

P L D 2015 Lahore 88

Before Muhammad Farrukh Irfan Khan, J

Mst. NABEELA SHAHEEN and others---Petitioners

Versus

ZIA WAZEER BHATTI and others---Respondents

Writ Petition No.3237 of 2011, heard on 9th September, 2013.

Dr. Asma Ali v. Masood Sajjad and others PLD 2011 SC 221 rel.

Mrs. Sarkar Abbas for Petitioners.

Javed Akhtar Bhatti for Respondent No.1.

Date of hearing: 9th September, 2013.

JUGMENT

MUHAMMAD FARRUKH IRFAN KHAN, J.---Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioners have sought for modification of the judgments and decrees dated 13-4-2011 and 20-9-2011, of the learned Judge Family Court, and Additional District Judge, Rawalpindi, respectively, to the extent of their maintenance allowance and its annual enhancement and further prayed for decree of the suit as per their claim by setting aside rest of the impugned judgments.

2. Brief facts of the case are that the petitioners filed a suit for recovery of maintenance, maternity expenses (on the birth of petitioner No.2), dower of Rs.200,000, a house, 13-1/2 tolas gold and dowry articles worth Rs.3,82,441. The suit was contested. Issues were framed whereupon evidence of the parties was recorded. The learned trial Court partially decreed the suit, vide judgment and decree dated 13-4-2011 in the following terms:---

"the maintenance allowance of minor plaintiff No.2 is fixed at the rate of Rs.5000 (rupees five thousand only) per month from the date of institution of this suit with 10% annual increase till further orders whereas the instant suit is hereby dismissed to the extent of recovery of maintenance allowance of plaintiff No.1. The instant suit to the extent of recovery of delivery expenses of Rs.50,000 (Rupees fifty thousand only), gold ornaments, deferred dower of Rs.2,00,000 (Rupees two lacs only) and a house is also dismissed. However, the plaintiff No.1 is held entitled to the recovery of dowry articles as per list Ex.D-11."

3. Feeling aggrieved, both the parties filed separate appeals. The learned lower Appellate Court dismissed both the appeals, with the modification in the judgment and decree of the trial Court to the effect that petitioner No.1/Mst. Nabeela Shaheen was also held entitled to the recovery of her maintenance allowance at the rate of Rs.5,000 per month. The petitioners being dissatisfied have now invoked the constitutional jurisdiction of this Court by filing the instant writ petition.

4. Learned counsel for the petitioners, Mrs. Sarkar Abbas, Advocate, at the very outset submitted that she does not press this petition to the extent of claim of maternity expenses incurred by petitioner No.2 on the birth of petitioner No.1. Regarding rest of the claim the learned counsel contended that the findings of both the courts below are against the law and facts on the record; that judgments and decrees of both the courts below are based on surmises and conjectures; that both the courts have misread the evidence available on the record; that petitioner No.1 had brought strong evidence on the record to prove the contents of the nikahnama according to which an amount of Rs.200,000, 10 tolas gold and a house was fixed as dower but the same was misinterpreted by both the courts below and illegally turned down her prayer; that the maintenance allowance at the rate of Rs.5000 per month granted to petitioners is insufficient in this age of inflation. Moreover, petitioner No.2 is school going and also suffers from disease of asthma, as such, extra money is needed to cater for his requirements; that respondent is a UK national and earns a handsome amount and he is bound to maintain the petitioners according to his status and income;

5. Conversely, it has been argued on behalf of the respondent that that maintenance allowance fixed by the Courts below does not commensurate with his source of income as he is jobless; that the learned lower appellate Court has illegally granted to petitioner No.1 the maintenance allowance which was rightly declined by the learned trial Court; that at the time of 'nikah' only Rs.2000 was fixed as prompt dower and the entries mentioned in column No. 14 of the 'nikahnanna' are forged and fabricated and are result of manipulation with the connivance of the concerned Nikah Registrar; that petitioner No.1 was given 10 tolas gold ornaments by respondent at the time of 'nikah' which are still with her; that there is no description of the house given in the 'nikahnama'; that the dowry list appended with the plaint also contained such articles which were never given at the time of marriage and the receipts thereof produced by the petitioner were maneuvered later on.

6. Arguments heard, Record perused.

7. Admittedly, the respondent is a UK national ever since his marriage with petitioner No.1. He has taken inconsistent pleas with regard to his source of income in his written statement and during the arguments addressed by his counsel before this Court. In the written statement he stated that he has no permanent source of income while it is argued by his learned counsel that he is jobless. But he has not been able to deny that he is getting sufficient subsistence allowance being a UK national. In the circumstances, when there is no evidence that petitioner No.1 has been living apart from her husband without any lawful excuse, she is entitled to get maintenance allowance as prayed for in her suit

till the subsistence of marriage. Similarly, petitioner No.2, who is minor son of the respondent is a school going child. He being a patient of asthma is also required to meet considerable expense on his medication. In these circumstances, his maintenance fixed at the rate of Rs.5000 per month seems to be insufficient to meet his requirements. This Court is, therefore, inclined to enhance his rate of maintenance from Rs.5000 to Rs.10000 with 10% annual increase.

8. So far as the question of dower, a house and 10 tolas gold is concerned, the petitioner has produced evidence from which it can safely be inferred that at the time of marriage Rs.200,000 was fixed as dower, in addition to 10 tolas gold and a house. The respondent's own witness Zaheer Ahmed while appearing as D.W.2 admitted in his cross-examination that an amount of Rs.200,000 was fixed as dower. The respondent has failed to adduce any cogent evidence to rebut version of the petitioner. There is no weight in the arguments that the entries in the 'nikahnama' have been interpolated. 'Nikahnama' is a public document which is registered under the Muslim Family Laws Ordinance, 1961 and as such presumption of truth is attached to it. According to law, four copies of the 'nikahnama' are prepared, out of which one is kept by Nikah Registrar, second is sent to the concerned Municipal Corporation, Municipal Committee or Union Council, third copy is supplied to the bride and the fourth one is given to the bridegroom. The very object behind it is so that each party may verify the entries in the Nikahnama according to the terms of marriage settled between them. The 'nikah', between the parties was solemnized on 19-8-2007, the suit was filed on 19-12-2009 and during the period from 19-8-2007 to 19-12-2009 and even thereafter the respondent did not bother to avail his remedy against the alleged interpolation in the 'nikahnama'. During the course of evidence he has equally failed to bring on record any thing to prove that the entries in column No.14 were changed. In the case of Muhammad Aslam v. Mst. Suraya (PLD 2000 Lahore 355) it has been held that if any party was of the view that Nikah Registrar had interpolated in the entries, of Nikah Register, such party could approach the Deputy Commissioner who was the Controlling Authority and could get the same corrected. In the cited case it has also been held that transaction of dower would become complete on the day of marriage and that endorsement of dower against column in 'nikahnama' was a verification of settlement and arrangement already reached between the parties. And that whenever a woman makes a demand through filing a suit for recovery of dower, the person who contends that the entries in Nikahnama are not correct is bound to rebut these entries through strong evidence otherwise the Courts are bound to give a solemn affirmation to the entries in Nikahnama. Keeping in view the evidence available on the record this Court is of the opinion that both the courts below have wrongly dismissed the suit of the petitioner qua the claim regarding dower amount of Rs.200,000, 10 tolas gold and a house. She was entitled to recover the same from the respondent as settled between the parties at the time of 'nikah'. No doubt description of the house is not mentioned in the 'nikahnama' but this fact is not fatal to the claim of the petitioner. In the case cited as Dr. Asma Ali v. Masood Sajad and others PLD 2011 SC 221 wherein no description of land was given in 'nikahnama' in terms of agricultural land's khasra numbers or identifying data, Supreme Court directed the trial Court to appoint commission comprising of a member of Revenue hierarchy to determine the average price of per kanal of agricultural land and thereafter wife was held entitled to receive as dower market

value of 100 kanals of agricultural land as determined. Seeking guidance from the cited judgment this Court is inclined to direct the District Officer (Revenue), Rawalpindi to inquire as to which one of the house at the time of marriage was owned by the respondent and what was its value. The market value so evaluated by the Revenue Authorities will be payable by the respondent to the petitioner No. 1.

9. For what has been discussed above, the instant writ petition is accepted in the terms enumerated above.

JJK/N-55/L

Petition allowed.