

**P L D 2014 Lahore 131**

**Before Muhammad Farrukh Irfan Khan, J**

**AZHAR MEHMOOD---Petitioner**

**Versus**

**Ms. HAFEEZ-UN-NISA---Respondent**

Writ Petition No.734 of 2010, decided on 9th September, 2013.

**(a) West Pakistan Family Courts Act (XXXV of 1964)---**

---Ss.5, Sched. & 10(4)---Constitution of Pakistan, Art.199---Constitutional petition---Suit for dissolution of marriage on the basis of khula---Claim of dower amount and maintenance by wife---Scope---Suit for dissolution of marriage filed by wife was decreed in her favour on the basis of khula but the claim of recovery of dower amount and maintenance was dismissed---Appellate court partially allowed the appeal and granted maintenance allowance---Validity---Lady had demanded dissolution of marriage on the basis of khula, therefore she was not entitled to receive any kind of dower from the husband---Findings of lower appellate court were non-sustainable in the eyes of law and the same were set aside.

**(b) West Pakistan Family Courts Act (XXXV of 1964)---**

---S. 5, Sched.---Constitution of Pakistan, Art.199---Constitutional petition---Suit for recovery of dowry articles i.e. clothes and gold ornaments mentioned in the list of dowry articles---Scope---Suit filed by lady was decreed as per list of dowry articles provided by her before Family Court---Appellate court modified the judgment of Family Court and excluded the clothes and gold ornaments from list of dowry articles--Contention of the lady was that she had proved the list of dowry articles through cogent and reliable evidence, therefore appellate court had unjustifiably modified the judgment of Trial Court---Validity---Parties had remained in nuptial tie for more than ten years---Clothes mentioned in list of dowry articles would have lost their utility by their use for such a long time during subsistence of marriage---Gold ornaments which were very dear to a lady and usually remain in her custody, lady claiming the same could not establish through cogent and reliable evidence that the articles/ gold ornaments were snatched by husband from her---Appellate court had rightly rectified the order of Family Court by excluding the articles in question from the list of dowry articles---Constitutional petition was dismissed.

Ch. Anjum Rafique for Petitioner.

Raja Farrukh Arif Bhatti for Respondent.

**ORDER**

**MUHAMMAD FARRUKH IRFAN KHAN, J.**---I intend to dispose of the above mentioned writ petition as well as Writ Petition No.1242 of 2010 titled "Mst. Hafeez-un-Nisa v. Azhar Mehmood etc." through this single order, as both these petitions are arising out of the single judgment and decree of the learned lower appellate court dated 8-8-2009. Hereinafter Azhar Mehmood shall be referred to as the petitioner and Mst. Hafeez-un-Nisa as respondent.

2. Briefly the facts of the case are that the respondent filed two suits one for recovery of dower and maintenance allowance and the other for recovery of dowry articles. The petitioner contested both the aforesaid suits by filing separate written statements raising certain preliminary as well as factual objections. Out of the divergent pleadings of the parties, learned Judge Family Court proceeded to frame necessary issues. Both the parties led evidence in respect of their respective claims.

3. The learned Judge Family Court after hearing the arguments advanced by the learned counsel for the parties proceeded to decide both the aforesaid suit through consolidated judgment and decree dated 30-3-2009 in the following terms:-

"In the light of my findings in the issues Nos.1 and 2 suit of the plaintiff for recovery of dower amount Rs.50,000 and 12 tolas golden ornaments or its alternative and recovery of maintenance is dismissed while in light of my findings in the issue No.3 suit of the plaintiff for recovery of dowry articles is decreed as per list Exh.P2 or its alternative Rs.284,150."

4. Being aggrieved both the parties filed appeals before the learned lower appellate court, who vide impugned consolidated judgment and decree dated 8-8-2009 proceeded to decide both the appeals in the following terms:--

"In view of my findings recorded above, the judgment and decree to the extent of recovery of dower amount is set aside, for the recovery of maintenance allowance it is modified to the extent that appellant is entitled to recover maintenance allowance at the rate of Rs.5000 per month for Iddat period only. The appeal filed by the respondent is also partially accepted to the extent of dowry articles as discussed in issue No.3."

5. Being not satisfied with the judgment and decree of the learned lower appellate court both the parties have filed aforesaid Constitutional petitions. The petitioner has also challenged the validity of impugned order dated 9-2-2009 whereby the learned Judge Family Court passed a decree for dissolution of marriage in favour of the respondent on the ground of Khula.

6. Learned counsel for the petitioner submits that the judgment and decree of the learned lower appellate court awarding the respondent dower amount of Rs.50,000 and 12 tolas of gold ornaments is based on surmises and conjectures and result of mis-reading and non-reading of the evidence; that according to the contents of Nikahnama the entire dower had been paid to her at the time of Nikah; that the respondent has obtained decree of dissolution of marriage, therefore, according to the provisions of section 10(4) of the West Pakistan Family Courts Act, 1964 the learned Judge Family

Court was bound to restore to the petitioner the Haq Mahr received by the respondent but the learned Judge Family Court while awarding decree for dissolution of marriage overlooked this mandatory provision of law. Adds that the learned trial court had rightly dismissed the claim of the respondent for dower which has illegally been awarded by the learned lower appellate court. He further submits that the learned lower appellate court has rightly modified the judgment and decree of the learned Judge Family Court to the extent of dowry articles which needs no interference by this Court in its Constitutional jurisdiction.

7. Conversely, learned counsel for the respondent submits that the judgment and decree of the learned lower appellate court to the extent of grant of dower is well reasoned, whereas, to the extent of depriving the respondent from the dowry articles mentioned at Sr. Nos.47, 48, 53 to 56 of list Exh.P2 is a result of mis-reading and non-reading of the evidence; that the respondent has proved the list of dowry articles Exh.P2 through cogent and reliable evidence and the learned Judge Family Court after due appreciation of the material available on the record had awarded decree for recovery of dowry articles as per list Exh.P2 but the learned lower appellate court has unjustifiably modified the said judgment and decree; that the findings of the learned lower appellate court to this extent are based on surmises and conjectures.

8. I have heard the arguments advanced by both the learned counsel for the parties and gone through the record.

9. As far as validity of impugned order dated 9-2-2009 whereby the learned Judge Family Court passed decree for dissolution of marriage in favour of the respondent on the ground of Khula is concerned, the petitioner has not challenged the said order at the relevant time which now has attained finality. Even in the subsequent litigation initiated by the respondent against the petitioner, he never raised any objection on the impugned order. Apparently, when the learned lower appellate court has passed a decree of dower against him he thought of challenging the same as well in the writ petition. Learned counsel for the petitioner is unable to justify such a long delay, as such no case for interference in the impugned order dated 9-2-2009 at this belated stage is made out, which has otherwise attained finality.

10. So far as the question whether the respondent is entitled to recover dower as prayed for. It is an admitted fact that amount of Rs.50,000 and 12 tolas of gold ornaments were fixed as dower, however, the dispute is regarding the nature of dower. According to the version of the petitioner the nature of dower was prompt and it was paid at the time of Nikah, whereas, according to the version of the respondent the same was deferred dower to be paid on demand and the petitioner has not paid the same uptil now. It is also important to note that earlier petitioner filed a suit for restitution of conjugal rights in which respondent filed written statement and claimed decree for dissolution of marriage on the ground of Khula which was accordingly awarded by the learned Judge Family Court by invoking the provisions of section 10(4) of the West Pakistan Family Courts Act, 1964. In these circumstances, the question for determination is whether after obtaining divorce on Khula the respondent can claim dower and for this purpose we have to follow the principles of Islamic Law governing

divorce. Para No.320 of the principles of Muhammadan Law by D.F. Mulla deals with this situation which provides as under:--

"320. Effect of Khula and Mubara'at at divorce.---Unless it is otherwise provided by the contract, a divorce effected by Khula or Mubara'at operates as a release by the wife of her dower, but it does not affect the liability of the husband to maintain her during her iddat, or to maintain his children by her."

10A. Thus, it is crystal clear that a lady demanding divorce on the ground of Khula is disentitled from claiming dower. In the present case, admittedly, the respondent prayed for dissolution of marriage on the ground of Khula, therefore, she is not entitled to receive any kind of dower from the petitioner. The findings of the learned lower appellate court to this extent are thus not sustainable in the eyes of law and the same are set aside.

11. As regards findings of the learned lower appellate court on the issue of dowry articles is concerned, to my mind the same are very reasonable. The parties remained in nuptial tie for more than ten years and the items mentioned at Sr. Nos.48 and 49 of Exh.P2 are clothes which certainly would have lost their utility by their use for such a long time during the subsistence of marriage. Other excluded items i.e. at Sr. Nos.47 and 53 to 56 are gold ornaments which are very dear to a lady and usually remain in her custody and the respondent could not establish through cogent and reliable evidence that the said articles were snatched by the petitioner from her. Learned lower appellate court has thus rightly rectified the order of the learned Family Judge by excluding the aforementioned items from the list of dowry articles. Learned counsel for the respondent is unable to point out any illegality or irregularity in the findings of the learned lower appellate court to this extent warranting interference by this Court in its Constitutional jurisdiction.

12. For what has been discussed above, Writ Petition No.734 of 2010 filed by the petitioner is partially accepted in the terms enumerate above, whereas, Writ Petition No.1242 of 2010 filed by respondent stands dismissed with no order as to costs.

JJK/A-125/L Order accordingly

