

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Civil Appeal No. 295 of 2018

(PLA Filed on 20.8.2018)

Ibrar Hameed s/o Abdul Hameed Khan, caste
Awan, r/o Singola, Tehsil Rawalakot, District
Poonch.

.... APPELLANT

VERSUS

1. Mst. Shazia Hassan d/o Hassan
Muhammad Khan w/o Ibrar Hameed,
2. Hassan Muhammad Khan s/o Bilal Khan,
3. Mst. Nafees Fatima w/o Hassan
Muhammad Khan,
4. Muhammad Arif s/o Muhammad Siddique,
5. Noor Ullah (Noor Muhammad) s/o Wazir
Muhammad Khan, caste Awan, r/o Singola
Hima Nari, Tehsil Rawalakot, District
Poonch.

..... RESPONDENTS

(On appeal from the judgment of the Shariat Appellate
Bench of the High Court dated 26.6.2018 in Appeal No.
95 of 2017)

FOR THE APPELLANT: Syed Habib Hussain Shah,
Advocate.

RESPONDENT NO.5: In person.

Date of hearing: 5.12.2018.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal by leave of the Court arises out of the judgment dated 26.6.2018 passed by the learned Shariat Appellate Bench of the Azad Jammu & Kashmir High Court in Family Appeal No. 95 of 2017.

2. The precise facts forming the background of the captioned appeal are that Mst. Shazia Hassan, respondent No.1, herein, filed three suits; one, for recovery of dower amounting to Rs.400,000/-; second, for recovery of maintenance allowance amounting to Rs.3000/- per month from the date of desertion; and the third, for recovery of dowry articles amounting to Rs.60,000/-, against the appellant, herein, in the Court of Additional District & Sessions Judge/Judge Family Court Rawalakot, on 13.04.2017. It was alleged that

marriage between the plaintiff and the defendant was solemnized on 23.11.2016, at village Singola, Tehsil Rawalakot, District Poonch, in lieu of the dower amounting to Rs.500,000/- out of which Rs.100,000/- was paid in shape of the gold ornaments, whereas, Rs.400,000/- was deferred. It was further stated that the relationship between spouses remained pleasant for one month but thereafter the defendant started abusing and maltreating the plaintiff on one or the other false pretext. It was alleged that the plaintiff brought the matter into the notice of the other inmates of the house but to no avail. It was further alleged by the plaintiff/respondent No.1. herein, that she was finally deserted from the home of her husband on 01.01.2017 and know she is living a miserable life at the home of her parents. It was stated that the dowry articles amounting to Rs.60,000/-, given to the plaintiff at the time of *rukhsati*, are in possession of the defendant which may ordered to be recovered. It was further stated that the defendant, in

connivance with the family members, has prepared a false and fabricated *panchayatnama* in order to make the plaintiff forgive the dower, whereas, fact of the matter is that no such *panchayat* was convened. The defendant besides filing written statement to contest the suits, also filed a separate suit for restitution of conjugal rights in the same Court on 23.02.2017, alleging therein, that the defendant went to her parents' home with her brother namely Khizar Basharat Hameed on 02.12.2016, but till then never came back. It was averred that the plaintiff/appellant, herein, made serious attempts to bring her wife back to home and a *panchayat* was also convened in this regard, whereby, it was decided by the notables of the family that the plaintiff is bound to populate with her husband. It was further averred that the defendant has left the home of the plaintiff without any reason. It was prayed that the decree of restitution of conjugal rights may be granted in favour of the plaintiff/appellant, herein, as he wants to

populate her wife. This suit was also contested by the other side by filing written statement, whereby, the claim of the plaintiff was refuted. The learned trial Court consolidated all the suits, framed issues in lights of the pleadings of the parties and asked them to lead evidence in support of their respective stand. At the conclusion of the proceedings, the learned trial Court vide judgment and decree dated 30.11.2017, decreed the suits for dower and maintenance allowance filed by the plaintiff/respondent, herein, in the terms that she is entitled to receive dower amounting Rs.400,000/- and maintenance allowance amounting to Rs.3000/- per month from the date of desertion i.e. 01.01.2017. The suit for recovery of dowry articles was also decreed in favour of the plaintiff, as was claimed. The suit filed by the appellant, herein, for restitution of the conjugal rights was decreed in his favour subject to the condition that the plaintiff shall pay dower and maintenance allowance to the defendant as well

as provide her a separate accommodation. Felling aggrieved from the judgment and decree dated 30.11.2017, the

appellant, herein, filed appeal before the Shariat Appellate Bench of the High Court on 28.12.2017. The learned Shariat Appellate Bench of the High Court, after hearing the parties, has dismissed the appeal.

3. Syed Habib Hussain Shah, the learned Advocate appearing for the appellant, argued that the judgment passed by the learned Family Judge is illegal, erroneous and against the record. The learned Advocate argued that the Family Court has not properly assessed the evidence, which resulted in erroneous judgment and decree. The learned Advocate further argued that respondent No.1, herein, left the home of her husband and remained living with her parents without any justification, hence, she was not

entitled to maintenance allowance. The learned Advocate further argued that that dower was also forgiven by the respondent, hence, no decree could have been passed against the plaintiff-appellant, herein. The learned Advocate argued that the learned Shariat Appellate Bench of the High Court has also not taken into consideration the evidence brought on record by the parties in its true perspective. He argued that the impugned judgment is telegraphic one and is liable to be set aside.

4. Respondent No.5 has filed written arguments on behalf of respondent No.1. It is stated in the written statement that the appellant willfully abandoned respondent No.1 and has not paid the maintenance allowances and she is living with her parents in a miserable condition. It was further stated that at the time of *Nikah*, the appellant under took to pay Rs.3000/- per month

as maintenance allowance in case of desertion but he has not honored his commitment. It is also stated that respondent No.1 is entitled to recovery of dowry articles or amount in lieu thereof.

5. We have heard the learned Advocate representing the appellant and have perused the arguments filed on behalf of respondent No.5 as well as the record of the case. The learned Family Judge after discussing the evidence brought on record on behalf of the parties has opined that the plaintiff-appellant, herein, has not made any serious effort for population of respondent No.1, herein, rather has shown his intention that if the dower is forgiven he would like to divorce her. It is also proved from the record that the dower has not been paid to respondent No.1, herein. The evidence further shows that the appellant, herein, has been found negligent to pay Rs.3000/- as monthly allowance to respondent No.1 in case of willful desertion. The witnesses produced by respondent No.1 namely Abdul Hameed, Muhammad Shakar

and Nazir Ahmed, who duly supported this version of respondent No.1, herein, before the Family Judge. The dowry articles is the right of respondent No.1 and it is proved that those are lying in the house of the appellant, herein. The decree of conjugal rights has been granted to the appellant subject to payment of dower and monthly allowance. We are of the view that no misreading or nonreading of evidence or record has been committed by the learned Family Judge. Though, the learned Shariat Appellate Bench of the AJ&K High Court has not discussed the evidence in detail but it appears that judicial mind has been applied to the facts of the case and the evidence has also been perused. Mere the fact that the evidence has not been reproduced in the judgment is not fatal.

The upshot of the above discussion is that finding no force in this appeal, it is hereby dismissed with no order as to costs.

JUDGE
Muzaffarabad.

CHIEF JUSTICE

