

[Peshawar]

Before Imtiaz Ali and Yahya Afridi, JJ

OBAIDULLAH---Petitioner

Versus

SEEMAB AKHTAR and 2 others---Respondents

Writ Petition No.2360 of 2010, decided on 2nd November, 2010.

West Pakistan Family Courts Act (XXXV of 1964)---

---S.5, Sched.---Constitution of Pakistan, Art. 199---Constitutional petition---Suit for recovery of dowry and maintenance allowance was decreed concurrently---Contention of husband (petitioner) was that wife had left the house on her own accord and was therefore, not entitled to maintenance; and further that according to custom of the local area, dower had been paid to the wife at the time of Nikkah---Validity---Evidence produced by parties did not suggest that the wife had left the house of her husband on her own accord and although there was evidence regarding the local custom of the husband's area, the evidence on record was silent with regard to any such payment of dower made by the husband to the wife---Findings of the courts below were correct---Constitutional petition was dismissed, in circumstances.

Muhammad Asad Khan v. Mst. Sadaf Niaz 2005 CLC 1881 and Arshad Ali v. Additional District Judge, Vehari 2002 CLC 1450 ref.

Muhammad Ajmal Khan for Petitioner.

Nasir Mahmood for Respondents.

Date of hearing: 2nd November, 2010.

JUDGMENT

YAHYA AFRIDI, J.---Obaidullah, the present petitioner, has through the instant constitutional petition sought from this Court for:--

"a writ declaring that both the judgments and decrees of the courts below as mentioned above are illegal, unlawful, have been passed without lawful authority and jurisdiction and are of no legal effect".

2. The brief and essential facts leading to the present petition are that the petitioner was lawfully married to respondent No.1 on 18-1-2009. Certain differences between the parties led respondent No.1 to seek legal redress from the Family Court, at Takht-e-Nasrati, Karak. Respondent No.1 in her petition claimed maintenance of Rs.2000 per month since 18-4-2009, dower of Rs.100,000 and 10 tolas of "Sona", dowry articles valuing Rs.1,24,250 and Rs.7600 as expenses incurred for medical purposes.

The present petitioner contested the claim of respondent No. 1. Accordingly, the trial Court framed six issues and thereafter evidence of the parties was recorded.

3. The trial Court vide judgment dated 7-1-2010, concluded that:--

"Suit of the plaintiff is hereby decreed to the extent of maintenance, half (prompt) dower and dowry articles and she is entitled to past maintenance @ Rs.1,000 per month since May, 2004 till today and also for future at the same rate. Her claim for dowry articles is also accepted and she is entitled to dowry articles as per list Exh.P.W.1/1 on the basis of as is where is. She is also entitled to half (prompt) dower. Her claim for recovery of medical expenses is declined".

4. Both, petitioner and respondent No.1, were aggrieved of the decision of the trial Court and impugned the same through separate appeals. Both the appeals were decided through a consolidated judgment or the Additional District Judge, Karak at Takht-e-Nasrati vide judgment dated 31-3-2010. The appellate court concluded that:--

"Keeping in view the above, the instant appeal as well as the connected appeal is dismissed being without substance".

5. The learned counsel for the petitioner contended that the respondent No.1 had left the house of the petitioner on her own accord and thus, she was not entitled to the maintenance awarded to her by the courts below; that the custom of the said area duly admitted by the witnesses and in fact respondent No.1 was that the dower was paid by the husband at the time of "Nikah"; and that the payment of dower could not be saddled upon the petitioner, as he had already paid the same to the respondent No.1. The learned counsel relied upon the judgments in Muhammad Asad Khan v. Mst. Sadaf Niaz 2005 CLC 1881 and Arshad Ali v. Additional District Judge, Vehari (2002 CLC 1450).

6. The learned counsel for the respondent No.1, in rebuttal opposed the assertion made by the learned counsel for the petitioner and contended that the respondent No.1 was treated very harshly by the petitioner and his family members as reflected in the evidence; that respondent No.1 had not admitted the payment of dower or that she had left the house on her own accord; and that respondent No.1 had been forced out of the house by the petitioner.

7. The Valuable arguments of the learned counsel for the parties duly heard and the available record of the case thoroughly considered.

8. We agree with the proposition advanced by the learned counsel for the petitioner that in case a wife leaves the house of the husband, on her own accord, she is not entitled to claim maintenance. However in the present case, the evidence produced by the parties does not suggest that the respondent No. 1 left the house of the petitioner of her own accord.

9. Moving on to the issue relating to the issue payment of dower. There is evidence regarding the local "custom" of payment of dower at the time of "Rukhsati". However, the evidence is silent regarding any such payment of dower by the petitioner to the respondent No.1.

10. In the circumstances, this court finds that the courts below have exercised its jurisdiction in accordance with law. The evidence produced by the parties has been correctly appraised and appreciated by the courts below in rendering the impugned decisions. Thus there appears no legal ground agitated and found to be sufficient to disturb the judicial pronouncements made by the courts below.

11. Accordingly, the present petition along with all applications being devoid of any legal and factual basis, is dis-missed.