

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No.443 of 2020

Zeeshan Younis
Vs
Shakeela Bibi & others

Petitioner By: Malik Saqib Mahmood, Advocate

Respondent No.1 by: Iftikhar Hussain Khan Advocate

Date of Hearing: 24.07.2020

Ghulam Azam Qambrani, J: Through this petition, the petitioner has assailed the Judgment and decree dated: 04.10.2019 passed by learned Additional District Judge-I/ Judge MCAC (East), Islamabad, whereby appeal filed by the petitioner was dismissed and the Judgment and decree dated: 06.07.2019 passed by the learned Senior Civil Judge, Islamabad-III (Guardian)/Judge Family Court, (East), Islamabad, filed by respondent No.1/plaintiff was partly decreed.

2. Brief facts of the petition are that the petitioner and respondent No.1 got married on 23.03.2017 at Tarlai Kalan, Islamabad, according to Muslim Family Laws Ordinance, 2001 with a dower amount, which was paid at the time of Nikkah. After some time, respondent No.1 filed a suit for dissolution of marriage, recovery of maintenance and for recovery of dowry articles or in the alternative of recovery of its value of Rs.5,61,400/- , before the learned Family Court at Islamabad. The petitioner contested the suit by filing written statement. Pre-trial reconciliation efforts between the parties were made, however, failed. Out of pleadings of the parties, following issues were framed;-

1. *Whether the plaintiff is entitled for maintenance, if yes at what rate and for what period? OPP*

2. *Whether the plaintiff is a "Nasheeza" and so not entitle for the post maintenance? OPP*
3. *Whether the plaintiff is entitled for recovery of dowry articles as per list attached with the plaint after deleting items mentioned in the list of defendant? OPP*
4. *Relief.*

Parties were directed to produce their respective evidence. Respondent No.1/plaintiff appeared and got recorded her statement as PW.1, statement of one Sufyan Ali through affidavit as Ex.P1, statement of one Mst. Hafeeza Begum through affidavit as Ex.P2, statement of one Mst. Jameela Bibi as Ex.P3. In documentary evidence, respondent No.1/plaintiff produced list of dowry articles Ex.P1/1-12, list of dowry articles as Ex.P4, application of jirga Ex.P5, receipt of dowry articles Ex.P6 (13 pages), and closed her oral as well as documentary evidence. On the other hand, defendant/petitioner recorded his statement as DW.1, , Special Power of Attorney as Ex.D1, copy of nikahnama as Mark DA and closed his oral as well as documentary evidence. After recording the evidence and hearing the parties, learned Trial Court partially decreed the suit under Section 10 sub-section (4) of Family Court Act, 1964 in the following terms;-

1. *Plaintiff shall be allowed to receive Rs. 8000/- per month as maintenance for period of iddat making the total of Rs 24,000/- for entire iddat period. Claim of past maintenance is declined.*
2. *Plaintiff shall be entitled to receive her remaining dowry articles as per list which plaintiff has attached with plaint.*

Being aggrieved, the petitioner/defendant filed appeal before learned Additional District Judge, East, Islamabad, which was dismissed vide order dated 04.10.2019. Hence, this petition before this Court praying for setting aside of the impugned judgments and decrees dated 06.07.2019 & 04.10.2019, respectively.

3. Learned counsel for the petitioner has contended that the impugned Judgments and decrees are against the law and facts; that the learned Trial Court as well as Appellate Court has failed to appreciate the evidence available on record; that the learned Trial Court has failed to follow law and the dictums laid down by the superior Courts and committed illegality while passing the impugned judgments and decrees. Next contended that the learned Trial Court as well as learned First Appellate Court has passed the impugned judgments and decrees without applying judicial mind. Further contended that subsequently, another list was filed which was not signed by the respondent and the same was not got exhibited. Also contended that no other articles exist with the petitioner and all the dowry articles were handed over to respondent No.1, through local commission. Lastly, prayed for setting aside of the impugned Judgments and decrees.

4. Conversely, learned counsel for respondent No.1 has opposed the submissions made by learned counsel for the petitioner and contended that the respondent at the time of filing of the suit had annexed the list of the dowry articles and value of the same was also mentioned as Rs.561400/- in the subject of the suit as well as the same value in the prayer clause; that respondent through her evidence has proved her contention by recording the statements of the witnesses.

5. I have heard the arguments of learned counsel for the parties and have perused the material available on record with their able assistance.

6. Perusal of the record reveals that the respondent lived with the petitioner for about one and a half year. Dissolution of marriage on the basis of khula has been allowed by Court on statement of respondent. Petitioner has clearly established that respondent is a "Nasheeza" and is not entitled to past maintenance. She was, however, entitled to receive Rs.24,000/- as maintenance for iddat period. Perusal of record further reveals that to the extent of recovery of dowry articles, petitioner has also annexed list of dowry articles and admitted that he is in possession of articles reflecting in his list. The respondent has also produced separate list in evidence, but had not annexed with plaint; it is also pertinent to

mention here that no question was put to the petitioner about the items which were received by her, whereas, in the suit the respondent has claimed the dowry articles or their value in the sum of Rs.561400/-.

7. The power of this Court under Constitutional Jurisdiction in a family matter has been elaborately set out by the Division Bench of the Hon'ble Peshawar High Court in the case reported as **[2005 CLC 54 Peshawar]** "Hadyat Ullah Vs. Amna Bibi", in the following terms:-

"Powers of High Court in constitutional jurisdiction are not analogous to those of an Appellate Court. Constitutional jurisdiction can only be exercised, if the lower Court has exceeded its jurisdiction or acted without jurisdiction. Finding of fact recorded by a Court possessing jurisdiction cannot be disturbed merely on the ground that another view is possible on the same evidence, unless that finding is based on no evidence, is fanciful or arbitrary. The object of taking away right of appeal in the family matters is meaningful. If the constitutional jurisdiction takes the place of appeal, then the intent and purpose of legislature would be frustrated. Impugned judgment, if passed with competence and jurisdiction conferred on the Court of law, then it cannot be adjudged in Constitutional jurisdiction of High Court."

8. In the case in hand, the learned Judge Family Court partially decreed the suit of the respondent vide judgment dated 06.07.2019, whereas the appeal filed by the petitioner was dismissed vide judgment dated 04.10.2019, as such, there are concurrent findings of the courts below which cannot be interfered with by this Court while exercising of its Constitutional Jurisdiction. In the case reported as "Muhammad Bakhsh and another Versus Sagheer Ahmad and another" (2010 SCMR 537) it has been held as under:-

"The concurrent findings of facts recorded by the learned courts below and maintained vide impugned judgment could not be interfered with. Therefore, we are of the opinion that the impugned judgment does not suffer from any infirmity or impropriety factual or legal."

Reliance in this regard is also placed upon the cases "Muhammad Ashraf and seven others, vs. Muhammad Waris and two others". (2008 CLC

1466) and "Shahbaz Gul and others Vs. Muhammad Younsa Khan" (2020 SCMR 867).

9. In view of the above, I find the order dated 06.07.2019 passed by the learned Judge Family Court to be strictly in accordance with the law and not suffering from any jurisdictional infirmity. The instant writ petition having been bereft of substance is dismissed.

Ghulam Azam Qambrani
Judge

Announced in Open Court, on this 29th day of July, 2020.

~~Judge~~

S.Akhtar