

**IN THE LAHORE HIGH COURT,  
BAHAWALPUR BENCH, BAHAWALPUR.**

**ORDER SHEET.**

**JUDICIAL DEPARTMENT**

**Writ Petition No.6399 of 2013**

**Mst. Uzma Bibi      Versus      Additional District Judge, etc.**

S. No. of order/ Proceedings	Date of order/ Proceedings	Order with signature of Judge, and that of Parties of counsel, where necessary.
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24.01.2017 Mr. Rashid Mehmood Naich, Advocate for the petitioner.  
Mian Muhammad Bashir, Advocate for respondent No.2.

Through this common order, I intend to dispose of Writ Petition No.6399 of 2013 titled "Mst. UZMA BIBi v ADDITIONAL DISTRICT JUDGE, ETC." and Writ Petition No.331 of 2014 titled MUHAMMAD SHAFIQUE v ADDITIONAL DISTRICT JUDGE, ETC." arising out the same judgments and decrees.

2. The petitioner has called in question the legality and vires of the judgment and decree dated 03.09.2013, handed down by the learned Additional District Judge, Ahmadpur East, District Bahawalpur, by virtue of which appeal filed by respondent No.2 was partially accepted and modified the decree passed by learned Judge Family Court.

3. Briefly, the facts of the case are that petitioner got married with respondent No.2 on 27.07.2009 and at the time of Nikah, cash to the tune of Rs.5000/- one house consists of five marla situated in Millat Colony,

Bahawalpur valuing Rs.15,00,000/- 10 tola gold ornaments valuing Rs.400,000/- was fixed as dower which was not paid. Further averred that at the time of marriage, parents of petitioner gave dowry articles detail of which has been given in para 2 of the plaint worth valuing Rs.6,60,000/-. It was further alleged that the petitioner started living with respondent No.2 who habitually gave beatings to her and ultimately turned out the petitioner from his house in wearing apparels. The petitioner filed suits for recovery of dower, dowry articles and maintenance titled "Mst. UZMA BIBI v MUHAMMAD SHAFIQUE". Contrary to this, respondent No.2 filed suit for restitution of conjugal rights titled "MUHAMMAD SHAFIQUE v Mst. UZMA BIBI". The said suits were contested by the opposite parties respectively. The learned Judge Family Court after framing of issues, recorded evidence led by both the parties and proceeded on to decree the suit filed by the petitioner and dismissed the suit filed by respondent No.2, vide judgment and decree dated 08.05.2012 which were assailed in appeal by both the contesting parties and the learned lower appellate court vide impugned judgment and decree dated 03.09.2013 partially set aside the decree granted in favour of the petitioner.

4. Learned counsel for the petitioner contends that act of learned lower Court while partially setting aside the well-reasoned judgment and decree of learned Family Court and that too without appreciating the evidence available on record is not warranted by law. Learned counsel for the petitioner while making reference to the entries of Nikah Nama submits that learned lower appellate court has also erred in law while holding that no cogent evidence with regard to the gold ornaments as deferred dower is available on record.

5. On the other hand, learned counsel for the contesting respondent while controverting the submissions made by learned counsel for the petitioner, defended the impugned judgment and stated that it was passed according to facts and law and there was no

6. After hearing learned counsel for the parties I have gone through the record.

7. As the petitioner is aggrieved of judgment passed by the appellate court by modifying the judgment of the trial court, it was the case of the petitioner that the appellate court was not justified to modify the claim of the petitioner viz: dower, maintenance and dowry articles.

8. Before dealing the above said issues it is better and appropriate to deal these terms in a seriatim.

The term 'Dower' under discussion needs proper interpretation so before evolving the issue in hand it is aptly to know about the etymology of the term "Dower" which has been described by the various international jurists, including Muslim jurists particularly, one renowned name i.e. D.F. Mulla.

"Dower is sum of money of other property which the wife is entitled to receive from the husband in consideration of marriage".

*"Mahr is a token of love and assurance given by the groom to his would be wife at the time of marriage".*

*Allah (SWT) said "And give unto the women (whom ye marry) free gift of their marriage portions. But if they of their own accord remit unto you a part thereof, then ye are welcome to absorb it (in your wealth)" (4:4)*

9. In Islam the dower has been elaborately defined by the different jurists but we can take guideline from the precepts of Hazrat Muhammad ﷺ. Now in order to thresh the word dower, which contains two divisions i.e. PROMPT DOWER AND DEFERRED DOWER.

PROMPT DOWER: (Mehr-e-Muajjal); Forthwith, immediate before consummation. Every dower which becomes due at the time of marriage is called dower. The moment Nikah is completed this dower becomes payable no matter the marriage has not been consummated yet but if husband pronounces divorce without consummation wife shall then have to give half

of the dower back to him. Husband is required to pay the dower at demand made from wife and in case of failure to pay wife can knock the doors of justice to recover it.

DEFERRED DOWER: (Mehr-e-Mawajjal);

subsequent, after consummation. Payable on demand. It is laid down in Hadaya that when the payment of dower depends on the happening of some event or on the accruals of anytime this is called deferred dower. Such dower may become payable at the time of dissolution of marriage or on the happening of some event or at the expiry of a particular period.

10. The term dower has been defined in Law Lexicon as under:

*“According to English Law dower in its proper sense means applicable only to real property and to the widow’s life estate therein, but it is sometimes applied in statutes, wills or contracts to a widow’s share in the personal property of her deceased husband”.*

11. From the perusal of the contents of the record it is crystal clear that respondent No.2 failed to cross-examine the plaintiff about the entries of Nikah-Nama, it is well established principle of law that when a person fails to cross-examine the witness on specific portion, it would be considered to admitting his statement as correct. Reference in this regard can be made to “ZAFAR IQBAL v IMTIAZ HUSSAIN PHULPOTO” (1986 MLD 2001),

“LAND ACQUISITION COLLECTOR, WAPDA SCARP-VI, RAHIMYAR KHAN and another v QURESH MUHAMMAD and 17 others” (1990 MLD 2123) and “REHMAN ULLAH v WAZIRZADA” (2011 YLR 3045). Thus, in the case in hand respondent No.2 could not properly substantiate the contents of the Nikah and as such the learned appellate court arbitrarily acted in the matter while modifying the judgment without getting through every inch and aspect of the case.

12. Now it is the case of respondent No.2 that he intended to rehabilitate his matrimonial tie with the petitioner, so he filed suit for restitution of conjugal rights but from the other side he could not substantiate the stance given by the petitioner that when she raised demand of her dower as incorporated in the Nikah Nama, respondent No.2 became furious and in order to quench his personal vendetta ousted the petitioner from her marital domicile, and so she was constrained to file the suit for recovery of the dower, maintenance and dowry articles. She also properly deposed in her statement when she appeared as PW1 that on raising the demand of dower her husband adopted cruel attitude and nourished grudge against her and kicked her out from his house. This aspect of evidence was not properly scanned by the learned appellate court and without any

justification upset the findings of the learned Judge Family Court which were recorded on the facts and circumstances.

13. According to the contents and definition of dower asserted (supra) it was not mandatory that there must be a divorce between the parties or dissolution of marriage then the wife can claim dower, it is against the spirit of ordains of Qur'an and precepts of Prophet ﷺ because when the marriage accrued between the parties it is the vested right of a woman to take dower forthwith but it was subsequently provided a convenience to the man by bifurcating the term dower as prompt and deferred. It does not mean that it gives liberty to a man and excuse that he intends to rehabilitate matrimonial life. It is suffice to give consideration to the woman in the shape of dower because she completely surrenders her corpse before man, including her chastity, youth and loyalty, so, in the case in hand the learned appellate court did not even bother to take into considerations the settled norms and in a slip shot manner delivers the judgment and erroneously set aside the judgment passed by the learned trial court.

14. Record transpires that petitioner-plaintiff produced receipts of dowry articles to substantiate her

claim. In view of the customs of our society every parents gives dowry articles to their daughters according to their limits and resources. The learned trial court rightly concluded issues i.e. dower, dowry articles and maintenance keeping in view the status of the parties and entries contained in the Nikah-Nama whereas the learned appellate court without applying its judicious mind modified the well-reasoned judgment of learned trial court.

15. So far as the claim of respondent No.2 with regard to institution of suit for restitution of conjugal rights is concerned, it appears that it was just an attempt to hamper the lawful rights of the petitioner and used the *modus operandi* in order to deprive of her vested rights. If respondent No.2 was sincere in reconciliation he would have paid the dower to the petitioner as per commitment incorporated in the Nikah Nama. Thus, the intention of respondent No.2 proved otherwise and speaks volume about his credibility.

16. Learned counsel for respondent No.2 has failed to point out any illegality, material irregularity or jurisdictional error on the part of learned Judge Family Court.

17. In view of above discussion, the instant petition is allowed and the judgment and decree dated 03.09.2013

of appellate court is set aside restoring the judgment and decree dated 08.05.2012 passed by learned Judge Family Court.

**(Tariq Iftikhar Ahmad)**  
**Judge.**

**APPROVED FOR REPORTING.**

A.D. Mian\*