

2021 C L C 911

[Balochistan]

Before Muhammad Ejaz Swati and Zaheer-ud-Din Kakar, JJ

MUHAMMAD IMAM-UD-DIN----Petitioner

Versus

Mst. SAIRA BANO and 2 others----Respondents

Constitutional Petition No.579 of 2018, decided on 13th August, 2020.

Family Courts Act (XXXV of 1964)---

---Ss.5, Sched. & 17---Qanun-e-Shahadat (10 of 1984), Art. 163---Suit for recovery of dowry articles---Provisions of Qanun-e-Shahadat, 1984 and Code of Civil Procedure, 1908 not to apply---Acceptance or denial of claim on oath---Scope---Plaintiff filed suit for recovery of dowry articles against the defendant---Defendant instead of contesting the suit filed application making an offer of taking special oath with regard to return of articles by him to the plaintiff---Offer of special oath was accepted by the plaintiff and in that respect the statement was recorded by the Trial Court---Suit filed by plaintiff was decreed and appeal filed against the same was also dismissed---Validity---Provisions of Qanun-e-Shahadat, 1984, were not applicable to Family Court's proceedings---Family Court could regulate its own procedure and was not bound by the rigors of Qanun-e-Shahadat, 1984, but Family Court was not barred from settlement of the dispute on special oath---Subsequent objection of the defendant that it was in violation of Art.163 of Qanun-e-Shahadat, 1984, was not tenable---Constitutional petition was dismissed.

1990 MLD 389 and Attiqullah v. Kafayatullah 1981 SCMR 162 ref.

Najibumllah Khan and another v. Fazal Karim and 2 others 1997 SCMR 1085 rel.

Baqir Bakhtiar and Abuzar Haider for Petitioner.

Asmatullah Achakzai for Respondent No.1.

Date of hearing: 10th August, 2020.

JUDGMENT

MUHAMMAD EJAZ SWATI, J.---The respondent No.1 (plaintiff) filed a suit for recovery of Dowry articles having total worth of Rs.1301,000/- against petitioner (defendant). The petitioner instead of contesting the suit filed an application making an offer of taking special oath with regard to return of articles by the petitioner to the respondent

No.1. The offer of special oath was accepted by the respondent/plaintiff and in this respect her statement was recorded by the trial Court and the same is reproduced as under:-

In the light of above statement, the suit filed by the respondent/plaintiff was decreed by the learned Family Judge-I, Quetta vide judgment dated 5th December, 2017. On appeal filed by the petitioner, the learned Additional District Judge-VI, Quetta vide judgment/decreed dated 28th April, 2018 dismissed the appeal.

3. Learned counsel for the petitioner contended that the provision of Qanun-e-Shahadat Order, 1992 was not applicable, therefore, any offer made by the petitioner or accepted by the respondent/plaintiff was contrary to law, thus cannot be based for decision. He further contended that under Article 163 of Qanun-e-Shahadat Order, 1984 (the order) it was the plaintiff to make an offer, but in the instant case no such offer was made on her behalf; that learned trial Court misinterpreted the provision of law and without affording opportunity to the petitioner decided the case on special oath instead of merits. Learned counsel for the petitioner placed reliance on case reported in 1990 MLD 389.

4. Learned counsel for the respondent/plaintiff contended that the petitioner instead of contesting the suit himself opted the decision of the suit on special oath by the respondents; that Family Court passed the impugned judgment while adopting legal procedure permissible under the law.

5. We have heard the learned counsel for the parties and perused the record, which reveal that after receiving notice the petitioner represented by a counsel filed a civil miscellaneous application dated 5th December, 2017, wherein the petitioner prayed as under:-

"That the defendant has no objection for making payment to the plaintiff of the articles so mentioned in the plaint on the market rate of that time when marriage was solemnized, if the plaintiff sworn/takes special oath on Holy "Qur'an" that such articles so mentioned in the plaint have not been returned by the defendant to her or the same have not been received by the plaintiff".

Besides, the above application, the petitioner through his statement dated 5th December, 2017 also reiterated that if the respondent/plaintiff sworn, takes oath on Holy Quran that such articles mentioned in the plaint have not been returned by the defendant to her or same have not been received by the respondent/plaintiff then he will make payment of Rs.1301,000/- to the respondent/plaintiff. Under Section 17 of the Family Court Act, 1964 provision of Qanun-e-Shahadat Order, 1984 are not applicable to family Court proceedings. Family Court could regulate its own procedure and was not bound by the rigors of Order 1984, but family Court was not barred from settlement of the dispute on special oath. In the instant case the petitioner/defendant asked plaintiff to take oath and offered settlement decision on oath by the plaintiff. The subsequent objection of the petitioner that it was

violation of Act 163 of Qanun-e-Shahadat Order, 1984 is not tenable. Reference is placed on case titled Najibumllah Khan and another v. Fazal Karim and 2 others 1997 SCMR 1085 wherein the Hon'ble Supreme Court of Pakistan observed as under:

"We find that in the order dated 6-10-1994, it is clearly stated that the petitioner No.1 in presence of his counsel offered oath to the plaintiffs which was accepted by the latter. It has also been stated in the same order that Najeebullah defendant/petitioner agreed and made offer that in case the plaintiffs/respondents take oath on the Holy Qur'an, their suit may be decreed. The presumption of correctness is attached to the order of the District Judge. Neither the petitioners/defendants, nor their counsel filed any Affidavit to the effect that Najeebullah or the petitioners had not agreed and made offer that in case the plaintiffs/respondents take oath on the Holy Qur'an then their suit may be decreed. When the plaintiff/respondents took oath on the Holy Qur'an in the open Court, the petitioners did not object to it. Now, when the plaintiffs/respondents have taken oath on the Holy Qur'an and the District Judge has decided the suit accordingly, it does not lay with the petitioners to resile from agreement and their offer and to say that the decision was made against their consent. The objection that the oath proceedings were not covered by Article 163 of the Qanun-e-Shahadat, 1984 was raised before the High Court and was rightly disposed of. Since the District Judge has decided the appeal in accordance with the Oath taken by the plaintiffs on Holy Qur'an and that too with the agreement of the petitioners, we do not see any justification to interfere with the impugned judgment."

6. In the instant case the petitioner/defendant after realization/accomplishment of the process in response to the offer made by him could not resile, therefore, once offer made by any party has been accepted by the other party and the same is acted upon, they cannot be wriggled out from the output thereof, as such, offer and acceptance would be an agreement of a binding nature, all of contracting parties could not back out such agreement unless contract void or frustrated. The principle of approbate and reprobate would be applicable and the petitioner is not obliged to challenged the decision of the suit on the basis of special oath administrated by the respondent. Reference in this respect is to be made in case titled Attiquallah v. Kafayatullah 1981 SCMR 162.

In view of the above, Constitutional Petition No.579 of 2018 is dismissed. Parties are left to bear their own costs.

SA/243/Bal.

Petition dismissed.