

Present: Umar Ata Bandial, Sajjad Ali Shah and Syed Mansoor Ali Shah, JJ

HASEEN ULLAH---Petitioner

Versus

Mst. NAHEED BEGUM and others---Respondents

Civil Petition No. 1289 of 2020, decided on 23rd November, 2021.

(Against the orders of Peshawar High Court, Peshawar dated 09.03.2020 passed in W.P. No.3215-P of 2018)

(a) Family Courts Act (XXXV of 1964)---

---S. 5, Sched.---Muslim Family Laws Ordinance (VIII of 1961), Ss.9 & 10---Dower (mehr)---Entries in columns Nos.13 and 16 of the Nikahnama---Entries in said columns are to be interpreted on the basis of the intention between the parties rather than the headings of the columns, in particular when there is a dispute between the value of the dower and items.

Respondent (wife) instituted a suit in the Family Court wherein amongst other things she sought recovery of her dower i.e. agriculture land (mentioned in column No. 16 of her Nikahnama). Family Court observed that the dower mentioned in column No.16 of the Nikahnama was payable only if the dower specified in column No.13 i.e. seven tolas of gold worth Rs. 1,60,000/- had not been paid, and as the respondent admitted to have received the dower of seven tola gold ornaments specified in column No.13, she was not entitled to claim the dower mentioned in column No.16 of the Nikahnama. The District Court, in appeal, endorsed this finding with the observation that agriculture land mentioned in column No.16 was to be given only in lieu of seven tola gold ornaments specified as dower in column No.13 of the Nikahnama, which the respondent had admittedly received. The High Court held that the facts and circumstances of the case clearly showed that the dower mentioned in column No.16 was in addition to, not in lieu of, the one specified in column No.13 of the Nikahnama.

Family Court and District Court acted on what the heading of column 16 prima facie suggested, i.e., the mentioning of any property that is given "in lieu of the whole or any portion of the dower", without ascertaining the intent of the parties. This approach of the said Courts is not in consonance with the settled principles of construction of contracts. Nikahnama is a deed of marriage-contract entered into between the parties, husband and wife, and the contents of its clauses/columns, like clauses of other contracts, are to be construed and interpreted in the light of intention of parties. The High Court rightly ascertained the intent of the parties for mentioning four Kanal agriculture land in column No.16 of the Nikahnama, irrespective of its placement in a particular column. It is a matter of common knowledge that the persons who solemnize Nikah or the Nikah Registrars are mostly laymen, not well-versed of legal complications that may arise from mentioning certain terms agreed to between the parties in any particular column of the Nikahnama. Therefore, it becomes the foremost duty of courts dealing with disputes arising out of the terms entered in the Nikahnama, to ascertain the true intent of the parties and give effect thereto accordingly, and not be limited and restricted by the form of the heading of the particular columns wherein those terms are mentioned.

Abdul Haq v. WAPDA 1991 SCMR 1436; HBFC v. Shahinshah Humayun 1992 SCMR 19 and Sandoz Limited v. Federation 1995 SCMR 1431 ref.

The figures (1) and (2) mentioned in columns Nos.13 and 16 respectively leave little room to guess what the true intention of the parties was; they clearly show that both (1) seven tola gold ornaments mentioned as dower in column No.13 and (2) four Kanal agriculture land mentioned in column No.16 were the dower. The figures (1) and (2) need not be mentioned if only one of them was to be payable as dower. Further, seven tola gold ornaments and four Kanal agriculture land have no parity of value to be agreed as an alternate of each other. Petition for leave to appeal filed by husband was dismissed with costs throughout.

Asma Ali v. Masood Sajjad PLD 2011 SC 221 and Yasmeen Bibi v. Ghazanfar Khan PLD 2016 SC 613 ref.

(b) Family Courts Act (XXXV of 1964)---

---S. 5, Sched.---Maintenance of wife---Obligation of husband---Under Islamic law a wife's right to be maintained by her husband is absolute so long as she remains faithful to him and discharges, or is willing to discharge, her own matrimonial obligations---Muslim husband is bound to maintain his wife even if no term in

this regard is agreed to between them at the time of marriage or she can maintain herself out of her own resources---Wife who is willing to, but cannot, discharge her marital obligations for no fault of her own, rather is prevented to do so by any act or omission of her husband is legally entitled to receive her due maintenance from her husband, and the latter cannot benefit from his own wrong.

Azizah Mohd, et al., Muslim Wives Rights To Maintenance: Husbands Duty To Maintain A Working Wife In Islamic Law (2010) 18 IIUMLJ 103; Al-Quran, Chapter 4 verses 34; Imam Muslim, Sahih Muslim, Translation by Abdal Hamid Saddiqi, Kitab al-Haj, Vol. II, pp. 615-616 and Al-Mubarakpuri, Tuhfat al-Ahwadhi bi Sharh Jamia Altarmidhi, Second Edition, Vol. 4, Maktabat al-Salafiyyah, Medina (1965), p. 326 ref.

(c) Family Courts Act (XXXV of 1964)---

---S. 5, Sched.---Dower, payment of---Obligation of husband---In Islam, the payment of dower to bride at marriage is an obligation that is imposed by Allah Almighty, and is thus an intrinsic and integral part of a Muslim marriage---Dower is considered an obligatory bridal gift offered by the bridegroom to the bride graciously as a manifestation of his love and respect for her---Some Muslim men compliment the obligatory bridal gift, dower, with other gifts and presents as per their financial capacity.

Tirkey, S., A critical analysis of dower (mahr) in theory and practice in British India through court records from 1800 to 1939 [Master's Thesis, the American University in Cairo]. AUC Knowledge Fountain (2020). ref.

Attaullah Khan Tangi, Advocate Supreme Court for Petitioner.

Nemo for Respondents.

Date of hearing: 23rd November, 2021.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---"This is a male-dominated society; men since ages have always been more concerned about their rights by using religion for their own convenience, especially in matrimonial matters, but forget religion when it comes to their duty and obligation towards their women"¹, this seems to hold true in the present case. This case where a husband disputes the payment of maintenance and dower to his wife, provides an occasion to underline the principles, duties and obligations of a husband towards his wife under the Islamic law with regard to maintenance and dower.

2. The respondent, Naheed Begum, instituted a suit, in the Family Court, Tangi Charsadda, for recovery of her dower i.e., 1-Jarab² of agriculture land (mentioned in column No. 16 of her Nikahnama) and maintenance for herself and her five minor children (three daughters and two sons) against the petitioner, her husband, who had contracted a second marriage and was living with his second wife. The Family Court decreed the suit to the extent of her claim for maintenance of her minor children, but rejected her claims for recovery of her dower and maintenance. The District Court dismissed her appeal, maintaining the judgment of the Family Court. She then invoked the constitutional jurisdiction of the Peshawar High Court, under Article 199 of the Constitution of Pakistan, for redress of her grievance against the judgments of the Courts below. The High Court allowed her constitution petition, reversed the judgments of the Courts below, and decreed

her claims of dower and maintenance, vide its judgment dated 09.03.2020. It is against this judgment of the High Court that the petitioner, Haseen Ullah, has filed the present petition for leave to appeal.

3. We have heard the learned counsel for the petitioner in detail and with his able assistance, perused the record of the case minutely.

4. The High Court and the Courts below have differed on interpreting the entries of columns Nos. 13 to 16 of the Nikahnama of the parties, which are reproduced hereunder for ready reference:

English translation:

13	Amount of dower:	7-tola gold ornaments valuing Rs.1,60,000/-
14	How much of the dower is mu'ajjal (prompt) and how much is ghair mu'ajjal (deferred):	[blank]

15	Whether any portion of the dower was paid at the time of marriage, If so, how much:	Almost [all]
16	Whether any property was given in lieu of the whole or any portion of the dower, if so, its specification and price agreed to between the parties:	(2) 1-Jarab land in Kashmirabad near Khadi Kalay

The Family Court observed that the dower mentioned in column No. 16 of the Nikahnama was payable only if the dower specified in column No. 13 had not been paid, and as the respondent admitted to have received the dower of seven tola gold ornaments specified in column No.13, she was not entitled to claim the dower mentioned in column No.16 of the Nikahnama. The District Court, in appeal, endorsed this finding with the observation that four Kanal agriculture land mentioned in column No. 16 was to be given only in lieu of seven tola gold ornaments specified as dower in column No. 13 of the Nikahnama, which the respondent had admittedly received. The High Court has held that the facts and circumstances of the case clearly show that the dower mentioned in column No. 16 was in addition to, not in lieu of, the one specified in column No. 13 of the Nikahnama.

5. We find that the Family Court and District Court have acted on what the heading of column 16 prima facie suggest, i.e., the mentioning of any property that is given "in lieu of the whole or any portion of the dower", without ascertaining the intent of the parties. This approach of the said Courts is not in consonance with the settled principles of construction of contracts. Needless to say that Nikahnama is a deed of marriage-contract entered into between the parties, husband and wife, and the contents of its clauses/ columns, like clauses of other contracts, are to be construed and interpreted in the light of intention of parties.³ The High Court has rightly ascertained the intent of the parties for mentioning four Kanal agriculture land in column No. 16 of the Nikahnama, irrespective of its placement in a particular column. It is a matter of common knowledge that the persons who solemnize Nikah or the Nikah Registrars are mostly laymen, not well-versed of legal complications that may arise from mentioning certain terms agreed to between the parties in any particular column of the Nikahnama. Therefore, it becomes the foremost duty of courts dealing with disputes arising out of the terms entered in the Nikahnama, to ascertain the true intent of the parties and give effect thereto accordingly, and not be limited and restricted by the form of the heading of the particular columns wherein those terms are mentioned.

6. We, on our own independent appraisal of the facts and circumstances of the case, agree with the finding of the High Court, which is not only supported by the contents of the compromise deed dated 18.12.2012 executed by both the petitioner and the respondent, but also by the contents of the entries of columns Nos. 13 and 16 of the Nikahnama. The figures (1) and (2) mentioned in columns Nos. 13 and 16 respectively leave little room to guess what the true intention of the parties was; they clearly show that both (1) seven tola gold ornaments mentioned as dower in column Nos. 13 and (2) four Kanal agriculture land mentioned in column No. 16 were the dower. The figures (1) and (2) need not be mentioned if only one of them was to be payable as dower. Further, seven tola gold ornaments and four Kanal agriculture land have no parity of value to be agreed as an alternate of each other. Therefore, the finding of the High Court on the issue of dower is perfectly correct and is in consonance with the principles of law enunciated by this Court in the cases of Asma Ali⁴ and Yasmeen Bibi.⁵

7. As for the claim of the respondent for her maintenance, the Family Court and the District Court held that since the respondent is not residing with the petitioner she is not entitled to maintenance. The High Court has overturned these findings and held the respondent entitled to receive maintenance from the petitioner, while observing that the respondent showed her willingness to go with the petitioner during hearing the petition, but the petitioner, who had contracted second marriage, flatly refused to take her to his house. We find nothing wrong in the decision of the High Court. A wife who is willing to, but cannot, discharge her marital obligations for no fault of her own, rather is prevented to do so by any act or omission of her husband is legally entitled to receive her due maintenance from her husband, and the latter cannot benefit from his own wrong.

8. As per Section 2 of the West Pakistan Muslim Personal Law (Shariat) Application Act 1962, the questions regarding dower are to be decided, subject to the provisions of any enactment for the time being in force, in accordance with Muslim Personal Law (Shariat) in cases where the parties are Muslims. It hardly needs reiterating that the Holy Quran and the Sunnah of the Prophet of Islam (pbuh) are the primary sources of Muslim Personal Law (Shariat) in Islam. The payment of dower (mahr) at the time of marriage was a customary practice in Arabia before the advent of Islam, but it was paid to the guardians of the bride, such as, her father or other male relative, as bride-price and the bride herself did not receive a penny of it. This practice of paying dower as bride-price to the male guardians of the bride was reformed by the Islam through the Quranic commands⁶ of paying dower as the bride-wealth to the bride herself, who becomes the sole owner of it. The Holy Quran also forbids the Believers to take back anything from their wives out of the paid dower even it be a great sum.⁷ In Islam, the payment of dower to bride at marriage is an obligation that is imposed by the God Almighty, and is thus an intrinsic and integral part of a Muslim marriage. It is considered an obligatory bridal gift offered by the bridegroom to the bride graciously as a manifestation of his love and respect for her. Some Muslim men compliment the obligatory bridal gift, dower, with other gifts and presents as per their financial capacity.⁸

9. Under the Islamic law a wife's right to be maintained by her husband is absolute so long as she remains faithful to him and discharges, or is willing to discharge, her own matrimonial obligations. A Muslim husband is bound to maintain his wife even if no term in this regard is agreed to between them at the time of marriage or she can maintain herself out of her own resources⁹. The Holy Quran¹⁰ enunciates that men are the protectors and maintainers of women because the God Almighty has given the one more strength than the other and because they support them from their money. And the Holy Prophet of Islam (pbuh) has instructed Muslim men to provide their wives with maintenance in a fitting manner¹¹ and declared it to be the right of the women¹².

10. We note that the petitioner, instead of paying the maintenance and giving the dower to the respondent willingly and graciously, has been evading his legal as well as moral obligation on one and the other pretext, as he first totally denied to have agreed to, and mentioning in Nikahnama, the term of giving four Kanal agriculture land as dower to the respondent, in his written statement, and later started opposing it with the argument that it was an alternate to be given only if seven tola gold ornaments mentioned in column No. 13 had not been paid. It is regrettable that the petitioner, an educated person who belongs to the noble profession of teaching, does not realize his obligation to pay the dower agreed upon by him at the time of marriage with the respondent, not only under the law of the land but also under the commandments of the God Almighty given in the Holy Quran to persons who proclaim to be Muslim. He has by his such conduct forced his wife to fight for her right to receive her maintenance and dower in four courts, from the Family Court to the Supreme Court. His such conduct is highly deplorable.

11. For the above reasons, we find the present petition baseless and vexatious and therefore dismiss it with costs throughout.

MWA/H-8/SC Petition dismissed.