

30/23

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

**MR. JUSTICE SARDAR TARIQ MASOOD**

**MR. JUSTICE AMIN-UD-DIN KHAN**

**MR. JUSTICE SYED HASAN AZHAR RIZVI**

**CIVIL PETITION NO.6482 OF 2021**

(Against the judgment dated 29.09.2021 passed by the Lahore High Court, Multan Bench, Multan in Writ Petition No. 7850 of 2019.)

Muhammad Yousaf

... Petitioner(s)

**VERSUS**

Addl. District Judge, Multan and others

... Respondent(s)

For the Petitioner(s)

: Mr. Aftab Alam Yasir, ASC.  
Syed Rifaqat Hussain Shah, AOR.

For the Respondents.

Malik Allah Nawaz, brother of respondent No. 3.  
Rao Ali Raza, Secretary UC Kabeer Pur Multan respondent No. 5.  
Muhammad Arshad, Nikah Registrar respondent No. 6.

Date of Hearing

: 08.02.2023

**ORDER**

**AMIN-UD-DIN KHAN, J.** Through this petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 leave has been sought against the judgment dated 29.9.2021 passed by the Lahore High Court, Multan Bench, Multan whereby Writ Petition No. 7850 of 2019 filed by the petitioner was dismissed.

2. Respondent No. 3 filed a composite family suit for dower, dowry articles and maintenance on 25.5.2015 whereas the petitioner filed a civil suit on 01.01.2016 against respondent Nos. 3 to 6 for cancellation of entries of Column No. 14, 16 and 19 of Nikah Nama between the petitioner and respondent No. 3 dated 19.1.2003 on the basis that same have been entered without

knowledge and consent and are, therefore, illegal and wrong etc. The learned trial court vide consolidated judgment dated 25.10.2018 partially decreed the suit of respondent No. 3 whereas the suit of the petitioner was dismissed. The record shows that the petitioner opted to file a single appeal under section 14 of the Family Courts Act, 1964 against the findings and decrees passed by the learned Civil Judge/Judge Family Court whereby the suit of respondent No. 3 was partially decreed whereas suit of the petitioner was dismissed. Respondent No. 3 also filed an appeal which was partially accepted whereas that of the petitioner was dismissed. Again the petitioner opted to file a writ petition against both the decrees i.e. decree of dismissal of his appeal as well as the decree of partial acceptance of appeal of respondent No. 3.

3. At the very outset, when confronted with the learned counsel that whether the suit of the petitioner was a civil suit or a family suit and whether it was filed before the civil court or the family court, states that he filed a civil suit before the civil court though the family court was having the jurisdiction of the civil court also who decided both the suits through a consolidated judgment. We are afraid that even if the family court concerned had civil jurisdiction as well, two suits could not be consolidated in a single proceeding. It is a cardinal principle of law that causes emanating from different jurisdictions cannot be consolidated in a single proceeding. A civil matter cannot be consolidated with a criminal matter, so also it cannot be consolidated with a family matter. Reliance can be placed on "Muhammad Khalid V. Muhammad Naeem and 6 Others" (PLD 2012 Lahore 490) and "Manzoor Ahmad v. Messrs Facto (Pakistan) Ltd. and Others" (1996 MLD 265).

4. We further see that the nature of the claim asserted in the civil suit of the petitioner falls within the exclusive jurisdiction of the family court since 2015 when the Family Courts Act, 1964 was amended in Punjab and a new residuary entry – “any other matter arising out of the Nikahnama” – was introduced at serial no. 10 in Part I of the Schedule to the Act (by way of Family Courts (Amendment) Act 2015 (XI of 2015)). Thus a suit challenging the validity of any entry of the Nikahnama was to be tried exclusively by the family court. The said amendment was merely procedural in nature bringing a change in the forum where the grievance was to be agitated. Reference can be made to “Gul Hassan and Co. v. Allied Bank of Pakistan (1996 SCMR 237), “Adnan Afzal v. Capt. Sher Afzal” (PLD 1969 SC 187), “Ch. Safdar Ali v. Malik Ikram Elahi and another” (1969 SCMR 166), “Muhammad Abdullah v. Imdad Ali” (1972 SCMR 173), “Bashir v. Wazir Ali” (1987 SCMR 978), “Mst. Nighat Yasmin v. N.B. of Pakistan” (PLD 1988 SC 391), “Yusuf Ali Khan v. Hongkong and Shanghai Banking Corporation, Karachi” (1994 SCMR 1007). Therefore, any suit pointing a finger at any entry of the Nikahnama instituted before and pending trial or filed subsequent to the above amendment shall be deemed to have been filed as a family suit and to be tried or transferred or deemed to have been transferred to a family court if already being tried by such court. The suit filed by the petitioner would thus also be deemed to have been filed as a family suit which was validly consolidated with the suit of respondent no. 3 and decided as a family suit by the family court. The petitioner rightly filed a family appeal against the dismissal of his suit.

5. As notice of the filing of this CPLA was sent by the AOR to all the respondents, therefore, brother of respondent No. 3

as well as respondent No. 5 and respondent No. 6 along with the original record are present.

6. We have heard the learned counsel for the petitioner and gone through the entries of Nikah Nama. By their perusal, through the naked eye, there is no cutting or variation of writing etc. in the original record. Even otherwise, the findings of fact recorded by the learned trial court are correct on the basis of records available with the court. So far as the findings of fact recorded by the learned family court in partially decreeing the suit of respondent No. 3 are concerned, she was not satisfied with the said findings. On her appeal which was partially accepted on the basis of findings of fact recorded by the appellate court which were challenged through a writ petition before the High Court by the petitioner, the petitioner was required to show some jurisdictional defect committed by the fora below, but he could not show any such defect, therefore, the writ petition was dismissed. In these circumstances, the petitioner failed to make out a case for the grant of leave. Consequently, leave to appeal is refused and the petition stands dismissed.

Islamabad, the  
8<sup>th</sup> February, 2023

Approved for reporting.  
Mazhar Javed Bhatti/-