

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

W.P. No. 502-M/2016

JUDGMENT

Date of hearing: **28.04.2017**

Petitioner:- (Mst. Shahida) by Mr. Farhad Ali, Advocate.

Respondent:- (Sardar Shah) by Mr. Atta-ur-Rahman, Advocate.

MOHAMMAD IBRAHIM KHAN, J.- Whereas family suit bearing No. 18/3 FC titled as “ Mst. Shahida wife of Sardar Shah in collision with her husband Sardar Shah” is for annulment of the Nikah alongwith recovery of maintenance, dowry articles or in alternate by obtaining decree for dissolution on account of ‘*Khula*’. The learned Judge Family Court passed his judgment on 7.02.2016, the findings contained in the judgment and decree were further assailed before the Court of learned District Judge/Zila Qazi Buner in Appeal No. 9/FCA of the year 2016, which on account of the provisions under section 14 (2) (a) of the West Pakistan Family

Court Act, 1964 being incompetent was dismissed.

2. Having heard arguments of learned counsel for the Parties, record with their assistance gone through.

3. In view of the dictum laid down in **1999 MLD 3090 (Lahore) title as “Naila Azmat vs Judge Family Court and others”**.

The relevant provision of law has been enunciated as under:-

“Wife in his Constitutional Petition had challenged decree passed by Family Court on ground of Khula, on payment of amount of Khula to her husband. Constitutional petition was resisted on ground that Petitioner/wife had remedy of appeal before Appellate Court. Validity. Under provisions of S. 14 (2) (a) of West Pakistan Family Court Act, 1964, decree of dissolution of marriage, though could not be challenged in appeal except in cases covered by S. 2 (viii) (d) of Dissolution of Muslim Marriages Act, 1939, but

dissolution in the present case was not absolute because same had been qualified by condition of payment of certain amount as consideration for Khula and unless amount of Khula was paid to husband, dissolution would not attain finality. Dissolution of marriage being not absolute in circumstances case was not hit by S. 14 (2) (a) of West Pakistan Family Court Act, 1964. Constitutional petition filed by wife was not maintainable as she had a remedy by way of filing appeal. Petitioner could move application for condonation of delay under S. 14, Limitation Act, 1908 in case there was delay in filing appeal.

Another judgment contained in *2015 MLD 1140 (Peshawar) title as “Chanzeb and another vs Mst. Yasmeen Bibi and others”*, wherein their Lordships of the Hon’ble Peshawar High Court held as under:-

“Wife had claimed dissolution of marriage on the basis of cruelty and

second marriage of husband etc. Such pleas were specifically taken in the plaint and issue was also framed. Serious allegations were leveled against the husband in the statement recorded by the wife but husband had failed to record his statement and controvert the said allegations rather his attorney appeared for deposing on his behalf. Spouse could depose with regard to material relations in family cases and no one could be a better substitute. Husband had contracted second marriage which by itself was sufficient ground to dissolve marriage. Decision given or decree passed by Family Court was appealable. Logic behind non-provision of appeal in the dissolution case was to protect wife from costly and prolonged litigation. Wife could not file an appeal against judgment or decision of Family Court where her suit was not decreed on the basis of cruelty or other grounds recognized under Family Laws even

if marriage was dissolved on the basis of Khula. Appeal filed by the wife was competent as she had challenged the condition through appeal.”

Likewise, this view has further been affirmed by the Hon’ble Supreme Court of Pakistan in its judgment contained in 2006 SCMR 100 “Abid Hussain vs Additional District Judge, Alipur District Muzaffargarh” as under:-

“ Object behind non-provision of appeal in case of dissolution of marriage was to protect woman, an under privileged and generally oppressed section of the society, from prolonged and costly litigation, as suit it aimed to put a clog on the right of husband.”

4. Learned counsel for the parties requested the Court to open the appeal bearing No. 9/FCA while setting aside the findings in the judgment dated 19.7.2016 and as the learned appellate Court is competent to hear the said appeal, therefore is directed to re-write the

judgment after hearing learned counsel for the parties on merits

5. The parties are directed to appear before the learned appellate Court on 17.5.2017.

Announced
Dt: 28.04.2017.

JUDGE