IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Constitutional Petition No. S-208 of 2019

Petitioner	:	Shahid Udho Through Mr. Abdul Rehman Bhutto Advocate.
Respondent No.1	:	Nemo
Respondent No.3	:	Government of Sindh through Mr. Liaquat Ali Sher Addl. Advocate General.
Date of hearing.	:	12.09.2019.
Dated of order.	:	12.09.2019.

ORDER

ARSHAD HUSSAIN KHAN, J.:- Through instant constitutional petition, the petitioner has called in question judgment and preliminary decree dated 13.02.2019 passed by the learned VIth Civil and Family Judge, Larkana, in Family Suit No.06 of 2019, whereby the suit of respondent No.1 for Dissolution of Marriage, Maintenance and Recovery of Dowry Articles, upon failure of pre-trial was preliminary decreed to the extent of Khula, whereas for the dispute in respect of dower, maintenance and dowry articles, the issues were directed to be framed.

2. Briefly the facts which give rise to the filing of this petition are that the petitioner was married with respondent No. 1 on 10.08.2004 according to Muslim Family Law. It is the case of Respondent No.1 before the Family Judge that the dower/Haq Mahar amount of Rs.10,000/- was fixed, which was never paid. After marriage *Rukhsati* took place but parties could not live together happily which forced the Respondent No.1 to file a suit for dissolution of marriage by way of Khula, maintenance and recovery of dowry articles. Such suhit is being contested by the present petitioner by filing his written-statement. From the record, it appears that defendant/petitioner filed written-statement on 07.01.2019 copy whereof was supplied to the Plaintiff/respondent No.1 and thereafter the matter was fixed in Court on 13.2.2019 for pre-trial of the parties. The learned Family Court on the said date upon

failure of pre-trial dissolved the marriage of the petitioner and respondent No.1 by way of Khula. This order has been questioned through the instant petition.

3. Learned counsel for the petitioner has contended that the judgment impugned in the present proceedings is against the facts and law and further suffers from material illegalities and irregularities and as such the same is not sustainable in law and liable to be set aside. It is also contended that the learned Family Court while passing the impugned judgment has failed to take into consideration the stance of the petitioner taken by him through his written statement filed in reply to the plaint of Suit No.06 of 2019. It is further contended that the learned Family Court has also failed to consider the fact that dower amount has already been paid by the petitioner to respondent No.1, which amount was directed to be returned to the petitioner upon the order of *Khula*, which has not been done in the present case rendering the impugned judgment a nullity in the eyes of law. It is also contended that the learned Family Court while passing the impugned judgment has failed to appreciate the facts that the parents of Respondent No.1 are greedy people and they wanted to sell the respondent No.1 to someone else after getting Khula from the Court. It is also argued that the learned Family Court, instead of deciding the matter in piecemeal, should have decided the whole case after recording the evidence on the issues framed, hence the judgment impugned is not sustainable in law being passed in exercise of jurisdiction not vested in it. Lastly, argued that the petitioner having no other efficacious and alternate remedy filed the present petition and for the above reasons, the judgment impugned is liable to be set aside.

4. Conversely, the learned Addl. Advocate General, while supporting impugned judgment has prayed for dismissal of the petition.

5. Heard the learned counsel for the petitioner as well as the learned Addl. Advocate General and have also perused the material available on record.

6. Before going into any further discussion, it would be appropriate to re-produce the relevant portion of the impugned judgment as under:

> “09. In the instant case, during pre-trial proceedings, this court has taken serious efforts for reconciliation between the parties but plaintiff has shown her unwillingness to live with defendant as his wife at any cost.
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> 10. It is well settled principle of law that wife is entitled to Khula if she satisfies conscience of the Court that it will otherwise forcing her into hateful union. Nonetheless a wife demanding separation on the basis of khula, will return to the husband any tangible returnable benefits conferred on her by the husband. In this connection, wisdom can be sought to the case titled Sadiq Rasool Khan v. The Additional District Judge, Lakki Marwat reported in 1991 MLD 1732.
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> 11. Keeping in view the dictum laid down in the case cited supra so also the facts and circumstances of the case, I am of the view that there is no possibility of reconciliation between the parties and any further effort for reconciliation would be futile exercise. Therefore, pre-trial proceedings are declared as failed and marriage between the plaintiff and the defendant is hereby dissolved by way of Khula U/S 10 (4) of West Pakistan Family Court Act 1964. Let the Preliminary decree be prepared accordingly and copy thereof be sent to concerned authorities for information and necessary action. So far as dispute between the parties in respect of dower as well as maintenance and dowry articles is concerned, let the issues be framed.”

Here it would be advantageous to discuss the provisions of section 10 of the West Pakistan Family Courts, Act, 1964, (hereinafter called Act), which are read as under:-

> "**10.** Pre-trial proceedings. **(1)** When the written statement is filed, the Court shall fix an early date for a pre-trial hearing of the case.
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> **(2)** On the date so fixed, the Court shall examine the plaint, the written statement (if any) and the precis of evidence and documents filed by the parties and shall also, if it so deems fit hear the parties, and their counsel.
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> **(3)** At the pre-trial, the Court shall ascertain the points at issue between the parties and attempt to effect a compromise or reconciliation between the parties, if this be possible.
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> **(4)** If no compromise or reconciliation is possible the Courts shall frame the issues in the case and fix date for the recording of the evidence:
>
> *Provided* that notwithstanding any decision or judgment of any Court or Tribunal, the Family Court in a suit for dissolution of marriage, if reconciliation fails, shall pass decree for dissolution

> of marriage forthwith and also restore the husband the Haq Mehr received by the wife in consideration of marriage at the time of marriage."

7. From the reading of above provision, it appears that subsection (3) of section 10 of the Act provides that at the trial, the Court shall ascertain the points at issue between the parties and attempt to effect a compromise or reconciliation between the parties, if this be possible. Subsection (4) of section 10 of the Act further provides that if no compromise or reconciliation is possible the Court shall frame the issues in the case and fix date for the recording of the evidence.

8. A bare reading of the above provision further shows that it is the statutory duty of learned Family Judge that after filing of written-statement, try to settle the dispute between the parties at the pre-trial stage in a suit for dissolution. It has been further stated in the aforesaid provisions that in case of failure of pre-trial, decree for dissolution of marriage shall be passed forthwith.

9. On the touchstone of the above provisions when I examined the judgment impugned in the present proceedings, I found it in accordance with the mandate provided under the law.

10. It may be observed that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the frame work of Constitution, and if there is any error on the point of law committed by the Courts below or the Tribunal or their decision takes no notice of any pertinent provision of law, then obviously this Court may exercise Constitutional jurisdiction subject to the non-availability of any alternate remedy under the law. This extra ordinary jurisdiction of High Court may be invoked to encounter and collide with extraordinary situation. This Constitutional jurisdiction is limited to the exercise of powers in the aid of curing or making correction and rectification in the order of the Courts or Tribunals below passed in violation of any provision of law or as a result of exceeding their authority and jurisdiction or due to exercising jurisdiction not vested in them or non-exercise of jurisdiction vested in

them. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice. However, if it is found that substantial justice has been done between the parties then this discretion may not be exercised. So far as the exercise of the discretionary powers in upsetting the order passed by the Court below is concerned, this Court has to comprehend what illegality or irregularity and or violation of law has been committed by the Courts below which caused miscarriage of justice. Reliance, in this regard can be placed on the case *Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others* ***(2015 PLC 259)***.

11. The learned counsel for the petitioner has not been able to point out any illegality or material irregularity in the impugned judgment warranting interference in exercise of writ jurisdiction of this Court, hence the present petition is liable to be dismissed being devoid of merit.

In the circumstances, this petition was dismissed in limine with no order as to cost by a short order dated12.09.2019 and above are the reasons of the same.

JUDGE