IN THE HIGH COURT OF SINDH, AT SUKKUR

Civil Revision Application No.98/2000

JUDGMENT.

Date of hearing_____

Appellant/Petitioner: Gul Muhammad through Mr. Abdul Qadir Shaikh Advocate.
Respondent: Mst. Zainab through M/s. Allah Bux Panhwar & Ahmed Ali Memon, Adv.

SYED ZAWAR HUSSAIN JAFFERI., J.- This Civil Revision Application is directed against the judgment and decree dated 25.10.2000passed by the learned IInd Additional District Judge Mirpur Mathelo praying therein that the same may be set aside alongwith the judgment and decree passed in Civil Suit No. 6/1996 dated 30.10.1999.

The precise facts as narrated that the respondent /plaintiff filed a Civil Suit No. 6/1996 in the Court of Civil Judge Mirpur Mathelo against the petitioner/defendant mentioning for the following prayer:-

> (a) to declare that the Defendant is legally wedded wife the plaintiff as she performed the Nikahnama in presence of witnesses before Haji Mahmood Chacher at deh Jhangal Malik, Taluka Ubauro.
> (b) To grant permanent injunction restraining the defendant from contracting second marriage with any other person prior obtaining the decree of dissolution of marriage from competent Court of law.
> (c) To award costs of the suit. Any other relief as deems fit under the circumstances of the case.

The defendant/plaintiff filed suit for dissolution of marriage in the Court of Family Court Daharki being Suit No. 3/1995 against Shaboo s/o Khuda Bux Dasti. The Suit was decreed in her favour on 28.8.1995 by the Family Judge Daharki. The defendant/respondent married with the petitioner with her sweet will on 30.11.1995 in presence of witnesses as mentioned in the Nikahnama and the Nikah was preformed by Haji Moulvi Mahmood Chachar resident of village Jhangal Malik, taluka Ubauro under the Mohammaden Law. The defendant/respondent and the petitioner/respondent legally wedded and lived as wife and husband at the house of petitioner. Thereafter one Abdul Karim filed FIR at P.S. Zahir Pir against the petitioner and his uncle Gullab Khan Shar and other being Crime No. 22/1996. Accused Gulab Khan was arrested on 4.2.1996 and respondent Mst. Zainab was also recovered and then they were brought at P.S. Zahir Pir and respondent was produced before Assistant Commissioner/SDM on 11.2.1996 where her statement was recorded and it was alleged that petitioner was committing Zina and Nikahnama was fabricated. In the

circumstances the custody of Mst. Zainab was handed over to her father Abdul Karim. A family suit which was admitted by the court. The process was issued where the written statement was filed by the petitioner and issues were framed and evidence was led by both the parties and consequently the suit was dismissed by the learned Civil Judge Mirpur Mathelo. The petitioner/plaintiff however filed appeal in the Court of District Judge Ghotki which was transferred in the Court of IIIrd Additional District Judge Mirpur Mathelo and the same was dismissed and the impugned judgment has been challenged in this revision.

It is contended by the learned counsel that the learned trial Court failed to appreciate the evidence led by the parties and did not consider the documents filed by the petitioner. It is also urged by the learned counsel that the learned Appellate Court while disposing the appeal has observed that he should have filed suit for jactitation of marriage under the family laws and under such circumstances suit was barred under Section 9 of the CPC. It is urged by the learned counsel that the trial court was having power of Family Court and as such it was easy to change or convert the suit as family suit. It is further argued that the trial court did not decide the suit on merits but it has been dismissed on technical ground. It is further argued by the learned counsel that the respondent has indulged in an offence of Zina Kari and her marriage was dissolved by the competent Court of law and thereafter the respondent cannot have sexual intercourse with her previous husband and the order passed by the learned IIIrd Additional District Judge as well as by the learned trial Court be declared as null and void. Learned counsel in support of his proposition has relied upon PLD 1988 Karachi 169.

Mr. Ahmed Ali Memon, learned counsel for the respondent has supported the judgment and decree of the lower courts and has relied upon the same authority cited by the learned counsel for the applicant.

I have gone through the judgments and the decree, of the two court below as well as the other documents filed by the learned counsel for the parties.

On pleading of the parties the trial Court has settled the following issued:-

1.Whether the defendant had filed her dissolution of marriage Suit in the Family Court Dhaka and got decree?

2.Whether the defendant married with plaintiff and such Nikah was performed on 30.11.1995 in presence of witnesses?

3.Whether the defendant legally wedded wife of the plaintiff?

4.Whether defendant is entitle to merry to any other person prior seeking dissolution of marriage from the plaintiff?

5.Whether the suit is maintainable?

6.What should the decree be?

The plaintiff in support of his case examined himself at Ex.36 as Witness Irshad and Haji Mehmood were examined at Ex. 39 and Ex.40 respectively. The side of the plaintiff was closed thereafter the defendant has examined himself at Ex.42 and in support examined Abdul Karim as Ex.45 and thereafter respondent also closed the side of the defendant as Ex.46. From the evidence adduced by the petitioner/plaintiff as well as by the respondent/defendant it appears that plaintiff has failed to prove that defendant had

filed the suit for dissolution of marriage before Family Judge Dherki. It was admitted by the Alkah Khawar in his cross examination that the father of the respondent was not present at the time of Nikah. The respondent in her evidence has stated that she is happily living in with her husband Shabbir Ahmed, which shows that she had no occasion to file suit for dissolution of marriage. It is brought in evidence by Mst. Zainab that about three years back her marriage was solemnized with one Shabbir Ahmed and she has two children namely Zainab Baby and Abid Hussain. It is also brought on record that defendant has never filed any suit for dissolution of marriage against her husband Shabbir Ahmed which was fully supported by her witnesses who is also her father (Abdul Karim). It is also come on record that Abdul Karim father of Mst. Zainab had lodged FIR at P.S. Zahir Pir against Gulab Khan and other, for abduction of Mst. Zainab. In consequence of the registration of FIR Mst. Zainab recovered and thereafter she was produced before the Assistant Commissioner Khan Pur and her statement was recorded and it was stated that she was never married with Gul Muhammad Sher. It is further come on record that Gul Sher filed a petition in the High Court Bench at Bahawalpur (Punjab) and she was also produced before the said Bench and the Petition filed by the petition was dismissed. Photo copy of petition filed by the plaintiff was also filed in the Lower Court. The trial Court while appreciating the merits of the case observed that there was conflict between the statement of petitioner/plaintiff and his witnesses Haji Mehmood. It is also came on the record that respondent was kidnapped and thereafter rape was committed by the plaintiff. The Assistant Commissioner/SDM after recording the statement of the respondent as per deposition of the abductee She was handed over to her father. Apart from this she has two little children from his husband Shabbir Ahmed. In view of the evidence brought on the record the trial Court as well as Appellate Court have observed that the respondent Mst. Zainab is legally wife of Shabbir Ahmed.

Learned counsel for the applicant is unable to point out any illegality or infirmity in the judgment and decree passed by the two courts below. The case law PLD 1988 Karachi 169 relied upon by the learned counsel for the petitioner is not based on the facts mentioned in the present case whereas learned counsel for respondent has also relied on the same authority. Since Mst Zainab had denied the marriage with the petitioner but on the contrary it is stated that petitioner abducted her and committed Zina and got Nikahnama fraudulently .

The findings of the trial Court on issued Nos.1,2&3 are affirmed and the Issues No.4 is redundant as the respondent Mst. Zainab had altogether denied about filing of alleged Family Suit No. 3/1995 in the Court of Family Judge Deherki. The suit was not maintainable in law and it was a simply a suit for declaration on the basis of alleged Nikahnama and the petitioner had no right to assert on the basis of alleged Nikahnama and he should have filed suit for jectitation of marriage in Family Court.

In view of the above reasons the Revision application merits no consideration, impugned judgment and decree of the two courts below are maintained and the Revision Application is dismissed with costs.

JUDGE