

**[Peshawar]**

**Before Nisar Hussain Khan and Musarrat Hilali, JJ**

**ABDUL SATTAR----Petitioner**

**Versus**

**Mst. SHAGUFTA BANO and 2 others----Respondents**

Writ Petition No.3165 of 2011, decided on 2nd April, 2013.

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

----S. 5, Sched.---Constitution of Pakistan, Art.199---Constitutional petition---Suit for recovery of dower amount---Every fact and material which was proper for adjudication of a dispute between the parties should be stated in the pleadings---Defendant (petitioner) could not be allowed to deviate from the case set up in his pleadings at the Trial Court---Conduct of defendant (petitioner) had proved that he had not paid dower amount---Constitutional petition was dismissed.

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

----S. 5, Sched.---"Deferred" and "prompt dower"---Distinction---Law does not permit withholding of payment of dower till the dissolution of marriage---Deferred dower is a sort of guarantee for a woman against ill-treatment, non-maintenance, desertion, or any other abnormality in the family life including rash and arbitrary divorce whereas the prompt dower is payable either at the time of marriage or at any subsequent time when it is demanded by the wife.

**(c) Muslim Family Laws Ordinance (VIII of 1961)---**

----S. 6(5)(a)---Payment of dower amount---Burden of proof---Petitioner-defendant (husband) claimed that he had paid full dower and nothing was against him---Burden to prove payment of

amount of dower was on the husband.

Muhammad Shabir v. Rehana Kausar and others PLD 2013 SC 102 rel.

Haji Muhammad Zahir Shah for Petitioner.

Wasimuddin Khattak for Respondents.

Date of hearing: 2nd April, 2013.

## JUDGMENT

**MUSARRAT HILALI, J.---** Impugned herein is the judgment and decree dated 12-9-2011 of learned Additional District Judge-XII, Peshawar, whereby appeal of the petitioner against the judgment and decree dated 6-10-2010 of learned Judge Family Court/Civil Judge-VIII, Peshawar has been partially allowed.

2. The antecedent facts as per record of this case are that on 27-4-2004 respondent No.1 Mst. Shagufta filed a suit for recovery of:--

Dower (Prompt)

(i) Rs.50,000/- cash amount.

(ii) 50 tolas gold in shape of ornaments or Rs.4,50,000/- its market value.

(iii) Maintenance allowance Rs.72000/- at the rate of Rs.2000/- per month as past maintenance and at the same rate as future allowance.

(iv) Recovery of dowry articles as per list attached to the plaint.

That after framing issues, the learned trial Court recorded pro and contra evidence and the case was decided in favour of respondent No.1. Learned trial Court also decreed the dowry articles as

per list attached to the plaint of respondent No.1, the appeal filed by the petitioner was partially allowed by learned Additional District Judge-XII, Peshawar on 12-9-2011.

Aggrieved of the decree passed on 12-9-2011, the petitioner has invoked the Constitutional jurisdiction of this Court, through the petition in hand.

3. Learned counsel for the petitioner contended that petitioner has paid the whole dower to respondent No.1 and nothing is outstanding against him. Learned counsel referred to the entries made at Columns Nos.13 and 15 of Nikahnama executed between the parties on 12-6-1986, wherein Haq Meher Rs.50,000/- is mentioned in the entry against Column No.13 while Column No.15 shows that the same is paid to respondent No.1 in the shape of gold ornaments.

4. On the contrary, learned counsel appearing on behalf of respondent No.1 Mst. Shagufta argued that bone of contention between the parties was that they were issueless and for that respondent No.1 was treated with cruelty for not being able to have children, that petitioner contracted second marriage without prior permission of respondent No.1 and had not maintained her since then. Learned counsel added that her total dower as fixed was Rs.50,000/- cash, 50 tola gold and a piece of land measuring 20 marla. Learned counsel referred to Tamleek Nama (Exh.P.W.1/1) dated 29-5-1986 executed by petitioner in favour of respondent No.1, that respondent No.1 in her plaint claimed Rs.50,000/- and 50 tola gold besides her maintenance allowance which is still not paid to her.

We have heard the arguments of the learned counsel for the parties and perused the record.

5. The petitioner during proceeding of the case kept changing his position on payment of dower. In para-5 of his written statement dated 15-3-2006, the petitioner submitted that in the year, 1995 he along with respondent No.1 went to Saudi Arabia to perform Umarah, where respondent No.1 relinquished her dower as gesture of gratitude.

6. His second stance regarding dower is that in the year, 2003, respondent No.1 torn Quran Karim and threw the pages on ground against that petitioner took Fatwas from religious scholars who declared petitioner No.1 infidel, due to which the marriage automatically dissolved with no liability of payment of dower on part of the petitioner.

7. The petitioner while invoking the jurisdiction of this Court came out with the third stance that as per Column No.15 of Nikahnama, the whole dower has been paid to petitioner No.1 in the shape of gold ornaments weighing 50 tola and nothing is outstanding against him.

8. Every fact and material which is proper for adjudication of a dispute between the parties shall be stated in pleadings. The argument of the learned counsel for petitioner that he has paid the dower as per Column No.15 of Nikahnama does not find support from his written statement

and the statement of petitioner recorded as DW-1 by the learned trial Court and is a complete departure from his pleadings. At this stage the petitioner cannot be allowed to deviate from the case set up in his pleadings at trial Court, thus, it is clear from the above discussion that petitioner by his conduct has proved that he had not paid the dower to respondent No.1.

9. The law does not permit withholding of payment of dower till the dissolution of marriage. The deferred dower is a sort of guarantee for a woman against ill-treatment, non-maintenance, desertion or any other abnormality in the family life including; rash and arbitrary divorce whereas the prompt dower is payable either at the time of marriage or at any subsequent time when it is demanded by the wife. It is laid down in the Holy Qur'an in Verse 24 of Surah Nisa-Paara-4. "And those of whom ye seek content (by marrying them), give unto them their portions as a duty".

10. Admittedly, the petitioner has contracted second marriage without prior permission of his first wife i.e. respondent No.1, he claimed that he had paid full dower and that nothing was against him. Burden to prove payment of amount of dower was on petitioner but he failed to discharge the same through evidence, therefore, under section 6(5)(a) of the Muslim Family Laws Ordinance, 1961, he is bound to pay the entire dower.

Reliance placed on case titled Muhammad Shabir v. Rehana Kausar and others (PLD 2013 SC page-102(b) (W.P.No.7607 of 2012).

For the reasons stated above, this writ petition is dismissed, with no order as to costs.

AG/193/P

Petition dismissed.