

Stereo.HCJDA 38.
JUDGMENT SHEET.

LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI.
JUDICIAL DEPARTMENT

W.P.No.2827 of 2016

MUHAMMAD SUQRAT

Versus.

THE LEARNED ADDL. DISTRICT JUDGE, ETC.

JUDGMENT.

Date of hearing: **02.03.2023.**

Petitioner by: Malik Faisal Sardar, Advocate.

Respondent No.3 M/s Shahbaz Ahmad Rajpoot & Nusrat
by: Naureen, Advocates.

Mirza Viqas Rauf, J. This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 stems out from judgment dated 22nd September, 2016, whereby the learned Additional District Judge, Rawalpindi, while allowing the revision petition filed by respondent No.3 (hereinafter referred to as “respondent”) set aside the order dated 6th February, 2016 passed by the learned Judge Family Court/ Executing Court, Rawalpindi.

2. Facts in brief necessary for adjudication of instant petition are that the petitioner was married to the “respondent”. On account of differences, a suit for dissolution of marriage on the basis of Khula was instituted by the “respondent”, which was decreed by way of judgment dated 8th December, 2010, subject to return of dower. The petitioner moved an execution petition seeking return of dower. The execution petition was

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though objected by the “respondent”, however, by way of order dated 6th February, 2016, the objection was turned down and the “respondent” was directed to hand over 4-tola gold in shape of ornaments or its price at the prevailing market rate. Feeling dissatisfied, the “respondent” filed a revision petition before the learned Additional District Judge, Rawalpindi, which was accepted through impugned judgment on the ground that execution petition was not competent, in the circumstances.

3. After having heard learned counsel for the parties at considerable length, I have perused the record.

4. After having remained in marital tie for some time with the petitioner, the “respondent” in order to part her ways, instituted a suit for dissolution of marriage on the basis of Khula before the learned Judge Family Court, Rawalpindi. On failure of pre-trial reconciliation proceedings, suit was finally decreed by way of order dated 8th December, 2010 with the following observations: -

“3. Considering pre-trial reconciliation proceedings to be failed under proviso of Section 10(4) of Family Court Act 1964, suit of the plaintiff for dissolution of marriage is hereby decreed on the basis of Khullah, subject to return of dower...”

(Underlining supplied for emphasis)

5. This followed an execution petition on behalf of petitioner for the return of 4-tola of gold as part of dower. The “respondent” resisted the execution proceedings and by way of order dated 22nd November, 2011, she was directed to return the four tolas gold ornaments mentioned in Nikahnama or its price mentioned in the receipt at the time of Nikah. Feeling dissatisfied, the petitioner preferred revision petition before

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the learned Additional District Judge, Rawalpindi, which was allowed by way of judgment dated 2nd April, 2012. The “respondent” then filed W.P.No.3002 of 2012, which was accepted with the consent of the parties by way of order dated 15th May, 2015 in the following manner: -

“With the consensus of the parties, this petition is accepted and set aside the orders dated 25.11.2011 and 02.04.2012 passed by the learned trial Court, with a direction to the learned Executing Court to decide the application of the respondent afresh keeping in view the law laid down by the Hon’ble Supreme Court of Pakistan in titled “Mst. Ayesha Shaheen vs. Khalid Mehmood & another” (2013 SCMR 1049).

6. In post remand proceedings, the learned Judge Family Court/ Executing Court, by way of order dated 6th February, 2016, directed the “respondent” to hand over 4-tola gold in shape of ornaments or its price at the prevailing market value while discarding her objections. This prompted the “respondent” to file the revision petition before the learned Additional District Judge, Rawalpindi, which was allowed through impugned judgment.

7. It appears from the impugned judgment that the revision petition was accepted on the sole ground that for the recovery of “Zar-e-Khula” in a suit for dissolution of marriage, execution petition was not maintainable. Reliance to this effect was placed on Mst. NADIA BIBI v. ADDITIONAL DISTRICT JUDGE and others (PLD 2013 Lahore 41). From the perusal of the judgment in the case of (Mst. Nadia Bibi) supra; it clearly reveals that in the said matter suit for dissolution of marriage was decreed and marriage was dissolved on the basis of Khula without any condition. In this

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backdrop, it was held that as there was no decree in favour of respondent No.2 in the petition, so execution proceedings are not maintainable.

8. The facts in the present case on the contrary are altogether different. In this case, the learned Judge Family Court, while dissolving the marriage on the basis of Khula, directed the “respondent” to return the dower. As per column No.17 of Nikahnama, dower was in the shape of 4-tola gold ornaments, which is even not in dispute. Learned counsel for the “respondent” though submitted that a suit for recovery was instituted by the petitioner to this effect, which was dismissed but from the perusal of record it reveals that suit for recovery was related to some other gold ornaments, having no nexus with the gold ornaments subject matter of the present controversy.

9. The term “decree” is nowhere defined in the Family Courts Act, 1964. So for this purpose, recourse can be made to section 2 (2) of the Code of Civil Procedure (V of 1908), which defines the decree as under: -

"decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint the determination of any question within section 144 and an order under rules 60, 98, 99, 101 or 103 of Order XXI but shall not include ---

- (a) any adjudication from which an appeal lies as an appeal from an order; or*
- (b) any order of dismissal for default.*

After having a glimpse of the definition of decree, no doubt left that a decree means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the

parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint the determination of any question within section 144 and an order under rules 60, 98, 99, 101 or 103 of Order XXI but shall not include any adjudication from which an appeal lies as an appeal from an order or any order of dismissal for default. Suit for dissolution of marriage was decreed in terms of section 10 (4) of the Family Courts Act, 1964. The decision was compound, which on the one hand dissolved the marriage interse parties and on the other dissolution was made subject to return of dower.

10. Section 13 of the Family Courts Act, 1964 provides the manner of enforcement of decrees, which reads as under: -

13. Enforcement of decrees.— (1) *The Family Court shall pass a decree in such form and in such manner as may be prescribed, and shall enter its particulars in the prescribed register.*

(2) *If any money is paid or any property is delivered in the presence of the Family Court, in satisfaction of the decree, it shall enter the fact of payment [or] the delivery of property, as the case may be, in the aforesaid register.*

(3) *Where a decree relates to the payment of money and the decretal amount is not paid within time specified by the Court [not exceeding thirty days], the same shall, if the Court so directs be recovered as arrears of land revenue, and on recovery shall be paid to the decree-holder.*

(4) *The decree shall be executed by the Court, passing it or by such other Civil Court as the District Judge may, by special or general order, direct.*

(5) *A Family Court may, if it so deems fit, direct that any money to be paid under a decree passed by it be paid in such installments as it deems fit.*

11. The manner and form of decree is provided in the West Pakistan Family Court Rules, 1965. Rules 16 and 17, for the said purpose, are more relevant, which are reproduced below: -

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16. In every suit, on passing the judgment, a decree shall be drawn up in Form I and shall be signed by the presiding Judge. The decree shall bear the seal of the Court.

17. The Court shall maintain a register of decrees and orders in the form prescribed for decrees and orders under the Code of Civil Procedure, 1908.

12. The above discussion thus leads to irresistible conclusion that the order dated 8th December, 2010 resulting into dissolution of marriage on the basis of Khula subject to return of dower, for all intent and purposes, was a decree under section 13 of the “Act, 1964” and was executable.

13. The crux of above discussion is that the learned Additional District Judge has erred in law while allowing the revision petition. Resultantly, this petition is **allowed**. Impugned judgment dated 22nd September, 2016 is set aside being illegal and unlawful. No order as to costs.

(MIRZA VIQAS RAUF)
JUDGE

Approved for reporting.

(JUDGE)