

[Balochistan]

Before Mrs. Syeda Tahira Safdar and Abdullah Baloch, JJ

KHALIL ULLAH---Petitioner

Versus

Mst. SAHIB BIBI and another---Respondents

Constitutional Petition No. 450 of 2017, decided on 16th February, 2018.

Family Courts Act (XXXV of 1964)--

---S. 14---Suit for restitution of conjugal rights---Petitioner/husband contended that Majlis-e-Shoora (Appellate Court) had no jurisdiction to entertain appeal preferred by him against the decree passed by Family Court---Validity---Family Courts Act, 1964 was a special law which vested powers with the Qazis and Civil Judges to adjudicate upon the family matters, but appeal as provided under S.14 of Family Courts Act, 1964 would only lie before the District Court---Majlis-e-Shoora (Appellate Court) was barred to entertain the appeal under special law---High Court observed that impugned order passed by the Majlis-e-Shoora was without lawful authority and void ab initio and set aside the impugned order and directed Majlis-e-Shoora (Appellate Court) to return the appeal to the petitioner/appellant who would be at liberty to file said appeal before the Court of competent jurisdiction---Constitutional petition was allowed accordingly.

Manzoor Ahmed Rehmani for Petitioner.

Muhammad Arif Achakzai for Respondents.

Date of hearing: 28th November, 2017.

JUDGMENT

ABDULLAH BALOCH, J.---This judgment disposes of Constitutional Petition No.450 of 2017 filed by the petitioner Khalil Ullah son of Ali Khan, against the order dated 16th April 2015 (hereinafter referred as, "the impugned Order") passed by learned Majlis-e-Shoora, Loralai, (hereinafter referred as, "the appellate Court"), whereby the judgment and decree dated 18th November 2014 passed by learned Family Judge Barkhan (hereinafter referred as, "the trial Court") was set-aside and the case was remanded to the trial Court with directions to decide the case afresh after framing additional issues and leading evidence.

2. The facts of the case are that the petitioner filed a suit for restitution of conjugal rights against the respondent No.1 before the learned trial Court, stating therein that the petitioner and the respondent No.1 were having relations of love and affections with each other and want to marry, but the parents of respondent No.1 were creating hindrance in the lawful marriage of the parties, hence on 6th May 2012 the parties out of their free will and consent married with each other at Kand Kot district Kashmore and thereafter the respondent No.1

started living with the petitioner and was performing her conjugal rights, where after the parties have also registered their Shari Nikkah Nama on 15th July 2012; that since the parents and brother of the respondent No.1 were against the marriage of parties, hence the brother of respondent No.1 Behram Khan lodged false FIR No.21/2012 at Levies Thana Barkhan against the petitioner for alleged abduction of respondent No.1, however, the petitioner made all attempts to compromise the matter, but he was got arrested and his wife i.e. respondent No.1 was taken by her parents with them and at that time she was pregnant. Hence, the petitioner filed the suit for restitution of conjugal rights.

3. The respondent contested the suit on factual as well as legal grounds; she flatly denied the solemnization of legal and lawful marriage with the petitioner and stated that the petitioner was her cousin and due to such relationship on 9th May 2012 the petitioner taken her and her family members in his vehicle towards Mazhar Dada Shah Mehmood and in the way the petitioner gave intoxication to the respondent and her other family members, while in unconscious condition he threw her all family members from the vehicle, while abducted her (respondent No.1). It has also been averred in the written statement that thereafter the petitioner took her on different places and repeatedly committed Zina-bil-Jabr with her and got embossed her thumb impression on forged Nikkah Nama and the petitioner always threatened her for murder, while lastly her brother lodged FIR against the petitioner and the police got recovered her from the clutches of petitioner.

4. Out of pleadings of parties, the trial Court framed the following issues:

5. After framing issues and adducing evidence by both the parties, the learned trial Court dismissed the suit of the petitioner, where-after the petitioner filed an appeal before the appellate Court, which was partly allowed and the case was remanded to the trial Court with the direction for framing additional issues and to deciding the case afresh by affording proper opportunities of hearing to the parties.

6. The learned counsel for the petitioner while arguing the matter only pressed the matter to the extent of jurisdiction of appellate Court being departure from its discretion.

7. Conversely, the learned counsel for the respondent No.1 sought time for submission of its written arguments and two days' time was granted to him for such purpose, however, he has failed to do the needful till date.

8. Heard the learned counsel and perused the record without dilating upon the merits of the case, advertng to the law point raised by the learned counsel for the petitioner with regard to the jurisdiction of Majlis-e-Shoora being barred to entertain appeals filed against the decree passed by a Family Court under Balochistan Family Courts Act, 1964. The appeal whereof lie under the same law before the District Judge. The bare perusal of Special Law reflects that the powers under the ibid Act, vested with the Qazis and Civil Judges to adjudicate upon the such matters, but appeal provided under section 14 of Balochistan Family Courts Act, 1964 only to the District Judge, for convenience the relevant provision of said law are reproduced as under:

"14. Appeal.---(1) Notwithstanding anything provided in any other law for the time being in force, a decision given or decree passed by a Family Court shall be

appealable:

(a) To the High Court, where the Family Court is presided over by a District Judge, and Additional District Judge or any person notified by Government to be the rank and status as of a District Judge or an Additional District Judge: and

(2) No appeal shall lie from a decree by a Family Court:----

(a) for dissolution of marriage, except in the case of dissolution for reasons specified in clause (d) of time (viii) of section 2 of the Dissolution of Muslim Marriage Act, 1939;

(b) for dower (or dowry) not exceeding rupees (fifty thousand);

(c) for maintenance of rupees (one thousand) or less per month.

(3) No appeal or revision shall lie against an interim order passed by a Family Court."

9. In view of the perusal of above provisions of Family laws provided under section 14 the jurisdiction of appeal is barred with the Majlis-e-Shoora, as such, the objection so raised by the learned counsel for the petitioner having force and we are agreed with the contention so raised by the learned counsel for the petitioner, that the jurisdiction of Majlis-e-Shoora is barred to entertain the appeals under Special Law (ibid) Act.

10. In view of the above, order/ judgment and decree passed by the Majlis-e-Shoora, Loralai was without lawful authority and the same being void ab initio.

11. For the reasons discussed hereinabove, the petition is partly allowed. The impugned judgment and decree-dated 16th April, 2015 passed by the Majlis-e- Shoora, Loralai is hereby set aside with the direction to the learned Majlis-e-Shoora to return the appeal to the petitioner/appellant, however, the petitioner/appellant is at liberty to file appeal before the Court of competent jurisdiction if so desired, subject to all just exceptions. Petition is disposed of in the above terms.

MQ/19/Bal.

Order accordingly.