

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 398 OF 2020

Moeen Adnan Taj
Vs.
Mst. Rabia Arif and others

Petitioner by : Mr. Abdur Rashid Awan, Advocate.

Respondent by : Muhammad Wajid Hussain Mughal, Advocate.
(for Respondent No.1)

Date of hearing : 17.02.2022.

SAMAN RAFAT IMTIAZ, J.:- Through the instant writ petition, the Petitioner (Moeen Adnan Taj) assailed Judgment and Decree dated 14.12.2019 (“**Impugned Judgment and Decree**”) passed by the learned Additional District Judge (West), Islamabad (“**Appellate Court**”), whereby his appeal was partially allowed and consequently the Judgment and Decree dated 19.09.2019 passed by the learned Senior Civil Judge/Judge Family Court, Islamabad-West (“**Trial Court**”) in the Suit for Recovery of Maintenance and Dowry Articles filed by the Respondent No. 1 was modified only to the extent of her claim of dowry articles.

2. Brief facts, as per Memo of Petition, are that the Petitioner was married to Respondent No.1 (Mst. Rabia Arif) on 26.02.2011. Mehr was fixed at Rs. 60,000/- out of which Rs. 5,000/- was paid on the day of marriage whereas the remaining Mehr was paid by the Petitioner to Respondent No.1 on 03.03.2011. At the time of marriage, gold ornaments weighing about 10 tolas and valuing about Rs.1,000,000/- were also given by the parents of the Petitioner to Respondent No. 1, which have been misappropriated by her.

3. Further that soon after the marriage, on the demands of the parents of Respondent No.1, the Petitioner was compelled to rent a house in Islamabad at an enormous amount of rent. During the month of April, 2012 Respondent No.1 demanded an amount of Rs.500,000/- from the Petitioner on the pretext that she has to complete a course in Australia offered by her company namely IBM. The Petitioner was forced to arrange the said amount from his hard earned money and Rupees 400,000/- was deposited by the Petitioner in the account of Respondent

No.1 whereas Rs.60,000/- was paid in cash. During the month of June 2011, Respondent No.1 allegedly left for Australia for the completion of said course with the commitment. An amount of Rs.40,000/- was also sent to the Respondent No.1 by the Petitioner through I.Net Banking. Hence the Petitioner paid an amount of Rs.500,000/- to Respondent No.1.

4. It was further stated that the subsequent events proved that the Respondent No.1 cheated the Petitioner by misappropriating the amount of Rs.500,000/- as well as the jewelry. In fact the Respondent No.1 never went to Australia and in spite of repeated demands by the Petitioner avoided to join the Petitioner as his wife. The Petitioner filed suit for restitution of conjugal rights which was decreed in his favour but Respondent No.1 failed to honour the decree of the Family Court and finally the marriage was dissolved by way of divorce pronounced by the Petitioner in May, 2014.

5. According to the Memo of Petition, the Petitioner requested Respondent No.1 to pay cash amount of Rs.500,000/- with interest and to return gold ornaments or to pay the value thereof but no fruitful result was achieved. This constrained the Petitioner to file a suit for recovery of Rs.1500,000/-, which was partially decreed vide Judgment and Decree dated 08.12.2016 to the extent of recovery of Rs.500,000/- whereas the relief for the return of gold ornaments or to pay value thereof was refused. Both the parties filed appeals. The learned Additional District Judge Islamabad (West) dismissed the appeals. The Respondent No.1 accepted the said Judgment and Decree whereas the Petitioner filed a Civil Revision No.411/D-2017 before this Court which is still pending.

6. The Petitioner also submitted in the Memo of Petition that as counter blast and to further pressurize the Petitioner the Respondent No.1 filed a Suit for Recovery of Maintenance for the Period of Iddat and Past Maintenance of Plaintiff No.1 and Recovery of Dowry Articles on 29.05.2017. The learned Trial Court partially decreed the said suit vide Judgment and Decree dated 19.09.2019 as follows:

- I. The plaintiff is held entitled for recovery of maintenance allowance for her Iddat period only at the rate of Rs. 30,000/- (Thirty Thousand) per month.*
- II. That plaintiff No.1 is held entitled for recovery of dowry articles mentioned under the heading of electronics of list Ex.P3 Serial No.1 &*

Oven, under heading of furniture at serial No. 1 to 4 and under the heading of crockery at serial No.1 to 12, whereas, to the extent of remaining claim of recovery of dowry articles her suit is dismissed.

III. That the plaintiff is held entitled for recovery of Rs. 55,000/- as dower.”

7. The Petitioner preferred an appeal and the learned Appellate Court vide the Impugned Judgment and Decree accepted the appeal partially. The learned Appellate Court granted the following reliefs to the Petitioner.

“In view of the above circumstances, this appeal is partially allowed the impugned judgment and decree dated 19.09.2019 passed by the learned Judge Family Court-West, Islamabad, is modified to the extent that the respondent/plaintiff is not entitled to receive the dowry articles from the appellant/defendant. The learned Judge Family Court-West, Islamabad is directed to make necessary amendments in the decree accordingly and also make necessary entries to that effect in the appropriate column of the register of the decrees U/R 22(4) of the West Family Courts Rules 1965.” [Emphasis added].

8. The learned counsel for the Petitioner submitted that as per Nikkahnama dated 26.02.2011 dower was fixed at Rs.60,000/- out of which Rs.5,000/- was prompt whereas the remaining was deferred. It was highlighted that the Petitioner specifically stated in his Affidavit-in-Evidence that the remaining amount was paid on 03.03.2011, however, no cross-examination was conducted by the learned counsel for the Respondent No.1. As such, he argued, that the payment of dower stood admitted. He submitted that the Respondent No.1 left the marital home in June, 2011 and she admitted leaving the house of her own will and accord in her cross-examination. According to the learned counsel, the Trial Court in consideration of such admission did not find her entitled for past maintenance. In such circumstances learned counsel for the Petitioner raised the question as to how Respondent No.1 would be entitled to maintenance for the Iddat period when admittedly she left the husband house of her own will and which is precisely the reason why the learned Trial Court did not find her entitled to past maintenance. As per learned counsel for the Petitioner the Impugned Judgment is, therefore, suffering from an inherent contradiction.

9. With regard to quantum of maintenance, learned counsel for the Petitioner submitted that the Respondent No.1 failed to support her allegation that Petitioner's income was 200,000/- per month and in fact admitted in her cross-examination that she has not submitted any proof in this regard. On the other hand

since the Petitioner stated that his monthly income was Rs.50,000/- per month the burden shifted upon the Respondent No.1, which she was unable to discharge.

10. On the other hand, the learned counsel for Respondent No.1 argued that in family law cases, failure to cross-examine does not necessarily mean admission. Since it was the Petitioner who claimed to have paid deferred dower, the onus of proof lay upon him to prove the same. He highlighted that the Petitioner did not produce any witness nor was any question put to the Respondent No.1 as to any specific date on which the Respondent allegedly paid such dower. He further submitted that it is settled law that the one in possession of proof must submit it. In this case a wife who is no longer living with the husband cannot be expected to produce proof of the husband's salary. On the other hand, the Petitioner admitted that he is an Engineer and he is a salaried person yet no salary slip or other proof of his monthly income was produced by him. Lastly he stated that writ has become infructuous as the Impugned Decree has already been executed.

11. In exercise of his right of rebuttal the learned counsel for the Petitioner made a statement at the bar that the payment made in the execution proceedings was subject to decision of this writ petition. This statement was not controverted by the learned counsel for the Respondent No.1.

12. Arguments advanced by the learned counsel for the parties have been heard and record perused with their assistance.

13. The thrust of the arguments made by Petitioner was that a wife who is not entitled to past maintenance on account of leaving the husband's house of her own will cannot be held entitled to maintenance during iddat period. In this regard reliance was placed on para 277 titled Husband's Duty to Maintain his Wife contained in Part-B of Chapter XIV on Marriage, Maintenance of Wives and Restitution of Conjugal Rights of Muhammadan Law, which provides as follows:

"277. Husband's duty to maintain his wife.—The husband is bound to maintain his wife (unless she is too young for matrimonial intercourse,) so long as she is faithful to him and obeys his reasonable orders. But he is not bound to maintain a wife who refuses herself to him, or is otherwise disobedient, unless the refusal of disobedience is justified by non-payment of prompt dower, or she leaves the husband's house on account of his cruelty."

14. According to the submissions made on behalf of the Petitioner, generally a wife who refuses herself to the husband or is otherwise disobedient is not entitled

to maintenance unless refusal or disobedience is justified by non-payment of dower or if she leaves the husband's house on account of his cruelty.

15. In the instant case, there are concurrent findings that deferred dower in the amount of Rs. 55,000/- remained unpaid. Whereas the learned counsel for the Petitioner argued that payment of deferred dower stood proved as the Petitioner's statement that it had been paid was not challenged on cross examination.

16. It is settled law that concurrent findings of fact cannot be disturbed in writ jurisdiction in the absence of misreading or non-reading of evidence. In the case at hand, the learned Trial Court observed that no contrary evidence was produced by the Petitioner to dislodge the entry in the Nikahnama which showed that Rs. 55,000/- was deferred dower amount, which view was maintained by the learned Appellate Court. The Petitioner has failed to point out any evidence that was produced by him which has not been read or misread by the two lower courts with regard to payment of deferred dower.

17. The sole ground that payment stood proved on account of failure to conduct cross examination with regard to the Petitioner's statement alleging that payment had in fact been made is neither correct nor tenable. All entries in the Nikahnama are presumed to be correct, which presumption can only be rebutted through cogent evidence. A bare perusal of the Petitioner's cross-examination reveals that he specifically admitted that he does not have any evidence to support his claim of payment of deferred dower in the amount of Rs. 55,000/-. On the other hand, the Respondent categorically denied in her cross-examination that she has received the deferred dower. In such circumstances, it cannot be concluded that there was any misreading or non-reading of evidence which would warrant interference by this Court in exercise of writ jurisdiction.

18. Since he failed to prove payment of dower, by his own arguments in reliance of para 277 of Muhammadan Law, the Petitioner cannot be held absolved of his duty to maintain his wife despite her refusal to him or disobedience.

19. Even otherwise, with regard to the question as to whether a husband who is otherwise justified in not maintaining his wife, is nevertheless liable to maintain her during the iddat period, the relevant para of Muhammadan Law would be para 279 which provides as follows:-

“279. Maintenance on divorce.- (1) After divorce, the wife is entitled to maintenance during the period of iddat. If the divorce is not communicated to her until the expiry of that period, she is entitled to maintenance until the expiry of that period, she is entitled to maintenance until she is informed of the divorce.

(2) A widow is not entitled to maintenance during the period of iddat consequent upon her husband’s death.”

20. The said paragraph provides that the wife is entitled for maintenance during iddat after divorce. There is no exception provided. Nowhere does it say that a wife would be deprived of her right to maintenance during the iddat period if she herself left the husband’s house.

21. In the following judgments passed by various Honourable High Courts of this country, maintenance during the iddat period was allowed despite the fact that the wife was held not entitled for maintenance allowance for leaving the husband’s house of her own will and accord and also in cases where she was seeking khula:

- (i) *Sh. Azmatullah Vs. Mst. Imtiaz Begum*, PLD 1959 (Lahore) 167,
- (ii) *Muhammad Zairaf Vs. Mst. Safia Bibi*, 2000 MLD 1900 (Lahore),
- (iii) *Kashif Akram Vs. Mst. Naila*, 2011 MLD 571 (Karachi),
- (iv) *Mst. Ghazala Sadia Vs. Muhammad Sajjad*, 2012 YLR 2841 (Lahore),
- (v) *Razia Bibi Vs. Muhammad Iqbal*, 2012 MLD 1943 (Lahore),
- (vi) *Abdul Rafay Butt Vs. Additional District Judge*, PLD 2015 (Lahore) 258,
- (vii) *Mst. Parveen Khan Vs. Abdul Ghafoor*, 2016 CLC 932 (Baluchistan),
Israfeel Vs. Nekam Zada, 2016 YLR 1103 (Peshawar),
- (viii) *Rukhsana Ambreen Vs. District and Sessions Judge, Khushab*, 2021 CLC 1512 (Lahore) and
- (ix) *Fahad Khan Vs. Mst. Farukh Tabbassum*, 2021 MLD 109 (Peshawar).

22. It is therefore clear that maintenance for iddat period rests on a different footing and a wife is entitled to maintenance for such period even if she is disentitled to claim maintenance otherwise.

23. Similarly, the Petitioner failed to point out any non-reading or misreading of evidence or any other infirmity or illegality in the concurrent findings of both the lower courts pertaining to quantum of maintenance. Therefore, the Petitioner has failed to make out a case for interference by this Court.

24. In view of the above, the Impugned Judgment and Decree dated 14.12.2019, passed by the learned Appellate Court, is upheld. Consequently the titled petition, being devoid of any merit, is **dismissed.**

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on _____.

JUDGE