

**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
BANNU BENCH.**

(Judicial Department)

**W.P No.69-B/2023**

Farman Ullah

Vs.

Mst. Shaheen Akhtar & others.

**JUDGMENT**

Date of hearing:     **17.4.2023**

For Petitioner:     Mr. Haroon-ur-Rashid, Advocate.

For Respondents: Malik Rahman Khattak, Advocate.

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FAZAL SUBHAN, J. Since the instant W.P No.69-B/2023 titled Farman Ullah Vs. Mst. Shaheen Akhtar and others and connected W.P No. 137-B/2023 titled Mst. Shaheen Akhtar Vs. Farman Ullah and others are outcome of one and the same consolidated judgment of learned appellate Court, therefore, by way of this single judgment I would like to dispose of both the petitions.

2.            Through instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner/defendant has prayed as following:-

“It is, therefore, most humbly and respectfully prayed that on acceptance of the instant writ petition, this Hon'ble Court may very graciously be pleased to set aside the impugned

order/judgment dated 15.12.2022 and order/ judgment/ decree dated 08.02.2022 of learned Senior Civil Judge/Judge Family Court, Karak to the extent of recovery of maintenance allowance fixed Rs.3500/- per month for last six years prior to institution of suit and onwards till existence of marital tie”

3. In the connected W.P No.137-B/2023 plaintiff Mst. Akhtar Shaheen has prayed as following:-

“It is, therefore, very humbly prayed that on acceptance of instant Writ Petition, the impugned judgments of the learned courts below may very graciously be set aside to the extent of the relief which has been denied/refused/ dismissed to the petitioner (plaintiff) and the suit of the petitioner (plaintiff) may please be decreed in her favour as prayed for.

Any other relief which this Hon'ble Court deem fit and just may very graciously be granted.”

4. Concise facts of the case are that the respondent Mst. Shaheen Akhtar instituted a family suit for recovery of maintenance allowance at the rate of

Rs.10,000/- per month from March 2009 till date with 10% enhancement, recovery of dower 3 tola gold ornaments, dowry articles with 5 tola gold ornaments, recovery of Rs.1000/- per month received by respondent from Benazir Income Support Program (BISP) on her CNIC, provision of separate house and decree of Hazanat and visitation rights with his son/daughters.

5. On filing the suit, petitioner was put on notice and after appearance, he filed his written statement, whereafter the Judge Family Court framed as much as 14 issues. Parties led their desired evidence and vide its judgment the Court passed decree of maintenance at the rate of Rs.3500/- per month for the last 6 years, decree of provision of separate house, whereas her remaining suit was dismissed. The Family Court, passed decree of restitution of conjugal rights in favour of petitioner.

6. Both the parties filed separate appeals No.25/FCA and 26/FCA of 2022, and after considering the arguments of both sides, the appellate Court, upheld the impugned judgment before him, and dismissed both the appeal. Being aggrieved the petitioner has filed the

instant petition.

7. Learned counsel for petitioner in his arguments has mainly objected to the grant of decree of Rs.3500/- per month as maintenance allowance to the respondent, contending that it has nowhere been proved that petitioner had ever maltreated or treated her with cruelty, rather the respondent is a self deserter and despite convening Jirgas, she refused to his house and to live as obedient wife, hence in such circumstances, she was not entitled to the decree for maintenance allowance.

8. Counsel for respondent on the other hand submitted that it was consistent stance of respondent in her plaint as well as evidence that the petitioner was a quarrelsome who used to beat and torture her and on 10.3.2009 she was forcibly ousted from his house, and therefore, she being in the wedlock of petitioner, was entitled for maintenance allowance.

9. From the record it is evident that the parties are tied in a wedlock since February 2000, and marriage between the spouses is still intact. From the wedlock three children, a son and 2 daughters are born and are residing with the petitioner. The respondent herself and

her brother appeared and deposed in respect of cruel attitude toward petitioner. The respondent in her statement has come up with certain facts of shaving off her eyebrows and head to prove cruelty of petitioner, however, these facts are beyond her plaint (pleadings) and cannot be admitted to be correct and seems after thought, however, it is admitted by the petitioner and his witness that respondent is residing with her parents since 2009. The petitioner has also contracted second marriage and there is admission on his part that he has not obtained any permission from the concerned union council before the second marriage. He also admitted that he has not filed any suit to enforce his conjugal rights.

10.

Section 9 of the Muslim Family Laws Ordinance, 1961, relates to the maintenance and it makes incumbent upon the husband to provide maintenance to his wife during subsistence of marriage. It is, therefore, undeniable right of a wife to provide her with maintenance if even the wife is staying away from the husband due to just and valid reason. The suit filed by respondent manifest that she has not come up with a prayer for dissolution of marriage which means that she does not want to part ways with the petitioner but intend

to continue with the marriage but due to mistreatment and forcible ouster she is living apart, hence in these circumstances, the petitioner is bound to provide maintenance to the respondent. In the case titled "Mst. Farida Khanum Vs. Deputy Commissioner/Collector, Okara, and others" (2004 MLD 798, it was held that:-

“----The record clearly supports the contention of the petitioner that she was forced to live in the house of her parents after desertion by respondent No.2 who had not made any effort to rehabilitate her through any Court proceeding by filing a suit for restitution of conjugal rights. She is entitled to the maintenance allowance from her husband for the period specified above.----.”

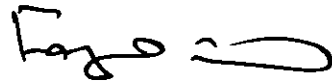
11. So far as rest of the impugned judgment is concerned, the learned counsel for the parties have no serious reservation with the rest of the findings. The respondent is not seeking dissolution and on provision of separate house, as has been decreed to her, she will be entitled to receive her dowry articles, lying with the petitioner while she has already been granted the right of visitation of her children. In my view, both the courts

below have properly evaluated the record and the judgments rendered are based on correct appreciation of record/evidence, hence findings no merits, these petitions stands dismissed.

**Announced.**

17.4.2023

Ihsan



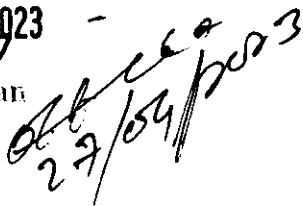
**J U D G E**

(S.B) Hon'ble Mr. Justice Fazal Subhan.

SCANNED

27 APR 2023

  
Khalid Khan

  
27/04/2023