

IN THE COURT OF SYED ABBAS BUKHARI,
CIVIL JUDGE/FAMILY JUDGE-II TEHSIL COURTS, KALAYA, ORAKZAI

Civil Suit No. 02/3 of 2022
Date of Original Institution: 13.12.2022
Date of Decision: 17.05.2023

Mst: Sameeda Bibi W/O Mumtaz Ahmad, resident of Qaum Sheikhhan, Tappa Bazid Khel, District Orakzai.
.....(Plaintiff)

VERSUS

Mumtaz Ahmad S/O Muhammad Asghar, resident of Qaum Sheikhhan, Tappa Bazid Khel, District Orakzai.
.....(Defendant)

SUIT FOR DISSOLUTION OF MARRIAGE AND RECOVERY OF DOWER, MAINTENANCE, DOWERY ARTICLES, MEDICAL EXPENSES AND GOLD

Ex-Parte Judgment/Order:
17.05.2023

Vide this ex-parte order I intend to dispose of the instant suit, through which the plaintiff sought for grant of following decrees:-

- Alif:** Dissolution of marriage.
- Bay:** Recovery of 02 tolas of gold ornaments or its market value.
- Jcem:** Recovery of maintenance allowance @ Rs. 15,000/- per month from January, 2020 till disposal of the suit.
- Daal:** Recovery of Rs. 55,000/- as medical expenses.
- Zaal:** Recovery of Rs. 200,000/- as dowry.
- Ray:** Recovery of dowry articles worth Rs. 58,000/- as per list annexed with plaint.

Brief facts of the case as narrated in the plaint are that, marriage of the plaintiff was solemnized with defendant in accordance with Islamic Law in March, 2019. At the time of nikah dower was fixed as Rs. 200,000/-, out of which 50,000/- were paid to the plaintiff by defendant. Further plaintiff alleged that she was previously forcefully ousted by:

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defendant from his house in January, 2020 and thus she is entitled for recovery of her maintenance allowance @ Rs. 15000/month from January, 2020 till decision of instant suit. Plaintiff also allege that her medication expenses worth Rs. 55000/- were met by her parents and thus she is also entitled for the recovery of same from defendant. At the time of her marriage with defendant, her parents had given her dowry articles worth Rs. 58,000/- as per list annexed with the plaint, which are in possession of defendant and she is also entitled for the recovery of the same. After her marriage she shifted from the house of her parents to the house of defendant and initially the behaviour of defendant towards plaintiff was good but after the birth of her daughter, the attitude of defendant changed and he used to abuse and beat plaintiff on petty matters and finally ousted plaintiff from his house in the year 2020. Moreover, the defendant had also contracted second marriage without the consent and permission of plaintiff and thus in given circumstances it is not possible for a plaintiff to reside with defendant as his wife within the ordained limits of Almighty Allah rather she prefer death.

That the defendant was asked to pay the maintenance and the entire outstanding dower but he refused. That all the aforesaid wrong deeds on the part of the defendant created hate in the heart of the plaintiff that is why she cannot rehabilitate with the defendant as a wife, therefore, her

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marriage be dissolved on the basis of cruelty, non-payment of maintenance and dower.

Defendant was summoned and accordingly he initially appeared before the court in person and submitted his written statement. However, subsequently after failure of pre-trial reconciliation he failed to appear before court and was accordingly was placed and proceeded as ex-parte.

Thereafter, plaintiff was directed to produce her ex-parte evidence, which she did accordingly and examined 03 PWs and closed her evidence. Thereafter ex-parte arguments were advanced by counsel for the plaintiff.

Now on perusal of record, evidence produced by plaintiff and valuable assistance of learned counsel for the plaintiff to this court is of the humble view that although all the PWs deposed in light and support of the stance of plaintiff previously alleged in the plaint and furthermore, due to ex-parte proceedings nothing in rebuttal or contradictory is available on the record. However, as for as the recovery of 02 tola gold or its market value is concerned, it is pertinent to mention here that although all the PWs have deposed in their respective examination in chief that same is in possession of defendant. However, plaintiff failed to produce in exhibit any receipt in respect of said gold, which could suggest that same was actually purchased by plaintiff's father. Moreover, plaintiff also failed to examine the shopkeeper, from whom

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said gold was purchased, as witness in the instant case. Plaintiff was under obligation to have produce said receipts to strengthen and prove her stance.

As for as, the recovery of maintenance from January, 2020 till decision of the suit @ 15000/month is concerned, it is pertinent to mention here that defendant in para no. 04 of his written statement had alleged that plaintiff is a self-deserted lady and she left his house with her own consent and will. In given circumstances after such stance by defendant, plaintiff was under obligation to have proved her stance alleged in the plaint through cogent, convincing and independent evidence. PW-01 and PW-03 are respectively grandfather and father of plaintiff, hence, are interested witnesses and thus in absence of any independent witness, their statements could not be relied upon conclusively. Furthermore, there is no such evidence available on the record which could suggest that plaintiff was previously ousted by defendant from his house. It is also worth mentioning here that the ex-parte proceedings does not amount that burden of proving a specific fact has been shifted from the shoulders of plaintiff or has been discharged, rather plaintiff was under obligation to prove her stance through cogent, convincing and reliable evidence.

As for as, recovery of Rs. 55000/- as Medical expenses is concerned, it is pertinent to mention here that no

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prescription or medical record has been produced by plaintiff in her evidence, which could lead this court to presume that plaintiff was medically treated and all her medical expenses were confronted by her father.

As for as, recovery of Rs. 200,000/- as dower is concerned, it is worth mentioning here that plaintiff in para-01 of her plaint had sought the recovery of Rs. 200,000/- as her dower while on the other hand in para-02 of her plaint she had alleged that her dower was fixed as Rs. 200,000/- and out of said amount Rs. 50,000/- was paid to her. This stance of plaintiff, alleged in para-02 of the plaint, has also been narrated by all the PWs in their respective examination in chief and they had further deposed that Rs. 150,000/- as dower is outstanding against defendant. The stance alleged by plaintiff in the body of plaint and subsequently in her evidence is in contradiction with the relief sought by her in para-01 of her plaint. In such like situation, question arise that as to which stance of the plaintiff is correct and could be relied upon.

As for as, recovery of dowry articles worth of Rs. 58,000/- is concerned, it is pertinent to mention here that although plaintiff has previously annexed list of her dowry articles with her plaint and subsequently the same has been exhibited by PW-01 in his statement as Ex. PW-1/2. However, mere annexation and exhibition of said list does

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not prove that articles mentioned in the list were actually purchased by plaintiff's parents. Furthermore, plaintiff was supposed to have produced in exhibited the receipts of said articles in her evidence in support of her stance and furthermore should also have examined the shopkeepers from whom shops said articles were purchased. Moreover, the list of dowry articles, annexed with the plaint, has been drafted on a plain paper and thus same is not sufficient to prove that said articles were purchased by plaintiff's parents.

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 Agama
 Islam
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As for as, the dissolution of marriage of plaintiff with defendant is concerned, although plaintiff failed to prove cruelty, non-payment of dower and her ouster from the house of defendant through her evidence, however during pre-trial reconciliation the defendant had admitted that he had contracted second marriage. Furthermore, plaintiff was also not willing to patch up the matter with defendant and reside with him as his wife rather she preferred death in such condition. In given circumstances this court is of the view that as plaintiff is not willing to reside with defendant within the ordained limits of Almighty Allah and it is not possible for the parties to lead their lives as husband and wife.

In light of the above discussion, instant suit of plaintiff is hereby decided as under.

Relief Alif; as it is dissolution of marriage on the basis of cruelty and hatred is hereby dismissed. However, marriage



of the plaintiff with defendant is hereby dissolved on the basis of *Khula*.

Relief Bay; as it is for recovery of 02 tola gold or its market value is hereby dismissed.

Relief Jeem; as it is for recovery of maintenance allowance from January, 2020 till decision of instant suit @ 15000/month is hereby dismissed.

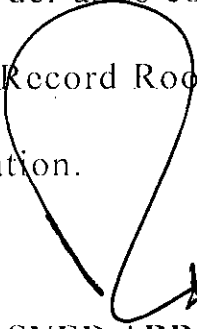
Relief Daal; as it is for recovery of Medical expenses worth Rs. 55,000/- is hereby dismissed.

Relief Zaal; as it is for recovery of Rs. 200,000/- as dower is hereby dismissed.

Relief Ray; as it is for recovery of dowry articles worth Rs. 58,000/- is hereby dismissed. No order as to costs.

File be consigned to the District Record Room, Orakzai after its proper completion and compilation.

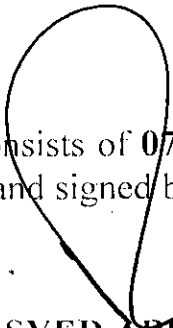
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Civil Judge/JM-II
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CERTIFICATE

Certified that this judgment of mine consists of 07 pages, each has been checked, corrected where necessary and signed by me.


SYED ABBAS BUKHARI
Civil Judge/Family Judge-II,
Tehsil Courts, Kalaya, Orakzai

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