

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL PETITION NO.4690 OF 2018

(Against the judgment of the Peshawar High Court, Mingora Bench (Dar ul Qaza) Swat dated 17.10.2018 passed in Writ Petition No.319-M/2018).

Muhammad Jamil & others ... **Petitioners**

Versus

Mst. Sajida Bibi & others ... **Respondents**

For the Petitioners : Raja Ghazanfar Ali Khan, ASC
Syed Rifaqat Hussain Shah AOR

For the Respondents : NR

Date of Hearing : 12.08.2020

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J:- The instant civil petition has assailed under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 seeking leave to appeal against the judgement dated 17.10.2018 passed by learned Single Judge of Peshawar High Court in writ petition No.319-M/2018 with a prayer to set aside the same in the interest of justice.

2. Brief facts leading to file the instant petition are that respondent No.1 alongwith minors filed a family suit against the petitioners for recovery of dower in shape of 05 tolas of gold ornaments, 03 tolas gold ornaments as personal ownership of respondent No.1 or its market value, maintenance @ Rs.6000/- per month since November 2013 till disposal of the suit and afterwards with 30% increase per annum for respondent No.1, maintenance @ Rs.3000/- per months since November, 2013 till attaining age of majority plus 30% increase per annum each for

petitioners No.2&3 and respondents No.2&3 (all minors) and recovery of dowry articles according to list annexed with plaint or market value thereof i.e. Rs.229500/-. Respondent No.1 also sought custody of petitioners No.2&3 till their attaining the age of majority.

The suit was contested by petitioner No.1. He filed written statement with divergent stance. The learned trial court framed issues on the basis of pleadings of both parties and thereafter the evidence of the parties was recorded. Thereafter the learned trial court vide judgment and decree dated 16.09.2015 partially decreed the suit to the extent of 05 tolas dower and maintenance @ Rs.1000/- per months each for respondents No.2&3 since November 2013 with 25% increase per annum during the period they reside outside the house of petitioner No.1. The plea of petitioner No.1 for restitution of conjugal rights was decreed in his favour.

Being aggrieved, both the parties preferred separate appeals before appellate court who vide consolidated judgment and decree dated 09.06.2016 set aside the decree of the family court and remanded the case with the direction to record findings on issue No.07 relating to custody of the minors. Upon which learned family court decided the suit afresh vide judgment and decree dated 22.02.2017 by giving following findings: -

“In view of the facts and circumstances narrated above, suit of the plaintiffs, to the extent of five tolas gold dower of plaintiff No.1 and maintenance amount for plaintiffs No.4&5 as Rs.1000/- with 25% per annum increase from November, 2013 till maturity or their marriages, whichever happens earlier, is decreed, while rest of the suit is dismissed.”

In second round of litigation, both the parties approached to appellate court who vide consolidated judgment and decree dated 23.09.2017 partially allowed the appeal of respondent No.1 and modified the judgment and decree of learned family court.

It is pertinent to mention here that respondent No.1 also filed another suit on the ground that the petitioner No.1 has contracted second marriage without seeking permission from her, hence, she filed suit for dissolution of marriage on 10.02.2017 which was decreed in her favour vide judgment dated 25.01.2018.

Feeling dissatisfied from the impugned judgment dated 23.09.2019, passed by Additional District Judge, the petitioner filed constitutional petition before learned High Court Peshawar. The learned Single Bench after taking into consideration facts and circumstances dismissed the constitution petition in limine, however, the judgment of the appellate court was modified to the extent of payment of maintenance till the expiry of period of "Iddat".

3. At the very outset, learned counsel for the petitioner argued the matter half-heartedly. The main stay of the arguments advanced by learned counsel for petitioner No.1 is that the recovery of dower is against the facts and prevailing law. Further contends that Mst. Sajida Bibi, the Ex-wife of the petitioner is not entitled to maintenance allowance when the petitioner No.1 has been granted decree for restitution of conjugal rights. Lastly, it is argued that judgments and decree passed by the learned courts below are liable to be set aside.

4. We have heard the learned counsel for the petitioner and gone through the record.

There is no denial to this fact that the petitioner No.1 has contracted second marriage during subsistence of his marriage with Mst. Sajida Bibi (respondent No.1) without her permission or from Arbitration Council and section 6 of the Muslim Family Laws Ordinance, 1961 prohibits contracting second marriage without previous permission in

writing of the Arbitration Council. The respondent No.1 filed suit for recovery of dower, dowry articles, gold ornaments and maintenance whereas the petitioner No.1 in his written statement prayed for restitution of conjugal rights as counter claim and the claim of the petitioner No.1 for restitution of conjugal rights was decreed whereas the suit filed by the respondent No.1 was partially decreed to the extent of five Tolas of gold as dower of respondent No.1 and maintenance amount for respondents No. 2 & 3 as Rs.1000/- with 25% per annum increase from November, 2013 till maturity or their marriage which ever happens earlier and rest of the claim was dismissed. It is pertinent to mention here that the respondent No.1 afterwards filed a suit for dissolution of marriage which was decreed in her favour vide judgment and decree dated 25.01.2018 by the learned Judge Family Court. As the petitioner No.1 has contracted second marriage without the permission of his first wife i.e. respondent No.1 and Arbitration Council, therefore, as per section 6(5)(a) of Muslim Family Law Ordinance, 1961, the dower becomes immediately payable. It would be advantageous to reproduce said section:-

- Polygamy:** (1).....
 (2).....
 (3).....
 (4).....
 (5) Any man who contracts another marriage without the permission of the Arbitration Council shall:-
 (a) Pay immediate the entire amount of dower whether prompt or deferred, due to the existing wife or wives which amount, if not so paid shall be recoverable as arrears of land revenue; and
 (b).....

It is now abundantly clear that the entire amount of dower fixed at the time of marriage whether prompt or deferred is immediately payable on account of second marriage. The petitioner No.1 by entering into second

marriage without seeking prior permission either from the existing wife i.e. respondent No.1 or the Arbitration Council, the dower even if it is termed as deferred or prompt has become payable without any delay. Otherwise the provision of section 6 of the Muslim Family Law Ordinance, 1961 is in consonance with the injunctions of Islam. The said provisions has not placed any restriction to contract second marriage, rather it only relates to seeking permission before entering into second marriage in order to regulate the structure of society as a whole. Any deviation from the provision of section 6 of Muslim Family Law Ordinance, 1961, it might ensue number of issues which would frustrate the fabric of relationship within society, therefore, the judgment of the learned Single Bench of Peshawar High Court for immediate payment of dower (5 Tolas of gold) is quite in accordance with law. So far as recovery of maintenance allowance is concerned, learned counsel for the petitioner has failed to point out any good reason qualifying interference into the judgment impugned before us. The learned High Court has rightly declined the prayer; hence, no other exception is called for. As a consequence, this petition is dismissed. Leave to appeal is declined.

Judge

Judge

Islamabad,
12.08.2020
Not approved for reporting.
Athar