

**THE PESHAWAR HIGH COURT,**  
**ABBOTTABAD BENCH.**

*[Judicial Department].*

**W.P. No.1090–A of 2015**

**Nasir Shah.**

**Vs**

**Mst. Nasira Bibi and others.**

**JUDGMENT**

Date of hearing \_\_\_\_\_ 04.5.2017 \_\_\_\_\_.

Appellant-Petitioner \_\_\_\_\_

\_\_\_\_\_  
Respondent \_\_\_\_\_

**SYED MUHAMMAD ATTIQUE SHAH, J.-** Petitioner

through the present writ petition, called in question the Judgment and decree dated 18.9.2015 passed by learned Additional District Judge-V, Mansehra vide which the appeal of the petitioner was dismissed while maintaining the partial judgment and decree dated 13.5.2013 passed by learned Judge Family Court-I, Mansehra vide which the suit filed by respondents No.1 was partially decreed in her favour.

**2.** Brief facts of the case are that respondent No.1 filed a suit against petitioner for possession of house, recovery of maintenance allowance, return of dowry articles, gold ornaments and dissolution of marriage. The present petitioner was summoned by learned trial Court, where he appeared and contested the suit by filing his written statement. The learned trial Court after recording evidence of the parties and hearing arguments of the learned counsel for the parties vide judgment and decree dated 28.10.2014, partially decreed the suit of respondent No.1. Both the parties, present petitioner and respondent No.1 being aggrieved with the above mentioned judgment and decree filed separate appeals before learned appellate Court, who after hearing learned counsel for the parties, dismissed both the appeals vide consolidated judgment and decree dated 18.9.2015, hence the instant writ petition.

**3.** Learned counsel for the petitioner argued that the findings of both the Courts below are illegal and are the result of misreading and nonreading of evidence available on the record of the case. Further

contended that both the Courts below have wrongly interpreted the contents of Ex:PW1/1 and prayed for setting aside the impugned findings of both the Courts below.

4. On the other hand, learned counsel for respondent No.1 fully supported the judgments and decrees of the Courts below and prayed for the dismissal of the writ petition in hand, being devoid of merits.

5. Arguments heard and record perused.

6. Perusal of the record shows that marriage between the parties was solemnized on 11.7.2008 and in this respect Nikahnama has also been registered. Both the parties have admitted the said Nikahnama. PW-1 appeared before the learned trial Court and exhibited the same as Ex:PW1/1 without any objection from the petitioner's side. In the said Nikahnama (Ex:PW1/1) Rs.100000/-was fixed as amount of dower and in lieu of said amount one house alongwith veranda and courtyard situated at Jallu Mansehra was given to the respondent No.1/plaintiff. Present petitioner /defendant alleged in his written statement that only one room alongwith

veranda in the said house was given to respondent No.1/plaintiff. The learned counsel for petitioner at the time of arguments only confined his submissions upto the extent of Ex:PW1/1 and stated that respondent/plaintiff was not given the entire house as dower, rather only one room alongwith veranda was given to her as dower. However, this contention of learned counsel for the petitioner is belied by contents of column No.16 of Ex:PW1/1 Nikahnama in which it is clearly mentioned that; پورے مہر کے عوض ایک عدد مکان بمعہ برآمدہ و صحن واقعہ جلو ما نسہرہ لڑکے نے لڑکی کے نام کر دیا گیا ہے جو اب لڑکی کی مالکیت ہے۔

Moreover, the petitioner when appeared as DW-1, during cross examination he admitted correct that the contents of column No.13 and 16 of Ex:PW1/1 (Nikahnama) and stated that in lieu of dower of amount Rs.100000/-, one house alongwith verandah and courtyard situated at Jallu Mansehra was given to the respondent, which is now in her ownership. It is important to note that right from the date of marriage i.e. 11.7.2008 till this moment the petitioner/defendant never challenged the validity of

Ex:PW1/1 before any Court, nor he has objected to the same at the time of its exhibition. By merely saying that only one room alongwith veranda has been given in the house as dower will not in any manner deprive the respondent No.1/plaintiff from the benefits of Ex:PW1/1 in absence of any solid and concrete evidence. The document/instrument of Nikahnama is registered under section 5 of the Muslim Family Laws Ordinance, 1961. It has got sanctity under the law, which holds the status of primary evidence in the matrimonial matters and determines the terms and conditions of the marriage between the parties. So far as dower is concerned, it is paid in consideration of marriage to a wife by a husband and later on husband cannot deny or refuse the same to his wife unless and until the wife waive off or forgo the same by herself or it is so declared by the competent forum under the law. Therefore, the documentary evidence in shape of Nikahnama in matrimonial matters could not be bypassed on the basis of mere oral testimony of the husband.

7. Thus in view of the above discussion, this Court reached to the conclusion that the findings of

both the learned Courts below are based on proper appreciation of evidence/material available on the record of the case, which does not deserve to be disturbed by this Court. Therefore, the present writ petition being bereft of merits, hence the same is hereby dismissed.

**Announced:**  
04.5.2017  
*AftabI\**

**JUDGE**