

**[Balochistan]**

**Before Muhammad Ejaz Swati and Jamal Khan Mandokhail, JJ**

**MUHAMMAD ALI KHAN PARACHA---Petitioner**

**Versus**

**Mst. BINISH and 2 others---Respondents**

C.P. No.677 of 2010, decided on 5th October, 2015.

**West Pakistan Family Courts Act (XXXV of 1964)---**

----S.5, Sched.----Limitation Act (IX of 1908), Art. 103---Constitution of Pakistan, Art. 199---  
Constitutional petition---Suit for recovery of prompt dower---Limitation, determination of---  
Both Trial Court and appellate court decreed the suit allowing recovery of dower amount and  
maintenance---Defendant contended that suit for recovery of dower amount was barred under  
Art. 103 of Limitation Act, 1908, as the same had been filed after six years of divorce---Validity-  
--Neither any ground of limitation was raised in written statement, nor was issue framed by Trial  
Court in that respect---Limitation pursuant to Art. 103 of Limitation Act, 1908 would start from  
date of refusal to pay dower amount---Mere making of demand of dower amount without any  
refusal by husband did not attract provision of Art. 103 of Limitation Act, 1908---Limitation  
would not start unless two conditions, making of demand and refusal by husband, were fulfilled--  
-Defendant, in his written statement, had pleaded that he had paid dower amount to plaintiff, but  
he failed to substantiate the same through evidence---Defendant s witnesses, during cross-  
examination, had admitted that dower amount had not been paid to plaintiff---Limitation, in the  
present case, would, therefore, start from time when written statement had been filed by

defendant---Present suit was not hit by Art. 103 of Limitation Act, 1908---Constitutional petition was dismissed in circumstances.

Sohail Ahmed Ansari for Petitioner.

Respondent No.1 proceeded ex parte on 25-08-2015.

Mst. Sarwat Hina, Additional, P.G. for Official Respondents.

Date of hearing: 25th August, 2015.

## **JUDGMENT**

**MUHAMMAD EJAZ SWATI, J.**---The respondent No.1 filed a suit for Dower Amount (Haq Maher), Dowry Articles, Maintenance against the petitioner before the Family Judge-II, Quetta (hereinafter the "trial Court") with the averments that the marriage between the spouses was solemnized on 5th November 1998, whereby Rs.500,000/- was fixed as Haq-Maher payable on demand, which has not been paid by the petitioner. Out of the wedlock, a baby child namely Laiba Ali was born on 13th August 2000 and the birth expenses were borne by the parents of the respondent No.1, however, in the month of November 2002, the respondent No.1 (plaintiff) was turned out by the petitioner along with the minor daughter and she used to reside with her parents. The plaintiff/respondent No.1 sought relief for Haq-Maher of Rs.500,000/- and maintenance of Rs.20,000/- per month for herself and maintenance of Rs.20,000/- for minor daughter and further recovery of six gold bangles, one pair of gold rings.

2. The petitioner contested the suit by way of filing written statement, however, the trial Court vide judgment dated 7th April 2010 (hereinafter the "impugned judgment & decree") decreed the suit and directed the petitioner to pay dower amount of Rs.500,000/- and maintenance allowance to the respondent No.1 for Iddat period at the rate of Rs.5,000/- per month from December 2002 till February 2003. The petitioner/defendant was also directed to pay maintenance allowance for minor child Laiba Ali at the rate of Rs.2,000/- per month from December 2002 and onwards with 10% annual enhancement. On appeal filed by the petitioner,

the learned Additional Sessions Judge-II, Quetta (hereinafter the "appellate Court") vide order dated 27th July 2010 (hereinafter the "impugned order"), allowed the appeal and held that the respondent No.1 is not entitled for maintenance during the Iddat period, however, the remaining part of the decree related to Haq-Maher and maintenance of minor was upheld.

3. The learned counsel for the petitioner contended that impugned judgment/decreed and order passed by the Courts below are perverse and suffer from misreading and non-reading of evidence; that despite of the fact that the payment of amount of dower by the petitioner to the respondent No.1, had been proved, but the Courts below have failed to resolve the issues No.1 and 2 in accordance with the evidence on record; that the respondent No.1 was admittedly divorced by the petitioner in November 2002, but after lapse of eight years, she claimed dower amount, which was hopelessly time barred under Article 103 of the Limitation Act 1908 (hereinafter the "Act, 1908"), which aspect of the matter had been unnoticed by the Courts below and thus, committed glaring illegalities and irregularities.

The respondent No.1 was proceeded against ex-parte on 25th August 2015.

4. We have heard the learned counsel for the petitioner and have gone through the record of the case. The learned counsel for the petitioner mainly pressed the impugned judgment and decree in respect of dower amount and contended that DW-1 Farshad Bandgi in his examination deposed that the dower amount of Rs.500,000/- was paid and this fact was further admitted in the cross-examination, but the Courts below misread the evidence produced by the petitioner. We have considered this aspect of the matter. Though, DW-1 in his examination deposed about the payment of dower by the petitioner to the respondent No.1, but in his cross-examination, he admitted that in his presence no such dower amount was paid to the respondent No.1, therefore, there appears no misreading and non-reading of evidence. Likewise, DW-2 during cross-examination has also admitted that in his presence no payment of dower in question has been paid to the respondent No. 1. The petitioner in his pleadings urged that he had paid dower amount to the respondent, but had failed to substantiate the same through evidence. On legal premises, question as raised by the petitioner that the respondent No.1 was divorced in the year 2002 and she brought a suit for recovery of dower amount in the year 2009. According to the learned counsel, she was divorced in the year 2002, therefore, the suit for recovery of dower amount after six years of divorce was barred by limitation under Article 103 of the Act, 1908. The perusal of pleadings of the parties and issues framed by the divergent pleadings of the parties, no ground of limitation was raised nor any issue was framed in this respect, even otherwise the limitation pursuant to Article 103 of the Act, 1908 would run from the date of refusal of dower amount. Article 103 of the Act, 1908, reads as under:--

Description of suit	Period of limitation	A  Time from which period begins to run
1	2	3
103. By a Muhammadan for exigible dower (mu' ajjal).	Three years	When the dower is demanded and refused or (where, during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce.

5. From the above, the starting point of limitation in a suit for prompt dower is from the time a demand for payment is made and when the said demand has been refused. Mere making of demand without any refusal by the husband does not attract the Article 103 of the Act, 1908. The requirement of law is to make a demand, which should be refused by the husband unless these two conditions are fulfilled. The period of limitation would not start running. In the instant case, the petitioner (husband) in the written statement pleaded that he had paid the dower amount to the respondent No.1, which he has failed to substantiate through evidence, therefore, the starting point of limitation in the instant suit is from the time when the written statement was filed by the petitioner, thus the suit filed by the respondent was not hit under Article 103 of the Act, 1908. Since the petitioner pressed the petition to the extent of dower amount, but failed to point out any illegality or irregularity to warrant interference by this court in the impugned judgment and decree.

In view of the above, the Constitutional Petition No.677 of 2010, having no merit is dismissed.

SL/98/Bal.

Petition dismissed.