

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Irfan Saadat Khan
Justice Shahid Bilal Hassan

C.P.L.A.No.2759-L of 2023

(Against the order dated 21.07.2023 passed by Lahore High Court, Lahore in Writ Petition No.48244 of 2023)

Muhammad Ejaz

... *Petitioner(s)*

Versus

Judge Family Court, Hafizabad and others

... *Respondent(s)*

For the Petitioner(s): Mr. Zulfiqar Ali Hargan, ASC

For Respondent: Mr. Aftab Hussain Bhatti, ASC

Date of Hearing: 14.01.2025

ORDER

SHAHID BILAL HASSAN, J. Challenging the vires of order dated 21.07.2023 passed in W.P.No.48244 of 2023 by the Lahore High Court, Lahore, the petitioner has filed the instant petition.

2. Facts, in precision, are as such that the respondent No.3 instituted a suit for dissolution of marriage and recovery of dower, in terms of conditions of Nikahnama, wherein the petitioner was proceeded against *ex parte* and decree for dissolution of marriage was passed on 12.03.2021, giving effect to section 10(5) of the Family Courts Act, 1964 to the extent of prompt dower, without dismissing or dilating upon the claim of deferred dower, which otherwise was pleaded in the plaint. The respondent No.3 by filing an application sought review of the decree dated 12.03.2021 and the Judge Family Court proceeded to partially decree claim of deferred dower on 30.03.2021. The respondent No.3 being aggrieved preferred an appeal. Meanwhile,

the petitioner filed an application seeking setting aside of *ex parte* decree/proceedings, which application was, however, later on, withdrawn on 02.04.2022. Again, the petitioner filed another application for recalling of the order of withdrawal of earlier application on the plea that no instructions for withdrawal of the application were conveyed to the counsel but the petitioner failed to get a favourable order as the said subsequent application was dismissed on 20.07.2022. The said order was assailed by the petitioner before the appellate Court. It is also notable that the petitioner also instituted a suit for cancellation of entries in column No.15 of the Nikahnama on 27.05.2021, which is still pending. The petitioner, too, filed cross objections to the appeal preferred by the respondent No.3. The appellate Court decided the appeals and cross objections through consolidated judgment and decree dated 01.03.2023. The petitioner being dissatisfied filed writ petition bearing No.48244 of 2023 before the Lahore High Court but the same was dismissed vide order dated 21.07.2023, impugned before us.

3. We have heard learned counsel for the parties and have gone through the record as well as impugned judgments. Though the petitioner sought setting aside of *ex parte* decree by filing an application under sub-section (6) of Section 9, Family Courts Act, 1964 but later on, he withdrew the same 02.04.2022, meaning thereby he acquiesced of the decree and waived off his right to further agitate it. So far as the filing of subsequently application for recalling of the above said order, as purportedly, no instructions for withdrawing the above said application for setting aside *ex parte* decree/ proceedings to the counsel, were conveyed is concerned, suffice it to say that the said order was passed after the statement of the duly engaged counsel of the petitioner because engagement of the said counsel under Order III, Rule 1, Code of Civil Procedure, 1908, is admitted one (*even the counsel, who withdrew the application, also instituted the suit for cancellation of entries in column No.15 of the Nikahnama, which means the petitioner has confidence and trust upon his counsel*); therefore, the petitioner cannot take a summersault as the act of duly engaged counsel is considered as that of the person, who engages him/her and the petitioner is bound by the acts of his counsel. By singing a

Wakalatnama all the powers including withdrawal of suit or to take any step and conduct proceedings is delegated upon the counsel. Lahore High Court in a judgment¹ held:-

'It is inconceivable that elements of fraud and misrepresentation may anyway be involved in the exercise of lawful authority conferred on a counsel by means of Wakalatnama. This appointment is made as per the contemplation of Rule 1 of Order III, C.P.C. and is essentially an authority conferred on an agent, exercisable under the ordinary rules governing the relationship of Principal and Agent, in quite a subtle and refined form, exercisable in the field determined by the terms of Wakalatnama itself. Effectiveness of such delegated authorisation and the use thereof stand provided for by section 2 of the Powers of Attorney Act (VII of 1882) as also in Chapter X of the Contract Act (IX of 1872). Authority to withdraw or compromise a, litigation has been held to also be inherent in the engagement of a counsel.'

Further, this Court in judgment² invariably held that:-

'It will be seen that the terms of Vakalatnama amply demonstrate that the counsel was empowered to take any step and conduct proceedings in the suit as considered proper by him, and that the same were acceptable to the respondents, who put their signatures on the Deed in token of their approval.'

A party is always bound by the statement of his counsel unless there is anything contrary in the power of attorney placing restriction(s) on the authority, delegated upon the counsel, to compromise or abandon the claim on behalf of his client(s)³. In Hassan Akhtar case, this Court has held:-

'13. It is by now well-settled that an Advocate has authority to make statement on behalf of his client, which is binding upon the client, unless there is any thing contrary in the Vakalatnama putting restriction on the authority of the Advocate to compromise or abandon claim on behalf of the client. The Advocate's power in the conduct of a suit allows him to abandon the issue, which in his discretion, advisable in the general interest of his client.'

In this view of the matter, the principle of estoppel fully attracts against the petitioner. Even otherwise, the appellate Court, after passing of the

¹ Fateh Khan v. Manzoor and 5 others (PLD 1993 Lahore 76)

² Noor Muhammad and others v. Muhammad Siddique and others (1994 SCMR 1248)

³ Hassan Akhtar and others v. Azhar Hameed and others (PLD 2010 Supreme Court 657) and Afzal and others v. Abdul Ghani (2005 SCMR 946)

decree by the trial Court, reviewed its findings and concurred the same being in accordance with pleadings, evidence and law on the subject.

4. In view of the above discussion, we find no illegality in the impugned orders, judgments and decree and it is not a fit case for grant of leave. Leave is refused, consequent whereof the petition stands dismissed.

Judge

Judge

Islamabad

14.01.2025

'Approved for reporting'

(M.A.Hassan)