

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-1452 of 2014

Before: Mr. Justice Muhammad Shafi Siddiqui

Engr. Nizamuddin	-----	Petitioner
	Versus	
Dr. Shakila Qazi & others	-----	Respondents

<u>Date of Hearing:</u>	<u>07.11.2017</u>
Petitioner:	Through Mr. S.A. Jalib Chaudhry Advocate
Respondent No.1:	Through Mr. Naveed Ali, Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J: This petition impugns a judgment passed in Family Suit No.1844/2013 whereby the exparte judgment and decree of “Khulla” was granted.

Learned Counsel for the petitioner has raised grounds such as :

- (i) The trial Court had no territorial jurisdiction.
- (ii) Contrary statement was given by the respondent No.1 as far as the dower amount is concerned.
- (iii) Deliberately address of petitioner in the suit was incorrectly shown to be of Panu Aqail, District Sukkur.
- (iv) That Rule 6 of the Family Court Rules, 1965 were not followed as the respondent was not a resident of the address as shown in the title of the suit in pursuance of the bailiff report.

I have heard the learned Counsels and perused the material available on record.

Admittedly this judgment and decree was passed after exhausting all steps of service including publication. Learned Counsel for the petitioner has not placed a copy of the publication but he has conceded to such an extent, however the only argument was raised that it was not a well circulated newspaper and that he was not residing at the address shown in the title though he has not denied it to be his native place. Rule 6 of the West Pakistan Family Court Rules, 1965 provides that the Court which shall have jurisdiction to try a suit will be that within the local limits of which (a) the cause of action wholly or in part has arisen or (b) where the parties reside or last resided together; provided that in suits for dissolution of marriage or dower, the Court within the local limits of which the wife ordinarily resides shall also have jurisdiction.

In the plaint the address is shown to be of Flat No.418, Hill View Apartment Block-D, North Naziamabd, Karachi and also Internal Medicine ANAK General Hospital, Corniche Road, Daman P.O. Box. No. 31911. The cause of action shows that it accrued when the plaintiff/respondent proceed abroad in order to secure her life and the cause of action continued and subsisting until filing of the suit. He last claimed to have resided at the address mentioned in the title of the plaint i.e. Hill View Apartment Block-D, North Naziamabd, Karachi which is within the territorial jurisdiction of Police Station North Nazimabad, Karachi.

The provisio of aforesaid Rules provided additional room for the subject cause to file a suit for dissolution of marriage and dower amount within the local limits where wife ordinarily resides. It is distinguished from rest of the jurisdiction wherein the parties were last resided and/or where cause wholly or in part has arisen. While applying the said Rule a suit for dissolution of marriage by way of

“Khulla” can be filed at the address where wife ordinarily resides at the time of filing suit.

As to the service when Counsel enquired as to how he came to know about the pendency of the suit, he gave no satisfactory answer. He moved an application under section 9(6) of the Family Court Act, 1964 for setting aside the judgment and decree passed in the aforesaid suit but has not disclosed a single word as to how he came to know about the pendency of the suit. He himself has stated that the petitioner in view of his job is constantly being transferred from one place to another and he has not denied that the address shown in the title of the plaint is his native village. A statement as to dower amount which is claimed to be contrary, would not disentitled the plaintiff from claiming “Khulla”, similarly the address of respondent shown in CP No.536/14 is also insignificant as it is the address where he resided at the time of filing of a suit is to be considered not any future address. She has recorded her evidence that she was married to the petitioner on 24.11.2011 against dower amount in the shape of 5 tola gold which she was willing to return. This is the statement that counts. I therefore, do not see any reason to interfere with the judgment and decree of the Family Court granting “Khulla” to the respondent in lieu of dower amount, the petition is accordingly dismissed along with pending applications.

Above are the reasons for the short order dated 07.11.2017 whereby this petition was dismissed.

Judge