

2015 C L C 1374

[Balochistan]

Before Muhammad Noor Meskanzai and Muhammad Kamran Khan Mulakhail, JJ

SOHAIL----Petitioner

versus

Mst. NAZIA AMIN and 3 others----Respondents

C.P. No.695 of 2013, decided on 24th July, 2014.

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

----S. 5, Sched.---Constitution of Pakistan, Art. 199---Constitutional petition---Suit for recovery of dower---Satisfaction of decree in instalments---Scope---Husband had not assailed the judgment and decree passed by the Trial Court and the same had attained finality---Judgment and decree which had attained finality could not be reopened in execution proceedings---Sufficient and reasonable leniency had already been advanced in favour of husband by both the courts below---Constitutional petition was dismissed in circumstances.

(b) Islamic Law---

----Dower---Scope---Dower or Mehr was the sum of money or other property which the husband

was obliged to pay to his wife as a mark of respect---Dower was the consideration of marriage contract and token of respect for wife---No marriage could take place without fixing dower---Dower had to be paid by the husband to the wife to acquire religious merit and to discharge an obligation or duty towards the wife---Dower was a debt and wife was entitled to receive the same as a creditor of her outstanding dues against her husband---Dower would become due soon after the marriage was consummated or the Nikah was solemnized.

Muhammadan Law rel.

Jamil Ahmed Kakar for Petitioner.

Shakeel Ahmed Zamrani for Respondents.

Date of hearing: 25th June, 2014.

ORDER

MUHAMMAD KAMRAN KHAN MULAKHAIL, J.--- This constitution petition assails the order dated 13-3-2013 passed by the learned Family Judge, Turbat ("trial court") in an execution application filed by the respondent/decreed holder in pursuance of the judgment and decree dated 15-11-2012 and against the order dated 22-7-2013 passed by the learned District Judge, Makran at Turbat, whereby, the order dated 13-3-2013 passed in execution application was modified and the petitioner still being aggrieved preferred instant constitutional petition.

2. The brief facts of the case are that the respondent/decreed holder filed a suit for recovery of dower amounting to Rs.300,000 and 70 miscal gold, mainly on the averments that the parties were entered into a marriage tie in the year, 2008. In solemnization of 'Nikah' the aforesaid amount and gold was fixed as prompt dower of the respondent/decreed holder. Whereas, out of 70 miscal gold, 27 miscal gold, were delivered at the time of Nikah and remaining 43 miscal gold and Rs.300,000 was promised to be paid on demand. Subsequently, the relationship between the parties became strained and the petitioner divorced the respondent but refused to pay the dower amount and gold as agreed between the parties. Therefore, family suit bearing No.41 of 2011

was filed by the respondent, wherein, she contended that despite the fact that petitioner had not paid the dower amount and remaining 43 miscal gold were not delivered, while, 27 miscal gold delivered at the time of `Nikah' were also retained, when the Talaq was pronounced and she was expelled from the matrimonial home in wearing apparels.

3. The suit was contested by the petitioner and finally decreed in the following terms:---

"Therefore, the suit of plaintiff is partly decreed in favour of plaintiff against the defendant, it is declared that the plaintiff is entitled to receive remaining Haq e Mehr 43 miscal of gold and Rs.300000 (three lac) from the defendant. The defendant is directed to pay remaining Haq e Mehr of plaintiff i.e. 43 miscal of gold and Rs.300000 to the plaintiff. No order as to cost."

4. The petitioner did not assail the judgment and decree, therefore, the execution application was filed by the respondent. The petitioner entered appearance, submitted an application, and sought permission for payment of decretal amount and delivery of gold in easy instalment to satisfy the decree. The learned executing court vide order dated 13-3-2013, accepted the application and the permission was granted to the effect that he shall pay first instalment of 10 miscal gold and Rs.10,000 and thereafter for succeeding months, one miscal gold and Rs.3000 per month, till satisfaction of the decree in letter and spirit. The order was assailed in appeal, before the learned District Judge, Mekran at Turbat, whereby, the order was further modified and first instalment stipulated by the learned trial court was allowed to be paid in two instalments i.e. five miscal gold and Rs.5,000 (Rupees five thousand) per month, for initial two months and the remaining will be paid as already directed by the trial court i.e. 1 miscal gold and Rs.3000 per month. The petitioner still being aggrieved of the orders passed by the courts below, filed instant Constitution Petition on the strength that he is a student and does not have any earning source, and he solely depends upon his parents. It was further contended that due to his poor financial status, he is unable to satisfy the decree and to pay the decretal amount in lump sum.

5. Mr. Shakeel Ahmed Zamrani, Advocate appearing on behalf of the respondent/decreed holder, contended that the petitioner did not assail the judgment and decree passed by the learned Family Judge, therefore, cannot raise any objections on execution of the decree. He stated that learned appellate court as well as learned executing court have altogether failed to follow the mandate of law that the executing court was bound by the terms of the decree and instalment thereof could not be allowed without consent of the respondent/decreed holder. He finally requested for dismissal of the petition.

6. We have heard the learned counsel and have gone through the record, but before attending the prayer made in this petition, it appears helpful to go through the importance and concept of 'dower/Haq-e-Mehr' in the light of Islamic Law. The dower is paid by the husband to the wife, firstly to acquire this religious merit and secondly to discharge an obligation or duty towards the wife. It is why in common parlance, we call it "Haq-e-Mehr" the origin of dower dates back to the pre-Islamic era much before the pre-Islamic days, the husbands used to despoil/deflower their wives and then to turn them out helpless and without any means to survive honourably. With evaluation of tribal system and when a little wisdom prevailed then it became customary condition to fix some dower of the validity of marriage but for the enforcement of such right, the wife was having no efficacious remedy as there was no binding custom/sanction of any rule behind it thus, this customary obligation was oftenly disregarded without heck as the tribal system by then was unorganized being bereft of codified rules. On the advent and promulgation of Islam this repulsive behaviour was forbidden and was declared repugnant being unjust towards the fair sex as is evident from the different verses of the Holy Qur'an in "Sura Nisa"

Dower or Mehr under Muhammadan Law is the sum of money or other property which the husband is obliged to pay to his wife as mark of respect to the wife. Quranic commandant shows that no marriage can take place without fixing dower, therefore, dower is the consideration of marriage contract and it is also a token of respect for wife, therefore, the dower range is a debt and the wife is entitled to receive the same as a creditor of her outstanding dues against her husband, thus, it becomes an obligation of the wife's consent to Nikah in such view under the domain of Almighty Allah the dower becomes due soon after the marriage is consummated or the Nikkah is solemnized. It is undisputed that under Muslim law dower is a debt which is owned by the husband to the wife. Accordingly the ordinary principle of payment of debt should also govern the case relating to realization of dower debt. The Article 285 of the Muhammadan Law is relevant in this behalf which provides as under:---

"Dower or Mehr under the Muslim Law is the sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage. Under Muhammadan Law dower is an obligation imposed upon the husband as a mark of respect to the wife. The consideration had been compared to the price in a contract of sale because marriage is a civil contract and sale is a typical contract to which Muhammadan jurists are accustomed to refer by way of analogy. Thus, the wife is entitled to receive the dower as incident of the contract of marriage and as a token of respect, even the injunction of Islam makes it mandatory of such an incident where the husband has been died without payment of dower/Haq-e-Mehr to his wife/wives, his estate cannot devolve upon his legal heirs before recovery of Haq-e-Mehr from the deceased's property and in all intents a widow is entitled to recover her debts of dower like other creditors of her deceased husband."

In view of above discussion, the perusal of the record reveals that the trial court being an executing court and subsequently, the appellate court have already shown enough leniency in favour of the petitioner, though, the petitioner did not assail the judgment and decree passed by the learned trial court and same on having been attained finality cannot be reopened in execution proceeding. But the petitioner started pursuing his lis and he had filed a civil appeal while the respondent/decreed holder did not challenge the order of executing court as well as of the appellate court and as no counter affidavit was filed to controvert the petitioner's stance, that either he owns enough resources to satisfy the decree or he with ill-will and malice is delaying the same, therefore, we are of the considered opinion that sufficient and reasonable leniency has already been advanced in favour of the petitioner and both the courts below have dealt with lis and exercised their discretion, therefore, no interference under the constitutional jurisdiction of this court is required, thus, the petition is dismissed, but with no order as to costs.

AG/35/Bal.

Petition dismissed.