

25

In the name of almighty Allah who has unlimited jurisdiction over and beyond the universe.

BEFORE THE COURT OF
ADDITIONAL DISTRICT JUDGE, ORAKZAI

Family Appeal No. 1/FCA of 2023

Date of institution: 17.01.2023

Date of decision: 13.06.2023

Khyal Zaman son of Muhammad Wazeer presently resident of Zargeri District Hangu. **(Appellant)**

...Versus...

Mst Masti Khela wife of Khyal Zaman resident of Qaum Ali Khel, Tappa Jasrat Khel, District Orakzai **(Respondent)**

Appeal against Judgement, Decree and Order dated 19-12-2022 in Family Suit No. 2/3 of 2021.

JUDGMENT

Through instant appeal, the appellant Khyal Zaman has challenged the validity and propriety of Judgment & Decree dated 19.12.2022, recorded in family suit No. 2/3 of 2021; whereby, learned Senior Civil Judge /Judge Family Court, Orakzai has granted decree in favour of the plaintiff by entitling her to the dower of Rs. 50,000/- cash, dowry articles of its market value worth Rs. 50,000/- and maintenance of Rs. 15,000/- per month since 01-01-2017 till 25-01-2021 and afterword 03 months period as Iddat with 10% annual increase against the defendant.


2. Brief facts, relevant for the disposal of the appeal, are such that the plaintiff Mst. Masti Khela (respondent herein) instituted a suit against the defendant/husband Khyal Zaman (appellant herein) for the recovery of maintenance of Rs. 15,000/- per month since 01-01-2017 till 25-01-2021 with 10% increase per year; the dower of Rs. 50,000/- cash; and, dowry articles as per the list or its value worth Rs. 50,000/-. The matrimonial life of the spouse passed pleasantly when from the wedlock of the parties, a baby was born,


SAYED FAZAL WADOOD
Advt. District & Sessions Judge
Orakzai Hangu

however, the attitude of the defendant towards plaintiff changed altogether. The defendant did not take care about the requirements of the plaintiff and used to beat her. It was 01.01.2017 when the defendant ousted plaintiff from his house with 03 pairs of clothes where after she is residing in her parents' house and during the period the defendant has paid no maintenance to her. The dowry articles are in the possession of the defendant and he also refused to pay the deferred dower. Plaintiff claimed to have approached the defendant to pay her dower, return the dowry articles or price thereof; but, he refused which led to the institution of the suit.

3. Learned, the Trial Court summoned the defendant, who appeared and contested the suit by filing written statement; wherein, he raised certain legal as well as factual objections. It was specifically pleaded that the dower has already been paid and plaintiff was served with divorce on mutual consent that led return of the dowry articles on the spot. Pleadings of the parties were reduced into the following issues by the learned Trial Court.

- i. Whether the plaintiff has got a cause of action?
- ii. Whether the plaintiff is estopped to sue?
- iii. Whether the plaintiff is entitled to the recovery of dower worth Rs. 50,000/- and dowry articles as per the list annexed *with* the plaint or its price worth Rs. 50,000/- in the alternate from the defendant?
- iv. Whether the plaintiff is entitled to the recovery of an amount of Rs. 15,000/- for month with 10% annual increase since 01.01.2017 till the disposal of the suit from the defendant as maintenance?
- v. Whether the plaintiff herself has left the house of the defendant on 01.01.2021 and took away her dowry articles and the marriage between the parties has been dissolved by irrevocable divorce on 25.01.2021 that


SAYED FAZAL WADOOD
 District & Sessions Judge
 Orakzai Hangu
 P. O. D. G. E.

is why she is not entitled to the recovery of either maintenance or the dowry articles?

- vi. Whether the plaintiff is entitled to the decree as prayed for?
- vii. Relief.

4. After framing of issues the parties were asked to produce evidence in support of their respective contentions. In order to prove her claim/contention, the plaintiff produced 03 witnesses. Akhtar Gul (brother and special attorney of the plaintiff) appeared as PW-01, Lobat Khan (relative of the plaintiff) as PW-02 and Noor Jalil (relative of the plaintiff) appeared as PW-03. All the above mentioned PWs narrated the same story as in the plaint and supported the contention of the plaintiff. On the other hand, the defendant in support of his contention himself appeared as DW-1 who narrated the same story as in the written statement and added that he has divorced the plaintiff on 25-01-2021.

5. The learned trial court made efforts for the post trial reconciliation, which resulted into failure; therefore, after affording an opportunity to the parties for addressing arguments, the suit of the plaintiff was decreed in favour of the plaintiff by entitling her to the dower of Rs. 50,000/- cash, dowry articles of its market value worth Rs. 50,000/- and maintenance of Rs. 15,000/- per month since 01-01-2017 till 25-01-2021 and afterword 03 months period as Iddat with 10% annual increase against the defendant. Feeling aggrieved, the defendant/appellant preferred instant appeal, which was contested by the plaintiff/respondent. The appellant assailed the impugned Judgment and Decree on the ground of misreading and non-reading of the evidence produced by the parties and that the findings/decision of the Trial Court is wrong and against the evidence of the parties.


SAYED FAZAL WADOOD
 District & Sessions Judge
 Uraizai District

6. Learned counsel representing appellant argued that the lady was chronic case of mental health illness. She was divorced on the mutual consent of the parties with the approval of their families. The date of commencement i.e 01-01-2017 has been mentioned in the plaint but later on deviated in the evidence and thus is contradictory. He concluded that the maintenance at the rate of Rs.15,000/- per month with 10% per annum increase is too much. Setting aside of the impugned Judgement with special reference to monthly maintenance is prayed for.

7. Learned counsel representing respondent argued that the impugned Judgement is based on logical appreciation of evidence and correct application of law. Presentation of appeal is aimed to protract litigation with mala fide and prayed for dismissal of appeal with cost.

8. It is main contention of the appellant/defendant that the learned Trial Court has not rendered correct decision/finding and has fixed the maintenance of plaintiff Rs.15,000/- per month, dower of Rs. 50,000/- cash and dowry articles of its market value worth Rs. 50,000/- and the same decision of the learned Trial Court is the result of misreading and non-reading of the evidence and moreover payment of the same maintenance allowance is not affordable for the appellant/defendant as he is a poor person. The appellant has not challenged the findings/decision of the learned Trial Court which has been rendered on the remaining issues, hence the sole question for determination before the Court as to see and decide that whether the learned Trial Court has correctly determined the maintenance amount of the plaintiff Rs.15,000/- or not? It is also worthwhile to mention here that when the plaintiff left the house of her husband/appellant in the year 2017, till date the appellant/defendant has not provided any maintenance allowance to the plaintiff, which shows the conduct and behavior of the appellant/defendant that even he has failed to

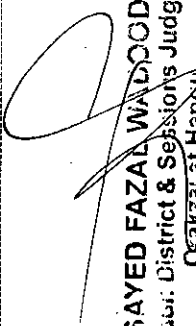
29

provide any maintenance whatsoever in favour of plaintiff. As far as this contention of the defendant/appellant is considered that Rs.15,000/- per month is too much amount which could not be paid by him conveniently. Regarding the same fact, it is observed that Rs.15,000/- as maintenance allowance per month for plaintiff is not a huge amount as the price hike in the recent years has been increased tremendously in respect of all daily use commodities and hence, it cannot be held that the same amount is beyond sufficiency to meet the basic necessities of daily life. In this regard guidance is taken from the Judgment being reported in "2019 CLC Note 50 [Sindh (Hyderabad Bench)]" wherein their lordship have observed as under:-

"---S. 5 & Sched.---Suit for recovery of dower amount, dowry articles and maintenance---Petitioner assailed judgments and decrees passed by lower courts whereby respondent was held entitled to recover dower amount of Rs. 2,00,000, maintenance for iddat period at the rate of Rs.5,000 per month, past maintenance of both the minors at the rate of Rs. 5,000 per month till disposal of the suit and their future maintenance at the rate of Rs. 3,000 per month till they attained majority with increase of 10% per year---Validity--- Family Court had fixed the maintenance allowance keeping in view the source of income of the father/petitioner---Judgments and decrees passed by lower courts did not suffer from any illegality or jurisdictional defect---Constitutional petition was dismissed. [Paras. 9 & 10 of the judgment]"

9. It is, therefore, keeping in view the social and financial status of the defendant/appellant, the learned Trial Court has determined reasonable maintenance allowance for the plaintiff. Financial position being weak is no stance of the defendant either in his written statement or in evidence. Therefore, the findings of the learned Trial Court on issue No.3 and 4 are correct.

10. Resultantly, as a sequel of the above discussion, this Court holds the view that the Trial Court has correctly and properly appreciated the evidence produced by the parties and there appears no misreading and non-reading

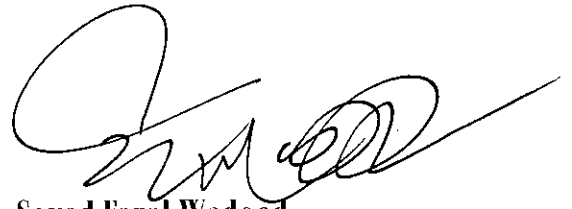

SAYED FAZAL WAJOOD
A.S. District & Sessions Judge
Osarkat at Hangal

30

evidence in the impugned judgment and decree of the learned Trial Court and hence, the decision/findings of the learned Trial Court upon the issue No.3 and 4 is correct and in accordance with law, which does not warrant any interference of this Court. Hence, the instant appeal being devoid of merits is hereby dismissed. Parties are left to bear their own costs.

11. Requisitioned record be returned back while file of this Court be consigned to District Record Room, Orakzai after completion and compilation within the span allowed for.

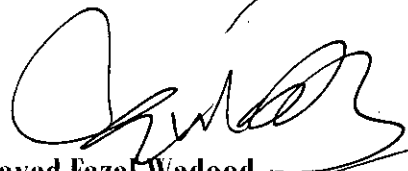
12. Announced in the open Court
13.06.2023



Sayed Fazal Wadood,
ADJ, Orakzai at Baber Mela

CERTIFICATE.

Certified that this Judgment consists of six (06) pages; each of which has been signed by the undersigned after making necessary corrections therein and read over.



Sayed Fazal Wadood,
ADJ, Orakzai at Baber Mela