

SHARIAT APPELLATE BENCH OF HIGH COURT

Civil Appeal No.06/2019
Date of Institution 17.01.2019;
Date of hearing. 10.10.2022
Date of Decision 11.10.2022.

1. Mohammad Sadiq S/o Mohammad Sajawal;
 2. Iftikhar Ali S/o Mohammad Sadiq caste Jutt R/o Parai Rajdhani Tehsil and District Kotli.
-Appellants

Versus

1. Saiqa Bi D/o Mohammad Yousaf;
 2. Aleena Ali D/o Iftikhar Ali R/o Ownah Dadyal presently House No.122-A Sector D/3 east Tehsil and District Mirpur.
- Respondents

FAMILY APPEAL

BEFORE:- Justice Chaudhary Khalid Rasheed, J.

PRESENT:

Imtiaz Hussain Raja, Advocate, for appellants.
Hafiz Arshid Mehmood, Advocate, for respondents.

JUDIGMENT:-

The captioned appeal has been filed against the judgment and decree of learned Additional District Judge/ Judge Family Court Mirpur dated 17.12.2018, whereby, suits filed by respondents herein for dissolution of marriage and recovery of maintenance allowance have been decreed.

Detailed facts of the case are, plaintiff/ respondents herein filed 2 separate suits one for dissolution of marriage and other for recovery of maintenance allowance against appellants herein in the Court of Additional District Judge/Judge Family Court

Mirpur, wherein it was claimed that plaintiff, Saiqa Bi was married to defendant, Iftikhar Ahmed on 23.07.2011 in lieu of prompt dower Rs.10,000/-. It was further submitted that out of their wedlock a baby girl namely Alina Ali was born on 29.04.2012. It was averred that after 2/3 months of the marriage, defendant went abroad and did not pay maintenance to the plaintiff as well as to the minor since 2012 and since her birth the minor is in custody of plaintiff. It was contended that since March 2015, the defendant did not contacted with the plaintiff and changed his residence, therefore, prayed for decree for dissolution of marriage as well as maintenance allowance. Defendants resisted the suits by filing written statement and refuted the whole claim of plaintiff. In the light of pleading of the parties, learned lower Court framed issues and provided an opportunity to produce evidence. At the conclusion, the learned Family Court decreed the suit for dissolution of marriage on the basis of non-payment of maintenance allowance and decreed maintenance allowance of Rs. 8000/- per month from March 2015 to 17.12.2018 alongwith Iddat period to respondent No.1, and @ Rs. 8000/- per month with 10% annual increase in favour of minor vide its impugned judgment and decree dated 17.12.2018, hence the captioned appeal.

The learned counsel for appellants zealously argued that the defendants-appellants proved through reliable and cogent evidence that plaintiff left the house of her husband in the year 2016 on the occasion of Eid ul Fitr sine any reason or complaint. The learned Advocate further argued that appellant No.2 also proved through documentary as well as oral evidence that he remained paying maintenance to the plaintiff but the Court below failed to appreciate the relevant evidence in its true spirit and perspective by anomalously granting the claimed maintenance and also skipped to ponder the law on the subject and instead of dissolving the marriage on the basis of Khulah, dissolved it on the ground of non-payment of maintenance and torture. The learned Advocate also solicited that appellant Iftikhar Ali is behind the bars in England, hence maintenance allowance fixed by the Court below is not plausible. The learned Advocate vehemently contended that the Court below erroneously held that appellant Muhammad Sadiq is duty bound to pay maintenance to the plaintiffs who has got no concern with the matter as being father of appellant No.2, thus the impugned judgment entails to be set at naught on this score also.

The learned counsel for the respondents supported the impugned judgment on all counts and submitted that plaintiff by producing reliable and

tangible evidence proved her claim therefore, the Court below rightly decreed the suits, hence the impugned judgment deserves to be maintained. He also stated that as per statement of witnesses produced by defendant-appellant, defendant Iftikhar Ali remained in jail for a short span of time, however was released, hence it could not be IPSO Facto presumed that he was unable to pay maintenance as required by law.

I have heard the learned counsel for the parties and peruse the record of the case with utmost care and caution.

The plaintiff took a specific stance that after 2/3 months of the marriage defendant left for abroad and failed to pay maintenance not only to plaintiff but to his minor daughter who took birth on 29.04.2012. She further stated that since March 2015, defendant did not contact her. Plaintiff to prove her claim, produced Shoukat Ali, Muhammad Nazim Atari as witnesses who supported the version taken by the plaintiff, she also got recorded her statement in support of her claim. Defendant in his written statement while refuting the claim of the plaintiff taken in para No.3 of the suit that defendant did not contact her since March, 2015 simply stated that para No.3 is incorrect, baseless and against the facts, hence denied. This rebuttal of the defendant-appellant is apparently evasive in nature and law is very

much clear that evasive denial of a fact shall be deemed to be an admission and admitted facts need not to be proved because general principles of Qanoon-e-Shahadat and C.P.C are applicable instead of bar under Section 17 of Family Court Act. Reliance may be placed on 2011 SCR 224, 1996 SCR 82, thus this fact alone is worth considered to decree the suits. Under Section 2 of The Dissolution of Muslim Marriage Act, 1939 a woman married under Muslim Law shall be entitled to get a decree for dissolution of her marriage on any of the grounds mentioned in the said section. Sub-section (ii) postulates that if a husband has neglected or has failed to provide maintenance to her wife for a period of two years and Sub section (iv) postulates that if husband failed to perform, without reasonable cause, his marital obligations for a period of three years, the woman is entitled to get a decree of dissolution of marriage. In this case, appellant No.2 admittedly went abroad in the year 2012, hence, he did not perform his marital obligations for more than three years and as stated above it is an established fact from the record that defendant failed to contact with plaintiff since March, 2015 hence, neglected and did not pay maintenance to her for more than 2 years, thus, entitled to get a dissolution of marriage as mentioned in section 2 of the Dissolution of Muslim Marriages Act, 1939. The witnesses produced by the

defendant admitted that minor since birth is in custody of her mother, hence plaintiff successfully proved the non-payment of maintenance by the appellant since 2015, thus, the Court below rightly decreed the suits and appreciated the evidence in a legal fashion. It is also pertinent to note here that as stated above it is proved from evidence that defendant did not contact with plaintiff since March 2015, which fact is sufficient to hold that behavior of the defendant with plaintiff was cruel because if conduct of husband create tension or frustrate feeling of his wife it also amounts to cruelty. Reliance may be placed on 2020 SCR 378. It is also pertinent to mark that in case of dissolution of marriage, no right of appeal can be exercised under Section 14(2) of the Family Court Act. Reliance may be placed on 2001 CLC Kar. 507.

So far the quantum of maintenance is concerned, it is an admitted position that defendant is living abroad since long, hence Rs.8000/- maintenance to the plaintiff is justified keeping in view the fact that a person settled abroad earns handsome amount per month even if he is a taxi driver or daily wager. The husband/father is duty bound to maintain his family and provide them the status which he is enjoying himself. The argument of the learned counsel for the appellant that appellant is unable to pay the maintenance because he

was arrested in UK has no force because evidence produced by appellant negates this versions and one of the witnesses produced by the defendant named Muhammad Sadiq S/o Muhammad Sajawal deposed that defendant was arrested for a short span of time, however, has been released, thus, the argument of the learned counsel is against the record.

The contention of the learned counsel for the appellant that Muhammad Sadiq, father of Iftikhar Ali has illegally been declared responsible to pay the maintenance, is misconceived because no such direction has been given in the impugned judgment but it is otherwise correct that any such direction is illegal because father/husband is duty bound to maintain his family and grandfather cannot be declared responsible to pay the maintenance of the minors, hence, this argument need not to be addressed.

The sum and substance of the above discussion is, finding no essence the captioned appeal is hereby dismissed.

Circuit Mirpur.
11.10.2022.

-Sd-
JUSTICE

Approved for reporting.

-Sd-
JUSTICE