SUPREME COURT OF AZAD JAMMU & KASHMIR

[Appellate Jurisdiction]

PRESENT:
Ch. Muhammad Ibrahim Zia, CJ
Raja Saeed Akram Khan, J.
Ghulam Mustafa Mughal, J.

Civil Appeal No.102 of 2017
(PLA filed 4.9.2015)

Shahzad Rauf s/o Sardar Abdul Rauf Khan caste Sudhan r/o Gorah Dewan, Tehsil Pallandari, District Sudhenuti.

.... APPELLANT

v e r s u s

Shabana Yasmin w/o Shahzad Rauf d/o Manzoor Khan caste Sudhan r/o Mohallah Chandena Mohra Rawalakot, District Poonch.

..... RESPONDENT

(On appeal from the judgment & decree of the Shariat Court, Dated 4.8.2015 in Civil Appeal No.85 of 2014)

FOR THE APPELLANT: Sardar Muhammad Ejaz Khan, advocate.

FOR THE RESPONDENT: Sardar Shamshad Hussain Khan, advocate.

Date of hearing: 10.5.2017

JUDGMENT:

Ghulam Mustafa Mughal, J.—The captioned appeal with our leave has been directed against the judgment and decree of the

Shariat Court dated 4.8.2015 in Civil Appeal No.85/2014.

2. The precise facts forming background of the captioned appeal are that the respondent, herein, filed four suits; first for dissolution of marriage, second for recovery of the maintenance allowance @ Rs.15,000/- per month, third for recovery of the dower amount to the tune of Rs.600,000/- and fourth for recovery of the dowry articles or in the alternate the amount of Rs.89,135/-, in the Court of Senior Civil Judge/Judge Family Court Rawalakot on 22.11.2012. The suits were contested by the defendant, appellant herein. A counter suit for restitution of conjugal rights was also filed by the appellant, herein, in the same Court. All the suits were consolidated by the Judge Family Court and after providing the parties an opportunity of leading evidence, the decree for dissolution of marriage on the ground of cruelty was passed in the suit for dissolution of marriage. A decree for dower amounting to the tune of Rs.600,000/-, a decree for recovery of dowry articles, to the tune of Rs.89135/- and a decree for maintenance allowance amounting to Rs.75,000/- was also passed in favour of the plaintiff-respondent and her minor son. The cross suit filed by the plaintiff-appellant for restitution of conjugal rights was dismissed. Feeling aggrieved from the judgment passed by the Family Court, the appellant, herein, challenged the legality and correctness of the same by way of appeal before the Azad Jammu & Kashmir Shariat Court on

15.9.2014. After hearing the parties, through the impugned judgment dated 4.8.2015, the learned Shariat Court has dismissed the appeal.

3. Sardar Muhammad Ejaz Khan, advocate appearing for the appellant, vehemently argued that the ground on which the decree for dissolution of marriage has been passed by the Family Court, was not proved through any cogent evidence, hence the judgment is capricious, arbitrary and erroneous. The learned advocate by referring to the evidence produced by the plaintiff, respondent herein, in support of her claim, submitted that at the most a decree for dissolution of marriage on the basis of *Khula,* in the circumstances of this case, could have been passed but the learned Judge Family Court failed to consider this aspect of the case and has not attended to the arguments advanced before him in their true perspective. The learned advocate further argued that the suit for recovery of the dower was also not maintainable because the case of the plaintiff-respondent before the trial Court was that the dower was paid in shape of gold ornaments, which were snatched by the defendant-appellant while throwing her out of his home. The learned advocate maintained that the dower once paid, cannot be recovered by filing a suit before the Family Court because the same becomes a civil liability and redressal of such grievance can be had from the civil Court only. The learned advocate further argued that the decree for maintenance could also not be granted in view of the

conduct of the plaintiff-respondent, because she has herself left the home of the appellant, herein. According to the learned advocate, the desertion in this case was not willful and the same cannot be attributed to the appellant, herein, hence award of the maintenance allowance was illegal. The learned advocate contended that the decree passed for dowry articles is also illegal and against the record and the evidence. The learned advocate submitted that dismissal of the suit for restitution of conjugal rights was not proper as the cruelty was not proved, thus, the wife was under obligation to perform her matrimonial obligations. The learned advocate, in support of his submissions, referred to and relied upon the following cases:-

i. *Azhar Bashir vs. Sadia Shafique* [2015 SCR 521],

ii. *Madhia Aftab & 2 others vs. Khawar Hanif* [2006 SCR 190], and

iii. an unreported judgment of this Court in the case titled *Benazir vs. Khalil Ahmed & 2 others* (Civil Appeal No.285/2014, decided on 26.3.2015).

In *Azhar Bashir vs. Sadia Shafique* [2015 SCR 521], it was observed at page 530 of the report that “It is correct that cruelty is not confined only to physical torture. We have observed in the case reported as *Mst. Amreen vs. Muhammad Kabir* [2014 SCR 504] that the cruel attitude is not confined only to the extent of physical violence, it includes mental torture, hateful attitude of husband or other inmates of the house and also includes the

circumstances in presence of which the wife is forced to abandon the house of her husband."

Again, at page 432 of the report, it was observed that "It is settled law that dower once paid, cannot be demanded for second time through the Family Court. The Family Court has observed that there is no evidence that ornaments were snatched by the husband. For the sake of arguments if it is assumed that the ornaments were snatched, then too, the plaintiff cannot demand the same as dower, some other remedy may be available to the party."

The facts of *Madhia Aftab & 2 others vs. Khawar Hanif* [2006 SCR 190], are that a suit for recovery of ornaments worth Rs.2,50,000/- was filed before the District Judge, which was returned for presenting the same before the proper forum while relying on rule 6 of the Family Courts Rules, 1965 and rule 4 of the Family Courts Procedure Rules, 1988. The order was challenged through revision petition before the Azad Jammu & Kashmir High Court, which was accepted and it was observed that the controversy raised in the suit was of civil nature and is governed by the provisions of sections 19 and 20 of the Civil Procedure Code. It was further observed that it does not fall within the category of cases, triable by the Family Court under section 5 of the Family Courts Act. It was observed that "We agree with the learned Judge of the High Court that suit is of civil

nature and is governed by the provisions of sections 19 and 20 of the Code of Civil Procedure. It does not fall within the category of the cases which fall within the jurisdiction of the Family Court under section 5 read with schedule of the Family Courts Act."

In the case titled *Benazir vs. Khalil Ahmed & 2 others* (Civil Appeal No.285/2014, decided on 26.3.2015), it has been opined by this Court that "It is evident from para 4 of the plaint that the ornaments were given to her and she was also given the possession of the room measuring 12x12 feet, meaning thereby, that the dower which he has promised to pay, had been paid to her which was subsequently snatched. It is settled law that dower can only be paid once and subsequently if the dower, which consists of some items, is snatched, then the suit for recovery of dower in the Family Court is not maintainable, it is only the civil Court which has jurisdiction in the matter and a wife can file a suit for recovery of the items in the civil Court because after payment of dower, these were her property. The learned Chief Justice of the High Court accepted the appeal in misconception that the dower was not paid and suit is for recovery of the dower. The judgment of the High Court is not sustainable."

4. Conversely, Sardar Shamshad Hussain Khan advocate, appearing for the respondent, contended that the appeal is not

competent because the affidavits filed by the appellant in support of the petition for leave to appeal and the service upon the respondent have been filed by the advocate, who was not engaged by the appellant, herein, at the relevant time. The learned advocate argued that the affidavits have been sworn by Sardar Nazar Muhammad Khan, advocate, whereas the same are signed by Sardar Muhammad Ejaz Khan, advocate, who was not engaged by the appellant, herein, at the relevant time, hence these cannot be considered to have been filed in accordance with the provisions contained in Order XIII, rule 10 and 4 and Order XVII, rule 4 of the Azad Jammu & Kashmir Supreme Court Rules 1978. In support of his submissions, the learned advocate placed reliance on the case reported as *Muhammad Hanif vs. Muhammad Bashir* [2003 SCR 489]. The learned advocate further argued that the appeal is not maintainable for another reason because the copies appended with the memorandum of appeal had been obtained by an unauthorized person, who was not the counsel for the appellant on the relevant date i.e. 17.8.2015. The learned advocate argued that the copies, in fact, have been obtained on 17.8.2015, the date on which Sardar Muhammad Ejaz Khan, advocate, was not engaged by the appellant, rather he was engaged on 18.8.2015, the date on which the power of attorney was signed by him, hence the appeal is not competent in view of the provisions contained in Order XIII, rule 3 of

the Azad Jammu & Kashmir Supreme Court Rules 1978. In this regard, reliance was placed on the case reported as *AJ&K Government & 2 others vs. Abdul Salam Butt & 3 others* [2003 SCR 287] and *AJ&K Government & 2 others vs. Ch. Khadim Hussain ex SDO* [2005 SCR 211]. The learned advocate further argued that cruelty was proved by the plaintiff-respondent through cogent evidence, which remained unrebutted and it was obligatory for the Family Court to grant the decree for dissolution of marriage on the ground of cruelty, which has rightly been granted. The learned advocate argued that the Judge Family Court cannot be directed to give a judgment on the desire and choice of the appellant. The learned advocate argued that the decrees passed in the other suits are also supported by the evidence, which is well appreciated and remained unchallenged in the cross-examination. He argued that the judgment of the Shariat Court is also unexceptional and does not suffer from any legal infirmity. He argued that reappraisal of evidence is not the function of this Court, therefore, the concurrent finding of facts returned by the Courts below cannot be disturbed. The learned advocate argued that the dispute of dower whether paid or unpaid whenever arises, is always adjudicatable by the Family Court and jurisdiction of the civil Court in this respect is barred, because the Family Court is a special forum and is created by the legislature with a specific purpose and intent, as is evident from its

preamble. In support of his submissions, the learned advocate referred to and relied upon the following cases:-

i. *State vs. Lt. Col. (Retd.) Muhammad Mansha Khan & 16 others* [PLD 1984 SC (AJ&K) 56],
ii. *Ahmed Zaman Khan vs. the Government of Pakistan & 13 others* [PLD 1977 Lahore 735],
iii. *The State & another vs. Mirza Javed Iqbal* [2001 SCR 1],
iv. *Muhammad Sabil Khan & another vs. Saima Inshad* [2014 SCR 718],
v. *Muhammad Tariq vs. Mst. Shaheen & 2 others* [PLD 2006 Peshawar 189],

In *State vs. Lt. Col. (Retd.) Muhammad Mansha Khan and 16 others* [PLD 1984 SC (AJ&K) 56], in para 16 of the report it was observed that "It may be stated here that the preamble of a statute usually states general object and intention of the Legislature in enacting it. Enacting part is not exactly co-executive with the preamble. Former, if expressed in clear and unequivocal terms, overrides the latter…."

In *Ahmad Zaman Khan vs. the Government of Pakistan and 13 others* [PLD 1977 Lahore 735], the rules of interpretation of statute were noticed and it was observed in para 20 of the report that "There is no doubt that the preamble cannot control, restrict, extend or otherwise add to or detract from a substantive provision of the Statute, where it is expressed in clear unambiguous language, but where such position does not exist in a particular Statute like the present one, preamble of the Act sheds useful light as to what a

Statute is intended to achieve. In many judicial authorities preamble has been referred to with advantage as an aid to the construction of the main provisions of the Statute. It is accepted as legitimate aid to construction. It is key to a Statute and affords a clue to its scope, particularly where the words constructed by themselves are fairly capable of more than one construction…."

The rule of law laid down in the case reported as *The State and another vs. Mirza Javed Iqbal* [2001 SCR 1] is not attracted, as the facts of that case were totally different.

In *Muhammad Sabil Khan & another vs. Saima Inshad* [2014 SCR 718], it was observed by this Court that for proving cruelty it is not necessary that physical assault or injury is required to be proved rather the conduct and behavior of the husband can also be treated by the Court as cruelty.

5. In rebuttal, Sardar Muhammad Ejaz Khan, advocate for the appellant, submitted that he was engaged by the appellant, herein, on 17.8.2015 and has obtained the copies and also filed affidavits but inadvertently the name of Sardar Nazar Muhammad Khan, advocate, was entered in the power of attorney as well as in the affidavits, which is a human error and can be condoned and the appeal cannot be thrown out for this defect. The learned advocate submitted that under section 3 of the Dowry and Bridal Gifts

Restriction Act, 1976, the dowry cannot be given more than Rs.10,000/-, therefore, the respondent cannot claim dowry and in the alternate a sum of Rs.89,135/-, thus the decree of dowry has been passed by the Family Court in violation of the law.

6. We have heard the learned advocates for the parties and gone through the record of the case.

7. Firstly we would like to attend the objection regarding maintainability of the appeal, raised by Sardar Shamshad Hussain Khan, advocate, for non-compliance of the provisions of Order XIII, rule 3 of the Azad Jammu & Kashmir Supreme Court Rules 1978. The objection has been raised in the light of the rule of law laid down in the cases referred to hereinabove. In the said cases, this Court has considered the provision of Order XIII, rule 3 of the Azad Jammu & Kashmir Supreme Court Rules 1978 and while considering sub-rules (i) and (ii) of rule 3 of the said order, it has been opined that for filing a petition for leave to appeal before this Court, the petitioner has to obtain the copies in his own name or in the name of his advocate, attorney or agent. The view has been reiterated and followed in a number of cases, which need not be mentioned here for the sake of brevity. Some of those cases have also been referred to and relied upon by Sardar Shamshad Hussain Khan, advocate. Our appreciation of the record leads to the conclusion that the

objection is of technical nature and the other provisions of the rules referred to and relied upon by Sardar Shamshad Hussain Khan, advocate, are not attracted in this case. We are of the considered opinion that on the ground of procedural technicality, the relief cannot be refused to a party, especially in the case in hand. Sardar Muhammad Ejaz Khan, advocate, as per record, has been engaged by the appellant, herein, as counsel, on 17.8.2015. He has obtained the copies on the same date, however, the power of attorney has been signed by him on 18.8.2015. In the affidavits, the name of Sardar Nazar Muhammad Khan, advocate, has been entered inadvertently, which is a human error because the affidavits required to be attached with the petition for leave to appeal as well as the service, have been obtained by Sardar Muhammad Ejaz Khan, advocate. He has also signed the affidavits as deponent, hence entering the name of Sardar Nazar Muhammad Khan, advocate, who was counsel for the appellant before the Shariat Court, does not render the petition for leave to appeal/appeal incompetent on the strength of the case-law relied upon by Sardar Shamshad Hussain Khan, advocate.

As has been stated hereinabove that the defect is of technical nature, therefore, this objection does not preclude the Court from deciding the case on merits, hence repelled. We may refer some cases in support of our conclusion. In *Ghulam Mohi-ud-*

Din and another vs. Noor Dad and 4 others [PLD 1988 Supreme Court (AJ&K) 42], the provisions of Order III, rules 1 and 4 have been considered by this Court and it has been observed that absence of signatures of the plaintiff on the plaint is a formal defect rectifiable at any stage. It was further observed that the Court has power to call to plaintiff to sign the plaint to do away with the defect.

In *Fozia Hussain Abbasi vs. The Nomination Board through Chairman and 4 others* [1995 CLC 1761], this Court at page 1765 of the report, observed as under:-

> "In reply, Raja Muhammad Hanif Khan, Advocate, the learned counsel for respondents Nos. 2 and 3, has contended that he gave the 'Vakalatnama' to the father of one of the petitioners-respondents after filling in the same and directed him to get it signed by the concerned but he failed to do the needful by getting their signatures. But at the time of filing of the writ petition the said defect did not come to his notice due to oversight. However, the learned counsel maintained, when the defect was noted a duly signed 'Vakalatnama' was placed on the record. The learned counsel has contended that such a mistake was not fatal to the institution of the writ petition and was merely an irregularity which could be subsequently cured. The learned counsel has relied upon a case of this Court reported as *Muhammad Riaz Khan vs. Sardar Rahim Dad* [PLD 1990 SC (AJ&K) 13], wherein it has been held that if a power of attorney is not signed by a party, his attorney or his counsel due to oversight or inadvertence, the defect is an irregularity which is curable under section 196 of the Contract Act, especially so when the act of the counsel is owned by the party for whom he has acted as counsel. The perusal of aforesaid authority shows that while giving the aforesaid view, a number of authorities from Pakistan and

> Indian jurisdiction were considered and relied upon. Thus, we are of the view that the absence of the signatures of the petitioners-respondents on the 'Vakalatnama' was merely an irregularity in the circumstances and stood cured after filing of the duly signed 'Vakalatnama'. Hence, the argument that the writ petition should have been dismissed due to the absence of their signatures on the 'Vakalatnama' has no substance and it herby repelled."

Same view has been taken in *Nargis Begum and 5 others vs. Muhammad Ibrahim and others* [PLJ 1982 SC (AJ&K) 35].

In *Muhammad Munshi and others vs. Mst. Rakiya Bi* [1990 CLC 301], a learned single Judge of the High Court, while resolving the identical proposition, has observed in paragraphs 3, 4 and 5 as under:-

> "3. The appointment of counsel to prosecute the suit is contemplated under Order III, Rule 4 of the Code of Civil Procedure. The provisions of Rule 4 postulate that no pleader shall act for any person in the Court, unless he has been appointed for the purpose by a document in writing, signed by such person or by his recognized agent or by some other person duly authorized by or under a power of attorney to make such appointment. It further lays down that the document appointing a counsel shall be filed in the Court and shall be presumed to be in force until revoked or death of the client or counsel. It is this condition recognized by law which requires that a counsel appearing on behalf of a party has to submit 'Vakalatnama' duly signed by the party to whom he represented.
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> 4. In this case, the 'Vakalatnama' as postulated under Rule 4 of Order III of the Code of Civil Procedure is accepted to have been filed in the Court. The only objection of the defendants is that the document was not signed by the

> plaintiff or that the thumb-impression on it, was not that of the pre-emptor-plaintiff. The proposition deserves its examination from various angles.
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> 5. The first act of the counsel in the case is that he designed the pleadings of the plaintiff, signed and verified it. Rule 14 of Order VI postulates that every pleading shall be signed by the party and his pleader. Provided that a counsel may sign the pleadings on account of absence of party or for others good cause. Rule 15 further provides that every pleading shall be verified by the party or by some other person acquainted with the facts of the case. It is well-accepted rule of procedure applicable to the signing and verification of pleadings that an omission to sign and verify was only an irregularity curable at any stage of the proceedings and not an illegality likely to result in dismissal of the suit. In this case, in the alternative, if it is believed that counsel was not duly engaged, on account of absence of signatures of the plaintiff, the inference would be that the signatures and verification of the pleadings was not that of an authorized person. In other words, it shall be deemed that the pleadings was either signed nor verified. Therefore, at the best, in such a situation, the Court has to exercise its discretion and may call the plaintiff to sign and verify the pleadings at subsequent stage. For, such a formal defect is certifiable at any stage. Therefore, even on acceptance of the proposition raised by the defendants, the suit is not liable to be dismissed on account of such defect."

In view of the afore-stated position of law, the objection raised by Sardar Shamshad Hussain Khan, advocate for the respondent, with regard to the maintainability of the petition for leave to appeal/appeal is hereby repelled for having no substance in it.

8. The moot point, which has been argued by the learned advocate for the appellant is that whether, after snatching the gold

ornaments by the husband, the Family Court has no jurisdiction to adjudicate upon the same and the judgment passed by the said Court is without jurisdiction? We have paid due attention to the contentions of the learned advocates representing the parties and have also considered the relevant law on the subject. Before proceeding further, it may be stated that in Azad Jammu & Kashmir, the Family Courts have been established with a specific purpose and intent by the Government. The preamble of the Azad Jammu & Kashmir Family Courts Act, 1993 (Act XI of 1994), reveals that the Family Courts have been established for expeditious settlements and disposals of the disputes relating to the marriage and family affairs and all the matters connected therewith. The jurisdiction of the Family Courts has been extended with regard to all the matters listed in the schedule, which reads as under:-

> "**5. Jurisdiction:-** The Family Courts shall have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in the schedule."
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> **"SCHEDULE**
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> 1. Dissolution of marriage.
> 2. Dower.
> 3. Maintenance.
> 4. Restitution of conjugal rights.
> 5. Custody of children.
> 6. Guardianship.
> 7. Jactitation of marriage.
> 8. Dowry."

We are, therefore, of the considered opinion that the suits for dissolution of marriage, dower, maintenance, restitution of conjugal rights, custody of children, guardianship, jactitation of marriage and dowry are exclusively triable by the Family Courts and not by the civil Courts. No doubt, civil Courts are the Courts of ultimate jurisdiction and are empowered to decide the suits of civil nature but their jurisdiction can be taken away by the express provision of law or impliedly, as has been commanded in section 9 of the Civil Procedure Code, which postulates that the Courts have jurisdiction to try all the suits of civil nature, except the suits of which their cognizance is either expressly or impliedly barred. By the enactment of Family Courts Act, while establishing special forum i.e. the Family Court, the jurisdiction of the civil Courts is excluded. We are also of the view that the dower once fixed between the parties would remain as a dower and neither would it undergo any change, nor will it be transformed into civil liability, in case, the same is snatched or forcibly taken away by the husband from the wife. The dower, if paid to the wife and snatched by the husband, would automatically restore its liability to repay the same and the matter would be triable by the Family Court alone. The proposition has been considered by a division bench of the Peshawar High Court in the case reported as *Muhammad Tariq vs. Mst. Shaheen and 2 others* [PLD 2006 Peshawar 189], by observing that once dower was

paid, then it would become the property of wife as her complete domain was established over it. The act of its snatching would amount to disposal of her property and the Family Court alone would have jurisdiction to take cognizance for the recovery of the same. The proposition before the division bench was that once dower is paid to the wife, the liability of husband is discharged and subsequently its snatching by the husband does not fall within the jurisdiction of the Family Court under section 5 read with the schedule to the West Pakistan Family Courts Act 1964 and that being a civil liability, the wife has to file a suit for recovery of the same before the civil Court. The learned division bench after considering the preamble of the West Pakistan Family Courts Act 1964 as well as its schedule, recorded its findings in paragraphs 22 and 23, which speak as under:-

> "22. Under the provisions of section 9 of the C.P.C. civil Courts have jurisdiction to decide all matters of civil nature unless its jurisdiction is either impliedly or expressly excluded. The provision of section 5 of the Family Court Act has conferred exclusive jurisdiction upon the Family Court in the matter of recovery of dower whether unpaid or paid but snatched/taken back by the husband. When Statutory Law itself has not drawn any distinction in this regard then Court is not supposed to introduce any change of drastic nature by taking away the jurisdiction of the Family Court vested in it which in no manner is dependent on happening of such event, therefore, in our humble opinion the view taken in Allauddin Arshad's case (supra) is not based on correct construction of the Statutory Law on the subject

> as the same may create inexplicable complication in the trial of matr5imonial matters due to unforeseen eventualities and may result into multiplicity of litigation before two different forums. For instance if the paid dower is snatched by the husband, the wife in that case would be entitled not to perform her conjugal obligations and may opt for separate living. In that cases she would be entitled to maintenance allowance and if she bring a suit in the Family Court for its recovery the husband may competently raise a dispute/issue regarding the jurisdiction because granting of maintenance would be subject to the decision of the civil Court on the issue of snatched dower. The law does not provide protection or premium to the usurper to pirate but always favour the victim/the aggrieved party thus, the husband at fault cannot be treated with favour either on point of law in such case.
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> 23. Learned counsel for the petitioner after extensive deliberation on the law point ultimately conceded in a fair and frank manner that the District Appeal Court has committed legal error by refusing to exercise jurisdiction vested in it with regard to the dower and for this reason the impugned judgment is not sustainable being based on incorrect view of law."

In *Muhammad Ajaib vs. Tasleem Wakeel* [2013 MLD 305], this Court has already taken the similar view by observing as under:-

> "The interpretation of section 13 of the Family Courts Act, 1993, demands that the whole scheme of law laid down in this Act along with preamble has to be considered and appreciated. The intention of the legislature is clearly ascertainable that the purpose of the enforcement of the Family Courts Act is; expeditious settlement and disposal of the disputes relating to marriage and family affairs and the maters connected therewith. Once a question of fact has been determined by the Family Court after due

> appreciation of evidence, dragging the parties on the same question of fact in civil suit, amounts to defeat the very purpose of this special law. Therefore, in our considered view the matter which falls within the jurisdiction of the Family Court relating to the payment of money is determined by the Family Court and a specific order is passed in this regard, such order will fall within the scope of section 3 and the same can be enforced or executed by the Family Court or if so required under the provisions of subsection (4) of section 13 by any other civil Court if so directed by special or general order of District Judge. Therefore, the impugned judgment of the Shariat Court is modified to the extent that for recovery of the amount of Khula, determined by the Family Court, separate civil suit is not required and such order is executable under the provisions of section 13 of the Azad Jammu & Kashmir Family Courts Act, 1993."

In *Liaquat Ali vs. Additional District Judge, Narowal & 2 others* [1997 SCMR 1122], a suit for possession was filed by the wife for the land given to her as dower vide "Kabinnama" and "Nikahnama". A question about the jurisdiction of the Family Court to decree the suit for possession of the land was raised on the ground that the Family Court was not empowered in terms of section 5 of the West Pakistan Family Courts Act, 1964, for entertaining and deciding such a suit. The decree was granted by the Family Court and the same was maintained up to the High Court. The apex Court of Pakistan refused to grant leave to appeal against the judgment.

The matter was also considered in *Mst. Razia Begum vs. Jang Baz & 3 others* [2012 CLC 105] and it was observed by the

Lahore High Court that the suit for possession of immovable property given to the wife as dower by her husband and father-in-law was maintainable.

In *Ayesha Bibi vs. Muhammad Faisal & 2 others* [PLD 2014 Lahore 498], identical situation was resolved and reliance was placed on *Muhammad Arif & others vs. District & Sessions Judge, Sialkot & others* [2011 SCMR 1591].

In view of the aforesaid settled position of law, it can safely be concluded that the dower once fixed between the spouses remains dower and even after its payment, if any dispute arises or the same is snatched by the husband, the Family Court alone has got jurisdiction to entertain and decide the matter. The suit before the Family Court for recovery of the dower will also be competent against any person, who has stood as a guarantor for the payment of the dower, however, we may clarify that if any dispute arises in respect of the property given in lieu of the dower, with any person other than the husband or the guarantor, then, of course, the case would be decided by the civil Court. The view taken by this Court in the case titled *Benazir vs. Khalil Ahmed & 2 others* (Civil Appeal No.285/2014, decided on 26.3.2015), so far it runs counter to the view taken in the case in hand, is hereby overruled.

9. The contention of Sardar Muhammad Ejaz Khan,

advocate, appearing for the appellant, that cruelty was not proved through any cogent evidence, hence it was enjoined upon the Family Court to pass a decree on the ground of *khula*, in the circumstances of the case is devoid of any force. For proving cruelty, physical assault or torture is not necessary. The conduct of the husband, which includes abusive and insulting language to the wife, can also be treated as cruelty. In her claim, Shabana Yasmin, plaintiff-respondent, has taken a categorical stand about the conduct of the husband, making her life miserable, which has not been rebutted. Even no evidence has been led by the husband in rebuttal. The statement of the plaintiff-respondent has not been cross-examined and as per law, when a part of the statement of a witness is not challenged in cross-examination, the same would be deemed to have been admitted, hence the decree of dissolution of marriage on the ground of cruelty has rightly been granted by the Family Court.

10. The contention of the learned advocate for the appellant that no decree for maintenance could have been granted by the Family Court, is also devoid of any force. The plaintiff-respondent left the home of her husband due to cruel treatment, therefore, it was obligatory for the husband to pay her maintenance.

11. We have also not found any defect in the decree granted for dowry articles.

The upshot of the above discussion is that finding no force in this appeal, the same is hereby dismissed.

JUDGE CHIEF JUSTICE JUDGE

Muzaffarabad

Date of announcement: 19.05.2017