IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
JUSTICE YAHYA AFRIDI, CJ
JUSTICE MUHAMMAD SHAFI SIDDIQUI
JUSTICE MIANGUL HASSAN AURANGZEB

CPLA Nos.2555 & 2556 OF 2022
(Against judgments dated 17.03.2022 of the Lahore High Court, Rawalpindi Bench passed in W.P. Nos.548-A of 2012 and 1007 of 2016)

Mst. Wajiha Rasheed

...Petitioner
(in both cases)

Versus

Adeel Akhter and others *in CPLA No.2555/2022*

Additional District Judge, Rawalpindi, etc. *in CPLA No.2556/2022*

...Respondents

For the Petitioner(s): Ms. Anila Atique, ASC with Syed Rifaqat Hussain Shah, AOR.
(*in both cases*)

For the Respondents: Not represented *(in both cases)*.

Date of Hearing: 27.08.2025

JUDGMENT

MIANGUL HASSAN AURANGZEB, J.- Through this judgment, we propose to decide C.P.L.A. Nos.2555 and 2556 of 2022 since they entail common features with the same contesting parties.

2. The record shows that Adeel Akhter (**"respondent"**) and Wajiha Rasheed (**"petitioner"**) got married on 05.04.2001. *Rukhsati* did not take place until 28.06.2004. As per the contents of the *Nikahnama*, dower was fixed at Rs.10,00,000/- on demand in addition to Plot No.6, Sector-D, Ghazikot Township, Mansehra (**"Plot No.6"**). The couple lived in the United Kingdom for about three years after which the petitioner returned to Pakistan.

3. After the respondent's father, Muhammad Akhter sold Plot No.6 to one Riaz Ahmed, the petitioner, on 20.12.2010, filed a suit

for declaration, permanent injunction and possession (**"Suit No.216/FC of 2010"**) before the family court against the respondent as well as Muhammad Akhter and Riaz Ahmed praying *inter alia* for a declaration to the effect that she is the owner of Plot No.6 on the basis of entries in the *Nikahnama* dated 05.08.2001. The petitioner had impleaded Riaz Ahmed as a defendant in the suit as he had purchased Plot No.6 from the petitioner's father-in-law through Transfer Deed No.1194 dated 30.04.2004. This suit was decreed vide judgment and decree dated 18.10.2011. By this time, the marriage between the petitioner and the respondent was intact.

4. The respondent's appeal against the family court's said judgment and decree dated 18.10.2011, was dismissed vide judgment and decree dated 09.06.2012. The respondent filed writ petition No.548-A/2012 before the high court against the said concurrent judgments and decrees.

5. At this juncture, we deem it appropriate to make reference to the suit for dissolution of marriage, recovery of maintenance allowance, dower and dowry articles (**"Family Suit No.45 of 2012"**) filed by the petitioner on 01.02.2012 before the family court against the respondent and his father. On 09.10.2012, the petitioner made a statement before the family court that there was no chance of a reconciliation between the parties; that on account of hatred and aversion that she had developed for the respondent, she does not want to live with him; that she has not been paid her dower; and that she has no intention of relinquishing her dower. After recording the petitioner's statement, the family court, vide order dated 08.11.2012 dissolved the marriage and proceeded to

frame issues. One of the issues framed was whether the petitioner was entitled to recover dower amounting to Rs.10,00,000/- from the respondent. It appears that an issue whether she was entitled to Plot No.6 as dower was not framed as by the time the issues were framed, she had already obtained a decree with respect to the said plot in her favour in Suit No.216/FC of 2010.

6. As the petitioner had alleged cruelty at the hands of the respondent, and had not relinquished her dower, the family court proceeded further with the trial. The trial culminated in the judgment and decree dated 06.11.2014 whereby the petitioner was held entitled to the recovery of dowry articles or their alternative depreciated value of Rs.200,000/- as well as to the maintenance allowance of Rs.20,000/- per month for the three-month *Iddat* period. The family court turned down the petitioner's claim for the recovery of gold ornaments. Her claim for the recovery of dower was also turned down as she had not been able to prove cruelty or brutality at the hands of the respondent.

7. The petitioner's appeal against the family court's said judgment and decree was dismissed by the appellate court vide judgment and decree dated 01.03.2016. The petitioner preferred writ petition No.1007/2016 before the high court against the said concurrent judgments and decrees.

8. The high court decided writ petition No.548-A/2012 titled "Adeel Akhter etc. Vs. Wajiha Rasheed etc." (reference to which has been made in paragraph-4 above) and writ petition No.1007/2016 titled "Wajiha Rasheed Vs. Additional District Judge, etc." vide two separate judgments dated 17.03.2022. In its judgment passed in writ petition No.1007/2016, the high court did not interfere with

the concurrent judgments and decrees of the family court and the appellate court passed in Family Suit No.45 of 2012. As regards writ petition No.548-A/2012, the high court allowed the same by holding that since the marriage had been dissolved on the basis of *khula*, the petitioner would not be entitled to the recovery of dower. In holding so, the high court had taken cognizance of a development subsequent to the judgment and decree passed in Suit No.216/FC of 2010 i.e. the judgment and decree passed by the family court in Family Suit No.45 of 2012. In fact, the high court reproduced the operative part of the family court's order dated 08.11.2012 whereby the marriage between the petitioner and respondent, was dissolved. The high court did not give the benefit of the amendments made in section 10(5) and (6) of the West-Pakistan Family Courts Act, 1964 through the Punjab Family Courts (Amendment) Act, 2015 whereby in case of a dissolution of marriage through *khula*, a wife is to surrender up to 50% of her deferred dower or up to 25% of her admitted prompt dower to the husband, whereas in case of a decree for the dissolution of marriage, the family court is to direct the husband to pay the whole or part of the outstanding deferred dower to the wife. The high court took the view, and correctly so, that since the decree for the dissolution of marriage pre-dates the enactment of the Punjab Family Courts (Amendment) Act, 2015, it could not be given retrospective effect.

9. Learned counsel for the petitioner's submissions centered around the petitioner's entitlement to her dower. She asserted that the concurrent judgments and decrees of the family court and appellate court in Suit No.216/FC of 2010 entitling the petitioner

to Plot No.6 on the basis of entries in the *Nikahnama* could not have been interfered with by the high court simply because in a subsequent suit (Family Suit No.45 of 2012) for dissolution of marriage etc., the petitioner had not been able to prove cruelty at the hands of the respondent. Furthermore, it was submitted that even if the petitioner was required to return the dower, it should have been only to the extent as provided in section 10(5) and (6) of the West-Pakistan Family Courts Act, 1964 as amended by the Punjab Family Courts (Amendment) Act, 2015.

10. We have heard the learned counsel for the petitioner and perused the record with her able assistance.

11. Although the order dated 08.11.2012 (passed in Family Suit No.45 of 2012), whereby the family court dissolved the marriage between the petitioner and the respondent makes no mention of *"khula",* it does explicitly state that *"the marriage between the parties is hereby dissolved under the proviso [to] section 10 of the Family Courts Act, 1964".* The proviso to section 10(4) of the said Act provides that in a suit for dissolution of marriage, if reconciliation fails, the family court shall pass decree for dissolution of marriage forthwith and "*also restore to the husband the haq mahr received by the wife*" in consideration of marriage at the time of marriage. Through the order dated 08.11.2012, the marriage between the petitioner and respondent was dissolved, but no order was passed as to the return of dower. This is because the petitioner had alleged cruelty at the hands of the respondent, and she had to prove the same in her evidence. The family court and the appellate court, after appraisal of the evidence came to the conclusion that the petitioner had not been able to prove cruelty at

the hands of the respondent in any form and therefore, she was liable to return the dower. Since the petitioner had obtained a decree for Plot No.6 (which was a part of her dower), from another court in an earlier suit (Suit No.216/FC of 2010), the high court was well within its rights to allow the respondent's writ petition and disentitle the petitioner to such dower.

12. The petitioner's claim to Plot No.6 was based on the entries in the *Nikahnama*. She had filed Suit No.216/FC of 2010 for declaration as to the ownership of Plot No.6 on 20.12.2010. This suit was decreed on 18.10.2011. It is after this decree that the petitioner, on 01.02.2012 had filed Family Suit No.45 of 2012 for dissolution of marriage and recovery of dower etc. After the order dated 08.11.2012 for the dissolution of marriage, the petitioner's entitlement to dower was dependent on whether she was compelled to leave her matrimonial abode or she had done so on her own volition for reasons not attributable to the respondent. Since the family court, in its judgment and decree dated 06.11.2014 passed in Family Suit No.45 of 2012 had clearly held that she had not been able to prove cruelty at the hands of the respondent in any manner, therefore, her claim to the ownership of Plot No.6 (which was a part of her dower) even though based on an earlier judgment and decree dated 18.10.2011 passed in earlier Suit No.216/FC of 2010 would cease. The family court's finding that the petitioner has to restore *Haq Mahr*/dower to the respondent has been given due recognition by the high court by setting aside the concurrent judgments and decrees whereby Plot No.6 was declared to be the petitioner's property on the basis of the entries in the *Nikahnama*.

13. We tend to agree with the findings of the family court that it would have been a different matter had the petitioner been able to prove cruelty or brutality at the hands of the respondent. In such an eventuality, the petitioner would have been entitled to retain her dower and there would have been no reason for the high court to interfere with the judgment and decree dated 06.11.2014 passed by the family court in Family Suit No.45 of 2012.

14. The dissolution of marriage under judgment and decree dated 06.11.2014 passed in Family Suit No.45 of 2012 not entitling the petitioner to retain or obtain *Haq Mahr* was a crucial development subsequent to the filing of Suit No.216/FC of 2010 and had a profound bearing on the decree that the petitioner had got regarding Plot No.6 prior to the dissolution of her marriage. It is well settled that courts can look into subsequent events at the time of deciding cases. Reference in this regard may be made to the law laid down in the cases of Mst. Amina Begum Vs. Mehar Ghulam Dastgir (PLD 1978 SC 220), Muhammadi Vs. Ghulam Nabi (2007 SCMR 761), Khushi Muhammad Vs. Abdul Ghafoor (2006 SCMR 839) and Evacuee Trust Property Board Vs. Sakina Bibi (2007 SCMR 262). With the passing of the decree dated 06.11.2014 in Family Suit No.45 of 2012 (which has been upheld by the appellate court and the high court), the decree dated 18.10.2011 that was given in the petitioner's favour in Suit No.216/FC of 2010 had become obsolete or unserviceable. In the case of Muhammad Arif Vs. Saima Noreen (2015 SCMR 804), it was held that where the family court had reached the conclusion that no cruelty could be proved by the wife, it could not grant a decree for dissolution of marriage on the basis of cruelty under the

Dissolution of Muslim Marriages Act, 1939. Furthermore, it was held that the only logical conclusion was that the marriage should have been dissolved on the basis of *khula* in which event the wife would have to forgo the dower amount.

15. Since we do not find any legal infirmity in the impugned judgments dated 17.03.2022 passed by the high court in writ petitions No.548-A/2012 and 1007/2016, leave to appeal is declined and the petitions are dismissed.

Chief Justice

Judge

Judge

Announced in open Court on _____ at Islamabad.

Judge

Approved for reporting
*Sanaullah**