

**IN THE COURT OF LUBNA ZAMAN
ADDITIONAL DISTRICT JUDGE-VI, MARDAN**

Appeal No.94/FCA of 2024

Date of Institution: 24.09.2024

Date of decision: 24.01.2025

Itibar Khan son of Hazrat Khan r/o Mohallah Khatan Khel Gujar Garhi
presently near Khattak Kanta Nowshera road, Mardan.

.....(**Appellant**)

V E R S U S

1. Mst.Hina wife of Itibar Khan daughter of Muhammad Nawaz alias Nawary.
2. Sahar daughter of Itibar Khan (minor) r/o Mian Chowk Rustam,
District Mardan.

.....(**Respondents**)

JUDGMENT

1. Appellant/defendant has preferred this appeal against the judgment, decree and order dated 26.07.2024 of the learned Senior Civil Judge (Family) Mardan vide which the respondents were held entitled to the following relief: -

- i. Plaintiff No.1 is held entitled to receive expenses of childbirth i.e. Rs.30,000/-.*
- ii. Plaintiff No.2 is held entitled for the recovery of Rs.5000/- per month with 10% annual increase till her marriage.*
- iii. Plaintiff No.1 is held entitled for the recovery of Rs.50,000/- as market value of the dowry articles. Rest of the claims are stand dismissed.*

2. Facts of the case are that the respondent No.1/wife filed a family suit against the appellant/husband for seeking recovery of unpaid

dower consisting of gold ornaments weighing 02 tola and house measuring 2 ½ marla situated at Nowshera road District Mardan and recovery of maintenance allowance for her and minor daughter @ Rs.7,000/- per month coupled with recovery of medical expenses incurred at the birth of her daughter and dowry articles alleging that her nikah was solemnized with the appellant/husband and dower amount was fixed vide *kabin nama* dated 08.04.2013 which is outstanding against the appellant/husband. The relationship of the parties became bitter after six months of *Rukhsati* and the appellant/husband ousted her from the house. The respondent No.2/minor was born at the house of the parents of respondent No.1/wife and medical expenses were paid by them. The parents of the respondent No.1/wife gifted dowry articles to her as per list annexed with the plaint, which are in the custody of appellant/husband. The appellant/husband has neglected to maintain the respondents, which compelled the respondent No.1/wife to file a suit.

3. The appellant/husband contested the suit and submitted written statement wherein he raised various legal and factual objections. He contended that dower amount was fixed as Rs.5000/- which was paid whereas the respondent No.1/wife has left the house without his permission and medical expenses were duly paid on his behalf to her parents. He also sought decree for restitution of conjugal rights. Divergent pleading of the parties were reduced into following issues.

ISSUES

- 1) Whether plaintiffs have got a cause of action?*
- 2) What the dower was fixed?*
- 3) Whether dower is paid?*
- 4) Whether plaintiff No.1 is entitled for recovery of Rs.30,000/- as maternity expenses incurred upon the birth of plaintiff No.2?*
- 5) Whether plaintiff No.1 is entitled for recovery of maintenance @ Rs.7000/- per month for the last four months prior to the institution of the case and onwards?*
- 6) Whether plaintiff No.2 is entitled for recovery of maintenance @ Rs.7000/- per month for onwards?*
- 7) Whether plaintiff No.1 is entitled for recovery of dowry articles worth Rs.50,000/-?*
- 8) Whether defendant is entitled for recovery of 02 tola gold ornaments and Rs.25000/- cash which allegedly plaintiff No.1 took away with her?*
- 9) Whether defendant is entitled for restitution of conjugal rights?*
- 10) Relief.*

4. In the course of proceedings, the respondent No.1/wife submitted application for dissolution of marriage on basis of *khula* subject to relinquishment of dower amount, and amendment in the plaint was made to the extent of dissolution of marriage on the basis of *khula*. As a result marriage of the parties was dissolved vide order dated 11.10.2023 on the basis of *Khula* subject to waiver of dower amount. The parties recorded pro and contra evidence and after hearing arguments of learned counsels for the parties, the learned Senior Civil Judge (Family) Mardan partially decreed the suit as detailed in the opening paragraph of the judgment vide impugned decree, judgment and order dated 26.07.2024.

5. Feeling aggrieved the appellant/husband has challenged the impugned judgment, decree and order on the ground that the learned Senior Civil Judge (Family) Mardan has passed the impugned judgment without taking into consideration the evidence of the parties. Contends that the appellant/husband has produced evidence that he made payment of medical expenses through DW-1 but the learned Family Court has discarded his evidence without genuine reason. Contends that the market value of dowry articles are decreed without exhibition of receipts on part of respondent No.1/wife whereas her parents are not financially stable to afford the dowry articles. Contends that the maintenance allowance of minor daughter is also fixed @ Rs.5000/- per month beyond the financial means of the appellant/husband. He requested that the impugned judgment, decree and order dated 26.07.2024 may graciously be set aside.
6. Arguments heard and record perused.
7. Perusal of case record would show that the respondent No.1/wife after one year of her *Rukhsati* has filed the family suit and in the course of trial the marriage was dissolved on the basis of *khula* subject to relinquishment of dower amount vide order dated 11.10.2023 which was not challenged on behalf of the appellant/husband; therefore, it has attained finality.
8. The respondent No.1/wife while appearing as PW-1 has stated that appellant/husband used to beat her and expelled her from the house. She stated that her daughter was born at the house of her parents and medical expenses were also paid by them. In her evidence, she has

not produced medical prescriptions or receipts to show that medical expenses worth Rs.30,000/- were incurred at the occasion of birth of her daughter. In rebuttal the appellant/husband has examined DW-1, who stated that he went to the house of respondent No.1/wife as a Jirga member and came to know regarding the birth of respondent No.2/minor. He stated that he went again to the house of the respondent No.1/wife alongwith his family and the mother of the respondent No.1/wife told them that they have incurred medical expenses at the birth of the minor. He stated that;

مدعیہ کے والدہ نے کہا کہ بچی کی پیدائش پر خرچہ آیا ہے میں نے اس کے خرچہ سے پانچ ہزار روپے سے زیادہ ادا کئے تاہم مجھے اب صحیح رقم یاد نہ ہے۔

He also disclosed that he made efforts for reconciliation but the respondent No.1/wife was not ready to return to the house of appellant/husband. In cross examination he admitted it correct that;

یہ درست ہے کہ جو رقم میں نے بطور خرچہ پیدائش مدعیہ نمبر 2 ادا کئے مجھے یاد نہ ہے البتہ میں نے والدہ مدعیہ کے مطالبہ سے -/5000 روپے زیادہ ادا کئے۔

9. Similarly, the brother of the appellant/husband (DW-2) also corroborated that DW-1 went to the house of respondent No.1/wife for purpose of reconciliation. The appellant/husband himself recorded statement as DW-3 and disclosed that the medical expenses were paid to the respondent No.1/wife through DW-1. He stated that;

اس کے بعد مدعیہ کو گھر لانے کے لیئے میں اور مفتی سخی بہادر صاحب بطور جرگہ گئے لیکن مدعیہ نہیں مانی پھر مدعیہ نمبر 2 پیدا ہوئی پھر میں بمعہ مفتی سخی بہادر صاحب اور اس کی اہلیہ بطور جرگہ گئے اور

وہاں پر مدعیہ کی والدہ نے مدعیہ نمبر 2 کے پیدائش کے اخراجات کا مطالبہ کیا تو مفتی صاحب نے انکے مطالبہ سے زیادہ رقم ادا کی۔

He also stated that;

مدعیہ نمبر 2 مدعیہ نمبر 1 کے والدین کے گھر پیدا ہوئی۔ یہ درست ہے کہ مدعیہ نمبر 2 کے پیدائش کے اخراجات مدعیہ نمبر 1 کے والدین نے برداشت کئے تھے۔ از خود کہا کہ بعد میں مفتی صاحب نے اسکی ادائیگی کردی تھی۔

10. In the light of evidence of DWs, it is clear that the appellant/husband sent Jirga to the house of respondent No.1/wife after the birth of his daughter and made payment of medical expenses through DW-1 subject to the demand of the mother of respondent No.1/wife whereas the respondent No.1/wife has not produced evidence to rebut the statements of the DWs. Therefore, in the given circumstances she is not entitled to the recovery of medical expenses worth Rs.30,000/-. The learned Senior Civil Judge (Family) Mardan has ignored the evidence of DW-1 while deciding the issue regarding the recovery of medical expenses.

11. As far as the maintenance of respondent No.2/minor is concerned; there is no doubt that in the present era of inflation the amount of Rs.5000/- per month is insufficient to meet the needs of the minor. The appellant/husband is a taxi driver, and the learned Senior Civil Judge (Family) Mardan while taking into account the financial means of appellant/husband has already taken a lenient view. The amount fixed in the impugned judgment, decree and order would enable the respondent No.1/wife to meet the educational expenses, clothing, transport and other necessities of life of the minor, which is within the means of the appellant/husband; hence, the learned Senior

Civil Judge (Family) Mardan has rightly fixed the maintenance allowance of the minor @ Rs.5000/- per month with 10% annual increase since her birth till her marriage.

12. In the course of proceedings, the appellant/husband has submitted application for extending right of visitation to him regarding the minor/respondent No.2. The minor is the real daughter of the appellant/husband, therefore, to maintain the parental bond alive between the father and daughter it would be appropriate to extend the right of visitation. The appellant/husband would be at liberty to meet the minor twice a month at the venue and time which shall be mutually settled by the parties in the course of execution.
13. The list of dowry articles (EX.PW1/1) is produced, which consists of normal articles of daily household use. In our society the parents of the bride normally gift dowry articles to their wedded daughters and sisters within their financial means. The DWs have not rebutted the list, therefore, the learned Senior Civil Judge (Family) Mardan has rightly decreed the worth of dowry articles Rs.50,000/-.
14. For reasons given above, upon partial acceptance of the appeal, the impugned judgment, decree and order dated 26.07.2024 is partially modified to the extent of medical expenses of respondent No.1/wife and right of visitation to the appellant/husband. Consequent upon the respondent No.1/wife is held not entitled for recovery of medical expenses worth Rs.30,000/-. The appellant/husband being the real father of the respondent No.2/minor daughter therefore right of visitation is extended to him and he shall visit the minor twice a month

at a venue and time mutually agreed by the parties in the course of execution. Rest of the findings are maintained. Cost shall follow the events.

15. Requisitioned record be returned to the quarter concerned alongwith copy of this judgment and file of this court be consigned to record room after its necessary completion and compilation.

Announced

24.01.2025

(Lubna Zaman)

Additional District Judge-VI,
Mardan

CERTIFICATE

Certified that this judgment consists of (08) pages. Each page has been read, corrected wherever necessary and signed by me.

(Lubna Zaman)

Additional District Judge-VI,
Mardan