaintiff within the jurisdiction of the Family Court where the suit has been instituted, or the defendant resides within the jurisdiction of such a Court. This, in my view is the ratio in the cases of *Masood Ahmad Malik v. Fouzia Farhana Quddus (supra)* and *Anil Mussarat Hussain v. Muhammad Anwar Naseem (supra)*. If we are to proceed on hypothesis and imagine a foreign Muslim couple getting married abroad under the laws of a foreign country and then the wife coming to Pakistan and filing a suit for dissolution of marriage before a Family Court in Pakistan - would the Family Court assume jurisdiction simply because wife happens to be here. In my opinion not, unless a cause of action recognized by law accrues within the jurisdiction of the local courts or the husband submits to the jurisdiction of such local courts."

Thus accruing of cause of action or residence of the parties or their last residence within the local limits of any Court are necessary factors under Rule 6 of Family Court Rules, 1965, for assuming jurisdiction to try the suit under the provisions of Ordinance, 1961 and Act, 1964.

8. Latest judgment on the issue under consideration is in the case titled as ***Dilshad Bibi vs. The State (PLD 2019 Islamabad 476)*** wherein the parties to the case admittedly belonged to AJ&K but got married in Islamabad which was registered with the Union Council Islamabad; the wife holds CNIC issued under section 14 of NADRA Ordinance, 2000; when husband contracted second marriage without obtaining her permission, the

wife filed complaint against her husband under section 6 (5) of the Ordinance, 1961, which was allowed; he was found guilty of the offence and was then convicted and sentenced. The appeal of the husband was allowed by the learned Additional Sessions Judge on the sole ground of lack of jurisdiction by holding that being the citizen of AJK, the husband could not be treated as citizen of Pakistan, hence, out of the purview of section 1 (2) of the Ordinance, 1961. This Court set-aside the judgment of the Additional Sessions Judge while dilating upon the aspect of issuance of CINC to the citizens of AJ&K and held as under:-

“A National Identity Card is, therefore, an acknowledgement or a certification by the State of Pakistan that the person to whom it is issued is a citizen of Pakistan and has to be treated as such unless his or her citizenship is revoked or acknowledged under the Ordinance of 1951 by the competent authority and in the manner prescribed therein. It is noted that the question whether or not a person holding a National Identity Card is a citizen of Pakistan can only be dealt with under the Ordinance of 1951 because the Ordinance of 2000 does not empower the Authority to decide such a status.

It has been further observed in the said judgment that:-

“13. In the facts and circumstances of the case in hand, it is an admitted position that the respondent, regardless of his place of residence, holds a National Identity Card issued to him by the Authority under the Ordinance of 2000. As long as the National Identity Card remains valid and subsisting, the respondent cannot claim to be a person who is not a citizen of Pakistan. The marriage was contracted between the parties and duly registered in Islamabad and, therefore, to the extent of the petitioner the cause of action in the context of section 6 of the Ordinance of 1961 has arisen in Islamabad.”.

9. The facts and circumstances of the present case has been examined keeping in view the dictums laid down, vide above cited judgments of this Court. Admittedly the parties are citizens of Azad Jammu & Kashmir and the respondent was living in Islamabad prior to her marriage which was solemnized and registered on 21.07.2018, with the Union Council Bhara Kahu, Islamabad, thus the *cause of action* arisen within the territorial limits of Islamabad. There is no denial of the fact that the petitioner has been issued CNIC bearing No. 82202-5649633-3, family No. X634N2, under the NADRA Ordinance, 2000, as such, in view of the principle laid down in ***Dilshad's case supra (PLD 2019 Islamabad 476)***, he has to be treated as citizen of Pakistan. Majid Hussain's case (2017 YLR 484) relied upon by the learned counsel for the petitioner is distinguishable on the ground that marriage of the parties in the said case solemnized and registered in Azad Jammu & Kashmir, as such, the cause of action to the petitioner arose in AJ&K and not in Pakistan. Thus, In view of the admitted facts and the principles laid down in the above referred judgments of this Court, I am of the opinion that the learned Judge Family Court-III, Islamabad, vide her order dated 05.07.2019, has rightly dismissed the application for rejection of plaint u/o VII rule 11 CPC filed by the petitioner.

10. For the foregoing reasons, impugned order dated 05.07.2019 passed by the learned Judge, Family Court, East-Islamabad, is based on proper appreciation of facts and law and does not suffer from any illegality, infirmity or irregularity, hence, same is upheld. Resultantly, instant petition, being devoid of any merit, is dismissed.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in the Open Court on 28.07.2020.

JUDGE

M. Junaid Usman