

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Qazi Faez Isa, CJ
Justice Amin-ud-Din Khan
Justice Athar Minallah

Civil Petition No.2734-L of 2023

(Against the judgment dated 24 May 2023 passed by Lahore High Court, Lahore in Writ Petition No.5278/2021)

Khalid Pervaiz

....Petitioner

Versus

Samina, etc

....Respondents

For the petitioner:

Ch. Zulfiqar Ali Hagan, ASC.
(through video link from Lahore)

For the respondents:

N.R.

Date of Hearing:

20 November 2023

ORDER

Qazi Faez Isa, CJ. Learned counsel for the petitioner states that the petitioner had married respondent No.1 on 10 February 2017. The *Nikahnama* mentioned the wife's *mehr* (dower) to be five hundred thousand rupees. The *mehr* was not paid by the petitioner to the respondent No.1, who filed a suit on 8 January 2018, which was decided in her favour on 23 February 2019. The petitioner (defendant in the suit) was directed to pay to the respondent No.1 the *mehr* and maintenance with annual increase of ten percent. The petitioner appealed the judgment and decree of the Family Court and the learned Additional District Judge partly allowed it, by holding that the wife was not entitled to her *mehr* as her marriage subsisted. The wife (respondent No.1) successfully assailed the judgment of the appellate court before the High Court which restored the judgment of the learned Civil Judge.

2. The learned counsel states that since the marriage subsists the *mehr* is not payable. We enquired whether the *mehr* has since been paid to the respondent No.1 and the learned counsel states that the petitioner is paying maintenance as decreed but has not paid the *mehr* because the parties are still married, and since the instant petition is pending.

3. *Mehr* is an Islamic concept mentioned in the Holy Quran, (*An-Nisa* (4) verse 4 and *Al-Baqrah* (2) verses 236-7) and it is specifically recognised by the law of Pakistan, that is, section 2 of the Muslim Personal Law (Shariat) Application Act, 1962. *Mehr* has to be paid whenever demanded by the wife. Section 10 of The Muslim Family Laws Ordinance, 1961 stipulates that:

‘Where no details about the mode of payment of dower are specified in the nikahnama, or the marriage contract, the entire amount of the dower shall be prescribed to be payable on demand.’

In the case of *Syed Muhammad v Mst. Zeenat* (PLD 2001 SC 128) the Supreme Court held that, *mehr* (dower) can be demanded during the subsistence of the marriage, and that the husband is under an obligation to pay it.

4. The impugned judgment accords with the law and the learned counsel has not been able to point out any illegality therein. It transpired during the hearing that the petitioner has two wives, but the petitioner did not fulfil his obligations towards the respondent No.1 when he failed to pay the *mehr* demanded by the respondent No.1. The respondent No.1 had to file a suit for recovery of the *mehr* and maintenance, and the petitioner unnecessarily involved the respondent No.1 in litigation, which reached this Court after six and half years. This kind of frivolous litigation is paralysing the judicial system of Pakistan. The petitioner took up an untenable defence, and perpetuated it probably because costs were not imposed upon him and the courts did not insist that the decision of the Family Court should first be complied with before entertaining a challenge to it. The excuse put forward by the learned counsel that, since the decision was challenged it was not complied with, is untenable. We reiterate that if a decision is challenged it does not mean that it becomes ineffective, and need not be complied with.

5. There was no justification to assail the decision of the High Court, which was in accordance with the law. Therefore, leave to appeal is declined and this petition is dismissed. Imposing sufficient costs may have had the salutary effect to make the petitioner act reasonably. Courts should not hesitate in imposing costs, and compensatory costs too when required. We were inclined to impose substantial costs,

however, the learned counsel states that the *mehr* (dower) will be paid to the respondent No.1 through bankers cheque/pay order/demand draft or will be deposited in the Family Court within one month. Therefore, in addition to imposing costs throughout we impose compensatory costs to the extent of one hundred thousand rupees on the petitioner considering the decrease in the value of money. If the *mehr* and the said costs are not paid the Family Court shall execute this order, which may include attachment of the properties of the petitioner.

Chief Justice

Judge

Judge

Islamabad
20 November 2023.
(Umair)

Approved for reporting