THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Athar Minallah
Mr. Justice Aqeel Ahmed Abbasi

Civil Petition Nos.768 and 827 of 2022
(Against judgment dated 13.12.2021 of the Lahore High Court, Rawalpindi Bench passed in WP No.2111 of 2013)

CP 768/22

Mst. Fakhra Jabeen	...	Petitioner(s)
Versus		
Wasif Ali and another	...	Respondent(s)

For the petitioner(s): Mr. M.Waqar Rana, ASC.

For respondent No.1: Kh.Shahid Rasool Siddiqui, ASC.

CP 827/22

Wasif Ali & another	...	Petitioner(s)
Versus		
Mrs. Fakhra Jabeen and others	...	Respondent(s)

For the petitioner(s): Kh.Shahid Rasool Siddiqui, ASC.

For respondent No.1: Mr. M.Waqar Rana, ASC.

Date of hearing: 28.11.2024

ORDER

Athar Minallah, J.- The two petitions before us have been filed by invoking the jurisdiction of this Court under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ('**Constitution**') and, in both, leave has been sought against the judgment of the High Court dated 05.10.2021. CPLA No.768 of 2022 has been filed by Ms. Fakhra Jabeen ('**plaintiff/petitioner**') while CPLA No.827 of 2022 by Wasif Ali, ('**defendant No.1**') and Zulfiqar Hussain Shah Kazmi ('**defendant No.2**'), (collectively they shall be referred to as **defendants/respondents**).

2. The plaintiff/petitioner and defendant No.1 had entered into a marriage contract on 05.06.2005. The terms and conditions settled between the parties were recorded in the Nikahnama, which was

executed by them followed by its registration. The married couple were blessed with a daughter, Maheen Ali ('**minor**'), who was born on 22.8.2006. However, on account of matrimonial disputes between the spouses, the plaintiff/petitioner had separated from her husband along with the minor. The plaintiff/petitioner filed a suit seeking the recovery of her dower and other claims which were contested by the defendants by filing written statements. In their written statements they did not dispute the dower settled between them in the form of immovable property, which was duly recorded in column No.16 of the Nikahnama. This suit was withdrawn on 12.4.2008 pursuant to a compromise reached between the parties. The marital disputes could not be resolved and it again led to the separation of the spouses. The plaintiff/petitioner then filed a suit seeking recovery of dower which was recorded in the relevant columns of the Nikahnama i.e rupees five hundred thousand and a plot described in columns no.13 and 16 respectively. She had also sought recovery of gold ornaments weighing three tolas along with other household articles. Moreover, a decree for the grant of maintenance was also sought for herself and the minor. The defendants filed their respective written statements. The defendants had adduced in evidence an uncertified copy of the Nikahnama wherein the description of the plot in column no. 16 appeared to have been interpolated and tampered with and this aspect will be discussed in more detail later. Nonetheless, the defendants did not dispute that a plot was settled as dower and it was duly recorded in column no.16 of the Nikahnama. However, they took the stance that it was to be given *in lieu* of rupees five hundred thousand recorded in column no.13 i.e, if the latter amount was not paid only then the claim to the plot would become operative. The defendant no.2 took a stance, on the basis of the allegedly tampered

copy of Nikahnama, that his name had been subsequently deleted. The trial court, out of the divergent pleadings, had framed five issues. The plaintiff/petitioner and defendant No.1 entered the witness box as PW-1 and DW-1 respectively. The former had produced a certified copy of the Nikahnama which was exhibited as Ex-P.2 while the latter had also tendered in evidence an uncertified copy which was exhibited as Ex-D.6. The uncertified copy of the Nikahnama tendered in evidence by defendant No.1 had cuttings and overwriting in column no.16 and thus the description of the property recorded in the certified copy produced in evidence by the other party had been altered. The plaintiff/petitioner had also produced in evidence a compromise deed dated 01.10.2010 which was placed on record as Ex.P.6. The settlement between the parties recorded in the compromise deed, Ex.P.6, affirmed that the plot described in column no.16 of the certified copy of the Nikahnama was the correct description of the immovable property which was consented to and agreed to be given as part of the dower. The trial court, after concluding the trial, had partly decreed the suit of the plaintiff/petitioner. The certified copy of the Nikahnama produced by the plaintiff/petitioner and brought on record as Ex.P.2 was declared to be genuine while the uncertified copy tendered in evidence by defendant no.1 and exhibited as Ex.D.6 was declared otherwise and it was thus discarded. The trial court had declared that the plaintiff/petitioner was entitled to the ten marlas plot described in column no.16 of the Nikahnama produced in evidence as Ex.P.2. Her claim regarding three tola gold was not accepted. It was also declared that she was not entitled to claim rupees five hundred thousand as dower mentioned in column no. 13. The maintenance in respect of the minor was decreed and the latter was held entitled to receive

Rs.2500 per month while the plaintiff/petitioner was not granted a decree for maintenance. The judgment and decree dated 31.01.2011, passed by Judge Family Court, Taxila was challenged by both the contesting parties by preferring separate appeals. The appellate court, vide judgment dated 04.06.2013, allowed the appeal preferred by the plaintiff/petitioner and, consequently, the decree of the trial court was partially modified. The plaintiff/petitioner was held entitled to payment of rupees five hundred thousand and the plot explicitly mentioned in columns no.13 and 16 respectively of the Nikahnama, which was brought on record as P. 2. The maintenance amount decreed in favour of the minor was enhanced by rupees four thousand per month. The plaintiff/petitioner was also held entitled to receive maintenance. The judgment and decree of the appellate court, dated 04.06.2013, was challenged by the defendants before the High Court by invoking the jurisdiction vested in it under Article 199 of the Constitution. A larger Bench was constituted because of the divergent opinions in two judgments of the High Court in the cases of Mst. Iram Shahzadi v. Muhammad Imran-ul-Haq and others (**2019 MLD 112 Lahore**) and Attorney General v. Mst. Amna-Tuz-Zahra (**2011 CLC 726 Lahore**). In the former judgment the High Court had held that entries of the Nikahnama in columns no.13 and 16 are to be read disjunctively while in the latter judgment it was held that they are to be interpreted conjunctively. The High Court had, therefore, framed two legal questions for consideration; "*whether columns No.13 and 16 of the Nikahnama are to be read separately or in conjunction with each other?*" and "*whether entries in Nikahnama can operate against a person not privy to the document/Nikahnama*". After examining the provisions of Muslim Family Laws Ordinance, 1961 ('**Ordinance of 1961**') and the West Pakistan Rules under the Muslim Family Laws

Ordinance, 1961 ('**Rules of 1961**'), the High Court has held that columns no.13 and 16 of the Nikahnama are distinct and, therefore, they have to be read and construed separately. It was further held that column no.16 of the Nikahnama would become operative and take effect only when the amount mentioned in column no.13 is not paid as dower. The High Court had, therefore, interpreted that the claim to the right described in column no.16 was in lieu of the amount recorded in column no.13 and, therefore, if the latter obligation was discharged then the wife was not entitled to recover the dower mentioned in column no. 16. In other words, the High Court has held that the right of the wife relating to the entry in column no. 16 was subject to fulfillment of the obligation recorded in column no. 13. The High Court has also observed and held that entries in the Nikahnama must always be interpreted in favour of the groom because the latter is at the receiving end since he is to bear the burden of the liabilities recorded in the columns/entries thereof and declared it as a settled law. On the basis of this interpretation the High Court held that the wife, in the first instance, would be entitled to recover the dower amount recorded in column no.13 and if that is not paid only then would she become entitled to claim the dower mentioned in column no.16. In essence, the High Court has held that the entitlement to claim recovery of the property mentioned in column no.16 was dependent on the failure on the part of the husband to discharge the obligation of payment of dower mentioned in column no.13. The right to claim the property mentioned in column no. 16, according to this interpretation, will mature if there is default in payment of the cash amount recorded in column no. 13. On the factual side, the High Court had upheld the concurrent findings of the two competent courts regarding the declaration that the certified

copy of the Nikahnama adduced in evidence by the plaintiff/petitioner and placed on record as Ex.P.2 was genuine and that defendant No.2 was privy thereto and, thus, liable to the extent of the property described in column 16. The judgment of the High Court has been challenged by both the contesting parties, as already noted above.

3. We have heard the learned counsels for the parties at length and the record has been perused with their able assistance.

4. The plaintiff/petitioner and defendant No.1 had tied the knot and they had executed the Nikahnama in the form prescribed under the Rules of 1961 and it was later registered in accordance with law. It is not disputed that an amount of rupees five hundred thousand was recorded in column no.13 and a plot was explicitly described in column no.16. In column no.14 the parties had recorded '*An dul Talab'* i.e on demand. The plaintiff/petitioner had tendered in evidence a certified copy of the Nikahnama and it was exhibited as Ex. P-2. The defendants, on the other hand, had also produced an uncertified copy of the same Nikahnama which was brought on record as Ex D-6 but it had cuttings and overwriting in column 16. An attempt seems to have been made to change the description and exclude the defendant no. 2 from his obligation. The trial court had declared the certified copy Ex P-2 to be genuine and the one produced in evidence by the defendants was, therefore, discarded because it was otherwise. This was a crucial declaration and finding of fact in the context of this case. However, this finding of fact was not challenged by the defendants and, therefore, it was concurrently upheld by the appellate as well as the High Court. A plain reading of the grounds taken by the defendants in their petition filed before this Court clearly shows that this factual finding has not been challenged

by them. These concurrent findings of facts by three competent courts regarding the Nikahnama, brought on record by the plaintiff/petitioner as Ex P.2 and the obligation of defendant no.2 being privy to the Nikahnama has attained finality. The High Court, placing reliance on the principles and law enunciated by this Court in the case of Fawad Ishaq,[1] has held respondent No 2 to be liable in relation to the obligation mentioned in column no. 16 of the Nikahnama. The High Court has upheld the decrees passed by the appellate court except that it has interpreted the columns in such a manner that in the first instance the plaintiff/petitioner has been held entitled to the dower mentioned in column no. 13 and if that was not paid only then she would become entitled to the plot recorded in column no. 16. The concurrent findings of fact are unexceptionable and, therefore, need not to be interfered with. The only question raised for our consideration is the interpretation of the columns of the Nikahnama relating to the dower. Whether the High Court has correctly interpreted that the obligation recorded in column no 16 becomes effective only if the liability in column no. 13 has not been discharged. In other words, whether the obligation under column no. 16 is in lieu of column no. 13 i.e if the obligation under the latter column has not been discharged only then the right of the wife to claim the right recorded under column no. 16 will mature. Moreover. whether the rights recorded in the columns in case of an ambiguity are to be resolved in favour of the husband, because he has to bear the burden of liability. In order to answer these questions, it would be beneficial to appreciate the nature of dower, the principles regarding the interpretation of the columns of a Nikahnama and the rights of the husband and wife recorded therein.

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[1] *Fawad Ishaq and others v. Mehreen Mansoor and others (PLD 2020 SC 269)*

5. The Ordinance of 1961 was enacted to give effect to the recommendations formulated by the Commission on Marriages and Family Laws. Section 5 of the Ordinance of 1961 governs the registration of marriages and it provides that every marriage solemnized under the Muslim laws shall be registered in accordance with the provisions thereunder. Sub-section 5 of section 5, inter alia, provides that the form of the Nikahnama shall be such as may be prescribed. Form-II of the Rules of 1961 has prescribed the form of the Nikahnama. Columns No.13 to 16 are regarding the dower. The heading or title of column No.13 is '*amount of dower*' while that of column No.16, "*whether any property was given in lieu of the whole or any portion of the dower with specification of the same and in valuation agreed to between the parties*". It is also relevant to refer to column No.14 and column No.15. Column No.14 is titled "*how much of the dower is mu'jjal (prompt) and how much ghair mu'jjal (deferred)*" while column No.15 "*whether any portion of the dower was paid at time of marriage, if so, how much*". The heading of column No.17 is '*special conditions, if any*'.

6. In order to interpret the above-mentioned columns, it would be beneficial to understand the Nikahnama as a document in the context of the concept of dower. It is settled law that the Nikahnama is a civil contract and it contains the terms and conditions agreed upon by the parties i.e. the husband and the wife. It is a contractual arrangement between a man and a woman, having the object of enabling them to live together and enjoy their rights as husband and wife. The terms and conditions are aimed at securing their rights and interests. As a civil contract the Nikahnama has certain essential requirements i.e. offer and acceptance. The offer and acceptance would be valid if made by parties who are competent to enter into a

valid marriage contract. The existence of free will of the parties is the foundational principle for the validity of the contract i.e free consent of both the parties i.e. the groom as well as the bride, who upon execution attain the status of a husband and wife respectively. Any coercion, undue influence, fraud, misrepresentation or mistake would amount to entering into the marriage contract sans free consent. Moreover, if one of the parties does not have an informed understanding of the terms settled on the latter's behalf even that would taint the free will. The significance of the Nikahnama is evident from the fact that a presumption of truth is attached to it and, once it is registered, it enjoys the status of a public document. Likewise, there is a presumption of truth regarding the entries recorded in the Nikahnama. As already noted above, the Nikahnama is a civil contract and it consists of terms agreed upon by the parties. The foundational principle of *Nikah* is the free consent of the contracting parties. This court, in case of Haseen Ullah,[2] has held that the Nikahnama is a deed of marriage contract entered into between the parties and that its clauses/columns/context are to be construed and interpreted in the light of the intention of the parties. It has been further held that headings are not sufficient to determine the intention of the two parties to the Nikahnama i.e. the husband and wife. It is, therefore, obvious that neither the headings nor the columns of the form of the Nikahnama, prescribed by the Rules of 1961, are conclusive or sacrosanct. It is the intent of the parties which would be the determining factor. Moreover, it is settled law that any ambiguity in a contract is to be resolved by ascertaining the real intention of the parties. In order to interpret the terms of a contract, the court has to first ascertain the intention of the parties. As held by

[2] *Haseen Ullah v. Mst. Naheed Begum and others (PLD 2022 SC 686)*

this Court in the case of House Building Finance Corporation[3], that the contract has to be read as a whole and the words are to be taken in their literal, plain and ordinary meaning. The court cannot imply, while interpreting the contract, something that is inconsistent with its express terms. Moreover, a stipulation not expressed in the written contract can also not be applied merely because it may appear to be reasonable to the court. The headings of the prescribed form of the Nikahnama are, therefore, guidance of the parties and they do not enjoy the status of conclusively determining the intention of the parties. The possibility that the entries made in the columns may not be correct or that some essential information may have been left out cannot be ruled out. The correctness of the entries also depends on the competence, knowledge and experience of the licensed Nikah Registrar. The nikah or marriage contract may have been performed in the absence of a licensed Nikah Registrar as is contemplated under sub section 3 of section 5 of the Ordinance of 1961. It is noted that sub section (2A) was inserted in section 5 of the Ordinance of 1961 through the Muslim Family Laws (Amendment) Act 2015 ('**Act of 2015**') in the Province of Punjab. It makes it a mandatory duty of the Nikah Registrar or any other person who solemnizes the nikah to 'accurately' fill all the columns of the Nikahnama form with the specific answers of the bride or the bridegroom. The failure to fulfill this onerous obligation attracts penal consequences which have been expressly provided under clause (i) of sub section (4) of section 5 of Ordinance of 1961 i.e the person who contravenes the aforementioned provision becomes liable to punishment of simple imprisonment for a term which may extend to one month and fine of twenty-five thousand rupees. It is obvious that the legislature did not

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[3] *Housse Building Finance Corporation v. Shahinshah Humayun Cooperative House Building Society and others (1992 SCMR 19)*

rule out the possibility that due to multiple factors the columns of a Nikahnama may not reflect the intention of the parties and, therefore, a statutory duty has been imposed on the Nikah Registrar or any other person who solemnizes the nikah to '*accurately fill all the columns with specific answers of the bride or the bridegroom*". The intention of the bride and the groom, however, has to be ascertained by keeping in view the aforementioned principles of interpretation and, therefore, the titles and headings of the columns of the prescribed form of the Nikahnama nor what has been recorded therein are the determinant factors. The headings of a column of the Nikahnama are, therefore, not conclusive nor sacrosanct. There could be ambiguities which are to be resolved in accordance with the settled principles of interpreting the contract and the evidence brought on record.

7. The next crucial aspect of this case is the nature and concept of dower. Dower is a mandatory condition for a valid and effective marriage contract. The validity of a marriage remains unaffected i.e it is valid even if the parties have not expressly mentioned it in the marriage contract because, in such an eventuality, reasonable dower, '*Mehr-ul-Misel*', is presumed. Dower is given by the husband to the wife and its determination would be subject to consent of the wife. It is settled law that dower is the exclusive right of a bride. This right is relatable to a thing which has marketable value. It can either be in the form of cash or property or both. It may be prompt or deferred. If the parties have not specified the nature of the payment of dower, then it is presumed to be prompt as provided under section 10 of the Ordinance of 1961. The dower is an essential condition for giving effect to a valid marriage contract. It becomes the exclusive property of the wife because it has many benefits for both the parties. It is a

financial security for the wife and its determination must be guided by informed understanding of the bride regarding her rights. An unconditional declaration of dower in the form of immovable property leads to creating the exclusive ownership of the bride upon the execution of the Nikahnama and she cannot be deprived of her rights relating thereto in any manner. The dower in the form of cash is distinct from its other forms. If the interpretation of the High Court is accepted then dower agreed to be paid in cash would have the effect of virtually making dower in other forms such as immovable or movable property redundant. This would negate the basic concept of dower i.e parties out of free will agreeing to dower in any form provided it has a marketable value. The parties may, therefore, agree to dower being paid in cash in addition to and distinct from dower in any other form, such as immovable or movable property. The headings of columns in the Nikahnama are definitely not the determinant factor nor can they prevail over the intention of the parties. This would negate the very concept of dower. The High Court has virtually rendered the right to dower agreed between the parties in the form of immoveable property as redundant by subjecting its effectiveness to fulfilling the obligation recorded under column 13. As already noted above, dower is obligatory and it could be anything which has a marketable value. It can be in the form of cash or property or both. The parties may agree to dower in the form of immovable property in addition to cash. The columns of the prescribed form of Nikahnama will be discussed in more detail later. However, the question regarding the intention of the parties relating to dower agreed between them at the time of execution of the Nikahnama is to be determined in accordance with the settled principles highlighted above and not on the basis of the titles or

headings of the columns of the prescribed Nikahnama, which are neither conclusive nor sacrosanct. The interpretaion of the High Court, with respect, is erroneous.

8. The form of the Nikahnama has been prescribed in the Schedule of the Rules of 1961. The status of the rules is that of delegated legislation. As already noted above, the columns/contents/ clauses of a Nikahnama are to be construed and interpreted in the light of the intention of the parties and the headings are not sufficient to determine what the parties had agreed and intended. The expressions used in the headings are also open to be misconstrued, particularly by those who lack legal knowledge or do not have adequate understanding of the principles governing a nikah. This could be illustrated by referring to the headings of each column separately. Column 13 is titled '*amount of dower*'. This is generally construed as referring to dower in the form of amount of cash as being distinct from its other forms. This does not refer to nor construed as the value of the total dower agreed upon by the parties in all its forms because the parties may have intended and agreed to giving dower in its different forms i.e cash as well as immovable property. The urdu version uses the expression '*raqam*' which could be construed as cash only. Likewise, the headings of columns 14 and 15 may also be understood as having reference to column 13 and being distinct from column 16. Column 16, on the other hand, is titled '*whether any property was given in lieu of the whole or any portion of the dower with specification of the same and valuation agreed to between the parties*". It is obvious from a plain reading of the expressions used in the heading of this column that it specifically refers to dower in the form of property. The expression '*in lieu*' has been used in the context of the ‘whole’ or any ‘portion’ of the dower.

The dower may only be agreed in the form of property and, therefore, it would amount to giving such a property *in lieu* of the whole dower. However, the property may also be agreed as portion of the whole dower and in such an eventuality it has been intended to be given in addition to dower in some other form e.g cash. The expression '*in lieu*' has definitely not been used with reference to the '*amount of dower*' recorded in column 13 as has been erroneously construed by the High Court. Column 16 further requires the recording of '*specification*' and '*valuation*' of the property agreed between the parties as dower. This further highlight that the column is specifically meant for recording the dower in the form of property, whether agreed upon to be part or whole of the dower. The heading refers to '*property*' and does not make a distinction between immovable or movable property or property in some other form having marketable value such as shares of a juridical person. It can also not be ruled out that the person filling the form may not record the agreed terms of dower in columns 13, 14, 15 and 16, rather they may be recorded either in an unrelated column or some other column such as column 17 which has been titled as '*Special conditions*'. Would doing so render the explicitly agreed terms regarding dower to become redundant, merely because the person filling the prescribed form did not have adequate knowledge and understanding? The answer is no. The headings and expressions used in the prescribed form are, therefore, not free from being misconstrued and grossly misinterpreted, particularly if the Nikah Registrar or any other person solemnizing the nikah lacks experience, knowledge or proper understanding of the principles governing the marriage contract. The purpose of this discussion was to highlight the reasons of this Court because it has already held that the headings of the columns are neither conclusive nor sacrosanct

and cannot in any manner prevail upon or render the intention of the parties as redundant. The paramount or fundamental factor in interpreting the Nikahnama is to discover the intention of the parties by carefully examining the recorded terms and conditions in the executed prescribed form and having regard to the evidence which the parties may have adduced before the court during the trial. The foundational principle of *Nikah* is the free consent of the contracting parties and, pursuant thereto, their intent to agree upon the terms and conditions which determine their respective rights. It is obvious, therefore, that neither the headings nor the columns of the form of the Nikahnama, prescribed by the Rules of 1961, are conclusive or sacrosanct. It appears that the aforementioned principles laid down by this Court regarding the interpretation relating to an executed Nikah nama were not brought to the attention of the High Court, resulting in misconstruing the portion relating to dower and erroneously declaring the headings to be sacrosanct and conclusive. The entry in column no. 13 is definitely not a rider to entries in columns no. 14, 15 and 16 as was held by the High Court.

9. There is another crucial aspect of this case. The High Court was of the opinion and had erroneously referred to a purported settled law regarding principles of interpretation of a Nikahnama. The principle referred to in the impugned judgment suggests favoring the husband while interpreting the terms and conditions of the Nikahnama because the latter has to bear the liabilities and is, therefore, at the receiving end. We are afraid that such a declaration was contrary to the concept and the fundamental principles relating to a nikah i.e a marriage contract. The law enforced in Pakistan relating to marriage contracts explicitly recognizes the rights of both the parties, the bride and the groom, to give free consent in order to

enter into a contractual bond of marriage and the freedom to negotiate and settle the terms and conditions. Both the contracting parties must have informed understanding of their respective rights and the entries which are required to be recorded in the Nikahnama. The bride, who upon execution of the marriage contract becomes a wife, has an equal right to give her consent and settle the terms and conditions of the marriage contract. The free consent and freedom to negotiate the terms and conditions of the nikah is not a privilege of each party but a right recognized by law. The court, while deciding a dispute and interpreting the terms and conditions of the parties, has to take into consideration whether the free consent or free will of the parties was compromised on account of the attending circumstances, such as cultural and social influences. Was this inviolable right effectively exercised by a bride, keeping in view the social and cultural milieu prevalent in the society? Was the bride informed about her rights before the terms and conditions were settled and incorporated in the Nikahnama? Did the bride have the freedom to negotiate the terms and conditions of her marriage? Did the Nikah Registrar or the person who may have solemnized the nikah possess sufficient knowledge and understanding regarding the principles relating thereto and the entries required to be recorded in the Nikahnama? If the answer to these questions is in the negative then in such an eventuality the rights of the bride stand breached and, therefore, any ambiguity or doubt in the recorded entries have to be interpreted with great caution and scrutiny. The social and cultural norms generally prevalent in the society present profound challenges, particularly for the bride. The bride may be in a disadvantageous position when the social and cultural norms prevent her from exercising her religious as well as her legal right to exercise her free will by giving consent and to

negotiate and settle the terms and conditions of the marriage. It is, therefore, an onerous duty of the court, while interpreting the contents of the Nikahnama, to take into consideration the factor of free consent of the bride and her freedom to settle the terms and conditions as a person having informed understanding of her rights. If an ambiguity or doubt arises regarding the terms and conditions recorded in the Nikahnama, an entry or column thereof and the preponderance of evidence brought on record does not establish that she was informed of her rights and had an informed understanding of the columns of the Nikanama nor had the freedom to negotiate and settle the terms and conditions out of free will, then such a doubt or ambiguity must be interpreted with great care and scrutiny so that the wife, who at the time of execution of the marriage contract was in a disadvantageous position, is not deprived of her rights. The rule of *contra proferentem*, known as the rule of interpretation against the person who has drafted the contract, can also be applied because it is a recognized principle of contractual interpretation. It provides that in case of an ambiguous promise, agreement or term, the preferred construction should be the one that works against the interests of the party which had drafted the agreement. However, depending on the facts and circumstances in each case, an ambiguity cannot be construed against the interests of the wife except when it has been established on the principle of balance of probabilities that she, at the time of execution of the Nikahnama, was informed of her rights, she understood each column of the Nikahnama and she had the freedom to negotiate and settle the terms and conditions out of free will and consent. The courts, while interpreting a Nikahnama, must exercise utmost care and careful scrutiny because patriarchal tendencies of

the society and cultural norms may have placed the bride in a disadvantageous position at the time of execution of the Nikahnama.

10. In the case before us the courts had concurrently held the certified copy of the Nikahnama tendered in evidence by the petitioner/plaintiff and exhibited as Ex.P.2 as genuine and, therefore, the copy produced by Defendant no.1 was discarded. This finding of fact was never challenged and even otherwise it is unexceptionable. The parties had filled columns 13, 14 and 16 while columns 15 and 17 were left blank. In column 13 the amount of dower has been mentioned as Rs.500,000/- while in column 14 the parties recorded their intention as '*on demand*'. Column 16 explicitly describes the property agreed to be part of the dower. The property mentioned in the said column, therefore, had become the exclusive ownership of the petitioner/plaintiff, upon execution of the Nikahnama, as part of the dower. The amount mentioned in column no. 13 was undoubtedly agreed to be paid as a cash amount and, when read with column 14, the payment was to be made on demand thus rendering it as deferred dower. These two entries were independent of the dower in the form of property, which was clearly intended to be '*in lieu*' of part of the whole dower. When the recorded entries in the columns are read together in the light of the evidence brought on record, it leaves no doubt that the parties had agreed upon dower in its two forms i.e cash and part of it as immovable property described in column 16. The amount of cash was to be paid on demand while the property described in column 16 had become the exclusive ownership of the petitioner/plaintiff upon execution of the Nikahnama. There is no force in the argument advanced by the learned counsel for the respondents that since the property has been a subject of acquisition for a public purpose, therefore, the petitioner/plaintiff is no more

entitled to claim her rights over it. As already noted, the property described in column 16 had become the exclusive ownership of the latter upon execution of the Nikahnama and, therefore, she is solely entitled to be dealt with by the land acquisition authorities as such i.e as owner. The appellate court had correctly appreciated that the evidence and its interpretaion regarding the entries in columns 13, 14 and 16 was in accordance with what the parties had intended at the time of execution of the Nikahnama. The impugned judgment of the High Court is, therefore, set-aside and the judgment and decree of the appellate court, dated 04.06.2013, is hereby restored. The appellate court had correctly interpreted the law and its findings have been found to be unexceptionable and do not require any interference. The petition filed by the petitioner/plaintiff, C.P.LA No. 768/2022, is converted into appeal and allowed in the above terms while in the case of C.P.L.A No. 827/2022, filed by the respondents, leave is refused and the petition is dismissed.

11. The above are the reasons for our short order of even date.

12. Before parting, we feel constrained in recording our observations regarding the disputes which reach this Court in a large number relating to interpretation of the entries recorded in the columns of the Nikahnama. In many cases such disputes may not have arisen if the headings of the columns were not open to be misconstrued or the Nikah Registrar had fulfilled the statutory duties under the Ordinance of 1961 read with the Rules of 1961. It is also not disputed that a nikah may also be solemnized by a person other than a Nikah Registrar. In the province of Punjab, through the Act of 2015, the legislature has made it mandatory, rather a statutory duty has been imposed upon the Nikah Registrar to accurately fill all

columns of the Nikahnama with specific answers of the bride and groom. A breach of this statutory duty exposes a Nikah Registrar to penal consequences i.e imprisonment for up to one month and a twenty-five thousand rupee fine. The purpose declared by the legislature was to protect women from exploitation and provide them with expeditious resolution of family disputes and ancillary matters. The legislature was, therefore, conscious of the challenges faced by women in the context of exercising their rights relating to settling the terms and conditions of marriage. The Act of 2015, through which sub-sections (2A) and (4)(i) were inserted in section 5 of the Ordinance of 1961, was definitely appreciable in securing the rights of the parties, particularly the women, keeping in view the social and cultural norms prevalent in many parts of the country. It was indeed a step in the right direction in order to reduce the number of disputes and consequently the volume of litigation as well. However, we are of the opinion that without reviewing the prescribed form of the Nikahnama as a whole, particularly the expressions used in the headings of the columns, this positive step taken in the province of Punjab may not achieve its intended goal of protecting the rights of women in particular. The prescribed form of the Nikahnama in the schedule of the Rules of 1961 i.e Form II, needs to be reviewed and made more user friendly so that even a literate person of ordinary prudence does not have difficulty in understanding its requirements and the columns. As already discussed above, the expressions used in the prescribed form are ambiguous and, therefore, open to be misconstrued. The form of the Nikahnama has been prescribed in accordance with the mandate of the Ordinance of 1961 and duly notified as part of the schedule of the Rules of 1961. Section 11 of the Ordinance of 1961 empowers the Federal Government to make rules

in respect of the cantonment areas and the Provincial Governments in their respective areas of jurisdiction. The Federal Government and the Provincial Governments may, therefore, consider to review the prescribed form of the Nikah nama to make it more user friendly and to remove the ambiguities likely to arise from the vague and ambiguous expressions used in the headings of the columns in the form currently prescribed under the Ordinance of 1961 read with the Rules of 1961. This would not only protect the rights of the parties in general and the women in particular but would also reduce litigation since a more user-friendly prescribed form of the Nikahnama will give rise to lesser disputes.

13. There is yet another important aspect which requires to be addressed by the respective Governments. The integrity, competence, knowledge and understanding of the Nikah Registrars who are licensed under sub section 2 of section 5 of the Ordinance of 1961 by the Union Councils are crucial for effectively safeguarding the rights of the parties, particularly the women. They have the most important role in ensuring that each party exercises her or his rights and that the entries recorded in a Nikahnama correctly reflect their intention. It is a statutory duty of each Government to guide the Union Councils in setting out adequate qualifications and criteria for the granting of licenses to persons for performing the functions of Nikah Registrars. Moreover, training and evaluation of performance of those who have been licensed would further guarantee that the social or cultural norms and influences do not prevail over the absolute rights bestowed upon women under the law. The Governments may also consider taking steps to ensure that persons of integrity and those who possess the required qualification and knowledge are granted

licenses and regular audits of the record relating to Nikahnamas maintained by the Union Councils are conducted.

14. The office of this Court is directed to send copies of this judgment to the Secretary Cabinet, Government of Pakistan and Chief Secretaries of the respective Provinces so that they may place it before the competent authorities and forums for considering the aforementioned observations and we expect that effective steps would be taken to ensure safeguarding the rights of the parties to a marriage contract, particularly the bride who may be more vulnerable on account of multiple factors, including the cultural and social norms and beliefs.

Judge

Judge

Judge

Islamabad the
28th November, 2024
APPROVED FOR REPORTING'
Aamir Sheikh / Remeen Moin, LC