

THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Salahuddin Panhwar

C.P.No. S-391 of 2017

C.P.No. S-453 of 2017

Petitioner: Ghulam Nabi through M/s Abdul Qadir Awan, Muhammad Sarmad Khan and Qasim Iqbal advocates (*petitioner in C.P.No.S-391 of 2017 and Respondent in C.P.No.S-453 of 2017*)

Respondent No.3: Dr. Naseem Umar through M/s Zia Ahmed Awan, S. Itrat Hussain Zaidi and Abdul Hadi advocates (*Respondent in C.P.No.S-391 of 2017 and petitioner in C.P.No.S-453 of 2017*)

Date of hearing: 31.08.2023

Date of decision: 16.10.2023

J U D G M E N T

SALAHUDDIN PANHWAR, J.- By the dint of this single judgment, I intend to decide both the captioned petitions as they involve a common question of fact and law.

2. Succinctly, the relevant facts for disposal of instant petitions are that Dr.Naseem Umar (hereinafter referred to as respondent) filed a Family Suit No. 848/2008 for recovery of dower amount as well as maintenance against Ghulam Nabi (hereinafter referred to as petitioner) by stating therein that she was divorced by her first husband and out of said wedlock she had a daughter. On 24.02.2006 she contracted marriage with petitioner in consideration of prompt dower in the shape of 150 tolas gold or its equal amount (which remained unpaid), the petitioner also agreed to provide her bungalow measuring 500 sq. yards in DHA and Rs.50,000/- per month as maintenance to her, it was duly written in column No.17 of the Nikahnama. However, it is claimed by the respondent that petitioner had failed to provide her

maintenance as agreed between them. It is further alleged that the petitioner compelled the respondent, who was working as Doctor to quit her job which was performing at Hub Balochistan; the petitioner also got ejected the tenant from the flat of the respondent, which she rented out at Rs.30,000/- per month and asked her to reside in the said flat. As per respondent, she left her job and started residing in the said flat, but after sometime, the petitioner changed his attitude and used to issue threats to her of divorce. It is further alleged by the respondent that petitioner had also sold out her commercial plot as well as golden ornaments and usurped the amount. It is further alleged by the respondent that when the petitioner demanded from the respondent to waive her dower amount otherwise, he would divorce her, the respondent served legal notice upon the petitioner to pay dower amount, provide her bungalow measuring 500 sq. yards as well as Rs.50,000/- as maintenance since April 2008. Such legal notice was duly replied by the petitioner wherein he admitted the fact of Nikah but denied claim of the respondent regarding dower amount, bungalow and maintenance. Ultimately on 27.09.2008 the petitioner sent a copy of Divorce Deed to her with intimation to the concerned Union council for confirmation of divorce, hence the respondent filed Family Suit against the petitioner.

3. After service, the petitioner filed written statement in the said Family Suit wherein he denied the claim of the respondent and stated that Nikahnama is forged and fabricated document. It is further stated by the petitioner that respondent wanted to remarry her former husband, therefore, she in order to perform Halala, approached Hafiz Gul Muhammad on 24.02.2006 along with petitioner and asked him to perform her marriage with the petitioner. Accordingly, said Hafiz Gul Muhammad performed the Nikah in presence of witnesses namely Muhammad Waris and Dr. Muhammad Aslam against dower amount of Rs.500/- which according to the petitioner was paid. It is further claimed by the petitioner that after marriage, they started to reside at Hub Balochistan and sometime at Karachi. However, the respondent started to meet with her former husband, which was objected by the petitioner, but she did not mend her ways. Petitioner further claimed that he had given to the respondent new car, diamond watch of Rs.300,000/-, gold watch of Rs.200,000/-, gold bangles, rings and other articles of Rs.200,000/-, clothes worth Rs.80,000/-, land measuring 5.0 acres in Gawadar as well as cash. Petitioner further stated that he is willing to pay Rs.5000/- per month for the iddat period from the date of divorce for three months. Petitioner further

claimed that petitioner after receipt of divorce notice even did not participate the conciliatory proceedings. Lastly, the petitioner prayed that Family Suit filed by the respondent is based on fabricated and forged document.

4. In the first round of litigation, family suit was decreed by Family court vide judgment dated 30.09.2010, appeal preferred against said judgment was allowed vide judgment dated 21.04.2011 by which petitioner was provided opportunity to lead evidence. However, the suit again was decreed vide judgment dated 17.08.2012, against such judgment and decree, Family Appeal was preferred, but the same was dismissed vide judgment dated 11.01.2013, said judgment was assailed before this Court in C.P.No.S-68/2013, which was too dismissed, hence, the petitioner approached Supreme Court by filing CP No. 316-K/2013. Supreme Court remanded the matter back to the trial Court. Trial Court in compliance of the order of the Apex Court, recorded evidence of petitioner, Nikahkhwa and Intiaz Ali handwriting expert, who examined the signatures of the petitioner and Nikahkhawan vide judgment dated 10.09.2014 decreed the suit of the respondent and granted maintenance of Rs.30,000/- from 02.09.2008 till Iddat period, such judgment and decree were assailed before the Appellate Court by preferring Family Appeal No. 48/2014. Learned Appellate court after hearing the parties vide judgment dated 10.02.2017 held that Decree in respect of prayer clause A and B of the family suit requires no interference, however, the findings on prayer clause B were set aside. Hence, both the petitioner and respondent have preferred the captioned petitions against such judgment and decree.

5. Learned counsel for petitioner argued that judgment and decree passed by the Courts below are against the facts and law except the finding recorded by the appellate Court with regard to prayer clause-B; that both the Courts below have failed to properly evaluate the evidence adduced during trial; that fabrication of the Nikahnama could be ascertained from the fact that it is alleged in the Nikahnama bungalow of 500 sq. yards of DHA shall be given to the respondent, but no where it is mentioned in which city it is situated; that findings of both the courts below are based on surmises and conjectures; that while passing the judgment and decrees both the Courts below have failed to take into consideration the settled principles of law; that concurrent findings are not based on sound reasons, therefore, the same are liable to be set aside.

6. On the other hand, counsel for the respondent Dr. Naseem Umar argued that findings of the appellate Court with regard to prayer clause-B are against

the settled law; that appellate Court has failed to go through the issues settled by the trial Court; that the appellate Court recorded the findings with regard to clause-B in slipshod manner without taking into consideration the evidence and the record brought during trial. Lastly, it is prayed that findings of the appellate Court to this effect may be set aside.

7. Heard and perused the record.

8. In the first round of litigation, Apex Court remanded the matter to the trial Court to record evidence of petitioner, Nikahkhwa and handwriting expert. Learned trial Court recorded the evidence of the petitioner, Nikakhawan and handwriting expert, however, it appears that report of the handwriting expert was not exhibited in evidence. In the case of **Abdul Sattar vs. Land Acquisition Collector Highways Department and others (2010 SCMR 1523)**, the Apex court has held that if a document is not exhibited in evidence, no evidentiary value could be attached to it. The fate of the present case is based upon the Nikahnama, as one party is relying upon the Nikahnama and the other party as well as Nikahkhawan are denying execution of such Nikahnama, therefore, report of the handwriting expert/forensic examiner is essential in arriving at a just decision. From perusal of evidence of handwriting expert/forensic examiner, it appears that no specimen signatures of the Nikhakhawan were obtained by him in order to compare them with his alleged signature available on the said Nikahnama.

9. Accordingly, it would be in the interest of justice, to remand the case to the trial Court with direction to refer the Nakahnama as well as specimen signatures of Nikahkhawan, which shall be taken in presence of Nazir of this Court along with other relevant documents with the assistance of lawyers to the handwriting expert/forensic examiner for examination and report. Such report as well as earlier report of the handwriting expert/forensic examiner dated 03.04.2014 shall also be exhibited through a competent person, with the right of cross-examination, thereafter, learned trial court shall pass the judgment without being influenced by the order of this court.

10. Instant petitions are accordingly disposed of in the above terms.

JUDGE

Sajid