

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Shariat Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.

Civil PLA No. 322 of 2019

Civil Misc. No.145 of 2019

(Filed on 06.05.2019)

1. Muhammad Muneer S/o Muhamad Akbar
R/o Mera Kalsi Tehsil Pattika District
Muzaffarabad present Bella Noor Shah
near Neelum Park Muzaffarabad.
2. Muhammad Akbar S/o Sakandar R/o
Mera Kalsi Tehsil Pattika District
Muzaffarabad.

.....PETITIONERS

VERSUS

Naveeda Khalid D/o Khalid Mahmood R/o Bela
Noor Shah Tehsil & District Muzaffarabad.

.....RESPONDENT

[On appeal from the judgment and
decree of the Shariat Appelalte Bench of
the High Court dated 05.04.2019 in
family appeal No.10 of 2019]

(Application for interim relief)

FOR THE PETITIONERS: Kh. Arshad Mehmood,
Advocate.

FOR THE RESPONDENT: Nemo.

Date of hearing: 01.07.2019.

ORDER:

Ch. Muhammad Ibrahim Zia, C.J.–

The captioned petition for leave to appeal has been filed against the judgment of the Shariat Appellate Bench of the High Court dated 05.04.2019, whereby, the appeal filed by the petitioners, herein, has been dismissed.

2. The brief facts of the case are that the plaintiff-respondent, herein, filed a suit for recovery of dower to the tune of Rs. 500,000/- in shape of two rooms alongwith a Kitchen and bath before the learned Additional District Judge/Judge Family Court, Muzaffarabad, on 21.08.2017. It was alleged that the spouses contracted marriage on 31.07.2009 in lieu of dower to the tune of Rs. 7,60,000/- out of which Rs. 2,60,000/- were paid in shape of gold ornaments, whereas, the remaining dower in shape of two rooms alongwith a Kitchen and bathroom situated at Bela Noor Shah Tehsil

and District Muzaffarabad was to be paid. It was further alleged that the father of the petitioner, herein, was the guarantor of dower. It was stated that out of their wedlock, two children were born and after three years of marriage, the relations between the parties became strained; when the plaintiff demanded her dower, he refused to pay the same. On filing of the suit, defendants were summoned who appeared and filed written statement wherein, in para No. 2, the petitioners admitted the claim of the plaintiff regarding Nikah fixation of dower and mode for payment of dower. It is further admitted that plaintiff is residing at the petitioner's house and ornaments are in his possession and the plaintiff is the owner of the house and is living in the said house. While, the other claims of the plaintiff were negated. The learned trial Court after recording evidence and hearing the

parties accepted the suit of the plaintiff and passed a decree of dower worth Rs. 500,000/- in shape of house vide judgment and decree dated 26.12.2018. Against the said judgment and decree, the petitioners, herein, filed an appeal before the Shariat Appellate Bench of the High Court. The learned Shariat Appellate Bench of the High Court after necessary proceedings upheld the judgment and decree of Family Court and dismissed the appeal through impugned judgment and decree dated 05.04.219. Hence, this petition for leave to appeal.

3. Kh. Arshad Mehmood, Advocate, the learned counsel for the petitioners after narration of necessary facts submitted that the Courts below have fell in error of law and facts. The petitioner is willing to pay the dower amount of Rs. 500,000/- in cash, hence, grant of decree of property is against law. He further

argued that the property relating to which the decree has been granted, is neither in the ownership of petitioner No.1 nor has been transferred to him. The same is in the joint ownership of the other owners, co-sharers. These are important propositions justifying grant of leave.

4. I have heard the arguments of the learned counsel for the petitioners and gone through the record made available and judgments minutely. According to the pleading of the parties as well as the evidence produced, the respondent in para No. 2 of her plaint claimed that the marriage of the spouses was contracted in lieu of dower amounting to Rs. 7,60,000/- out of which an amount of Rs. 2,60,000/- was paid in shape of gold ornaments, whereas, rest of Rs. 500,000/- in shape of property consisting of two rooms with a Kitchen and bathroom. This averment of the

plaint has been categorically admitted by the petitioners in para No. 2 of the written statement that:-

"یہ کہ ضمن 2 نکاح اور حق مہر کی تقرری اور ادائیگی کے طریقہ کار کی حد تک درست تسلیم ہے"

It is further clearly mentioned in the same para that:-

"مدعیہ مد علیہ نمبر 1 کے گھر میں آباد ہے اور ترک سکونت کی ہی نہیں ہے زیورات جو حق مہر میں دیے گئے وہ اس کے پاس ہیں مکان اس کے زیر استعمال ہے مدعیہ مکان کی کامل مالک ہے اور قابض ہے۔"

Despite this admission, the evidence has been recorded and the trial Court has passed the decree after due appreciation of evidence, whereas, infact, in view of above reproduced admission in the pleadings, even no evidence was required. In this state of affairs, the judgments passed by the courts below are quite in accordance with law, thus, the concurrently recorded judgments on question of facts do not call for any interference.

5. The points agitated by the learned counsel for the petitioners in the arguments have no substance, because the same is contrary to the averments of the written statement of the petitioners as reproduced hereinabove. According to the celebrated principle of law, the parties are not allowed to deviate from their pleadings and build a new case which is totally contrary to the version taken in the pleadings, thus, the arguments being contrary to the pleadings and afterthought have no weightage, are hereby repelled. The petitioners have failed to make out any legal question of public importance justifying grant of leave.

Therefore, finding no force, this petition for leave to appeal alongwith application for interim relief stands dismissed. No order as to cost.

CHIEF JUSTICE

Muzaffarabad.
01.07.2019