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JUDGMENT SHEET
LAHORE HIGH COURT
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

W.P. No. 4866 of 2017

Umair Hassan Sabri

VERSUS

Additional District Judge and another

JUDGMENT

Date of Hearing	11.04.2022
Petitioner by:	Mr. Javed Ahmad Khan, Advocate
Respondent No. 2 by:	M/s Hafiz Adeel Sikandar and Mian Yasir Hameed Bhatti, Advocates

ABID HUSSAIN CHATTHA, J. This consolidated Judgment shall decide the titled as well as connected Writ Petition No. 5591 of 2017 since both the Petitions emanate from the family suits *inter se* the parties and are directed against the impugned Order / Judgments & Decrees dated 03.02.2016, 30.06.2016 and 09.03.2017 passed by Judge Family Court, Sahiwal and Additional District Judge, Sahiwal, respectively. Throughout this Judgment, Umair Hassan Sabri shall hereinafter be referred to as the “**Petitioner**” and Hafsa Abbas Chishti shall hereinafter be referred to as the “**Respondent**”.

2. Precisely, the Petitioner filed a suit for restitution of conjugal rights against the Respondent averring therein that he was married to the Respondent on 11.04.2010 and out of their wedlock a male child was born who subsequently died. Consequently, the Respondent separated from the Petitioner. Hence, the Petitioner was constrained to file a suit for restitution of conjugal rights.

3. The Respondent not only contested the suit filed by the Petitioner as stated above but also instituted a separate suit for the recovery of dower, maintenance allowance, pocket money and dowry articles. She

claimed her ouster from the house of the Petitioner without any just cause and claimed recovery of Rs. 50,000/- per month as past and future maintenance allowance; 120 Tolas silver & Rs. 1,500,000/- as dower; and recovery of dowry articles as per detailed list appended with the plaint valuing Rs. 1,050,000/-.

4. Both the above suits *inter se* the parties were consolidated and out of the divergent pleadings of the parties, the Family Court framed the following issues:-

- (i) Whether the plaintiff Umair Hassan is entitled to get decree of restitution of conjugal rights as per averments mentioned in the plaint? OPP
- (ii) Whether the defendant Hafsa Abbas is entitled to recover Haq Mehr 120 Tolas Silver ornaments and Rs. 1,500,000/- from the plaintiff Umair Hassan Sabri as per agreement between the parties dated 14.04.2010? OPP
- (iii) Whether the defendant is entitled to recover maintenance allowance from the plaintiff, if so, for what period and to what extent? OPD
- (iv) Whether the defendant is entitled to recover dowry articles as per list mentioned in Para No. 2 of the plaint or in alternative its value of Rs. 1,050,000/- from the plaintiff Umair Hassan Sabri? OPD
- (v) Relief.

5. After recording the evidence of both the parties, the Judge Family Court vide impugned consolidated Judgment & Decree dismissed the suit of the Petitioner, whereas, the suit of the Respondent was decreed and she was held entitled to recover 120 Tolas silver ornaments and Rs. 1,500,000/- as dower; Rs. 10,000/- per month as pocket money and Rs. 10,000/- as maintenance allowance from the date of filing of suit till her marriage remains intact; and dowry articles as per paragraph No. 2 of her plaint or in alternative an amount of Rs. 1,050,000/- as prayed for.

6. The threefold contentions were raised by learned counsel for the Petitioner. He submitted that the grant of maintenance allowance and pocket money was excessive and exorbitant; the dower of Rs. 1,500,000/- had been paid through cross cheque yet the payment thereof was not accepted by the Courts below by misreading of evidence on record; and the value of dowry articles was also accorded against the evidence on record.

7. It is contended that the Petitioner was married to the Respondent on 11.04.2010 and *Rukhsati* took place on 17.04.2010. Originally, cash amount of Rs. 1,500,000/- as dower was not part of Nikahnama and during the intervening period between the Nikah and the *Rukhsati*, the Respondent managed to get an agreement of an additional dower amount as above. At the instance of the Respondent, the Petitioner sold his house for Rs. 2,500,000/- out of which he paid the amount of dower amounting to Rs. 1,500,000/- to the Respondent through cheque. The parties lived for sometime in the house of father of the Respondent. Later, the Petitioner purchased another house and moved all the dowry articles to the house of his in-laws and thereafter to his new house where they resided till 2013. The new house was in the joint ownership of the parties having shares as 1/3 and 2/3, respectively. Subsequently, the parties sold the said house and purchased another house on 02.01.2014 which was in the ownership of the Respondent. After sometime on account of dispute between the spouses, the Petitioner had to leave the house. Eventually, both the parties filed the above referred suits against each other.

8. Conversely, learned counsel for the Respondent vehemently defended the impugned Judgments & Decrees and categorically submitted that the Respondent was never paid the amount of dower of Rs. 1,500,000/- through cheque as claimed by the Petitioner. Rather, on account of financial transactions, the cheque was required to be deposited in the Respondent's bank account and while doing so, the Petitioner intentionally and deceitfully wrote thereon in urdu language that it was payment against Haq Mehar.

9. While dismissing the suit for restitution of conjugal rights, the Courts below aptly relied upon the evidence on record which unequivocally depicted that during negotiating rapprochement with the Respondent, the Petitioner and his family members had imposed unreasonable restrictions and conditions for restitution of marriage including return of Haq Mehar and dowry articles. The Courts below on the basis of evidence on record rightly concluded that the Petitioner was not entitled to decree regarding his suit for restitution of conjugal rights.

10. The Respondent with respect to her claim of Haq Mehar of Rs. 1,500,000/- in cash and 120 Tolas silver ornaments testified that the same was granted on the eve of marriage but could not be inserted in the Nikahnama and as such, later on an agreement dated 14.04.2010 was executed to record the intentions of the parties. In rebuttal, the Petitioner as PW-1 admitted the existence of the agreement but stated that the same was result of undue influence and coercion and took a specific plea that the amount of dower was paid through cheque No. 93431912 maintained with MCB Bank, Sahiwal. It was established on the basis of evidence on record that in fact on 14.04.2010 two separate agreements were executed between the spouses. The first agreement was regarding the enhancement of dower amount, whereas, the second agreement was regarding the receipt of dowry articles. This was testified by PW-4, Pirzada Ali Muhammad Sabri and even admitted by the Petitioner himself. PW-4 stood as marginal witness of the said agreements which were executed at the dera of one Munir Sabir. No element of coercion or undue influence was established. Rather, the parties lived a cordial life after execution of both the agreements for sometime before their matrimonial life was marred with the present disputes. The Courts below also discovered from scanning of evidence that payment of Rs. 1,500,000/- through cheque was based on production of photocopy of the cheque as Mark-B claiming that after sale of house, the Petitioner was given an amount of Rs. 2,500,000/- by his father as share from the inherited property. The Petitioner paid the amount of dower as aforesaid through cheque from his own account maintained with Bank of Punjab, however, the receipt of amount of Rs. 2,500,000/- from his father was not independently proved from any source. On the other hand, the Respondent testified that an amount of Rs. 3,000,000/- was given to the Petitioner by her father out of which Rs. 1,500,000/- was returned by the Petitioner through the said cheque and while depositing the said cheque in her account, the Petitioner artfully and fraudulently mentioned the word Haq Mehar on the said cheque. Looked at by naked eye, the words ادائیگی برائے حق مہر is written in urdu language, whereas, the cheque is drawn in the name of

the Respondent and filled in terms of date and amount in English language. The same is also written in the deposit slip which is usually not stated in column of bank / branch which depicts conscious writing to this effect to achieve the desired objective. The Respondent was never cross examined on her statement to this effect. Her father / PW-2 was also not cross-examined on this point. This led the Courts below to concurrently apply the principle of law that specific portion or claim not cross-examined would be deemed to have been admitted and as such, concluded that payment of amount of Rs. 1,500,000/- in lieu of dower by the Petitioner was not established. The Courts below concurrently concluded that since an agreement regarding fixation of dower was admitted by the Petitioner and he also filed a suit for restitution of conjugal rights alleging that on 04.05.2014 he was expelled by the father and brothers of the Respondent, therefore, the stance taken by him regarding payment of dower without demand could not be believed during subsistence of marriage merely 04 months after the marriage when it is clearly described as *Ghair Muajjal* in the agreement dated 14.04.2010. Rather, it appears as a counter blast as alleged by the Respondent with reference to her suit for recovery of maintenance allowance, dower and dowry articles. Even, the Petitioner had initially not acknowledged the existence of the agreement but later admitted the same and acknowledged the fixation of Rs. 1,500,000/- as Haq Mehar as deferred dower payable on demand. The Petitioner could not prove on record that the same was demanded by the Respondent at the time of execution of the alleged cheque. This Court is not inclined to substitute the concurrent finding of facts recorded by the Courts below on the issue stated above when learned counsel for the Petitioner failed to point out any misreading and non-reading of evidence. On the other hand, the Judgments passed by the Courts below are exhaustive and have covered each and every piece of evidence on record and examined all the contentions raised by the parties to reach to their concurrent findings to this effect. Importantly, other transactions between the Petitioner and the father of the Respondent are also evident on record

which testified that the assertion of payment of dower through cheque was not proved.

11. The Petitioner in the agreement dated 14.04.2010 had undertaken that he would pay Rs. 10,000/- as pocket money to the Respondent. The same is also written in column No. 20 of the Nikahnama. In this context, the Courts below have rightly awarded Rs. 10,000/- per month as pocket money and Rs. 10,000/- per month as maintenance allowance to the Respondent till her marriage remains intact. It was also proved on record that the Respondent has brought dowry articles with her and the descriptions & details of dowry articles as mentioned in the plaint were not disputed. The Petitioner did not produce any cogent evidence to prove that dowry articles once given to the Respondent were taken from the house of his father and shifted to the house of the Respondent's father. The findings recorded by the Courts below on this issue are also unimpeachable.

12. Before parting from this Judgment, it is also noted that the Respondent also filed a separate suit for dissolution of marriage against the Petitioner. The pre-trial reconciliation proceedings met with failure on 29.06.2016 and the marriage between the parties was dissolved by the Family Court vide Order dated 30.06.2016 under Section 10(5) of West Pakistan Family Courts Act, 1964 with the direction to the Respondent to relinquish 25% of her prompt dower as consideration of Khula. The Petitioner assailed the aforesaid Order by filing an Appeal before the Appellate Court which was dismissed vide Judgment dated 09.03.2017. The Petitioner assailed the aforesaid Order / Judgment by filing W. P. No. 5591 of 2017. In this behalf, the impugned Judgments & Decrees have been thoroughly scanned by this Court. The contention of the Petitioner that the Family Court had decided the suit of dissolution of marriage in a mechanical way without returning the dower benefit derived by the Respondent is ill founded. The order to surrender up to 25% of prompt dower was part of discretion of the Family Court which was rightly exercised. The Appellate Court rightly observed that decree for dissolution of marriage can even be passed without consideration of Khula and it was not lawful for husband to

take back anything from his wife, particularly when Khula was due to some fault on the part of husband. Therefore, the Courts below while allowing the suit for dissolution of marriage of the Respondent and dismissing the Appeal of the Petitioner did not commit any illegality or irregularity subject to relinquishment of 25% of prompt dower. This Court maintains the findings recorded by the Courts below to the effect that the Respondent is not bound to return the benefits derived by her from the Petitioner on account of Khula except as determined by the Court. Admittedly, prompt dower of 11 Tolas silver received by the Respondent was to be relinquished up to 25% as decided by the Court which had been paid by the Petitioner to the Respondent at the time of marriage. The right to exercise Khula was attached with relinquishment of dower amount and the same was qualified with the word “at the time of marriage”. Thus, the Family Court rightly decided the matter by invoking the provision of Section 10(5) of West Pakistan Family Courts Act, 1964.

13. In view of the above discussion, the impugned Judgments & Decrees passed by the Courts below in the titled and connected Petition have been passed in consonance with law. No case of interference is made out. Therefore, both the Writ Petitions being devoid of any merit are hereby **dismissed**.

(Abid Hussain Chattha)
Judge

Abu Bakker