

48<sup>1</sup>

**IN THE COURT OF FARMAN ULLAH**

SENIOR CIVIL JUDGE/JUDGE FAMILY COURT ORAKZAI AT BABER MELA, HANGU

Family Case No. 06/3 of 2020  
Date of Institution: 15/10/2020  
Date of Decision: 21/12//2021

**Safia Bibi d/o Mehboob Gul**

R/o Qoam Dara Dar Momozai, Tappa Machi Khel, Arho Kalay P/O Ghiljo,  
Tehsil Ismail Zai & District Orakzai ..... (Plaintiff)

VERSUS

**Ariaz s/o Aibat Khan**

R/o Qoam Dara Dar Momozai, Tappa Machi Khel, Arho Kalay P/O Ghiljo, Tehsil  
Ismail Zai & District Orakzai .....(Defendant)

**SUIT FOR DISSOLUTION OF MARRIAGE, RECOVERY OF DOWER,  
MAINTENANCE AND RETURN OF DOWRY ARTICLES**

**JUDGEMENT:**

21.12.2021

Brief facts of case in hand are that plaintiff filed a suit for dissolution of marriage on the basis of cruelty, recovery of dower, maintenance and dowry articles to the affect that Nikah of plaintiff and defendant was solemnized in June, 2019 in lieu of dower Rs.10,000/- cash and 1.5 tola gold. That at the time of *Rukhsati*, 1.5 tola gold ornaments were given to the plaintiff, however, later on the same gold was snatched by the defendant, hence the entire dower including gold and Rs.10,000/- is outstanding against defendant. That plaintiff took articles, maintenance in the list annexed with the plaint at the time of *Rukhsati* which are still in the house of defendant, hence defendant is liable to return the same to the plaintiff. That the marriage of plaintiff with defendant was forcibly conducted by the uncle of plaintiff against the desire and wish of plaintiff but even then, plaintiff did not object the same and remained in the house of defendant for 04 months after *Rukhsati*. That the attitude of defendant remained harsh to the plaintiff since

  
FARMAN ULLAH  
Senior Civil Judge  
Orakzai at Baber Mela  
21-12-21

49

the first day of the marriage and he used to beat and torture her on petty nature matters. Finally, plaintiff was ousted by defendant from his house without any reason after four months of marriage and since then plaintiff is residing with her mother. That during the stay of plaintiff in the house of her mother, defendant failed to provide any maintenance rather defendant and his family members repeatedly extended threats to the plaintiff. That due to the cruel and harsh attitude of defendant, hatred has been developed in the heart of plaintiff towards defendant and thus plaintiff is unable to reside with the defendant as a wife within the limits of Shariat, hence, instant suit.

1. Defendant was summoned, who appeared before the court and contested the suit by submitting his written statement, wherein, he objected the claim of plaintiff on various grounds.

The divergent pleadings of the parties were reduced into the following issues.

**ISSUES:**

1. Whether the plaintiff has got a cause of action?
2. Whether plaintiff is entitled to dissolution of marriage on the basis of cruelty?
3. Whether dower of plaintiff was fixed Rs. 10,000/- and 1.5 tola gold, which is still outstanding against the defendant?
4. Whether plaintiff took dowry articles mentioned in the list annexed with the plaint to the house of defendant at the time of her *Rukhsati*?
5. Whether defendant has paid the dower of plaintiff?
6. Whether plaintiff is entitled to the maintenance since Sept, 2019?
7. Whether plaintiff herself left the house of defendant without his permission? If so its effects.
8. Whether plaintiff is entitled to the decree as prayed for?

FARWANJILIAH  
Senior Civil Judge  
Gakzai Baher Mela  
21.12.2019

30

9. Whether defendant is entitled to the decree for the restitution of conjugal rights?
10. Relief.

After framing of issues both the parties were provided opportunity to produce evidence in support of their respective contention.


Plaintiff recorded her statement as PW-01 while Muqarab Jana and Muhammad Yasin were produced as PW-02 and PW-03 respectively while defendant recorded his statement as DW-01 and other witnesses were produced as Dw02 to DW-04.

Learned counsel for the parties heard and record gone through. In the light of available record and arguments of counsel for parties, my issue wise discussion is as under:

**Issues No. 02:**

Plaintiff contended in her plaint that the attitude of defendant towards her remained harsh since first day of her marriage, who used to beat and torture her on petty nature matter and finally she was beaten and ousted from his house without any reason.

Plaintiff in support of her contention appeared as PW-01 and she repeatedly contents of plaint in her examination in chief. During cross examination admitted that no receipt/medical prescription of any doctor regarding torture has been produced by her in the instant case. She also admitted that she could also not produced any complaint in writing against the defendant regarding her beating by defendant. PW-02 is the statement of mother of the plaintiff, who stated in her examination in chief that defendant and his family members used to torture and beat plaintiff after marriage and finally ousted her from his house. PW-03 is the statement of Muhammad Yasin, who stated in his examination in chief that mother

  
**FARMANULLAH**  
Senior Civil Judge  
Orakzai of Balochistan  
21.12.21

51

of plaintiff telephonically informed him that plaintiff has been beaten and ousted by her-in-laws from their house and thereafter, they also attacked their house. During cross examination admitted that plaintiff was never beaten by defendant in his presence.

From the analysis of available record, it is an admitted position that plaintiff remained in the house of defendant for only 04 months after Rukhsati and thereafter, she is residing with her mother. Though the plaintiff and mother of plaintiff appearing as PW-01 and PW-02 stated in their examination in chief that plaintiff was subjected to torture by defendant and he used to beat her during her stay in the house of defendant yet plaintiff as PW-01 categorically admitted during cross examination that she could not produced any medical prescription/receipt of doctor regarding any torture by defendant. She also admitted that she could not produced any application filed by her against the defendant regarding her torture. Similarly, PW-03 also admitted that plaintiff was never beaten by defendant in his presence. Even if examination in the chief of PW-03 is closely analyzed then it is evident that his entire statement is based on hearsay as he stated that he was informed by the mother of plaintiff through telephone regarding the beating and ousting of plaintiff by defendant.

From the admission of PW-01, it is the evident that no documentary evidence is available with the plaintiff regarding torture and beating of plaintiff by defendant. As far as the oral evidence of plaintiff is concerned, plaintiff has produced only one independent evidence in the shape of PW-03. However, from the statement of the said witness, it is clear that he himself is not the eye witness of any torture/ beating of plaintiff by defendant rather his entire evidence is based on hearsay, which has got no weightage in the eyes of law to be rely upon. So, it

  
FARMANULLAH  
Senior Civil Judge  
Court of Baher Mela  
21.12.21

is held that plaintiff could not produced any reliable and cogent evidence to prove that she was beaten and tortured by defendant. So, in attending circumstances plaintiff has not entitled for the dissolution of marriage on the basis of cruelty. Hence issue is decided in negative.

**Issue No. 03 and 05:**

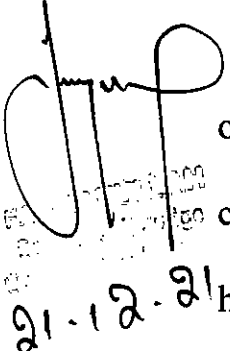
Both the issues are interlinked and interdependent, hence to avoid repetition of facts, both the issues are taken together for discussion.

It is the contention of plaintiff that her dower was fixed Rs.10,000/- cash and 1.5 tola gold which is still outstanding against the defendant.

On other hand defendant denied the contention of plaintiff regarding fixation of dower as Rs. 10,000/- and 1.5 tola of gold and contended that the entire dower fixed at the time of Nikah has been paid.

Plaintiff in support of her contention appeared as PW-01 while the mother of plaintiff was produced as PW-02. Both the PWs stated in their examination in chief that dower of plaintiff was fixed as Rs.10000/- and 1.5 tola gold and which has not been paid by the defendant to the plaintiff till date. However, during cross examination, PW-01 stated that she has no knowledge that how much dower was fixed at the time of Nikah. She also stated that she does not know about the witnesses of Nikah. PW-02 also stated that she neither knows the name of Nikah Khwan nor of the witnesses.

On other hand defendant appeared as DW-01 and stated in his examination in chief that the dower of plaintiff has been paid before the marriage ceremony. During cross examination stated that dower of plaintiff was fixed as Rs.229,000/- in presence of witnesses Atta Ullah and Arif and the Nikah was solemnized by the Nikah Khwan, the name of whose is not remembered to him. However, he will

  
21.12.21

53

produce the Nikah Khwan before the court. He further stated that dower amount Rs.1,19,000/- were paid to the plaintiff through Nikah Khwan while the remaining amount Rs.1,10,000/- were paid by his father to the mother of plaintiff. DW-02 is the statement of father of defendant, who stated in his examination in chief that dower of plaintiff was fixed as Rs. 2,29,000/- and out of which he himself paid Rs.1,10,000/- to the mother of the plaintiff while remaining 1,19,000/- were paid to the mother of plaintiff through Nikah Khwan. During cross examination, he also repeated that dower of plaintiff was fixed as Rs.2,29,000/- out of which RS. 110,000/- were paid to the mother of plaintiff while remaining 1,19,000/- were paid to the mother of plaintiff through Nikah Khwan. DW-03 is the statement of Atta Ullah, who stated in his examination in chief that he is the witness of Nikah of plaintiff and defendant and the Nikah was solemnized in his presence by Nikah Khwan. He also stated that dower of plaintiff was fixed as Rs.2,29,000/-. During the cross examination stated that no payment was made in his presence. DW-04 is the statement of Muhammad Ilyas, who stated in his examination in chief that he is the Nikah Khwan of Nikah of plaintiff and defendant and the Nikah was solemnized in mosque in presence of witnesses and the dower was fixed as Rs.2,29,000/-. He further stated that Rs.1,19,000/- were handed over to him by the father of defendant and the same amount, he paid to the mother of plaintiff. the facts uttered by the DWs regarding fixation of dower of plaintiff as RS.2,29,000/- remained un shattered during their cross examination. Similarly, plaintiff could not produced any oral and documentary evidence, which could negates the facts uttered by DWs and support the stance of plaintiff regarding fixation of her dower as RS.10,000/- cash and 1-1/2 gold ornaments. So, from the statements of DWs. It is established that dower of plaintiff was fixed as

  
FIAZ AHMAD  
Senior Civil Judge  
Crakazi at Baber Mela  
21.12.21

54

Rs.2,29,000/-. Similarly, from the statement of DW-04, it is evident that partially the dower amount Rs.1,19,000/- were paid through him to the mother of plaintiff at the time of Nikah. However, to the extent of remaining dower amount no cogent evidence was produced by defendant, which could established that the remaining amount was also paid to the plaintiff or her mother. Hence, issue No. 3 is decided in negative while issue No. 5 to the extent of payment of Rs. 1,19,000/- is decided in positive while to the extent of remaining payment of dower, it is decided in negative.

**Issue No. 4:**

It is the contention of plaintiff that the dowry articles, the detail of which has been mentioned in the list annexed with the plaint, were taken by the plaintiff to the house of defendant at the time of *Rukhsati*. In support of this contention, plaintiff and her mother appeared as PW-01 and PW-02 respectively and who stated in their examination in chief that the articles, mentioned in the list annexed with the plaint, were taken by the plaintiff to the house of defendant as dowry articles and the same are now in possession of defendant. However, in the cross examination, PW-01 admitted that she neither produced the receipts of dowry articles nor she could produce the shopkeepers from whom the said articles were purchased. She also stated that washing machine has been mentioned in the list of dowry articles but there is no electricity in their village. She further stated that the entire dowry articles were purchased by her mother (PW-02). However, PW-02 also admitted that she could neither produced the receipts of dowry articles nor could produced the shopkeepers as a witnesses, from whom the dowry articles were purchased. PW-02 also admitted it as correct that no washing machine was purchased by her for the plaintiff.

  
FARMANULLAH  
Senior Civil Judge  
District Court, B. D. D. M.

55

From the facts uttered by the PW-01 and PW-02, it is evident that neither receipts of dowry articles were produced by the plaintiff nor the shopkeepers as a witness, from whom the dowry articles were allegedly purchased by the mother of the plaintiff. Moreover, there is also contradiction in the statement of PW-01 and PW-02 as PW-01 stated that all the dowry articles including washing machine were purchased by her mother (PW-02) but PW-02 categorically stated that no washing machine was purchased by her. Furthermore, plaintiff could not produce a single witness regarding the taking of dowry articles, mentioned in the list annexed with the plaint were taken by the plaintiff to the house of defendant at the time of *Rukhsati*. So, the available record does not establish that the articles mentioned in the list annexed with the plaint were taken by plaintiff to the house of defendant as dowry articles. Hence, the issue is decided in negative.

**Issue No. 6 and 7:**

Both the issues being interlinked and interconnected are taken together for discussion as to avoid repetition of facts.

Plaintiff averred in her plaint that she remained in the house of defendant for 04 months after *Rukhsati* and thereafter, she was beaten and ousted by defendant from his house and since September, 2019 she is residing with her mother but during this period no maintenance was provided by the defendant to her. On other hand, it is the contention of defendant that plaintiff left the house of defendant without the permission of defendant and refused to perform her marital obligations inspite of repeated efforts made by the defendant, hence plaintiff is not entitled to any maintenance rather she is required to come to the house of defendant and perform her marital obligations.

  
FARID AHMAD  
Senior Civil Judge  
21.12.21



56

Plaintiff in support of her contention, appeared as PW-01 while her mother was produced as PW-02 and Muhammad Yasin as PW-03. PW-01 and PW-02, almost repeated the same facts in their examination in chief as mentioned in the plaint while PW-03 stated in his examination in chief that he was telephonically informed by the mother of plaintiff that defendant has beaten the plaintiff and ousted her from his house. On other hand defendant, in support of his contention appeared as DW-01 and stated in his examination in chief that plaintiff left his house in his absence and without his permission as at that time defendant was at Lahore in connection with livelihood. He further stated that as he came to know that plaintiff has left his house, he came from Lahore and repeatedly requested plaintiff through various Jirgas to come to the house of defendant and perform her marital obligations but she refused. DW-02 also stated that plaintiff remained in the house of defendant for 04 months after *Rukhsati* and thereafter, she left the house in absence of defendant as at that time defendant was in Lahore in connection with livelihood. He also stated that repeatedly efforts were made by them and requested plaintiff to come to the house of defendant to perform her marital obligations but she refused.

  
FARHAN M. KHAN  
Senior Civil Judge  
Court at Baber Mandi

From the available record, it is an admitted position that plaintiff remained in the house of defendant for 04 months after her *Rukhsati* and thereafter, left the house of defendant. Though, it is the contention of plaintiff that she was beaten and ousted by the defendant from his house yet DW-01 and DW-02 categorically stated in their examination in chief that at the time of leaving the house of defendant by the plaintiff, defendant was in Lahore in connection with his livelihood. Such facts uttered by the DW-01 and DW-02 were not cross examined by the counsel for the plaintiff during cross examination and thus these facts

CS7

uttered by DW-01 and DW-02 remained unrebutal. By not cross examining such facts, amounts to admission on the part of plaintiff. Moreover, Plaintiff appearing as PW-01, during cross examination stated that she was beaten by the brother of defendant and at that time defendant was in Lahore. So, the facts stated by DW-01 and DW-02 coupled with the facts admitted by PW-01, it is established that plaintiff left the house of defendant in the absence of defendant and at the time of leaving the house by the plaintiff, defendant was in Lahore. As defendant was in Lahore at the time of leaving the house by the plaintiff, hence no question of beating and ousting the plaintiff by defendant arising at the time of leaving the house of defendant by the plaintiff rather record suggests that plaintiff left the house of defendant with her free will and without the permission of defendant and thereafter, she is reluctant to perform her marital obligations. Though, husband is under obligations to provide maintenance to his wife but the wife at the same time is also require to perform her marital obligations. In other words, the rights and duties of the spouses are co-relative and the right of one party is the duty of other party while duty of one party is the right of other party. If a party fails to perform his/her duty then he/she cannot claim right from the other party. It is established in instant case that plaintiff has left the house of defendant in his absence and without his permission and failed to perform her marital obligations, hence she is not entitled to claim maintenance from defendant for such period. So, issue No. 6 is decided in negative while issue No. 7 is decided in positive.

**Issue No. 1, 8 & 9:**

In the light of discussion on issue No. 2 to 7, it is held that plaintiff is not entitled to decree for dissolution of marriage on the basis of cruelty, return of dowry articles, maintenance and recovery of dower, however, from the plaint,

21.12.21  
FARRAN MAJID  
Senior Civil Judge  
Court of Sessions  
Lahore

it is evident that plaintiff by no mean is ready to reside the defendant as wife and husband within the limits defined in Sharia. Even efforts for reconciliation were made during the pendency of suit but plaintiff refused to live with defendant as a wife. Being such position, court is left with no option but to dissolve the marriage of parties on the basis of *Khula*. As plaintiff has received dower amount RS.1,19,000/- from defendant, hence she is liable to return the same to the defendant. So, issue No.1 and 8 to the extent of dissolution of marriage on the basis *Khula* are partially decided in positive and to the extent of remaining claims, it is decided in negative. Similarly, issue No. 9 is also decided in negative.

**Relief:**

As sequel to above discussion, suit of plaintiff is decreed to the extent of dissolution of marriage on the basis of *Khula* while rest of suit of plaintiff is dismissed. However, plaintiff will return back the received amount of dower RS. 1,19,000/- to the defendant. No order as to cost.

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

**Announced**  
21/12/2021

FARMANULLAH  
Senior Civil Judge  
Orakzai at Baber Mela  
(Farman Ullah)  
SCJ/Judge Family Court,  
Orakzai at Baber Mela, Hangu.

**CERTIFICATE**

Certified that this judgment of mine consisting of 11 (eleven) pages, each has been checked, corrected where necessary and signed by me.

FARMANULLAH  
Senior Civil Judge  
Orakzai at Baber Mela  
(Farman Ullah)  
SCJ/Judge Family Court,  
Orakzai at Baber Mela, Hangu.