

HIGH COURT OF AZAD JAMMU & KASHMIR  
(Shariat Appellate Bench)

*Family Appeal No.31/2018;*  
*Date of Institution 28.04.2018;*  
*Date of Decision 18.03.2022.*

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Talha Nafees S/o Muhammad Sharif R/o  
Kanal Chawala P/o Damas Tehsil Chorohi  
District Kotli.

*Appellant*

VERSUS

1. Bushra Bostan D/o Muhammad Bostan.  
2. Muhammad Bostan S/o Punooch Khan.  
3. Muhammad Iddress.  
4. Asif S/o Bostan Cast Qurashi R/o  
Gohrsaiha P/o Chatterpari Tehsil and  
District Mirpur.

*Respondents*

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(2) *Family Appeal No. 32/2018;*  
*Date of Institution. 28.04.2018;*

\*\*\*\*\*

Talha Nafees S/o Muhammad Sharif R/o  
Kanal Chawala P/o Damas Tehsil Chorohi  
District Kotli.

*Appellant*

VERSUS

Bushra Bostan D/o Muhammad Bostan Cast  
Qurashi R/o Gohrsaiha P/o Chatterpari Tehsil  
and District Mirpur.

*Respondent*  
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(3) *Family Appeal No. 33/2018*  
*Date of Institution. 28.04.2018;*

\*\*\*\*

Talha Nafees S/o Muhammad Sharif R/o  
Kanal Chawala P/o Damas Tehsil Chorohi  
District Kotli.

*Appellant*

*VERSUS*

Bushra Bostan D/o Muhammad Bostan Cast  
Qurashi R/o Gohrsaiha P/o Chatterpari Tehsil  
and District Mirpur.

*Respondent*

**APPEALS AGAINST THE JUDGMENT & DECREES DATED 29.03.2018**

**Before:- Justice Sardar Muhammad Ejaz Khan, J.**

**PRESENT:**

Sardar Hamid Raza Khan, Advocate for the  
appellant.

Mrs. Ghazala Haider Lodhi, Advocate for the  
respondent.

**JUDGMENT:**

The captioned appeals have been filed  
against the judgment and decrees passed by the  
Additional District Judge/empowered as Judge  
Family Court, Mirpur, dated 29.03.2018 whereby  
suits filed by the respondent, herein, for recovery of

dowry articles and dissolution of marriage, have been decreed, whereas, a rival suit filed by the appellant, herein, for restitution of conjugal rights was dismissed for want of proof, hence, the instant appeals.

2. As common questions of facts and law are involved in the instant appeals, therefore, I propose to decide the same through this single judgment.

3. Precise facts of the case as per version of the appellant in the captioned appeals are that he filed a suit for restitution of conjugal rights before Additional District Judge/empowered as Judge Family Court Mirpur against the respondent herein, whereas, respondent-Bushra Bostan also filed two suits one for recovery of dowry articles and second for dissolution of marriage before the same Court. For the sake of brevity, the averments of the suits, need not to be reiterated here because the same have sufficiently been incorporated by the Judge Family Court in the impugned judgment. Suffice it to observe that after institution of the

suits, the learned Judge Family Court consolidated all the suits and framed relevant issues. After framing of issues and recording evidence of the parties, the learned trial Court decreed the suits filed by the plaintiff-respondent and the suit filed by the appellant was dismissed for want of proof vide impugned judgment & decrees dated 29.03.2018, hence, these appeals.

4. In compliance with order dated 27.01.2022 written arguments have been filed on behalf of respective pleadings of the parties.

5. I have perused the written arguments filed by the learned counsel for the parties and gone through the record of case with utmost care.

6. Adverting to appeal No.32/18 filed by the defendant-appellant, admittedly, appeal No.103/19, which was filed before this Court on 29.06.2019 for *setting-aside* the judgment & decree dated 18.06.2019 pertaining to maintenance allowance passed in suit No.300/2017 has already been decided by this Court against the defendant-

appellant after deep scrutiny of record of trial Court vide judgment dated 17.02.2022. Record further shows that during the period when both the appellant and respondent stayed together, behaviour of appellant with respondent remained hostile while he did not pay single penny to her since her desertion and he one way or the other pretexts left her in a *Madrasa* for religious education to avoid the expenses of maintenance allowance and thereafter, he also contracted second marriage.

7. It is crystal clear from evidence that the plaintiff-respondent proved the factum of desertion, non-performance of matrimonial obligations and non-payment of maintenance allowance and the case of the plaintiff-respondent falls in the grounds for dissolution of marriage. For proper appreciation of the matter, Section 2 of Dissolution of Marriage Act, 1939 which deals with the grounds of dissolution marriage is hereby under:-

2. **Grounds for decree for dissolution of marriage:-** A woman married under Muslim Law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely;-

- (i) That the whereabouts of the husband have not been known for a period of four years;-----
- (ii) That the husband has neglected or has failed to provide for her maintenance for a period of two years;
- (iii) That the husband has been sentenced to imprisonment for a period of seven years or upward;
- (iv) That the husband has failed to perform, without reasonable cause his marital obligations for a period of three years;
- (v) That the husband was impotent at the time of the marriage and continuous to be so;
- (vi) That the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;
- (vii) That she, having been given in marriage by her father or other guardian before she attained the age of sixteen years;

*Repudiated the marriage  
before attaining the age of  
eighteen years;  
Provided that the marriage has  
not been consummated;*

*(viii) that the husband treats her  
with cruelty, that is to say,*

*(a) Habitually assaults her or  
makes her life miserable  
by cruelty of conduct even  
if such conduct does not  
amount to physical ill-  
treatment, or*

*(b) Associates with woman of  
evil repute or lead an  
infamous life, or*

*(c) Attempts to force her to an  
immoral life, or*

*(d) Disposes of her property  
or prevents her exercising  
her legal rights over it, or*

*(e) Obstructs her in the  
observance of her  
religious profession or  
practice, or*

*(f) If he has more wives  
then one, does not treat  
her equitably in  
accordance with the  
injunctions of the Quran;”*

*(Underlining is mine)*

8. In light of above provisions of law, the plaintiff-respondent proved her case through reliable and convincing evidence for which trial

Court rightly decreed the suit for dissolution of marriage on the basis of non-payment of maintenance allowance and non-performance of marital obligations vide impugned judgment & decree dated 29.03.2018, hence, the same is not a result of misreading or non-reading evidence, which does not call for any legal interference by this Court, the same is upheld.

9. Coming to appeal No.33 filed against the decree for recovery of dowry articles, the appellant claimed that the impugned judgment & decree is a result of misreading and non-reading of evidence, hence, the same may be *set-aside*. It appears from record that the plaintiff-respondent in suit claimed dowry articles amounting to Rs.209935/- for which she also produced witness Muhammad Asif Bostan and she also entered into witness box and got recorded her statement while defendant-appellant produced witnesses Khudadad, Fadar Hussain and defendant-appellant himself entered into witness box and got recorded his statement. As claim of



plaintiff-respondent admitted by the witnesses of defendant-appellant that at time of marriage, dowry articles in a loaded Truck having worth more than Rs.2,00,000/- were given by the parents of plaintiff-respondent. Witness, Khudadad Hussain, produced by defendant-appellant, deposed in cross-examination that:-

؎"جو سامان دیا گیا تھا اس کی مالیت تقریباً 2 لاکھ سے زائد تھی۔ مظہر نے وہ سامان دیکھا تھا۔ مظہر نے ساتھ ہو کر سامان گاڑی میں لوڈ کروایا تھا۔ مدعا علیہ کے گھر والوں نے سامان کی واپسی کیلئے کچھ لوگوں کو بیچ میں ڈالا تھا۔ لیکن مدعی نے انکار کر دیا۔"

Likewise, appellant's witness, Muhammad Raziq Qureshi, in cross-examination deposed that:-

"یہ درست ہے کہ مدعا علیہا کا سامان مدعی کی دوسری بیوی کے زیر استعمال ہے۔"

10. From bare reading evidence of the parties, it transpires that it is an admitted fact that dowry articles given to respondent at the time of marriage are lying in house of appellant and its price is more than 2 lac., hence, the learned trial rightly appreciated the evidence of the parties and decreed the suit on the point that the plaintiff-respondent is entitled to recover the dowry articles according list of articles except item No.49, the amount as per list

comes to Rs.209935/- failing which 30% reduction on account of principle of depreciation, she is entitled to receive the amount of Rs.135450/-. I am not clear in my mind, when the trial Court reached at conclusion that according to the list of dowry articles, the amount of the same is Rs.2,09,935/- then it was enjoined upon the trial Court to decree the suit with the observation to return the dowry articles except item No.49 as it is and as an alternative, instead of fixing the amount of dowry articles as Rs.135450/-, the amount so determined as per evidence should have been fixed as Rs.209935/-, hence, the impugned judgment & decree dated 29.03.2018 granted to that extent is hereby modified in terms that the plaintiff-respondent is entitled to recover the dowry articles according to list produced by plaintiff-respondent and if the dowry articles except item No.49 are not handed over to the plaintiff-respondent, in alternative, she is entitled to receive the amount of Rs.2,09,935/-. Although the plaintiff-respondent

neither filed appeal against the said judgment & decree nor on this point any question has been raised by either side yet the same cannot be ignored and left unattended because if any flaw remains apparent on the face of record, which must be rectified by the Court itself.

11. In appeal No.31/2018, the appellant claimed to *set-aside* the impugned judgment & decree pertaining to restitution of conjugal rights passed in suit No.90/2015. As the suit for dissolution of marriage decreed in favour of plaintiff-respondent and the defendant-appellant failed to prove his version before the trial Court, hence, further deliberation will serve no purpose and judgment & decree to that extent is upheld.

12. The upshot of the above discussion is that the instant appeals No.31/2018 and No.32/2018, finding no force, are hereby dismissed. Judgment & decree dated 29.03.2018, under challenge, in appeal No.33/2018 passed in suit No.89 pertaining to recovery of dowry articles is modified in terms

that the plaintiff-respondent, is entitled to recover the dowry articles according to list produced by her and if the dowry articles except item No.49 are not handed over to the plaintiff-respondent, in alternative, she is entitled to receive the amount of Rs.2,09,935/-. A copy of this judgment shall be annexed along-with the other relevant files accordingly.

Muzaffarabad:  
18.03.2022(ZEB)

-Sd-  
**JUDGE**

*Approved for reporting*

-Sd-  
**JUDGE**