

SUPREME COURT OF AZAD JAMMU AND KASHMIR
(SHARIAT APPELLATE JURISDICTION)

PRESENT:

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

Civil Appeal No.360 of 2018
(Filed on 13.12.2019)

Zabeen Kousar d/o Muhabat Khan, w/o Abdul Waheed,
caste Mangral, r/o Nagal Sarsawa, Tehsil and District Kotli.

....APPELLANT

VERSUS

Abdul Waheed s/o Muhammad Shafaat, caste Mangral, r/o
Seri Sarsawa, Tehsil and District Kotli.

....RESPONDENT

(On appeal from the judgment of the Shariat Appellate
Bench of the High Court dated 16.10.2018 in Family
Appeal No.06 of 2018)

FOR THE APPELLANT: Miss Tazeem, Advocate.

FOR THE RESPONDENT: Raja Iqbal Rasheed Minhas,
Advocate.

Date of hearing: 07.05.2019

JUDGMENT:

Ghulam Mustafa Mughal, J.— The titled appeal has been directed against the judgment and decree dated 16.10.2018, passed by the Shariat Appellate Bench of the High Court in Family Appeal No.06 of 2018.

2. The facts forming the background of the captioned appeal are that the plaintiff/appellant, herein, filed two suits; one, for recovery of maintenance allowance; and the other, for recovery of dower, against defendant/respondent, herein, in the Court of Additional District Judge/Judge Family Court Kotli on 07.03.2017. It was averred that the marriage between the spouses was solemnized on 21.07.2002 in lieu of dower amounting to Rs.75,950/- which was paid in shape of gold ornaments. It was further averred that the

defendant lived with the plaintiff for 2 years and thereafter went abroad and did not pay any maintenance allowance to the plaintiff. It was alleged that once the defendant came back for some days and sold the gold ornaments which were given to the plaintiff as dower. It was further alleged that the defendant went back abroad and did not pay the dower which is liable to be recovered. It was claimed that after departure of the defendant to England the mother and brother of the defendant ousted the plaintiff from the home of her husband after beating her and she has been living with her parents for 8 years. It was further claimed that on the request of the respectable of the locality the plaintiff went back to the home of her husband but in March, 2015, she was again ousted by the mother and brothers of the defendant after beating. It was prayed that since her

desertion, she has not been paid even a single penny as maintenance allowance which may also be ordered to be paid. The suits were contested by the other side by filing written statement, wherein, it was submitted that the plaintiff had illicit relations with another person and when she was asked not to do such immoral acts, she left the home of her husband at her own without his permission. The claim of snatching the dower and selling the same was also refuted. The defendant/respondent, herein, also filed a suit for restitution of conjugal rights before the same Court, wherein, it was pleaded that Mst. Zabeen Kaousar left his home out of her free will and she has never been maltreated. It was claimed that he wants to populate her. This suit was also contested by the appellant, herein. All the suits were consolidated by the trial Court, framed issues in

light of the pleadings of the parties and directed them to led evidence pro and contra. At the conclusion of the proceedings, the learned Family Court Kotli vide judgment and decree dated 08.01.2018, decreed the suit for recovery of maintenance allowance in the terms that the plaintiff/appellant, herein, is entitled to the maintenance allowance at the rate of Rs.7000/- per month from March 2015 with 10% annual increase, whereas, the suit filed for recovery of dower was dismissed for want of proof. The suit for restitution of conjugal rights was also decreed in the terms that if the respondent, herein, pays maintenance allowance to the appellant, herein, from March, 2015, and provides her a separate accommodation, then she shall populate with him. Feeling aggrieved from the judgment and decree dated 08.01.2018, passed by the trial Court, both

the parties filed separate appeals before the Shariat Appellate Bench of the High Court. The learned Shariat Appellate Bench of the High Court, after hearing the parties, through the impugned judgment dated 16.10.2018, has dismissed the appeal filed by Zabeen Akhtar, whereas, the appeal filed Abdul Waheed has been accepted and the judgment and decree of the trial Court has been set aside to the extent of recovery of maintenance allowance.

3. Miss Tazeem, the learned Advocate appearing for the appellant argued that the respondent, herein, being husband of the appellant was duty bound to maintain her and desertion of the appellant was proved through cogent evidence but the learned Shariat Appellate Bench of the High Court has not considered this aspect of the case in its true perspective. The learned Advocate

further argued that the trial Court has rightly passed the judgment and decree for maintenance allowance which was liable to be upheld by the learned Shariat Appellate Bench of the High Court. The learned Advocate submitted that the impugned judgment handed down by the learned Shariat Appellate Bench of the High Court badly suffers from misreading and non-reading of the evidence, hence, while accepting this appeal the judgment passed by the learned Family Judge may be restored.

4. Conversely, Raja Iqbal Rasheed Minhas, the learned Advocate appearing for the respondent argued that this appeal is liable to be dismissed because the appellant, herein, has alleged that she has been thrown out of the home by the mother and brother of the husband but has not impleaded them as party in the line of respondents and has not

brought on the record any cogent evidence in this regard. The learned Advocate further argued that the appellant, herein, has herself left the home of the husband and was living an immoral life, hence, is not entitled to any maintenance allowance. He added that the impugned judgment of the learned Shariat Appellate Bench of the High Court is well reasoned and has been handed down in light of the judgment of this Court rendered in the case titled *Mst. Ambreen vs. Muhammad Kabir* [2014 SCR 504], hence, no interference by this Court is warranted.

5. We have heard the learned counsel for the parties and have gone through the record of the case. It may be stated that on the basis of the evidence led by the parties, the learned trial Court decreed the suit for maintenance allowance filed by the plaintiff/appellant, herein, but the learned

Shariat Appellate Bench of the High Court has vacated the findings recorded by the Family Judge. We are of the view that the appellant, herein, has not left the home of her husband out of her own free will rather she was compelled to leave due to the bad conduct of the family members of the husband, therefore, she was entitled to the maintenance allowance from the date of filing of the suit. It is on the record that prior to that the defendant/respondent, herein, use to come, populate with the plaintiff/appellant, herein, and pay maintenance allowance etc. In the case law referred to and relied upon by the learned Shariat Appellate Bench of the High Court in the impugned judgment, it has been observed that where a wife has to left the home of her husband due to conduct of his parents then she is entitled to maintenance allowance. Moreover, the allegation

of bad character is levelled against the appellant, herein, but even then the husband/respondent, herein, has filed suit for restitution of conjugal rights which shows that the stand of the respondent, herein, in this regard is ill-founded.

In view of the above while partly accepting this appeal, the impugned judgment passed by the Shariat Appellate Bench of the High Court is hereby set aside and the judgment of the Family Court is modified in the manner that the plaintiff/appellant, herein, is entitled to maintenance allowance at the rate of Rs.4000/- per month with 10% annual increase from March 2015, however, findings of the Family Court in the suit for recovery of dower are maintained.

JUDGE

JUDGE

Muzaffarabad,
08.05.2019

J-II

J-I