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26/11/2020

Plaintiffs through special attorney and counsel present.
Defendant has already been placed and proceeded ex-parte.

Through my this single order, I intend to dispose off the instant suit ex-parte, filed by the plaintiffs against the defendants.

Brief facts of the case are that the plaintiff No. 01 for herself and as a mother of the defendants No. 02 To 05, being minors, filed the instant suit for recovery of the maintenance of Rs. 15000-/PM since June, 2020 till subsistence of the valid Nikah for the plaintiff No. 01 and Rs. 10,000-/PM each for the plaintiff No. 02 To 05 since June, 2020 till the legal age of these plaintiffs, against the defendant. Recovery of Rs. 500,000/- for the plaintiffs, incurred by the parents of the plaintiff no. 01 upon all the plaintiffs during the period when the defendant was imprisoned. Recovery of 02 Tola gold or its market value, which was the ownership of the plaintiff no. 01 but the same was sold out by the defendant. That the marriage of the parties was solemnized in the year 2008. That after marriage, the plaintiff no. 01 was residing with the defendant as his wife and fulfilled all her conjugal duties. That plaintiff no. 02 To 05 were born out of the wedlock. That the attitude of the defendant was not good with the plaintiff no. 01 since the beginning of the marriage and he used not to fulfill his matrimonial obligations. That in the mean while he was imprisoned in the year 2012/2013 and the plaintiff No. 01 alongwith other plaintiffs shifted and maintained by the parents of the plaintiff No. 01, who spent Rs. 500,000/- upon the maintenance of the plaintiffs. That when the defendant was released

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from the prison, he after some days ousted all the plaintiffs in the worn clothes and since then, they are maintained by the parents of the plaintiff No. 01. That the defendant has neither bothered about the rehabilitation of the plaintiffs nor paid any maintenance to the plaintiffs. That the plaintiffs No. 02 To 05 are school going kids and they all are getting education upon the expenses of the parents of the plaintiff No. 01. That the defendant was asked to admit the claim of the plaintiffs, but he refused, hence, the present suit.

The defendant was served through the process of the court but he failed to appear before the court, therefore, he was placed and proceeded ex-parte vide order no. 06, Dated: 28.09.2020.

Consequently, the plaintiff No. 01 was directed to produce ex-parte evidence, who did accordingly.

The plaintiff No. 01 produced ex-parte evidence, in whom the one Awan Ali, the father and special attorney for the plaintiffs appeared as PW-01, who produced his special power of attorney, which is Ex.PW-1/1, further produced the Nikah Nama and Rukhsati Form of the plaintiff no. 01, which is Ex.PW-1/2. He stated that the marriage of the parties was solemnized on 05.06.2008 and that the dower of the plaintiff No. 01 was fixed as Rs. 1000/- and that she took with herself 03 Tola gold to the house of the defendant, which he later on snatched from the plaintiff No. 01 and sold out the same. He further narrated the same story as in the plaint. Further, Mr. Jameel Hassan appeared as PW-02, who produced his CNIC, the copy of which is Ex.PW-2/1 and supported the stance of the plaintiff by narrating the same story as in the plaint. Further, Mr. Nisar appeared as PW-03, who produced his CNIC, the copy of which is Ex.PW-3/1 and supported the stance of the plaintiff by narrating the same story as in the plaint. Further, Mr. Syed Zaheer Hussain appeared as PW-04, who produced his CNIC, the copy of which is Ex.PW-4/1 and stated that he narrated the Nikah of the parties and that the dower of the plaintiff No. 01 was fixed as Rs. 1000/- only.

28.11.2020
 Judge
 (Sd/-)

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After hearing of ex-parte arguments and perusal of the record, I am of the opinion that so far as the relief claimed in para "Alif" i.e. the recovery of maintenance is concerned, the plaintiff No. 01 established the existence of a valid Nikah and the birth of 04 kids out of the wedlock, through ex-parte evidence. Once it is established that there was a marriage between the parties and out of that marriage, kids have born, then legally father is totally bound to maintain his wife and his kids and there is no exception to this general rule. So far as the quantum of maintenance is concerned, it is a subjective question, subject to the financial status of a father/husband. In the present case, the plaintiff No. 01 has neither established nor suggested the well to do status of the defendant, from which it could be presumed that the payment as per the plaint would not over burden the defendant rather in a query from the father and the special attorney for the plaintiff No. 01 during arguments, he confirmed the fact that the defendant is a Suzuki Van driver. Meaning thereby that the defendant is someone below average person with respect to his earnings, so, he cannot be overburdened to pay Rs. 55000/- per month as maintenance to the plaintiffs rather I deem it appropriate and reasonable to fix the maintenance amount of each of the plaintiffs to the tune of Rs. 3000/- per month with 10 % annual increase. The plaintiff No. 01 will be entitled to receive the maintenance amount at the aforementioned rate since June, 2020 till the time she remains in the marriage of the defendant and the plaintiff No.02 being a male child will be entitled to receive the maintenance amount at the aforementioned rate since June, 2020 till the age of majority while the plaintiff No. 03 to 05 being female children will be entitled to receive the maintenance amount at the aforementioned rate since June, 2020 till their marriage.

So far as the relief claimed in para "Bay" i.e. recovery of the maintenance amount of Rs. 500,000/- is concerned, the plaintiffs have neither produced any document in this respect nor have established the fact that they were ousted from the house by someone when the defendant was imprisoned in the year 2012/2013 rather it is mentioned in the plaint that they were ousted by

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 C. J. J. Wani
 J. J. (Maha)

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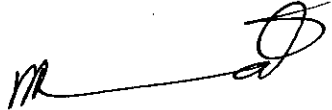
the defendant from the house in June, 2020. Thus, they failed to establish this claim.

So far as the relief claimed in para "Jeem" i.e. recovery of 02 tola gold or its market value is concerned, though the plaintiff No. 01 has not produced any documentary proof in this respect but it is a common practice that the bride takes dowry articles with herself from the house of her parents to the house of the bridegroom in the shape of gold and articles of common use etc and the marriage in its beginnings being the event of joy and happiness and the bride do least care of the dowry articles and the same is usually utilized by the bridegroom. Also, the defendant is ex-parte and there is nothing in rebuttal, thus, the plaintiff No. 01 established her claim to this effect and is entitled to its recovery or the recovery of its market value.

In the light of the aforesaid findings, the suit of the plaintiffs is hereby disposed off accordingly. Costs shall follow the event.

File be consigned to the record room after its necessary completion and compilation.

Announced
26.11.2020


(Rehmat Ullah Wazir)
Civil Judge-I,
Orakzai (at Baber Mela)