

HIGH COURT OF AZAD JAMMU AND KASHMIR

*Writ Petition No.10/2022;
Date of Institution 01.01.2022;
Date of Decision 25.03.2022.*

Suleman Shah S/o of Ahmed Shah, Caste Syed, R/o Mohallah Lower Tariqabad Ward No.7 Tehsil and District Muzaffarabad Azad Jammu and Kashmir.

Petitioner

VERSUS

1. Judge Family Court/Additional District and Sessions Judge Muzaffarabad, Azad Jammu and Kashmir.
2. Sobia Kazmi D/o Khalid Hussain Shah, W/o Suleman Shah, Caste Syed, R/o Ward No.11 Mohallah Plate, Tehsil and District Muzaffarabad, Azad Jammu and Kashmir.

Respondents

WRIT PETITION UNDER ARTICLE 44 OF
AJ&K INTERIM CONSTITUTION 1974

Before:- Justice Sardar Muhammad Ejaz Khan, J.

PRESENT:

Mr. Tahir Aziz Khan, Advocate for the petitioner.

Mr. Sharafat Hussain Naqvi, Advocate for respondent No.2.

JUDGMENT:

Through this writ petition filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, following relief has been sought by the petitioner:-

*“In view of the above, it is very humbly prayed that this Court may very graciously be pleased to struck down/quashed the impugned orders dated 15.12.2021 and 24.12.2021 (Annexure “PE” & “PF”) by declaring the same as having no legal effect and to dismiss the legally incompetent application of respondent No.2 dated 24.12.2021 (Annexure “PF/1”) with necessary orders to the respondent No.1 to decide the case on the basis of available record/evidences of the case, in the interest of justice. If the petitioner is legally entitled for any other alternate, appropriate or consequent relief that may also be granted to meet the ends of justice.
”*

2. Precise version as stated in writ petition by the petitioner is that a marriage between petitioner and respondent No.2 was

solemnized on 10.05.2018 and before *Nikah* respondent No.2 and her father agreed to solemnize *Nikah* in lieu of Rs.5,00,00 but at the time of *Nikah* respondent No.2 presented written *Nikahnama* while mentioning land measuring 06 Marlas survey No.621 consisting of two rooms, kitchen and bath room situated in Lower Tariqabad Muzaffarabad in place of settled dower amount and when the petitioner resisted upon the dower mentioned in the *Nikhanama* then father of the respondent No.2 admitted the fact and showed consent upon the settled amount of dower as Rs.5,00,000/- but has requested that at this time, it is not possible to execute new *Nikahnama*, therefore, under good faith the *Nikah* was duly completed. It has further been stated that land mentioned in *Nikah* is a crown land, which cannot be alienated rather the petitioner purchased 12 Marlas land survey No.621 &

622 whereupon he constructed a house by expending a huge amount of Rs.10,35,000/-. It has further been stated that respondent No.2 left the house of the petitioner on her free will and thereafter, filed a suit for recovery of dower on 20.11.2019 and petitioner contested the suit and after the commencement of trial, the trial Court has fixed the case for judgment on 15.12.2021. It has been averred that on the said date the learned Judge Family Court instead of announcing the judgment framed additional issue illegally to ascertain the market value of the land mentioned in *Nikahnama* and in continuation of that illegal order, allowed the application of the respondent No.2 on 24.12.2021 for summoning SDO building for assessment of the market value of the property, without inviting objections from the petitioner, therefore, feeling aggrieved from the impugned

orders dated 15.12.2021 and 24.12.2021, the petitioner filed the instant writ petition for redressal of his grievance.

3. After admission of writ petition, private respondent filed written statement along-with plethora of documents on 16.01.2022 wherein stand taken by the petitioner in writ petition was refuted from top to bottom and it has been stated that the petitioner suppressed the true facts from the Court and made the matter controversial on frivolous grounds, hence, it has been prayed for dismissal of writ petition.

4. Pro and contra arguments heard. Record perused.

5. It is relevant to mention here that prior to this writ petition, the petitioner filed writ petition No.1362/2020 on 17.10.2020 for seeking amendment in written statement, which was allowed with the direction to the

learned trial Court to decide the original case/suit within a period of two months vide order dated 01.01.2020 and thereafter, again the petitioner filed writ petition No.185/2021 on 16.01.2021 for framing additional issue, which was decided vide order dated 18.01.2021 with the direction to the trial Court for framing additional issue in view of amended written statement. It further reflects from record that petitioner appears to have filed third writ petition No.254/2021 on 25.01.2021 by challenging orders dated 22.01.2021 and 23.01.2021 respectively, which was accepted on account of no objection by the other side vide order dated 02.04.2021 while providing an opportunity for recording evidence of witness of respondent No.2 and providing the same to the petitioner for cross-examination on the above witness.

6. The question is as to whether against the interlocutory orders/interim orders passed by the learned Judge Family Court, the extraordinary jurisdiction conferred by this Court under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974 can be invoked or not? It is apt to state here that the Azad Jammu & Kashmir Family Courts Act, 1993 is a special law and the basic purpose for the establishment of the Family Courts is to provide speedy and expeditious trial of the family matters and accord justice at the doors steps of the spouses as such this prevalent practice to bring the interim orders passed by the Family Courts by-way of writ petition is not appreciable, which practice should be avoided so that particular purpose for enacting special law will be served, hence, jurisdiction of this Court by-way of constitution petition cannot be invoked in a routine matter, which can be

invoked in extra-ordinary situation and in exceptional circumstances as such no eventuality appears to have been found. For proper appreciation of the matter, I would like to reproduce the relevant portion of case titled *Muhammad Sabir vs. Mst. Azra Bibi and 2 others* [2011 CLC (Lahore) 417], wherein it has been observed as under:-

“The contention of the learned counsel for the petitioner is without any force. Admittedly under section 14(3) of the Family Court Act, no appeal or revision is competent against the interlocutory order passed by the Family Judge. Likewise, an interim order of the Family Court also cannot be legally challenged before the High Court through the writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan. If any authority is needed, reference may be made to S. Azharul Hassan Naqvi v. Mst. Hamida Bibi and 2 others (1979 CLC 754) and Muhammad Akram v. Mst. Raheela Aslam and 2 others (PLD 1999 Lahore 33).”

7. In view of principle settled in the above quota precedent, the instant writ petition against the interlocutory orders is not maintainable. However, keeping in view the earlier unending litigations, I would like to decide the matter on merits to secure further hardships of the parties. Record shows that the petitioner in fourth round of litigation challenged the validity and sanctity of the impugned orders dated 15.12.2021 and 24.12.2021. Admittedly, the property mentioned in *Nikahnama* is a crown land, which has not been denied by the petitioner in his statement recorded before the trial Court for which the learned trial Court framed additional issue on the ground that in alternative, what should be its market value and the parties were directed to produce their evidence, for and against, vide order dated 15.12.2021. Meanwhile, respondent No.2 filed

an application for summoning SDO Public Works Department Buildings Division, Muzaffarabad, as witness to ascertain the value of the property mentioned in *Nikahnama*, whereupon, the learned trial Court vide order dated 24.12.2021 accepted the application while summoning SDO Public Works Department Buildings Division, Muzaffarabad, and respondent No.2 is directed to submit the requisite expenses within three days so that the service upon the above witness may be procured. So, I am clear in mind that the learned trial Court committed no illegality while summoning SDO PWD as witness to assess the market value of the land mentioned in *Nikahnama* because it is the only way for the trial Court to ascertain the actual market value of that property. My this view finds support from a case titled *Anjum Firdous v. Additional*

District Judge and others [2007 CLC (Lahore)

1433] in which it has been held as under:-

“--S. 5 Sched. & S.14-Constitution of Pakistan (1973), Art.199---Constitutional petition---Suit for recovery of dower---Suit was dismissed, but Appellate Court partly allowed appeal against judgment of the Family Court holding that though the respondent was not owner of the house which was given in dower to the petitioner at the time of marriage, which earlier stood transferred in favour of mother of respondent, but respondent was bound to pay its price and that contention of respondent that he had already paid cash amount to petitioner in lieu of price of said house as owner, was not established---Respondent having not challenged findings of Appellate Court qua the house in dispute, said finding which had attained finality was binding on respondent---Omission on part of Appellate Court by not determining the price of house equivalent to its value could be termed as an accidental slip and same did not render judgment of Appellate Court, either redundant or ineffective- Illegality/irregularity so committed by Appellate Court was cured/

rectified by the High Court in constitutional jurisdiction, holding that, in view of admission by respondent regarding transfer of house in dispute to the petitioner in lieu of dower at the time of marriage, respondent could not be relieved of his liability to pay the price of disputed house, equivalent to its value---Constitutional petition was allowed and by modifying the impugned judgment of Appellate Court, it was declared that petitioner would be entitled to recover the price of house in dispute equivalent to its value from respondent to be determined by Executing Court during executing proceedings."

Likewise, aforesaid views strengthen from a case reported as *Mst. Razia Begum vs. Jang Baz and 3 others* [2012 CLC (Lahore) 105] wherein it has been pointed that:-

"The pith of all the discussion made above is that this petition is allowed by modifying the impugned judgment and decree of the learned Judge Family Court, Jand dated 22.07.2008 and by also modifying the impugned judgment and decree dated 27.11.2008 of the learned

Additional District Judge, Attock Camp at Jand and it is declared that the petitioner would be entitled to recovery of possession of 5 marlas of land, fully described in Column No.16 of the Nikahnama Exh.P.2 or in the alternative, the petitioner is entitled to recover price of the said land equivalent to its present market value from respondent No.1 to be determined by the executing court during execution proceedings.”

8. By taking into consideration the factual & legal controversy narrated in preceding paras and the principle laid down in the above precedents, the petitioner is neither an aggrieved party within the meaning of Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974 nor has *locus-standi* to invoke the extra-ordinary jurisdiction of this Court by-way of writ petition. Law is well settled on the subject matter that writ lies where any violation of law and rules has been made but in the case in hand, no such eventuality appears to have been found or

pointed by the learned counsel of the petitioner to which it can be assumed that impugned orders suffer from any irregularity or infirmity. The impugned orders dated 15.12.2021 & 24.12.2021 appear to have been passed in accordance with law while adjudging the real controversy between the parties as such the petitioner brought the factual controversy through the instant writ petition, which cannot be determined without recording evidence, hence, disputed question of facts cannot be resolved by this Court rather it is for the trial Court to determine the same after recording evidence on that factual controversies. I am of the considered view that reasoning handed down in the impugned orders by the learned Judge Family Court, Muzaffarabad, is quite consonance with the scheme of law, hence, the same do not call for any legal interference by this Court.

9. The gist of the above discussion is that the instant writ petition, having no legal backing, stands dismissed with no order as to costs and the same shall be consigned to record. Consequently, while vacating the ad-interim relief, the application moved for its extension stands rejected. However, in view of record, it elucidates the matter that the parties are in litigation since long, therefore, the learned trial Court is directed to decide the original *lis* within a period of one month from the date of receipt of this order in accordance with law.

Muzaffarabad:
25.03.2022(ZEB)

-Sd-
JUDGE

APPROVED FOR REPORTING

-Sd-
JUDGE