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Judgment Sheet

LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No. 72122/2021

Nusrat Sadiq **Versus** Nadeem Asghar etc.

J U D G M E N T

Date of Hearing:	02.06.2025
Petitioner by:	Mr. Saqib Akram Gondal, Advocate.
Respondent No.1 by:	Mr. Fakhar Abbas, Advocate, assisted by Mr. Imran Aslam and Mr. Rahil Riaz, Advocates.

Anwaar Hussain, J. This constitutional petition is directed against judgment of the Appellate Court below dated 02.08.2021 whereby appeal of respondent No.1 ("**the respondent**") was partially accepted and the judgment of the Trial Court was modified to the extent that the petitioner was held entitled to recover maintenance at the rate of Rs.60,000/- per month from March, 2013 to March 2016 alongwith three months of *Iddat* period (instead of issuance of divorce effectiveness certificate as allowed by the Trial Court), with an annual increase of 10%, while the minor was held entitled to recover maintenance at the rate of Rs.70,000/- per month with a 10% annual increase, as opposed to the 20% annual increment decreed by the Trial Court. The finding with respect to the dower was maintained.

2. Learned counsel for the petitioner submits that the controversy is confined to the date until which the petitioner is entitled to recover maintenance as the oral divorce between the parties was not proved by the respondent, who did not appear in person before the Trial Court

and instead deposed through a special attorney, alongwith witnesses that includes the respondent's father. Adds that failure of the husband to personally appear and substantiate the pronouncement of oral divorce creates serious doubt as to its pronouncement, especially when no effectiveness certificate has been issued by the Union Council concerned.

3. Conversely, learned counsel for the respondent supports the findings of the Appellate Court below and submits that the petitioner herself unequivocally stated that she had been orally divorced in triplicate, hence, there remained no legal necessity for the respondent's personal appearance to prove the divorce.

4. Arguments heard. Record perused.

5. The controversy requiring adjudication is whether an oral divorce was pronounced by the respondent and, if so, whether it could be deemed effective in the absence of an effectiveness certificate issued by the Union Council concerned.

6. The submission of learned counsel for the respondent carries weight. The judgment of the Appellate Court below is consistent with the evidentiary record, particularly in view of the petitioner's own admission. In paragraph 5 of the plaint, while asserting her entitlement to the maintenance as also deferred dower, the petitioner stated as follows:

> "5. …***The defendant ten days ago, contracted to the plaintiff No.1 telephonically and pronounced Talaq Salasa to plaintiff No.1.*** *After divorced (sic) the plaintiff No.1 is entitled to recover the dower amount Rs.500,000/- which has not yet been paid to the plaintiff No.1 by the defendant. The defendant is bound to maintain the minor/plaintiff No.2 and plaintiff No.1 by paying the past and future maintenance*."
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> ***(Emphasis supplied)***

In response to para 5 of the plaint, the respondent replied as under:

> "5. Denied being incorrect. The defendant has first wife but she remained issueless due to which the plaintiff contracted Nikkah with the plaintiff No. 1 to have some issue. The fact of earlier marriage of the defendant was brought to the notice of plaintiff No. 1 and her parents alongwith cause of second marriage to which they agreed. ***It is correct that the defendant divorced the plaintiff No.1 telephonically on her demand***. *However, the defendant had paid the dower amount of Rs. 5,00,000/- to Sajjad Ali Shah S/o Bashir Ali Shah, R/O Qaim Pur, Near Motorway Interchange, Post Office Mannu Pur, Tehsil and District Shiekhupura, who was appointed as "Saalis" by the parties and instead of paying this amount to the defendant No. 1, he has misappropriated it*. Resultantly the powers of the said attorney were renounced by the defendant vide document dated 13.04.2016. The defendant reserves his right for the recovery of this amount and the other amounts from said the person. The defendant has maintained the plaintiffs till January 2016. The plaintiff No. 1 is entitled to maintenance of "Iddat Period" which defendant is ready to pay determination of this Hon'ble Court."
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> ***(Emphasis supplied)***

It had been the petitioner's assertion that ten days before the filing of the suit, oral divorce, in triplicate, had been pronounced, which stands admitted by the respondent in his written statement, submitted through his attorney. In these circumstances, there remains no legal basis to disregard the occurrence of divorce, merely, due to the absence of an effectiveness certificate issued by the Union Council concerned. There exists no bar in law preventing a husband from submitting a written statement or deposing through a duly authorized attorney in matters pertaining to the divorce and maintenance. The pivotal consideration remains whether a divorce was in fact pronounced, and in present case, the petitioner herself asserts that it was in fact pronounced, which fact has been admitted by the respondent. Had the facts of the case been such that the wife was asserting a claim for

maintenance and the husband was setting up a defence of oral divorce—without himself appearing and deposing or naming any witness of the divorce; and substantiating the defence—then the contention of learned counsel for the petitioner would have been justified and a different conclusion might have followed. However, the factual matrix of the present case is entirely distinct as there is an assertion of the pronouncement of oral divorce on the part of the petitioner and the corresponding admission on the part of the respondent, which concludes the divorce and the issuance of divorce effectiveness certificate merely stands out as a procedural formality to be adhered to. Needless to state that admitted facts need not to be proved. In such a scenario, the absence of a formal effectiveness certificate does not *ipso facto* nullify the oral divorce or render it ineffective.

7. Moreover, to accept the petitioner's argument—that maintenance is payable until issuance of a divorce effectiveness certificate by Union Council concerned—would amount to compelling parties to maintain a marital relationship that, in substance and in law, has already been dissolved. Such an interpretation would run contrary to the spirit of Islamic *Shariah* as also the jurisprudence developed thereof, which recognizes the dissolution of marriage upon the pronouncement of *talaq* in triplicate, rendering the marital relationship extinct without further formalities.

8. The matter can be examined from another angle. The petitioner's claim, in terms of para 5 of the plaint reproduced hereinabove, for dower upon divorce—being deferred in nature—was allowed by the Trial Court, which in itself presupposes that the said Court reached the conclusion that the marriage had been dissolved through divorce and the respondent is obligated to pay the dower, which was accordingly decreed. By accepting the dower, the

petitioner herself affirmed the dissolution of marriage through oral divorce—in triplicate. She cannot now, in the same breath, take a contradictory position that the marital tie remains intact solely due to the absence of an effectiveness certificate by Union Council concerned. Such inconsistency is untenable in law and equity, and falls under the clutches of the principle of ***Allegans contraria non est audiendus*** (a person who alleges contradictory things is not to be heard).

9. For what has been discussed above, this writ petition is devoid of any merits. Hence, the same is **dismissed**.

(ANWAAR HUSSAIN)
Judge

Approved for reporting.

Judge

Akram