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JUDGMENT SHEET

LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

W.P No.1563/2026

Mst. Hoor Hifza ***Versus*** Additional District Judge etc.

J U D G M E N T

Date of Hearing	14.10.2026
Petitioner by:	Mr. Ahmed Nawaz Khan, Advocate.
Respondent No.3 by:	Mr. Abdullah Samiullah, Advocate.

Anwaar Hussain J: Through this common judgment, the present as well as the connected constitutional petition, bearing W.P. No.1204 of 2026, are being decided together, as both arise from the same matrimonial proceedings and raise interrelated questions concerning effectiveness of oral *talaq*, recovery of the dower and the enforceability of a stipulation regarding gold, recorded in the *nikahnama*.

2. Briefly, Mst. Hoor Hifza ("**petitioner**") instituted a suit against respondent No. 3 ("**respondent**") seeking recovery of dower amounting to Rs.500,000/-, ten *tola* of gold, and maintenance allowance, whereas the respondent instituted a suit for restitution of conjugal rights. Both suits were consolidated and decided by the Trial Court through judgment and decree dated 01.10.2025. The petitioner was held entitled to recover dower of Rs.500,000/-, recorded in the *nikahnama* as payable on demand (عندالطلب), and maintenance allowance at the rate of Rs.20,000/- per month for the *iddat* period as the Trial Court accepted the petitioner's assertion that oral *talaq* had been pronounced but declined her claim for recovery of ten *tola* of

gold. Consequently, the respondent's suit for the restitution of conjugal rights was held to have become infructuous. Both sides preferred appeals. Through consolidated judgment and decree dated 12.02.2026, the Appellate Court below reversed the findings concerning divorce, dower, maintenance and gold. It held that the marriage was still subsisting, declined recovery of dower and maintenance allowance, allowed the petitioner's claim for ten *tola* of gold under Column No. 17 of the *nikahnama*, and decreed the respondent's suit for restitution of conjugal rights.

3. The petitioner maintains that the Appellate Court below wrongly discarded the evidence of oral pronouncement of *talaq* and declined recovery of dower expressly payable on demand. On the other hand, the respondent disputes the enforceability of the stipulation concerning ten *tola* of gold recorded in Column No. 17 of the *nikahnama*.

4. Learned counsel for the petitioner submits that oral *talaq* was pronounced by the respondent in the presence of the petitioner’s sister, Amna Zainab (PW-2), and that the Trial Court rightly accepted its occurrence. He further asserts that the dower of Rs.500,000/- was expressly payable on demand (عندالطلب) and could not have been declined merely because the marriage was considered subsisting. Regarding the gold, the petitioner's case is that the quantity stipulated in Column No. 17 of the *nikahnama* was never delivered to her. It is further contended, by learned counsel for the petitioner, that the respondent, despite admitting the entry, failed to establish delivery of the gold through any reliable evidence.

5. Conversely, learned counsel for the respondent submits that the alleged oral *talaq* could not be treated as effective in the absence of the requisite statutory formalities and a divorce effectiveness certificate. It is further contended that the entry regarding gold in

Column No. 17 constitutes, at best, a contractual promise, enforcement whereof falls within the jurisdiction of the ordinary Civil Court rather than the Family Court. In support of his contentions places reliance on the case reported as *Muhammad Awais v. Mst. Zahida Parveen* **(PLD 2012 Lahore 38)**. Further averred that even otherwise, the record depicts that gold was given to the petitioner who was wearing it at the time of wedding as depicted from the photographs confronted to the petitioner during the trial and prays for acceptance of the connected petition.

6. Arguments heard. Record perused.

7. The controversy raises three questions: whether the Family Court could determine the factum of oral pronouncement of *talaq* notwithstanding non-compliance with the requirement of statutory notice under Section 7 of the Muslim Family Laws Ordinance, 1961 ("**Ordinance**"); whether dower expressly stipulated to be payable on demand could be declined merely because the marriage, in the opinion of the Court, continued to subsist; and whether the entry in Column No. 17 of the *nikahnama*, declaring ten *tola* of gold to be the property of the bride, established an enforceable matrimonial entitlement or merely contemplated an independent contractual promise?

8. The first question requires a distinction between proof of pronouncement and the statutory effectiveness of *talaq*. The petitioner herself entered the witness box and categorically asserted that the respondent had orally pronounced *talaq*. Her stance was corroborated by her sister, Amna Zainab (PW-2), who testified to having witnessed the pronouncement. Neither witness was materially shaken in cross-examination. The Trial Court, therefore, had before it direct and mutually supporting testimony concerning the factum of pronouncement of oral *talaq*. The respondent neither effectively

discredited that evidence nor furnished a convincing factual explanation capable of displacing the account of pronouncement. The Trial Court, being seized of matrimonial proceedings in which the existence or otherwise of the marriage directly affected the relief claimed by both parties, was competent to examine that evidence and determine whether *talaq* had, in fact, been pronounced. Such determination concerned proof of a disputed occurrence; it did not, by itself, establish that the pronouncement had acquired legal effectiveness under the Ordinance.

9. This Court has held in case of *Raheel Ahmad v. Tayyaba Haq* (**2026 LHC 6754** available at the website of this Court) that a husband who pronounces *talaq* but fails to discharge the statutory obligation of giving notice to the Chairman Union Council concerned cannot invoke his own default as a means of indefinitely frustrating the wife's ability to seek determination of her matrimonial status, by the Family Court. In case of *Raheel Ahmad*, *supra*, the Family Court had declined to determine the controversy concerning pronouncement, compelling the wife to approach the Union Council concerned. The present case stands on better footing. Here, the Family Court examined the evidence and returned an affirmative finding regarding pronouncement. The Appellate Court below, however, treated the absence of a divorce effectiveness certificate as sufficient to displace that factual determination of oral *talaq*. This approach conflated two distinct questions. Proof that *talaq* was pronounced is a question of fact; whether that pronouncement has dissolved the marriage is a question of its legal effectiveness under the Ordinance. The absence of statutory notice may prevent the latter consequence, but cannot retrospectively establish that the former occurrence never took place. The Appellate Court below, therefore, erred in reversing the evidentiary finding merely on the basis of non-compliance with the statutory procedure. When learned counsel for the respondent was

confronted with the proposition whether a husband who unequivocally pronounces divorce, even in the privacy of the matrimonial relationship, could be treated as continuing that relationship indefinitely merely because no independent witness was available to the pronouncement, no plausible explanation was forthcoming. The question is not whether statutory safeguards may be dispensed with; they cannot. Rather, it is whether their protective purpose can be inverted into an instrument for perpetuating a matrimonial relationship despite established pronouncement, in derogation of commands of Allah Almighty. The answer is clearly in negative. Therefore, the Appellate Court below did not undertake that inquiry, having erroneously rejected the very occurrence of pronouncement. Its decree for restitution of conjugal rights consequently cannot be sustained on the reasoning assigned in the impugned judgment. Therefore, the Trial Court's finding concerning pronouncement of *talaq* is restored.

10. The second question pertains to the dower, which is independent of the foregoing controversy. The *nikahnama* expressly records Rs.500,000/- as dower payable on demand (عندالطلب). Such dower is not deferred until dissolution of the marriage; its payment may be demanded during the subsistence of the matrimonial relationship. The Trial Court decreed the amount while proceeding upon its finding concerning divorce, whereas the Appellate Court below declined recovery after holding that the marriage subsisted and the dower is deferred. Both approaches overlooked the controlling contractual term. Where dower is expressly payable on demand, the subsistence of marriage is no answer to its recovery, just as dissolution of marriage is not a condition precedent to its enforceability. Whether the marriage stood dissolved or continued, the petitioner's right to recover the stipulated dower remained unaffected. The Appellate Court

below, therefore, erred in declining Rs.500,000/-, and the Trial Court's decree to that extent is liable to be restored.

11. The third controversy concerns ten *tola* of gold recorded in Column No. 17 of the *nikahnama* through the expression "10 تولے سونا دلہن کی ملکیت ہوگا" (Ten *tola* gold will be the property of the bride). The respondent contends that the entry constitutes no more than a future promise, enforcement whereof lies before an ordinary Civil Court. The question requires consideration of the character of the stipulation rather than its placement under a particular Column. Although Columns No. 13 to 16 principally deal with dower and Column No. 17 provides for special conditions, a *nikahnama* may record different matrimonial obligations, including dower, gifts, property rights and other conditions agreed between the parties. Their legal character must be determined from the substance of the agreement, not merely from the printed heading under which they appear.

12. The interpretation of such entries must also account for the circumstances in which *nikahnamas* are ordinarily prepared. Unlike commercial instruments drafted with professional assistance, marriage contracts are frequently recorded by *Nikah Khawan* upon instructions conveyed by family members, without the parties necessarily appreciating the legal implications of every expression employed. The Supreme Court of Pakistan in case reported as *Muhammad Yousaf v. Huma Saeed and others* (**2024 SCMR 1078**) recognized that neither the prescribed form of *nikahnama* nor the headings of its columns are conclusive in determining the intention of the parties. The decision also emphasized the importance of the bride's freedom to settle the contractual terms and cautioned against construing ambiguities to her disadvantage where meaningful participation in their settlement is not established. The contractual intention must, therefore, be ascertained

from the stipulation read in its matrimonial and social setting, rather than from an unduly technical or grammatical interpretation.

13. In the present case, the expression " 10 تولے سونا دلہن کی ملکیت ہوگا" (Ten *tola* gold will be the property of the bride) identifies the petitioner as the intended owner of ten *tola* of gold. It does not acknowledge that the gold had already been delivered. Had the entry recorded actual delivery or receipt, the question might have stood differently. Nor can the word "ہوگا" (will be) merely because it denotes the future tense, be treated as conclusive of an intention to postpone the petitioner's entitlement indefinitely. The stipulation identifies the beneficiary and the subject matter and contains no condition making entitlement dependent upon a future event. A declaration of matrimonial entitlement cannot be converted into proof of its performance; nor should the absence of proof of performance be allowed, without more, to extinguish the entitlement itself. The question remains whether that entitlement is one which the Family Court is empowered to enforce.

14. The objection founded upon case of *Muhammad Awais* *supra* must also be examined in the light of the statutory jurisdiction conferred upon Family Courts. Section 5 of the West Pakistan Family Courts Act, 1964, read with Part I of its Schedule, expressly includes dower under Entry No. 2, the personal property and belongings of a wife under Entry No. 9, and, significantly, "any other matter arising out of the *nikahnama*" under Entry No. 10. The latter provision is of independent significance and cannot be rendered redundant by restricting jurisdiction exclusively to property already delivered to the wife. The present claim arises directly from an admitted stipulation in the *nikahnama* declaring ten *tola* of gold to be the property of the petitioner. The respondent does not dispute the stipulation; his defence is that the obligation has already been discharged through delivery.

The controversy, therefore, concerns the enforcement and alleged satisfaction of a matrimonial obligation expressly recorded in the marriage contract and falls within the purview of Entry No.10. Although case of *Muhammad Awais supra* adopted a narrower approach to an unperformed stipulation concerning the gold, that approach cannot be applied without accounting for the independent statutory reach of Entry No. 10 in the light of *dicta* laid down by the Supreme Court in case of *Muhammad Yousaf supra* which recognizes that the substance and intended legal effect of a stipulation, rather than its placement in Column No. 17, govern its interpretation moreso when in present case the respondent contends that said gold was handed over to the petitioner. The jurisdiction to adjudicate a matrimonial obligation arising out of the *nikahnama* cannot depend upon whether that obligation has already been performed; otherwise, the very default giving rise to the claim would become a ground for denying the forum expressly provided by law. The objection to the jurisdiction of the Family Court is, therefore, without merit.

15. The evidentiary inquiry in such cases must remain equally precise to satisfy whether the said property has been delivered . Proof of purchase and proof of delivery of property—gold in present case, are distinct matters. A purchase receipt may establish that the gold was acquired, but does not necessarily establish its delivery to the bride. Similarly, photographs depicting the bride wearing the gold ornaments during marriage ceremonies may demonstrate their availability on that occasion, but do not conclusively establish that the stipulated quantity of gold was transferred to her in discharge of the contractual obligation. Where delivery is asserted, the Court may examine the source and time of purchase, the description and weight of the gold, the person to whom they were handed over, and the testimony of persons having direct knowledge of the transaction. The testimony of *Nikah Khawan*, marriage witnesses, jeweler, family

members and contemporaneous documentary material may provide relevant evidence, but no particular witness or document is invariably indispensable. Evidence of ceremonial use is not necessarily evidence of discharge of a matrimonial obligation. The material brought on record must be evaluated cumulatively.

16. The governing principle concerning burden of proof is that the wife must establish the contractual foundation of her entitlement; once that foundation is established and the husband asserts that the obligation has already been performed, the burden of proving such performance rests upon him. In the present case, the petitioner relied upon the express entry in the *nikahnama* and denied receipt of the stipulated gold. Significantly, the respondent did not dispute the entry itself; rather, he asserted that the stipulated gold had already been given to the petitioner. Having thus acknowledged the contractual foundation of her claim and pleaded its discharge through delivery, the burden rested upon the respondent to establish that affirmative assertion, which he failed to do. The entry declaring ownership could not itself be converted into proof that the gold had already been handed over to the petitioner. The Appellate Court below, therefore, rightly recognized the petitioner's entitlement to ten *tola* of gold, and its finding in this regard calls for no interference. The connected petition, filed by the respondent, is consequently without merit.

17. For the foregoing reasons, the present petition bearing W.P. No. 1563 of 2026 is **partly allowed**. The consolidated judgment and decree dated 12.02.2026 are set aside to the extent it reversed the Trial Court's finding concerning the factum of pronouncement of oral *talaq*, declining recovery of dower of Rs.500,000/- and decree of restitution of conjugal rights. The Trial Court's finding concerning pronouncement of oral *talaq* and its decree for recovery of dower are restored. The impugned appellate decree concerning ten *tola* of gold is

maintained; consequently, connected petition bearing W.P. No. 1204 of 2026 is **dismissed**.

(**ANWAAR HUSSAIN**)
JUDGE

Approved for reporting.

Judge

Announced in Open Court and,
dictated on the same date, however,
finalized on 29.10.2026.

Akram