IN THE HIGH COURT OF SINDHAT KARACHI

BEFORE:
Mr. Justice Aftab Ahmed Gorar

C.P. No.S- 573 of 2020

Najam-ur-Rehman

Versus

Masooma Hassan & others

Date of Hearing:	13.09.2021
Petitioner:	Through Mr. Junaid Alam Khan, Advocate
Respondent No.1:	Respondent No.1 is present in person
Date of Announcement:	15th October, 2021

J U D G M E N T

AFTAB AHMED GORAR, J.- Through this petition, the petitioner has assailed the concurrent findings of the two Courts below.

2. Precisely the facts leading to the case are that petitioner and respondent No.1 knot in the wedlock on 11.3.2012 against dower amount of Rs.50,000/-, however, rukhsati did not take place since the petitioner Najam-ur-Rehman had moved abroad and did not return on one pretext or the other. Consequently, the respondent No.1 Mst. Masooma Hassan filed Family Suit No.38 of 2018 for dissolution of marriage by way of Khula with maintenance charges @ Rs.25,000/- per month w.e.f February, 2013 to December, 2017, which suit was decreed vide judgment dated 07.05.2019 by the learned 1st Civil & Family Judge, Karachi (West) and such order was also maintained vide order dated 28.1.2020 by learned IXth Additional District Judge, Karachi (West) in Family Appeal No.48/2019 filed by the petitioner, hence petitioner assailed the concurrent findings of two Courts below in the instant petition.

3. Learned Counsel for the petitioner submitted that the two Courts below did not consider the basic injunctions of Islam, principles of Muhammadan law and principles settled by the superior Courts, therefore, the judgments and decrees passed by the two Courts below are not warranted by facts and law. He further contended that the concurrent findings are result of mis-reading and non-reading of the evidence. He also contended that since no rukhsati took place therefore, maintenance was not permissible under the Islamic jurisprudence. Learned Counsel for the petitioner in support of his contentions has relied upon the cases of ***Ghulam Maohy-ud-Din vs. Naveed-uz-Zafar Malik (1992 ALD 506), Abduld Rehman vs. Kahlida Bi & 2 others (1980 CLC 1098), Syed Rashid Ali Shah vs. Mst. Haleema Bibi & 2 others (PLD 2014 Peshawar 26)***. He lastly prayed that this petition may be allowed and findings of the two Courts below may be set aside.

4. Respondent No.1, who was present in person, submitted that the findings of two Courts below are according to law of land and Sharia as such does not need any interference. She submitted that though rukhsakti did not take place, however the petitioner kept in hopes that she would be called abroad by petitioner after two months of Nikkah and after the agreed period, the petitioner did not arrange for the respondent No.1 to move abroad, therefore, the family of respondent No.1 had been enquiring from petitioner about visa and date to leave abroad, which he was avoiding to specify for one reason or the other, however on consistent pursing of the respondent No.1's family, the petitioner promised to held rukhsati in December, 2012 which he failed. Thereafter the petitioner again promised for rukhsati in February, 2013 but in vain. Respondent No.1 submitted that since these frequent promises were not fulfilled by the petitioner, which disregarded the family of respondent No.1 in the society, therefore the respondent No.1 had left with no option but to seek dissolution of marriage by way of

Khulla. She also submitted that according to Sharia even if no rukhsati take place, the wife is entitled for maintenance till iddat period.

5. I have heard the learned Counsel for the petitioner, the respondent No.1, who was present in person, perused the material available before me and gone through the impugned orders of two Courts below.

6. The facts of wedlock as well as not taking place the rukhsati are admitted, however the only dispute between the parties is claim of maintenance charges for which concurrent findings are in favour of respondent No.1. Though the learned Counsel for the petitioner raised plea of mis-reading and non-reading of the evidence but neither he referred any such mis-reading or non-reading in the evidence nor did he show the same while arguing the matter. Learned Counsel for the petitioner has also failed to refer from Sharia law that the respondent No.1 is not entitled for maintenance charges if no rukhsati took place. In support of his contentions, he referred several citations but the facts of those citations are distinguishable from the facts of the case in hand as in the referred cases the wife does not want to live with husband and sought Khulla whereas in the case in hand the wife intended to live with the husband but the husband avoids rukhsati for one reason or the other. It is also part of the record and admitted by the petitioner in para-3 of his written statement filed in Family Suit No.38 of 2018 that he initially started sending maintenance charges to respondent No.1 w.e.f June, 2012 till January, 2013, the period during he kept respondent No.1 on hopes to arrange for her to travel abroad travel to live together which he failed.

7. Apart from the above, since the respondent No.1 was ready to join/live with the petitioner but petitioner in his written statement admitted that he could not arrange a visa for the respondent No.1 to live with him, therefore, he left respondent No.1 with no option but to seek

Khulla as a girl could not made to sit for hopes of rukhsati for indefinite period. Bare reading of Ayat No.48 of Quran-e-Majid reflects that in case despite of wedlock if the husband has not touched the wife even then he was directed to release the wife handsomely. Relevant verse of Surah-e-Ahzab with translation is produced hereunder for ready reference:-

(۴۸) يٰٓاَيُّهَا الَّذِيْنَ اٰمَنُوْٓا اِذَا نَكَحْتُمُ الْمُؤْمِنٰتِ ثُمَّ طَلَّقْتُمُوْهُنَّ مِنْ قَبْلِ اَنْ تَمَسُّوْهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُّوْنَهَا ۚ فَمَتِّعُوْهُنَّ وَسَرِّحُوْهُنَّ سَرَاحًا جَمِيْلًا

Urdu translation of Ayat No.48 of Surah Ahzab

(۴۸) مومنو! جب تم مومن عورتوں سے نکاح کرکے ان کو ہاتھ لگانے (یعنی ان کے پاس جانے) سے پہلے طلاق دے دو تو تم کو کچھ اختیار نہیں کہ ان سے عدت پوری کراؤ۔ ان کو کچھ فائدہ (یعنی خرچ) دے کر اچھی طرح سے رخصت کردو

8. In view of what has been discussed above, I am of the view that since the intention of the respondent No.1 Mst. Masooma Hassan was to join/live with the petitioner but petitioner in para-5 of his written statement filed in family suit admitted that he could not arrange a visa for the respondent No.1 to live with him, therefore, she was left with no option but to seek Khulla and as such, she could not be released without reasonable amount. Considering the arguments of both the parties as well as going through the verse referred above, I am of the opinion that the concurrent findings of two Courts below do not require any interference, hence this petition merits no consideration and the same stands dismissed along with pending applications, if any.

Karachi.
Dated: 15.10.2021 Judge