

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT, MINGORA**  
**BENCH**  
**(DAR-UL-QAZA), SWAT**  
*(Judicial Department)*

W.P. No. 18 of 2010.

**JUDGMENT**

Date of hearing: 09-10-2014.

**Petitioner:** ( Zahir Shah) by Mr. Mian Hussan Ali,  
Advocate.

**Respondent:** (Mst. Seema) by Mr. syed umar, Ali Shah,  
Advocate.

**ABDUL LATIF KHAN, J.-** Petitioner, through the instant petition, has assailed the judgments and decrees of the Courts below and prayed to have been passed as without lawful authority and of no legal effect.

**2.** Arguments heard and record perused.

**3.** A perusal of record reveals that respondent/wife filed a suit for recovery of dower, in kind three “*tolas*” of gold or in cash as per market value, maintenance @ Rs 4,000/- Per Month for last eight years and till decision of suit, dowry articles costing to Rs. 16,200/- , Rs. 65000/- as medical expenses, separate residence at village Bara Bandai “*Nawab*”

Swat alongwith security of her personal & property and in alternative dissolution of marriage alongwith all reliefs mentioned as A to D except relief 'e' regarding separate residence and security. The claim of respondent was contested by the petitioner, claiming that dower of 7 "*tolas*" was fixed at the time of marriage, out of which 6 "*tolas*" were paid and one "*tola*" is still outstanding against him, however denied the allegation of cruelty and maltreatment levelled against him by the wife/respondent. He also took the plea of restitution of conjugal rights. The parties have been afforded opportunity to produce evidence in support of their respective stance and trial Court/Family Court partially decreed the suit to the extent of dissolution of marriage on the ground of "*Khulla*" with direction to return six "*tolas*" of gold to the petitioner/husband, and relief '*Jim*' regarding dowry articles except serial No. 2, 4, 8 to 10 of the list while suit regarding rest of the claims was dismissed. The

"*Nawab*"

respondent feeling herself aggrieved, preferred an appeal before the Court of appeal which was partially allowed and modified by dint of impugned judgment to the extent that dissolution of marriage was converted from the ground of “*Khulla*” to cruelty condition for return of six “*tolas*” gold to the petitioner was deleted and instead petitioner/husband was directed to give one “*tola*” gold out of dower outstanding against him. Rs. 1,000/- per month previous maintenance for a period of eight years and further till “*Iddat*” was also granted in favour of respondent/wife, whereas judgment and decree passed by Family Court was maintained regarding medical expenses and dowry articles.

4. The scanning of evidence available on file reveals that plaintiff/respondent has levelled serious allegation of cruelty and maltreatment against the petitioner. The petitioner has contracted second marriage and residing abroad. The tie of the spouses has not given birth to any child

“*Nawab*”

and in such scenario the relation of the parent of husband and other inmates of house of defendant/petitioner with wife/respondent would be obviously not be cordial as it is depicts from the evidence and has been ousted from the house of defendant, entitles her for recovery maintenance, however the period precious 8 years allowed by the Court of appeal is not in line with law, and learned counsel for the respondent has also agreed to his extent and instead stressed for six years in the light of provision of Article 120 of the limitation Act , which was opposed by the petitioner

5. The evidence of the parties regarding the payment of dower, on proper evaluation leads to conclusion that one tola of dower is still outstanding against the petitioner and findings arrived it by the Court of appeal in this regard are the result of proper appreciation of evidence and is entitled for one tola of gold. It is pertinent to note the serious allegation made in the plaint by the wife/respondent

“ *Nawab*”

regarding cruelty and maltreatment coupled with the fact of second marriage and absence of petitioner being abroad, are the factors compelled her to seek remedy before Family Court including dissolution, entitles her for it, as maltreatment and cruelty does not only amount to physical beating etc rather the agony she suffered and the behavior of petitioner entangle her into litigation is sufficient to prove cruelty, however she failed to question the dissolution on ground of “*Khulla*” with condition to return the dower of six tolas to petitioner before this court in writ jurisdiction and instead filed appeal before Court of appeal which was not maintainable.

6. Through the evidence available on file has been properly assessed by the Court of appeal, however had no jurisdiction to hear the appeal regarding dissolution of marriage and to this effect findings regarding conversion of dissolution from the ground of “*Khulla*” to the cruelty. The

“*Nawab*”

plea of learned counsel for the respondent that wife can prefer appeal in case of dissolution on the ground of Khulla is misplaced as the relevant provision of Section 14 of the West Pakistan Family Court Act, 1964 is clear to this effect, in no case except the grounds mentioned in Section 2 (VIII)(d) of Act VIII of 1939 appeal can be preferred before The court of appeal. As the respondent failed to question the dissolution of her marriage on the ground of Khulla with condition to return the dower of six tolas of gold, passed by Family Court before forum, therefore the conclusion of appellate court from the ground of Khulaa to cruelty was “*coram non judice*”, however in the interest of justice and in particular circumstances of case, the findings of appellate Court are modified to the extent that the marriage stand dissolved on the ground of Khulla, however, the condition attached thereto is deleted, as dissolution on the ground of Khulla in all eventualities would not entitled the husband for “*Nawab*”

getting benefits back from the wife and instead duly hinges upon circumstances of each case, which is at least not attracted to the facts of instant case.

For the aforesaid reasons we allow this petition and modify the judgment impugned herein to the extent that marriage of the spouses stand dissolved on the ground of “*Khulla*” with no direction of return of any benefit and maintain the impugned judgment regarding other relief including payment of one “*tola*” by petitioner to respondent/wife accordingly.

Announced.  
Dt: 9-10-2014.

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