

JUDGMENT SHEET
PESHAWAR HIGH COURT D.I.KHAN BENCH
JUDICIAL DEPARTMENT

WP No. 426-D of 2014

Date of hearing 01.04.2015

Appellant / petitioner (Sheheryar Gul) by Mr. Muhammad Ghazanfar Ali Advocate

Respondent (Mst Sadaf Bibi) by Mr. Khuda Bakhsh Khan Baloch Advocate.

MUHAMMAD GHAZANFER KHAN J.-This writ petition is directed against the order dated 16/6/2014 passed by the learned Civil Judge-IX/Judge Family Court D.I.Khan, whereby application of the petitioner for additional evidence was turned down.

2. Briefly stated facts of the case leading to the instant petition are that the petitioner, namely, Sheheryar Gul filed a suit for restitution of conjugal rights against the respondent Mst. Sadaf Bibi. He alongwith the plaint annexed list of witnesses as provided under the law. When summoned, the respondent/defendant appeared before the trial Court and submitted written statement, wherein she claimed dissolution of marriage, recovery of dower amount, maintenance with pocket

money, recovery of gold ornaments and recovery of dowry articles. In order to submit proper reply, the petitioner/plaintiff with the permission of Court filed rejoinder/better statement to the counter claim of the defendant/respondent and also submitted a list of witnesses with the rejoinder. When the pre-trial reconciliation proceedings failed and issues were recorded, the plaintiff/petitioner in the light of changed circumstances of the case submitted an application for additional evidence because the previously submitted list of witnesses was only to the extent of claim of restitution of conjugal rights. The respondent/defendant submitted replication and the learned trial Judge after hearing pro and contra arguments of the parties dismissed the application vide order herein impugned.

3. After hearing learned counsel for the parties and going through the record, it transpires that the petitioner has earlier filed a suit for restitution of conjugal rights and has presented his list of witnesses to the extent of his claim in the suit, but later on the respondent when appeared and submitted her written statement, she in accord with section 9 (1) of the Family Court Act, 1964 claimed dissolution of marriage etc; as counter claim. So naturally the present petitioner had to

file better statement in shape of rejoinder and also submitted list of witnesses therewith, but not only his request for production of additional evidence was turned down, so much so his list annexed with better statement was also rejected by the impugned order.

4. This order of the trial Court is not only misconceived, but is illegal and based on mis-reading and wrong interpretation of law on the subject.

5. Section 9(1) and (2) are relevant to resolve the controversy emerged from the impugned order which read as under:-

“9. WRITTEN STATEMENT”

(1) On the date fixed under clause (a) of sub-section (1) of section 8, the plaintiff and the defendant shall appear before the Family Court and the defendant shall file his written statement, and attach therewith list of his witnesses alongwith a precise of the evidence that each witness is expected to give.

(2) Where a defendant relies upon a document in his possession or power, he shall produce it or a copy thereof in the Court alongwith the written statement”.

6. After insertion of above provisions of law, the written statement had attained the status of plaint. So, as provided in section 7(2) of the Family Court Act that a plaint shall contain all material facts relating to the dispute and shall contain a schedule giving the number of witnesses intended to be produced in support of plaint, names and addresses of the witnesses and brief summary of the facts to which they would depose. The proviso to the above section also empower the Court to allow either of the parties to call any of the witnesses at any later stage if it considers such evidence expedient to the interest of justice.

7. The above provision of law was over thrown by the trial court while passing the above said order.

8. The writ petition is, therefore, accepted, the impugned order dated 16/6/2014 of the learned Judge Family Court D.I.Khan is set aside and he is directed to examine the witnesses mentioned in the application dated 15/5/2014 filed by the petitioner in support of his claim.

ANNOUNCED
14/4/2015.

JUDGE

JUDGE