

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, J.
Ghulam Mustafa Mughal, J.

Civil Appeal No. 26 of 2017
(PLA filed on 29.11.2016)

Tariq Husain s/o Nisar Ahmed r/o Manial Color Colony, Tehsil & District Kotli through attorney Nisar Ahmed r/o Manial Color Colony, Tehsil & District Kotli.

.... APPELLANT

VERSUS

1. Asmia Tabraiz w/o Tariq Hussain,
2. Hammad Tariq s/o Tariq Hussain through his real mother, Asmia Tabraiz,
3. Muhammad Asghar s/o Raj Muhammad,
4. Malik s/o Mahando,
5. Arshad Mahmood s/o Tabraiz,
6. Nasreen w/o Arshad Mahmood r/o Manial Color Colony, Tehsil & District Kotli,
7. Tahira, widow of Anwar,
8. Zahida Bibi w/o Khursheed,
9. Zubaida w/o Malik r/o House No. 725 ZA Street No. 41, village Farooqia Dhok Manknal, Rawalpindi.

..... RESPONDENTS

(On appeal from the judgment and decree of the
Shariat Court dated 29.09.2016 in civil appeal No.
06 of 2016)

FOR THE APPELLANT: Ch. Muhammad Ashraf
Ayaz, Advocate.

FOR THE RESPONDENTS: Sardar Muhammad Raziq
Khan, Advocate.

Date of hearing: 25.04.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal by leave of the Court is directed against the judgment and decree dated 29.09.2016 passed by the Shariat Court in civil appeal No. 06 of 2016.

2. The facts necessary for disposal of the captioned appeal are that plaintiff-respondent No.1, herein, Mst. Asima Tabriaz filed two suits in the Court of Senior Civil Judge, Kotli empowered as Judge Family Court on 22.05.2014. Suit No.13/14 was filed for recovery of dower, whereas, suit No. 22/14 was filed for maintenance allowance. In the first suit, it was claimed by the plaintiff-respondent, herein, that

she was married to the defendant-appellant, herein, in accordance with *Shariat* on 25.03.2011. It was stated that 7 tola gold ornaments were given at the time of *Nikah* in lieu of dower and Rs. 3,00,000/- were to be paid by the defendant-appellant, herein, on demand. It was further stated that plaintiff-respondent, herein, populated with the defendant-appellant, herein, and remained performing her matrimonial obligations. It was stated that out of the wedlock, there is a son, namely, Hammad Tariq, who is now in the custody of the plaintiff-respondent, herein. It was further stated that the plaintiff-respondent, herein, previously, filed a suit for maintenance allowance. It was stated that the plaintiff-respondent, herein, has snatched the gold ornaments and subsequently entered into an agreement admitting taking back the same. It was stated that the defendant-appellant, herein, also agreed to pay Rs. 3,00,000/- but he has not honored his commitment. It was claimed that on 19.04.2014,

on the instigation of his family members, the plaintiff-respondent, herein, was thrown out from the home of her husband. The defendant-appellant, herein, now has refused to pay the dower, therefore, a decree of the same may be awarded. This suit was contested by the defendant-appellant, herein, whereby, the claim of the plaintiff-respondent, herein, was refuted. In the other suit, it was claimed that the plaintiff-respondent, herein, is legally wedded wife of the defendant-appellant, herein, and she has also a son from the wedlock and the defendant-appellant, herein, has not paid a single penny from 19.04.2014 till the filing of the suit. She prayed for maintenance allowance. This suit was also contested by the defendant-appellant, herein, who refuted all grounds stating that the agreement executed between the parties, has been acted upon, therefore, the suit cannot be filed in presence of the agreement. The 3rd suit has been filed for restitution of conjugal rights by the defendant-appellant,

herein, on 11.07.2014, which was contested by the plaintiff-respondent, herein. The learned trial Court consolidated both the suits and framed issues on 18.08.2014. The parties were directed to lead evidence. At the conclusion of the proceedings, the learned trial Court awarded the decree of dower in favour of the plaintiff-respondent, herein, and also awarded the maintenance allowance from 19.04.2014, the date of desertion, to the tune of Rs. 4,000/- per head. It was further ordered that the plaintiff-respondent, herein, would be entitled to 10% increase every year. The decree for conjugal rights was also granted subject to the conditions enlisted therein. Feeling aggrieved from the judgment and decree of the trial Court, Tariq Hussain, the defendant-appellant, herein, filed an appeal before the Shariat Court of Azad Jammu and Kashmir on 19.01.2016. After hearing the learned counsel for the parties, the learned Shariat Court through the impugned

judgment dated 29.09.2016 has dismissed the appeal.

3. Ch. Muhammad Ashraf Ayaz, the learned Advocate appearing for the defendant-appellant, herein, argued that in the agreement dated 26.10.2013, the reciprocal conditions were incorporated and both the parties were under obligation to fulfill these conditions. The learned Advocate argued that without honoring the commitment made on behalf of the plaintiff-respondent, herein, she filed a premature suit which was to be filed in the year 2017, if the conditions of the agreement dated 26.10.2013, would have not been fulfilled. The learned Advocate argued that the judgment passed by the learned Family Judge as well as the learned Shariat Court is without the jurisdiction as in view of the contract dated 26.10.2013, there was no family dispute between the parties and the relief granted by the learned Family Judge is not within the jurisdiction of the Family Court. The learned Advocate argued that the dower was

paid and the plaintiff-respondent, herein, has willfully left the home of the defendant-appellant, herein, therefore, she is not entitled to any maintenance.

4. Conversely, Sardar Muhammad Raziq Khan, the learned Advocate appearing for the plaintiff-respondents, argued that the petition for leave to appeal and appeal is not competent because the same has been filed on the basis of power of attorney which does not bestow any authority on the defendant-appellant, herein, to file the petition for leave to appeal. The learned Advocate further argued that the agreement dated 26.10.2013 can be read in light of the law and any condition which is against the fundamental right of the plaintiff-respondent, herein, and offend the public policy that is void. The learned Advocate argued that the desertion of the plaintiff-respondent, herein, was proved and the dower was also admitted by the defendant-appellant, herein, therefore, there is no any legal defect or dent in the judgment of

the learned Family Judge and the learned Shariat Court.

5. We have heard the learned Advocates representing the parties and gone through the record of the case.

6. So far as the preliminary objection raised on behalf of Sardar Muhammad Raziq Khan, the learned Advocate for the plaintiff-respondents, is concerned, that has no substance in it. The appeal has been filed by the attorney of Tariq Hussain, defendant-appellant, herein. It is categorically stated in the power of attorney that the attorney is entitled to file appeal even before this Court which include the petition for leave to appeal, therefore, we are of the view that the appeal has competently been filed.

7. The contention of Ch. Muhammad Ashraf Ayaz, the learned Advocate for the defendant-appellant, herein, that the suit could have been filed till the expiry of 3 years, is

devoid of any force. The dower was already fixed at the time of *Nikah* and it was an admitted position and proved through the evidence that the same was not paid. The agreement dated 26.10.2013 also proved the said fact, therefore, the plaintiff-respondent, herein, has right to institute the suit for recovery of dower as well as the maintenance. Any condition which offends the public policy or fundamental right regarding availing the remedy of a party before the Court of law, is void. We have perused the evidence as well as findings recorded by the learned Family Judge, independently, and are of the view that no legal infirmity has been committed by the learned Family Judge while passing the impugned judgment and the same has rightly been approved by the learned Shariat Court.

In view of the above, finding no force in this appeal, it is hereby dismissed. No order as to costs.

Mirpur
.04.2019.

JUDGE

JUDGE