

JUDGMENT SHEET  
**LAHORE HIGH COURT, BAHAWALPUR BENCH,  
BAHAWALPUR**

Writ Petition No.1633 of 2008/BWP

*Saeed Ahmed*      **Versus**    *Addl. District Judge, etc.*

**JUDGMENT**

Date of hearing:      22.09.2014

Petitioner(s) by:      **Mr. Muhammad Hanif Chughtai,**  
                                         **Advocate**

Respondent(s) by:      **Malik Muhammad Naeem Akhtar,**  
                                         **Advocate**

**Shahid Bilal Hassan-J:**      The plaintiff/respondent No.3 instituted a suit for recovery of Rs.100,000/- as compensation of divorce by maintaining that she was married with the petitioner on 28.02.1997, which culminated into birth of one son, but the petitioner failed to pay dower and maintenance allowance, so the respondent No.3 filed a suit for recovery of dower and maintenance allowance, which was decreed on 24.09.2004; meanwhile, the petitioner divorced respondent No.3 without any reason; hence, the suit for recovery of compensation of Rs.100,000/-. The suit was contested by the petitioner/defendant. The divergence in the pleadings was summed up into issues. Both the parties lead their evidence, pro and contra, in support of their respective versions. Learned trial Court *vide* its impugned judgment and decree dated 29.09.2007 decreed the suit in favour of the respondent No.3. Being aggrieved, the petitioner challenged the said judgment and decree through an appeal before the learned Appellate Court, which was subsequently dismissed *vide* impugned judgment and decree dated 05.03.2008; hence, this writ petition assailing

the impugned judgments and decrees dated 29.09.2007 and 05.03.2008, respectively.

2. Learned counsel for the petitioner has argued that the impugned judgments and decrees are against law and facts; that same suffer misreading and non-reading of evidence brought on record by the petitioner; that the law on the subject has not been considered in true perspective; that respondent No.3 failed to prove the stance taken up by her but even then both the learned Courts below have passed decree in her favour in an arbitrary way; that the evidence as a whole has not been evaluated and pick & choose method has been adopted, which is not the mandate of law; that both the learned courts below have failed to exercise the jurisdiction vested in them in proper way and passed the impugned judgments and decrees by committing sheer illegalities and irregularities; hence, same are not sustainable in the eye of law, because both the courts below had no jurisdiction to decide such like lis; therefore, by setting aside the impugned judgments and decrees, suit of the respondent No.3 may be dismissed. Relies on Syed Mukhtar Hussain Shah v. Mst. Saba Imtiaz and others (PLD 2011 Supreme Court 260), Mst. Zeenat Bibi v. Muhammad Hayat and 2 others (2012 CLC 837-Lahore) and Muhammad Akram v. Mst. Hajra Bibi and 2 others (PLD 2007 Lahore 515).

3. On the contrary, learned counsel appearing on behalf of the respondent No.3 by favouring the impugned judgments and decrees has prayed for dismissal of the writ petition in hand.

4. Heard.

5. The core point to be discussed in the present case is whether the claim of the respondent No.3 falls within the jurisdiction of Family Courts or same would be dilated upon in ordinary Court of jurisdiction i.e. learned Civil Court. In this regard, it is by now a settled principle of law that claim of the

respondent No.3/plaintiff for the alleged unjustified divorce is not actionable before the learned Family Court as held by Hon'ble Supreme Court of Pakistan in case of Syed Mukhtar Hussain Shah v. Mst. Saba Imtiaz and others (PLD 2011 Supreme Court 260), whereby the ratio adopted by this Court in Muhammad Akram v. Mst. Hajra Bibi and 2 others (PLD 2007 Lahore 515) has been upheld and the question involved in the present case has invariably been decided by observing that, *'Family Court, jurisdiction of---Words "personal property and belonging of the wife"---Scope---Civil Procedure Code, 1908---Applicability---Damages, recovery of---Parties entered into agreement stipulating that in case husband would divorce the wife, then he was obliged to pay a sum of Rs.100,000/- as damages to her---Validity---West Pakistan Family Courts Act, 1964, was special law meant to cater for specific object and special kind of cases strictly covered by items mentioned in Sched. Thereto---Civil Courts were the courts of inherent and plenary jurisdiction competent to adjudicate all disputes of civil nature between litigating parties but such jurisdiction in terms of S.9, C.P.C. had been ousted either expressly or by necessary implication--- In order to evaluate whether such jurisdiction had been taken away, the special law under which it was so done, must not only be strictly construed but also be accordingly applied---If provisions of S.5 of West Pakistan Family Courts Act, 1964, were read with the entries of the Schedule, there was no confusion or ambiguity about cases falling within item No.1 to 8 thereto while entry No.9 was incorporated by way of amendment----Words "personal property and belonging of wife" as appearing in item 9 of Sched. to West Pakistan Family Courts Act, 1964, could not be interpreted to mean that suit for specific performance, declaratory suits of any nature or any other civil litigation between wife and husband*

*was amendable to special jurisdiction of Family Court, as such was not the intent of law---According to literal approach of reading a statute, the statute had to be read literally by giving the words used therein, ordinary, natural and grammatical meaning---Addition and subtraction of a word in a statute was not justified, except where for interpretation thereof principle of reading in and reading down could be pressed into service in certain cases---When in entry No.9, of Sched. to West Pakistan Family Courts Act, 1964, “actionable claim” had not been provided by legislature, it would be improper and was impinge upon the legislative intent and rules of interpretation to add such expression to the clause/entry---Judges and decrees passed by all Courts below in favour of wife were set aside and her suit was dismissed.....”.* In view of above, it is manifested that the claim of the respondent No.3 does not come within the ambit of jurisdiction of Family Courts, rather it is a contractual obligation and if the respondent No.3 wants its recovery, she has to approach the proper forum i.e. learned Civil Court. Even otherwise, any such condition imposed in Nikahnama for the award of damages on account of an alleged unjustified divorce has been declared against the basic principle of law by the Apex Supreme Court in (2008 SCMR 186), wherein it has been held that, *‘His only contention was that such condition was embodied in the Nikahnama by way of safety and for prolongation of marriage contract, as it would deter for both the parties from bringing an end to the marriage contract. This contention to say the least is absolutely frivolous as it is against the basic principle of law which requires the parties to remain in marital ties in a peaceful and tranquil atmosphere and are not required to be bound by stringent conditions to remain in marriage bond.’* Same principle has been followed

by this Court in Mst. Zeenat Bibi v. Muhammad Hayat and 2 others (2012 CLC 837-Lahore).

6. For the foregoing reasons, I am of the considered view that both the learned Courts below have erred in law and being ignorant with the recent developments on the subject matter passed the impugned judgments and decrees in favour of the respondent No.3/plaintiff. Therefore, by allowing this writ petition, both the impugned judgments and decrees passed by learned trial Court as well as learned Appellate Court are set aside, as the same are not based on legal premises and material illegality has been committed. Resultantly, the suit of the respondent No.3/plaintiff for recovery of damages of Rs.100,000/- as compensation of divorce is dismissed. No order as to costs.

**(SHAHID BILAL HASSAN)**  
**JUDGE**

*M. A. Hassan*

Approved for reporting.

Judge