

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Amin-ud-Din Khan
Mr. Justice Syed Hasan Azhar Rizvi

Civil Petition No.2865 of 2022

(Against the Order dated 13.06.2022 of the Lahore High Court,
Rawalpindi Bench passed in Writ Petition No.1674 of 2022)

Syed Amir Raza ...Petitioner(s)

Versus

Mst. Rohi Mumtaz and othes ...Respondent(s)

For the Petitioner(s) : Sh. Ahsan-ud-Din, ASC

For Respondent No.1 : Sh. Muhammad Suleman, ASC

Date of Hearing : 05.05.2023

JUDGMENT

Syed Hasan Azhar Rizvi, J:- Through this petition for leave to appeal filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 13.06.2022 passed by the Lahore High Court, Rawalpindi Bench, whereby writ petition No.1674 of 2022 being devoid of merit was dismissed.

2. Precisely, facts relevant for adjudication of the instant petition are: that the petitioner (*Syed Amir Raza*) and the respondent (*Mst. Rohi Mumtaz*) entered into a contract of marriage on 20.10.2017 in consideration of dower, 50-tolas of gold ornaments and a house, duly mentioned in the *Nikahnama*. *Rukhsati* of the respondent took place on 17.02.2018 and

after that she started living and performing matrimonial obligations with the petitioner. During the said period, the attitude of the petitioner and his family members towards the respondent remained very unpleasant, cruel and quarrelsome and on a number of occasions, the petitioner has beaten the respondent, thus based on these facts severe hatred has developed in the mind of the respondent and it has become unfeasible for her to live with the petitioner. A civil suit for dissolution of marriage on the ground of *khula* was instituted on 22.09.2018 by the respondent before the Judge Family Court, Taxila (*trial Court*), which was decided through the judgment dated 28.11.2018 in the following terms:-

“Therefore, the suit of the plaintiff is hereby ex-pare decreed in favour of the plaintiff and against the defendant and martial ties between the parties are hereby dissolved on the basis of khula u/s 10(5) of West Pakistan Family Courts Act, 1964. The plaintiff is directed to surrender 50% of her deferred dower and 25% of her prompt dower.”

On 04.10.2018, the respondent filed a suit against the petitioner for recovery of dower, maintenance and dowry articles. Issues were framed and after recording of evidence, trial Court partially decreed the suit *vide* judgment and decree dated 27.08.2020 as under:-

- “a) The plaintiff is entitled to receive 37.5 tolas gold ornaments from the defendant No.1 or its alternative market value and a house from the defendant No.1 as mentioned in Nikhanama.*
- b) Therefore, plaintiff is entitled to receive Rs.20,000/- per month as maintenance allowance for period of iddat only from defendant No.1.*

- c) *The plaintiff is entitled to receive dowry articles as Exh.D-3 and articles “1, 4, 11, 12, 13, 14, 15, 16” as per list Exh.P-2 of plaintiff or their alternate value after 15% depreciation in value from the defendants. To the extent of all remaining claims suit of plaintiff is dismissed.”*

Being aggrieved, the petitioner as well as the respondent filed family appeals before the Additional District Judge, Taxila (*appellate Court*), which were dismissed through a consolidated judgment dated 31.03.2022. By invoking the constitutional jurisdiction of the High Court, the petitioner filed a writ petition, which too met the fate of dismissal *vide* order dated 13.6.2022, hence this petition.

3. Learned counsel for the petitioner contends that the impugned order is against law and facts; that the same is suffering from misreading and non-reading of evidence on the record; that the impugned order is based on extraneous reasons, surmises and conjectures; that the Courts below have not applied their judicious minds independently and passed the judgments in hasty and mechanical manner; that the marriage between the parties have been dissolved by way of a decree obtained on the sole ground of *khula*, according to which, the respondent has to surrender fifty percent (50%) of her deferred dower and 25% of prompt dower, whereas according to the contents of *Nikahnama*, the entire gold ornaments have been paid to the respondent at the time of *rukhsati*; that the High Court has ignored the important,

crucial and vital aspect of the matter that the petitioner was liable to pay half of the value of the house as described in column No.13 of the *Nikahnama* after passing of the decree of *khula*, which fact admittedly has not been challenged by the respondent and that the impugned order is a non-speaking order.

4. Conversely, learned counsel representing the respondent has supported the impugned order and faithfully defended the same.

5. We have heard the learned counsel for the parties at a considerable length and gone through the material available on record with their able assistance. *Per* Section 10(5) of the West Pakistan Family Courts Act, 1964, *in a suit for dissolution of marriage, if reconciliation fails, the Family Court shall immediately pass a decree for dissolution of marriage and in case of dissolution of marriage through khula, may direct the wife to surrender up to fifty percent of her deferred dower or up to twenty-five percent of her admitted prompt dower to the husband.* We find that the learned trial Court while decreeing the suit *vide* order dated 27.08.2020, disregarded the earlier judgment dated 28.11.2018, which directed the respondent to "*surrender 50% of her deferred dower*". The house from the petitioner, as mentioned in *Nikahnama*, is the deferred dower and as per the *khula* judgment, the respondent is only entitled to fifty percent

(50%) of the house (deferred dower). This premise is grounded in Section 10(5) *ibid* that while obtaining dissolution on the sole basis of *khula*, the respondent is bound to surrender fifty percent (50%) percent of her share in deferred dower. We refer to the judgment of this Court in the case of ***Muhammad Arif v. Saima Noreen (2015 SCMR 804)*** which held that the wife, in case of *khula*, has to forego the dower amount as per Section 10 of the *ibid* Act.

6. For what has been discussed above, this petition is converted into an appeal and allowed. The impugned order is modified to the extent of the deferred dower and the respondent is held entitled only to fifty percent (50%) share in the house in question or market value thereof.

JUDGE

JUDGE

Islamabad,
the 5th May, 2023
NOT APPROVED FOR REPORTING
Ghulam Raza/Ali Gilani (LC)*