

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Mr. Justice Amin-ud-Din Khan
Mr. Justice Athar Minallah

CIVIL PETITION NO.2673 OF 2022

*(Against the judgment dated 31.5.2022 of
the Lahore High Court, Rawalpindi Bench
passed in Writ Petition No.34/2017*

Muhammad Yousaf ...Petitioner(s)

Versus

Huma Saeed and others ...Respondent(s)

For the petitioner(s): Khawaja Muhammad Imtiaz, ASC.
Mr. Anis Muhammad Shahzad, AOR

For respondent No.1: Ms. Farhana Qamar, ASC
Syed Rifaqat Hussian Shah, AOR

Other respondents: Not represented.

Date of hearing: 06.04.2023

ORDER

Athar Minallah, J.- Muhammad Yousaf ('**petitioner**') and Huma Saeed ('**respondent**') had tied the knot on 05.5.2014. They were 49 and 26 years old, respectively, at the time when the contract of marriage ('**Nikah Nama**') was executed. It was duly registered by the *Nikah* Registrar as required under the Muslim Family Laws Ordinance, 1961 ('**Ordinance of 1961**'). The respondent was the petitioner's second wife and the earlier marriage was subsisting when they had entered the marriage contract. The marital relations between the partners became strained and the marriage ultimately ended when it was dissolved on 18.10.2014, pursuant to the pronouncement of divorce by the petitioner. The respondent filed a suit for recovery of dower, maintenance, dowry articles and gold ornaments because the petitioner was refusing to fulfill his obligations in accordance with the terms settled in the *Nikah Nama*.

The latter contested the suit and the trial court, after framing seven issues and granting opportunity to the parties to adduce evidence, partially decreed the suit vide judgment and decree dated 02.02.2016. The petitioner, as well as the respondent, challenged the decree by preferring separate appeals. The appeal preferred by the petitioner was partially allowed while that of the respondent was dismissed, vide judgment and decree dated 15.10.2016. Both the parties invoked the jurisdiction of the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ('**Constitution**'). The High Court declared the respondent entitled to the plot described in column 17 of the *Nikah Nama* and the relief sought to this extent was granted. The petition was thus accordingly allowed. The petitioner, through this petition, has sought leave against the judgment dated 31.5.2022 of the High Court. The controversy is now confined to the right of the respondent regarding entitlement to the plot described in column 17 of the *Nikah Nama*.

2. We have heard the learned counsels. As noted above, the sole controversy is regarding the intent of the parties in respect of the plot described in column 17 of the *Nikah Nama*. The learned counsel for the petitioner has argued that the plot described in column 17 of the *Nikah Nama* could not have been construed as part of the dower or treated as a gift because the title/heading of the column is 'special conditions', thus making it distinct from the other columns which have been specifically provided for the purposes of settling the terms of dower. It was the petitioner's stance before the trial court that the parties had intended that a house was to be constructed on the plot and that the respondent would be entitled to live in it during subsistence of the marriage. The counsel has stressed that column

17 of the *Nikah Nama* must be construed in accordance with its heading/title, distinct from columns 13 to 16.

3. The description of the plot in column 17 of the *Nikah Nama* is explicit and not disputed. However, there is no condition stipulated in the column except the description of the plot. The petitioner had filed his written statement in response to the plaint and had expressly admitted the description of the property but he had taken the stance that the plot was meant for the construction of a house and the respondent was to live in it for as long as the marriage subsisted. A plain reading of the description of the property, as mentioned in column 17, does not indicate nor supports such a stance. If such an interpretation is accepted then the property would not form part of the dower separately mentioned in columns 13 to 16 of the *Nikah Nama*. The copy of the *Nikah Nama* has been attached with the paper book before us at pages 87 to 88 and no condition has been stipulated in column 17 except describing the property. The question that has arisen for our consideration is how the terms and conditions stipulated in a *Nikah Nama* should be interpreted and if there is doubt and ambiguity regarding the intent of the parties, how can it be resolved.

Nikah Nama; a civil contract.

4. The *Nikah Nama* contains the terms of the *Nikah* i.e. the contract between a man and a woman, having the object to enable them to legitimately live together and enjoy all the rights as husband and wife. The terms and conditions are meant to secure the rights and interests of both the parties; the husband and the wife. The *Nikah* is a civil contract and its essential requirements '*ruk'n*', also called a '*sighah*', are offer, '*Ijab*' and acceptance, '*qabool*'. The offer

and acceptance would be valid if made by parties who are competent to enter into a valid marriage contract. The offer and acceptance can either be made expressly and directly by the two contracting parties or through their duly appointed agents or messengers. The most crucial factor is existence of free consent i.e. absence of coercion, undue influence, fraud, misrepresentation or mistake. It is settled law that a presumption of truth is attached to the *Nikah Nama* and it enjoys the status of a public document. Likewise, there is a strong presumption of truth regarding the entries recorded in the *Nikah Nama*. In exercise of powers conferred under section 11 of the Ordinance of 1961, the competent authority has made the West Pakistan Rules under the Muslim Family Laws Ordinance, 1961 (**'the Rules of 1961'**). The matters relating to registration of marriages and the issuance of licenses to *Nikah* Registrars are regulated under the Rules of 1961. Form II of the Rules of 1961 has prescribed the form of *Nikah Nama and its entries*. The titles of columns 13 to 16 relate to 'dower' while the heading of column 17 is 'special conditions, if any'. As will be explained later, neither the prescribed form nor the headings of the entries contained therein are conclusive for ascertaining the intent of the two parties to the marriage contract. But before we examine this aspect it would be beneficial to understand the significance of 'dower' in the context of a marriage contract'

'Dower'; right of the wife

5. 'Dower' is obligatory because it is an essential requirement of a valid marriage contract. The validity of marriage remains effective even if the dower has not been expressly mentioned in the marriage contract because, in such an eventuality, reasonable dower '*Mehr-ul-*

Misel' is presumed. Dower is distinct from a gift, which is over and above it. Dower is given by the husband to the wife and its determination is subject to the consent of the wife, since it is her exclusive right. This right of the wife is relatable to a thing which has marketable value. It can be in the form of cash or property or both. It may be prompt or deferred. In case the parties do not specify the nature of the payment of dower it is presumed to be prompt as provided under section 10 of the Ordinance of 1961. The dower becomes the exclusive property of the wife and it is given by the husband as a symbol of respect for her. It has many benefits for both the parties because it ensures stability in the relationship. It is an acknowledgment of equality of the wife because it recognizes her right to own property. It also serves the purpose of ensuring that the right to divorce is not abused by the husband. Dower has the benefit of serving as a financial security in the case of dissolution of marriage or in the event of the passing away of the husband. Its determination at the time of the execution of the Nikah Nama must necessarily be guided by an informed understanding of the bride regarding her rights. The freedom to negotiate and settle the terms by the bride, therefore, becomes crucial. The form of Nikah Nama nor its headings are conclusive or sacrosanct. It is the intent of the parties which would be the determining factor.

Interpretation of the terms of Nikah Nama;

6. As noted above, a Nikah Nama is in the nature of a civil contract and it contains the terms agreed upon by the parties, the husband and the wife. It is, therefore, obvious that the foundational principle of *Nikah* is the free consent of the contracting parties, which inherently involves the informed understanding of each party

regarding his or her rights and freedom to negotiate and settle the terms and conditions. The bride is, therefore, entitled to negotiate the terms of dower or at least take informed decisions in the context of its determination before the contract is executed. The entries in the *Nikah Nama*, described in form II of the Rules of 1961, are not conclusive nor can the intention of the contracting parties be ascertained merely on the basis of its headings. This Court has held that *Nikah Nama* is the deed of marriage contract entered into between the parties and its clauses/columns/ contents are to be construed and interpreted in the light of the intention of the parties. The headings, therefore, are not sufficient to determine the intention of the two parties to the *Nikah Nama*¹. It is a settled law that any ambiguity in a contract is to be resolved by ascertaining the real intention of the parties. In order to interpret the terms of a contract, the court has to first ascertain the intention of the parties. The contract has to be read as a whole and the words are to be taken in their literal, plain and ordinary meaning. The court cannot imply, while interpreting the contract, something that is inconsistent with its express terms. Moreover, a stipulation not expressed in the written contract can also not be applied merely because it may appear to be reasonable to the court².

7. The courts, while interpreting the contents and terms and conditions of a *Nikah Nama*, also have to take into consideration the factor of free consent of the bride and her freedom to settle the terms and conditions as a person having an informed understanding of her rights. This is crucial in the context of the social and cultural norms generally prevalent in the society. If an ambiguity or doubt arises in

¹Haseen Ullah v. Mst. Naheed Beugm & others (PLD 2022 SC 686)

²Housing Building Finance Corporation v. Shahinshah Humayun Cooperative House Building Society and others (1992 SCMR 19)

relation to the terms and conditions of the Nikah Nama, an entry or column thereof, then the benefit ought to go in favor of the wife if there does not exist preponderance of evidence on record to establish that she had been informed of her rights, she understood each column of the Nikah Nama, and she had the freedom to negotiate and settle the terms and conditions out of free consent. In case the columns of the Nikah Nama have been filled by others without her meaningful consultation then a doubt or ambiguity cannot be interpreted against her rights or interests. It is noted that the rule of contra proferentem, known as the rule of interpretation against the draftsman, is a recognized principle of contractual interpretation which provides that in case of an ambiguous promise, agreement or term, the preferred construction should be the one that works against the interests of the party which had drafted the contract. Nonetheless, an ambiguity cannot be construed against the interests and rights of the wife except when it has been established on the principle of balance of probabilities that she was informed of her rights, understood each column of the Nikah Nama and she had the freedom to negotiate and settle the terms and conditions out of free consent. It is implicit in the expression "free consent" that the wife, at the time of executing the Nikah Nama, had the freedom to settle the terms and conditions as an informed person competent to enter into a contract. Paternal tendencies of the society and dominance of the male members in relation to deciding the terms and conditions on behalf of the bride has generally been accepted as a cultural and social norm of the society. It places a bride in a disadvantageous position, inevitably adversely affecting her capacity to execute the contract with free consent. As an illustration, reference may be made to the social and cultural norms and tendencies recently highlighted

in a survey report titled "*Diagnostic Study of Nikah Namas in Punjab: A Review of Woman's Marriage Rights*". The report has been published by the Centre for Human Rights and Musawi with the support of the National Commission for Human Rights. The findings of the diagnostic studies manifest the adverse effects in relation to the rights of women at the time of execution of the marriage contract due to the entrenched social and cultural norms and tendencies. The attempts to suppress child or forced marriages by withholding information, lack of knowledge, training and personal beliefs of the *Nikah* Registrars and the influence of male members of the family are factors which can adversely affect the freedom of the bride and her free consent in relation to settling the terms and conditions of the marriage contract. The consent of the *wali/wakeel* may also take precedence over that of the bride. Social and cultural norms and practices may profoundly affect the rights of the brides by depriving their ability to independently decide the terms and conditions by exercising free consent. It, therefore, becomes crucial for a court to be satisfied, while interpreting the contents of the columns of a *Nikah Nama*, that the wife, at the time of its execution, understood each column and was informed of her rights and that she had exercised her free consent while settling the terms and conditions. It is settled law that no party can benefit from introducing or creating an ambiguity. The weakness or creation of an ambiguity in a *Nikah Nama* cannot be interpreted against the interest and rights of a wife if it cannot be established that she had the freedom to settle the terms and conditions and had exercised her free will.

8. In the case before us, the entries were recorded in a printed form of *Nikah Nama*. The columns no 13 to 16 relate to dower. Column 13 refers to dower in cash while the headings of columns 14,

15 and 16 could be construed as ambiguous regarding dower in the form of immovable property. Moreover, the heading of column No.16 could also be misconstrued. The heading of column no.17 describes it as 'special conditions'. As noted above, the description of the property is explicit but it does not mention any condition. It is not the case of the petitioner that the columns were filled by the respondent or pursuant to meaningful consultation carried out with her before or at the time of execution of the Nikah Nama. No such evidence has been brought on record. The stance taken by the petitioner is not supported by the entry. He has asserted that he understood the purpose of column no. 17 but did not attempt to describe the condition in conformity with the stance taken by him during the trial of the suit. The onus was on the petitioner to establish that the property described in column no. 17 was not meant nor intended by the parties to be part of the dower. The ambiguity, if any, cannot be construed against the interests and rights of the respondent in the facts and circumstances of the case before us. Moreover, accepting the stance of the petitioner would amount to reading in the Nikah Nama something not provided therein. The courts cannot construe the Nikah Nama and its entries as having the effect of applying a stipulation not expressly provided therein.

9. For the above reasons, we are sanguine that the High Court has correctly interpreted the columns of the *Nikah Nama* and, therefore, no interference is required with the impugned judgment. Consequently, no case is made out for grant of leave and, therefore, the petition is accordingly dismissed.

Judge

Judge

Islamabad the,
6th April, 2023
APPROVED FOR REPORTING.
(Aamir Sh./Momal Malik, LC))