

Stereo. H C J D A 38.
JUDGMENT SHEET
LAHORE HIGH COURT
BAHAWALPUR BENCH BAHAWALPUR
JUDICIAL DEPARTMENT

W.P No.9844/2024

Asif Iqbal **Versus** Additional District Judge
etc.

JUDGMENT

Date of Hearing:	10.12.2025.
Petitioner by:	Mr. Abid Ali Qureshi, Advocate.
Respondents No.3 to 6 by:	Rao Muhammad Amir Sarwar, Advocate.

Anwaar Hussain, J. By way of factual background, it has been noted that respondent No.3, namely, Faiza Ghaffar (“**the respondent**”), is the former wife of the petitioner as statedly, the marriage between the parties stood dissolved during the pendency of the present petition. She filed a suit for recovery of her dower, dowry articles and for maintenance of herself as well as of respondents No.4 to 6 (“**the minors**”), who are her children born from wedlock of the petitioner and the respondent. The suit was contested by the petitioner by filing written statement and after framing of issues, the case was fixed for 06.10.2023 for recording of evidence of respondents No.3 to 6/plaintiffs (“**the respondents**”). However, on 28.09.2023, an application was filed by Syed Muhammad Aurangzaib, Advocate, statedly representing the respondent whereby the file was put up before the Trial Court, on the same day, when both the petitioner and respondent appeared in person and statement of the respondent was recorded to the effect of withdrawal of her case. Crucially enough, the statement also spelled out that she had already received her dower in the shape of Rs.1,000/- and the remaining dower mentioned in columns No.15 and 16 of the *nikahnama* was never settled between the parties at the time of their marriage and she is residing in the house of the petitioner/defendant. The suit of the respondents was

dismissed as withdrawn on the basis of compromise. However, in latter half of the same day, the respondent again appeared and filed an application for recalling of her statement dated 28.09.2023, contending that she was defrauded by the petitioner/defendant. The critical aspect of the matter is that this application was filed through Rao Muhammad Amir Sarwar, Advocate, who had been earlier prosecuting the suit on behalf of the respondents alongwith Ch. Aftab Mubarak, Advocate. The application was taken up on 02.10.2023 and was dismissed in *limine*, against which an appeal was preferred by the respondents and through judgment dated 08.01.2024, the matter was remanded to the Trial Court for decision afresh. The Trial Court, on remand, accepted the application of the respondents through order dated 06.07.2024 with cost, against which an appeal was preferred by the petitioner and through impugned judgment dated 11.10.2024, the findings of the Trial Court were maintained, hence, present constitutional petition.

2. Learned counsel for the petitioner submits that the Trial Court had no power to review its own order, therefore, once statement was recorded by the respondent and the suit was withdrawn, the same could not have been revived. Adds that the Courts below have drawn an erroneous distinction between the original counsel and the subsequently engaged counsel as there is no such distinction in law and a counsel who has the power of attorney (*wakalatnama*) for contesting a case has the authority to appear before the Court. Places reliance on cases reported as Muhammad Ramzan v. Lahore Development Authority, Lahore (2002 SCMR 1336); Muhammad Akram v. Additional District Judge, Alipur and others (2018 CLC Note 112) and Muhammad Ejaz v. Judge Family Court, Hafizabad and others (2025 SCMR 558) to contend that sanctity is attached to the judicial proceedings and therefore, order dated 28.09.2023 based on statement of the respondent could not be recalled on the ground that the statement of the respondent was not recorded with her free will.

3. Conversely, learned counsel for the respondents have supported the impugned findings on the ground that there was no justification for the respondent to withdraw the suit when the case was not even fixed for hearing and she was not accompanied by the counsel of her choice. Adds that the respondent acted only on the persuasion of the petitioner to save her marriage resulting in simplicitor withdrawal of the case, which amounts to undue influence.

4. Arguments heard. Record perused.

5. This case reflects a scenario that highlights certain vulnerabilities both within the legal system and embedded in the broader societal context. Following questions require determination:

- (i) Whether a wife pursuing claims for dower, dowry articles and maintenance, who appears before the Court without counsel of her choice or any independent advice and withdraws her suit, can later seek to recall that statement on the ground of fraud, undue influence keeping in view the fact that sanctity is attached to the judicial proceedings?
- (ii) Whether the Court must examine the surrounding circumstances to determine if her act was truly free, voluntary, and uninfluenced, in the same manner as the Courts assess the voluntariness of statements made by women before the executive authorities.

6. It is well settled that judicial proceedings carry sanctity, and ordinarily a statement recorded before the Court—particularly one bearing a thumb impression of the maker—should be treated as conclusive and not be allowed to be withdrawn. Such statements are generally given full weight because same are presumed to reflect the free and voluntary will of the party making them before the Courts. However, this principle is not an unbending rule of thumb. The Court must examine the attending circumstances to determine whether the act was truly voluntary and free from undue influence or fraud. Therefore, the reliance on case law cited by learned counsel for the petitioner is of no help on account of distinguishable facts.

7. In the present case, a detailed analysis of the record reveals multiple factors that the Court must consider. The respondent was actively pursuing her claims for dower, dowry articles and maintenance, as also maintenance of the minors, both dependent upon the petitioner in the legal and social context of our society. It is well recognized that in such circumstances, the respondent may be subjected to considerable persuasion or pressure—social, emotional, or even subtle coercion—to reconcile with the petitioner for the sake of family cohesion or the welfare of the minors.

8. Notably, on 28.09.2023, the respondent appeared before the Court accompanied only by the petitioner—husband, when in fact the case was not fixed for hearing on that date. Respondent did not appear through her counsel, who had instituted the suit on her behalf and represented her independent choice. Instead, she was represented by Syed Muhammad Aurangzeb, Advocate, a junior associate of the petitioner's counsel from the same chamber. There was no independent adult male member of her family present. In the normal course of business involving any transaction and/or statement in the Court proceedings, husband of a female fully qualifies to be one imparting independent advice to a female, however, the same cannot be so construed in cases where husband and wife are standing in adversarial positions by asserting their respective rights. In the instant case, this position is superimposed by the factum of subsequent dissolution of marriage between the parties. It is noted that on 28.09.2023, the respondent recorded a statement withdrawing her primary claim, including the dower documented in the registered *nikahnama*, as well as claims for maintenance of the minors. On the same day i.e., 28.09.2023, the respondent approached counsel of her choice namely, Rao Muhammad Amir Sarwar, Advocate to challenge this withdrawal, asserting that she had been induced by the petitioner to record the statement and that her consent was neither free nor voluntary. The immediate action on part of the respondent raises serious doubts about the voluntariness of the disputed statement and

casts skepticism over the petitioner's assertion that the settlement or compromise was made voluntarily. Had the withdrawal been genuinely voluntary, the petitioner could have brought the respondent and the minors to his home and lived with them after the settlement. Instead, the circumstances suggest that the respondent was effectively trapped into relinquishing her substantial claims, including her dower, which is based on registered document.

9. The record further shows that the respondent appeared before the Trial Court through a counsel namely, Syed Muhammad Aurangzaib, Advocate, who is admittedly the associate of the petitioner's counsel, who has confirmed this fact before this Court as well. Moreover, she was invited to record the withdrawal on a date which was not the original date of hearing, and was thereby deprived of the independent legal guidance she had chosen. These circumstances, viewed collectively, raise a legitimate concern that the withdrawal have not been fully voluntary and free from undue influence. It is in such situations, particularly in family matters, that the Courts must apply careful scrutiny, similar to the manner in which it is expected that a woman should be supported by independent advice before the executive authorities. The presence of social pressures, dependence, and possible inducement by the petitioner are factors that Court cannot ignore merely because sanctity is attached to the judicial proceedings. Accordingly, while the principle of sanctity of Court's record is important, it cannot operate as an absolute bar against recalling a statement when the surrounding circumstances indicate that the act (of conceding statement) may not have been truly voluntary. In the instant case, the Trial Court is justified in considering these factors, and the withdrawal cannot be treated as automatically binding without such examination. This approach ensures both the protection of the sanctity, attached to the judicial proceedings and the safeguarding of the substantive rights of a vulnerable litigant.

10. At this juncture, it is imperative to address argument of learned counsel for the petitioner, who contended that the Trial Court lacked the power to review its earlier order. While it is generally correct that a Court does not possess power to revisit/review its prior orders, except for error apparent on record, the circumstances of the present case are distinguishable. The Trial Court was acting pursuant to the order of remand from the Appellate Court below, which required it to examine the special circumstances surrounding the stance of the respondent, which order was not challenged by the petitioner. Moreover, under the Family Courts Act, 1964 (“**the Act**”), the Courts are vested with procedural and equitable powers to ensure that justice is served, and they are not strictly bound by the technicalities of the Code of Civil Procedure, 1908 when dealing with matters within their jurisdiction. Accordingly, the Trial Court’s reconsideration of the withdrawal was undertaken in exercise of its statutory functions and therefore, cannot be held improper/illegal.

11. The petitioner’s counsel further argued that the Courts below erroneously drew a distinction between the respondent’s original counsel and the subsequently engaged counsel as any advocate once engaged can accompany the client and record his/her stance. Ordinarily, no rigid distinction exists between an original and a later-engaged counsel, and such technicalities are not determinative of the validity of a statement. However, as observed above, the present case is exceptional. The subsequently engaged counsel, Syed Muhammad Aurangzeb, Advocate is admittedly an associate of the petitioner’s own counsel namely, Mr. Abid Ali Qureshi, Advocate and belonged to the same chamber, raising a clear conflict of interest. He represented the respondent at the time she recorded her withdrawal, without the presence of her original counsel or any other independent support. The statement was recorded in English language while the respondent is merely a matric pass lady, who is admittedly a house wife and is not conversant with chicaneries of legal language. In these circumstances, the distinction drawn by the Courts below was valid

and justified, as it directly relates to the voluntariness and independence of the statement recorded by the respondent.

12. At this juncture, it is felt important to hold that in a dispute whenever a statement is to be recorded by a vulnerable litigant, like females in a family matter, the Court must take all necessary steps to ensure that the statement is fully understood by the maker; the statement should be recorded in a language which the party comprehends; particularly, if the maker is illiterate, the Presiding Officer must ensure that she is accompanied by her kin, who is literate, having no adverse interest, and understands the statement she makes and it should be read over to her by the Presiding Officer of the Court, who should specifically question such vulnerable party to ascertain that she understands the contents and implications of the statement, and that it is being made voluntarily, without any inducement, undue influence, or coercion, and that she has the independent advice from counsel of her choice. Such procedural safeguards are essential to uphold the principles of natural justice and to ensure that the sanctity of the judicial proceedings is preserved while protecting the substantive rights of vulnerable parties as required under the Constitution of Islamic Republic of Pakistan, 1973. In present case, these procedural safeguards were overlooked by the Trial Court when statement of the respondent was recorded on 28.09.2023 and when her application for recalling of said statement was initially dismissed on 02.10.2023, therefore, the said statement was rightly recalled by the Trial Court through the impugned order.

13. In view of the above discussion, this Court is of the opinion that this petition has no merits and hence, dismissed.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting

Judge

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