

ORDER SHEETLAHORE HIGH COURT, BAHAWALPUR BENCH, BAHAWALPUR
JUDICIAL DEPARTMENT

Writ Petition No. 4931 of 2012

Mst. Sadia Bibi Versus Additional District Judge Etc.

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5. 4.12.2012. Mr. Zahid Rehman Tayyab, Advocate for the petitioner.
Nemo for respondent No.3.

Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has called in question the *vires* of impugned judgments & decrees dated 26.11.2011 and 12.7.2012 passed by the Learned Judge Family Court, Liaquatpur, (respondent No.2) and the learned Additional District Judge, Liaquatpur (respondent No.1) respectively.

2. Succinctly, the facts forming background of instant petition are that the petitioner filed a composite suit for recovery of maintenance, dowry articles and dower before the learned Judge Family Court Liaquatpur whereas respondent No.3 filed a suit for restitution of conjugal rights. Both the said suits were disposed of by the learned trial Court, vide judgment & decree dated 26.11.2011 in the following terms: -

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- i. Petitioner was held entitled to receive maintenance at the rate of Rs.1,500/- per month from the date of institution of suit.
- ii. Suit of respondent No.3 for restitution of conjugal rights was decreed subject to payment of maintenance allowance.
- iii. Claim of the petitioner regarding recovery of gold ornaments, buffaloes and cows was dismissed.
- iv. Petitioner was held entitled to recovery of clothes or in alternative Rs.15,000/- as price thereof.
- v. Claim of petitioner regarding recovery of dower was dismissed.

Feeling aggrieved by the aforesaid judgment & decree the petitioner preferred an appeal before respondent No.1 which was dismissed vide judgment & decree dated 12.7.2012; hence this petition.

3. Learned counsel for the petitioner contends that while passing the impugned judgments & decrees both the courts below have erred in law while holding that the amount of dower being deferred, the petitioner was not entitled thereto; that the verdicts of both the courts below are result of misreading and non-reading of evidence; that while decreeing the suit filed by respondent No.3 both the courts below failed to consider that a wife cannot be directed to live with her husband against her wishes and that while passing the impugned judgments &

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decrees both the courts below have totally omitted to note that according to section 6(5) of the Muslim Family Laws Ordinance, 1961, a person who contracts second marriage without permission from his first wife is bound to pay entire amount of dower to his first wife either that is prompt or deferred. In support of his contentions learned counsel has relied upon the case reported as Mst. Shaheen Begum v. Zakaullah Khan Ghouri and others (2009 MLD 1124).

4. Since respondent No.3 did not opt to appear despite service by way of citation in daily 'Express', therefore, he was proceeded against *ex-parte* on 12.11.2012.

5. I have heard learned counsel for the petitioner at length and have also gone through the documents appended with this petition in addition to the case-law cited at the bar.

6. Before dilating upon merits of the case, I am of the view that perusal of section 6(5) of the Muslim Family Law Ordinance, 1961, is of paramount consideration which, for convenience of reference, is reproduced herein below: -

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“Any man who contracts another marriage without the permission of the Arbitration Council shall

(a) pay immediately the entire amount of the dower whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue; and

(b) on conviction upon complaint be punishable with simple imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both”

A perusal of the afore-quoted provision of law shows that a husband who contracts second marriage without seeking permission from his first wife, is bound to immediately pay the entire amount of dower to his first wife irrespective of the fact whether the same is prompt or deferred. Insofar as the case in hand is concerned, a perusal of Nikah Nama of respondent No.3 with Mst.Shaheen Bibi not only confirms that respondent No.3 contracted second marriage but also manifests that he admitted the factum of his earlier marriage and took the stance that he had divorced his first wife. If we take the stance of respondent No.3 that he divorced the petitioner as correct, even then he was bound to pay the amount of dower to the petitioner if the same

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was deferred. In this regard, this court has already taken consistent view in the cases reported as Munazza Noor and 2 others v. Additional District Judge and Others (2009 C L C 374), Dr. Saira Sultana v. Maqsood Sulari, Additional District and Sessions Judge, Rawalpindi and 2 others (2000 CLC 1384) and Mst. Anita Rani v. Additional District Judge (2000 Y L R 537).

7. Since Nikah Nama qua the second marriage of respondent No.3 with Mst. Shaheen Bibi was not put to respondent No.3 during the course of evidence, therefore, the submissions of the learned counsel for the petitioner that case be remanded back to the learned trial court for decision afresh on the issue of dower after taking into consideration the provisions of section 6(5) of the Muslim Family Law Ordinance, 1961, is appreciable.

8. Consequently, this petition is **partially accepted** and the judgments & decrees of both the courts below qua the amount of dower are set aside and the matter is remanded back to the learned trial court for decision afresh on the issue of dower, **within two months** of the receipt of this order, in view of section 6(5) of the Ordinance *ibid*, the case-law referred in the preceding paragraph and the fact

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of admission of respondent No.3 regarding divorce to the petitioner in the subsequent Nikah Nama. The findings of both the courts below on the rest of issues are upheld.

**(SHUJAAT ALI KHAN)
JUDGE**

Approved for Reporting

JUDGE

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