

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

Justice Musarrat Hilali
Justice Shakeel Ahmad

Civil Petition No. 252-P of 2025

(Against the order dated 14.02.2025 passed by the Peshawar High Court, Peshawar in W.P No. 2744-P of 2023)

Mst. Khalida Bibi

...Petitioner

Versus

Naeem Khan & others.

...Respondents

For the Petitioner(s) : Mr. Nasim Ullah, AOR/ ASC

For Respondent No.1 : In person alongwith Mr. Muhammad Zia Ullah, ASC (without caveat)

Date of Hearing: 04.06.2025

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ORDER

SHAKEEL AHMAD, J.- This petition for leave to appeal filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, has been preferred against the order dated 14.02.2025 passed by the Peshawar High Court, Peshawar, whereby and whereunder the Constitution Petition No. 2744-P of 2023, filed against the judgment of Additional District Judge-XVII, Peshawar dated 23.05.2023, was dismissed.

2. Facts and circumstances giving rise to this petition are that the petitioner/ plaintiff filed a suit for recovery of her dower amounting to Rs. 30,000/-, gold ornaments weighing 02 tolas, a plot measuring 03 *marlas* situated at Qazi Abad, Peshawar as stipulated in the *Nikah Nama* (Ex.PW1/1) and recovery of maintenance allowance @ Rs. 5000/- per month. She claimed that her marriage was solemnized with the respondent/ defendant and the dower, though fixed, remains unpaid. She relied upon the said *Nikah Nama* in support of her claim.

3. On service of summons, the respondent/ defendant put his appearance before the trial Court. He contested the suit by filing written statement, admitting the fact of marriage with the petitioner/ plaintiff. He did not deny execution of *Nikah Nama* or the relationship of husband and wife between the parties, however, he took the plea that the dower claimed by the petitioner/ plaintiff has already been paid, without producing any proof of such plea. On the pleadings of

the parties, the trial Court framed the following issues and directed the parties to produce their evidence:-

1. *Whether the plaintiff has got a cause of action?*
2. *Whether the dower of plaintiff was fixed as Rs. 30,000/- cash, 02 tola gold ornaments and 03 marla plot situated at Qazi Abad, Peshawar at the time of Nikah/ marriage and is still unpaid?*
3. *Whether plaintiff is entitled to the recovery of maintenance allowance against defendant, if yes, at what rate and for which period?*
4. *Whether defendant has paid the entire dower to plaintiff?*
5. *Relief.*

4. The petitioner/ plaintiff herself appeared in the witness box as PW-1, produced her *Nikah Nama* as Ex.PW1/1 and closed her evidence. The marginal witnesses of the *Nikah* were not produced. The respondent/ defendant neither disputed the marriage nor challenged the authenticity of *Nikah Nama* in his written statement. However, when he appeared in the witness box, he deposed before the trial Court that his *Nikah* with the petitioner/ plaintiff was recited verbally. On the conclusion of trial, the suit was decreed in favour of the petitioner/ plaintiff vide judgment and decree dated 27.02.2023, in the following terms:

- i. *"the plaintiff is held entitled for recovery of dower to the extent of Rs. 30,000/- cash and 03 marla residential plot mentioned in the plaint.*
- ii. *The plaintiff is held entitled for maintenance allowance @ Rs. 2000/- per month since the institution of the suit till restitution with defendant or in case of divorce till the iddat period expires"*

Not contented with the said judgment and decree of the trial Court, the respondent/ defendant filed appeal, which was allowed vide judgment dated 23.05.2023, and the suit of the petitioner/ plaintiff was dismissed. Dissatisfied with the judgment of the Appeal Court, the petitioner/ plaintiff filed Constitution Petition bearing No. 2744-P of 2023, before the Peshawar High Court, Peshawar, after providing right of audience to the learned counsel for the parties, same was dismissed vide impugned order dated 14.02.2025. Hence, the present petition for leave to appeal.

5. Heard and record perused.

6. It is settled law that where the relationship of husband and wife is admitted and the execution of *Nikah* is not denied, then non-production of the marginal witnesses of the *Nikah Nama* before the Court is not fatal to the suit of the plaintiff/ wife. The consistent view of the superior Courts is that, in such circumstances, the execution of *Nikah Nama* stands proved and the plaintiff's entitlement to dower is established. In this regard, reference may be made to Rasool Bibi's case¹, wherein it has been held that the copy of *Nikah nama* produced did not require production of witnesses to prove it. In this context, further reliance can be placed on Jan Muhammad's case². Mere verbal denial of the execution of *Nikah Nama* in the statement recorded before the trial court without supporting evidence carries no legal value. The *Nikah Nama* is a public document, which is registered under Section 5 of the Muslim Family Law Ordinance, 1961, and as such presumption of truth is attached to it, carrying evidentiary value in terms of Article 85 of the Qanun-e-Shahadat Order, 1984. Moreso, neither the Appeal Court nor the High Court has recorded any findings on issue No.3 framed by the trial Court, thus, failed to exercise jurisdiction vested in them.

7. For the foregoing reasons, we, without commenting upon the merits of the case, deem it appropriate to convert this petition into an appeal and allow the same by setting aside the impugned order of the High Court, and remand the case back to it for decision afresh in light of observations made hereinabove, within a period of thirty working days from the date of receipt of this order, but after providing the parties an opportunity of hearing. No order as to costs.

Peshawar

04.06.2025

~~Not~~ approved for reporting

Zia/ *

¹ Rasool Bibi VS Waryam (1992 SCMR 1520)

² Jan Muhammad VS Salamat Bibi (2002 SCMR 1408)