

PESHAWAR HIGH COURT, ABBOTTABAD
BENCH

JUDICIAL DEPARTMENT

JUDGMENT SHEET

Writ Petition No. 584-A/2022

Date of hearing : **06.12.2022**

(B)(R)

Petitioner (Sayyab Khan) By Mr. Aqeel-ur-Rehman, Advocate.

Respondents (Mst. Tayyaba Bibi) By Mr. Munib-ur-Rehman, Advocate.

FAZAL SUBHAN, J.- By way of this writ under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (constitution) the petitioner has prayed for as following; -



"It is therefore humbly prayed that on acceptance of instant writ petition the decree/orders passed by the respondent No. 3 to the extent of dismissed relief in appeal No. 44/FC dated 25.02.2022 may kindly be set aside and the appeal

filed by the petitioner in appeal No. 44/FC may kindly be accepted and the plaint of plaintiff/ respondent No. 1 may kindly be dismissed. Any other relief which this honorable court deems fit and appropriate may also be allowed."

2. Record reveals that the respondent Mst. Tayyaba Bibi instituted two suits one bearing No. 213/FC for recovery of dower, maintenance, dowry articles, possession of house and perpetual injunction and whereas the petitioner Sayyab Khan brought a suit bearing No. 212/FC, for restitution of conjugal rights, recovery of golden ornaments and money against the present petitioner. The parties, after attendance filed written statements and denied all the averments made in the plaints. Both the parties produced their desired evidence, where-after, the learned trial court/FC through its consolidated judgment dated 08.09.2020 decided the case as following: -.

- a. *Plaintiff/wife of suit No. 213/FC is entitled to the recovery of gold ornaments weighing 3-*

tolas as a part of dower from defendant.

- b. *Plaintiff/wife of suit No. 213/FC is entitled to the recovery of her future maintenance subject to rehabilitation with defendant/ husband.*
- c. *Plaintiff/wife of suit No. 213/FC is held entitled to the recovery of her missing dowry articles as per list annexed with bailiff report dated 10.12.2019.*
- d. *Plaintiff/wife of suit No. 213/FC is entitled to the recovery of possession of property as per entry in column No.17 of Nikahnama on account of said entry, defendant/husband is bound to transfer the property measuring 3-marlas in district Abbottabad in the name of plaintiff /wife.*
- e. *Plaintiff/husband of suit No. 212/FC is entitled to the decree of restitution of conjugal rights subject*



to satisfaction of above-mentioned relief.

f. Rest of the claims of the parties are dismissed.

3. Aggrieved from the said judgment and decree, the respondent filed family appeal No.44/FC of 2020 which was partially accepted and the impugned consolidated judgment & decree dated 08.10.2020 was set aside to the extent of prayer *Daal & Ray* regarding the landed property measuring 03 Marlas and the plaintiff/wife may approach proper forum for such relief, whereas rest of the findings of the learned trial court were maintained, hence the petitioner filed this writ petition.

4. Arguments of learned counsels for petitioner and learned counsel for respondent heard and record gone through.

5. Learned counsel for petitioner vehemently objected to the validity of the procedure adopted by the Family Courts while recording statements of the parties during pre and post reconciliation proceedings and

contended that the statute has prescribed any such procedure and therefore the procedure adopted by the Family Courts in this regard has no legal backing and value. He contended that decree of 3 tolas golden ornaments was passed against the petitioner on the sole ground of admission made during pre-trial reconciliation proceedings, hence, the same needs to be strike down. Regarding the decree in respect of dowry articles it was contended that respondent claimed her dowry articles in the suit and during trial the Family Court deputed bailiff of the court and whatever dowry articles were present in the room, these were handed over to her, hence, awarding decree of missing articles, being not part of her claim could not be granted to the respondent.

6. Learned counsel for respondent defended the judgments of the two courts below and submitted that suit of the respondent was rightly decreed in her favour, hence, being

based on correct appreciation of record cannot be disturbed.

7. The arguments of learned counsel for petitioner, to the extent of recording of statements of the parties at the time of reconciliation proceedings, was duly considered in its legal perspective. Section 10(3) of the West Pakistan Family Courts Act, 1964 (Act) prescribed a procedure for the Family Court to attempt and bring a reconciliation between the parties. Though law has not made it incumbent upon the court to record statements, however, it does lay a procedure to narrow down the controversy between the parties. The words "court shall ascertain the point at issue between the parties" has a much wide implication and therefore Family Court can adopt any procedure to find out the actual dispute involved in the case. Through the said provision Family Court has to make all-out efforts to effect compromise between the



parties, to meet the very purpose of expeditious disposal of matrimonial affairs as enumerated in the preamble of the Act, and therefore, when, as a result of such efforts a possibility of amicable solution to the dispute is expected then Family Court may record the statement of the parties. On the other hand, if such efforts end in failure the court shall have a clear vision of the controversy at hand. Keeping in view these aspects of the case in mind, this court, in the case of “*Dr. Fakhr-ud-Din Vs Mst. Kausar Takreem and another*”, reported in PLD 2009 Peshawar 92 specifically in Para 33 and 38, has held that;



33. Before parting with this judgment, we deem it essential to hold that the obligations of Family Courts/Qazis while exercising powers under the proviso to section 10(4) of the Family Courts Act have now been increased manifold. They shall have to make all-out efforts to conduct the proceedings in a professional investigative manner while probing the subject matter

and shall strive to discover the truth as to who amongst the spouses is at fault and that meaningful attempts must be made to preserve the marriage because in an Islamic Welfare State, a family is a primary unit, any sort of disturbance therein or its frequent break up would destabilize the society as a whole. Peaceful and happy union between spouses would serve as a linchpin for the peaceful and healthy society as a whole. In view of the radical changes introduced through the proviso, the reconciliation efforts now to be conducted must bear fruits. Careless dispensation and casual approach on the part of the Family Court Judges in this regard would increase the incidents of dissolution of marriage on the basis of 'Khula' which would be counter-conducive and detrimental to the society at large and any evils would surge out there from.



38. It is emphatically directed that minutes of the reconciliation efforts must be separately recorded with reasonable details,

be read over to the parties or their agents/counsel and the signatures/thumb-impressions of the parties be obtained thereon so that this Court or Court of appeal is in a position to ascertain the nature of the efforts made by the Family Court during reconciliation proceedings and to see as to what were the respective stances of the parties.

8. This would lay at rest the arguments of learned counsel for petitioner in respect of recording the statements of parties at the stage of reconciliation. So far as the statements recorded in the instant case at pre-trial reconciliation stage is concerned, the petitioner made a clean breast of it that the 3 tolas dowered gold ornaments are lying with him and after this admission, his subsequent denial has become meaningless, and therefore the decree of 3 tolas gold ornaments were rightly awarded against him.

9. So far as the dowry articles are concerned, though respondent in her suit claimed dowry articles as per list or its market

value, but in her statement she failed to mention anything about the list of articles nor produced or exhibited any list of dowry articles. It is clear from the record that on the directions of the Family Court bailiff prepared a list of dowry articles which she denied and alleged the missing of certain articles. The respondent, in that situation was required to convincingly prove the preparation of those articles, to produce the relevant receipts or the shop keepers concerned, however, the available record is totally silent about these facts, hence, she could not established the missing of any articles and therefore in the absence of any proof in this respect, she may not have been held entitled to the alleged missing dowry articles, hence, findings to the extent of missing articles is not sustainable in the eye of law and decree passed in favour of respondent to the extent of dowry articles is set aside.



10 In light of the aforesaid discussion,
this petition is partially allowed to the extent
of dowry articles while the writ petition to the
extent of remaining relief is dismissed.

Announced

06.12.2022

Date of writing judgment

20.12.2022

*Tahir Saleem JSS**



JUDGE