

ORDER SHEET
IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.
JUDICIAL DEPARTMENT
Writ Petition No. 6742 of 2024

Farhan Ahmed Bhatti. **Versus** Addl. District Judge and 02
others.

S.No. of order/ proceeding.	Date of order/ proceeding.	Order with signatures of Judge, and that of parties or counsel, where necessary.
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16.09.2026. Malik Imtiaz Mehmood Awan, Advocate for the
petitioner.
Mr. Nadeem Iqbal Chaudhary, Advocate for
respondent No.3.

Through this petition under Article 199
of the Constitution of Islamic Republic of
Pakistan, 1973, the petitioner has challenged
the validity of judgment/decreed dated
27.06.2024, passed by learned Additional
District Judge, Bahawalpur in a family appeal.

2. According to the actual and factual
background of the matter, respondent No.3
(Bushra Fareed) in a family suit sought
dissolution of marriage on the ground of
cruelty. The suit was fixed for 03.02.2024, for
cross examination of DWs, but respondent
No.3 (Bushra Fareed) moved an application for
recording her statement regarding dissolution
of marriage on the basis of *khula* maintaining
that she wants dissolution of marriage on the
basis of *khula* instead of cruelty. The learned
family court recorded her statement accordingly,
wherein she alleged that she received dowry
articles from defendant/petitioner and she forego

her past and *Iddat* maintenance allowance and withdraw her suit to the extent of dower and maintenance allowance.

3. The learned family court decreed the suit for dissolution of marriage on the basis of *khula* and directed respondent No.3 (Bushra Fareed-plaintiff) to return dower to defendant/petitioner (if any she received) placing reliance upon the dictum laid down by Federal Shariat Court of Pakistan in Petition No.24 of 2022, dated 17.02.2022. The suit to the extent of dowry articles was dismissed having become infructuous, whereas suit to the extent of dower and past as well as *Iddat* maintenance allowance was dismissed as withdrawn, vide judgment dated 03.02.2024.

4. Petitioner, being dissatisfied with the said judgment/decreed preferred an appeal, which was dismissed by learned Additional District Judge, vide judgment and decree dated 27.06.2024, mainly on the ground that according to Section 14 of Family Court Act, 1964, no appeal lies against decree of *khula*, hence not competent.

5. Main focus of learned counsel for petitioner was on the point that claim lodged by respondent No.3 (Bushra Fareed-plaintiff) regarding dower was false and frivolous, as she had already received the same before bridal departure '*Rukhsati*' had taken place; added that according to column No.13, 14, 15 & 16 of '*Nikah Nama*' (page 135 of the petition) respondent No.3 (Bushra Fareed-plaintiff) was paid cash of Rs.5000/- at the time of

‘*Nikah*’, and 5-Tolas of golden jewelry was agreed to be given at the time of event of marriage, whereas petitioner was bound down for the transfer of a constructed house measuring 4-Marlas; next contended that said dower was paid to respondent No.3 (Bushra Fareed-plaintiff); moreover petitioner purchased a house measuring 4-Marlas in the name of respondent No.3 (Bushra Fareed-plaintiff) paying the price out of his own pocket and got the sale deed executed and registered in her favour on 26.07.2019 (page 188 of the petition); said sale deed was bearing the signature of petitioner as representative of vendee/respondent No.3; further added that respondent No.3 filed the suit for the recovery of dower claiming that it was still unpaid and got the same disposed of as withdrawn at the time of passing of decree for dissolution of marriage on the ground of ‘*khula*’ giving the impression that she has waived the said benefit; by doing so she played mischief with the learned family court as well as petitioner. The learned counsel for petitioner further added that although a decree for the dissolution of marriage on the basis of ‘*khula*’ is not amenable to appeal, but question of determination of civil liability of the wife i.e. quantum of the Haq-ul-Maher or other benefits payable by wife to husband in consideration of ‘*khula*’ was to be determined by the learned family court and to that extent it was also appealable.

6. Conversely, the learned counsel for respondent No.3 (Bushra Fareed-plaintiff) opposed above submissions vehemently and rigorously and claimed that judgments/decrees passed by both the courts below were not reflecting any legal infirmity as such based upon correct interpretation of Section 14 of the Family Court Act. Moreover, respondent No.3, after getting the decree for dissolution of marriage contracted second 'Nikah' and was leading peaceful and happy life with her second husband, therefore, the petition is liable to be dismissed with cost.

7. Heard. Record perused.

8. It was held by apex Court in case titled 'Dr. Akhlaq Ahmad Versus Mst. Kishwar Sultana and others' (**PLD 1983 Supreme Court 169**) in clear terms that from the language used in proviso of Section 10(4) read with Section 14(2)(a) of Family Court Act, it is evident that matter of dissolution of marriage is not appealable, but the question of determination of civil liabilities of the wife i.e. quantum of *Haq-ul-Maher* (dower) or other benefits returnable by wife to husband upon the dissolution of marriage on the basis of '*khula*' has always to be determined by the learned family court. Said fact escaped the notice of learned trial court inadvertently. Reference may also be made to the cases titled 'Shahzado Shah Versus Mst. Anila' (**2009 YLR 2399**) and 'Farrah Bashir Versus Muhammad Umar Tahir and others' (**2014 CLC 1605**).

9. From the careful perusal of file, I observe that possibility cannot be ruled out that respondent No.3 (Bushra Fareed-plaintiff) moved an application for the conversion of suit for dissolution of marriage on the ground of cruelty into a suit for dissolution of marriage on the ground of '*khula*' and she got her suit for the recovery of dower disposed of as withdrawn cleverly, making an impression that she has waived said benefit (dower), but sale deed (Exh.D27) was suggestive of the fact that actually she had already received constructed house measuring 4-marlas as dower. Therefore, the learned trial court was required to determine the said question and liability of respondent No.3 regarding the return of benefits already obtained by her in lieu of '*khula*'. Both the courts below failed to properly exercise the jurisdiction vested in them.

10. I am of the affirmed view that impugned judgment/decreed dated 27.06.2024 passed in appeal by learned Additional District Judge was not in accordance with the dictums laid down by superior Courts. I observe that although appeal was not maintainable to the extent of decree for dissolution of marriage on the basis of '*khula*', as it attained finality, but it was competent regarding the remaining controversies between the parties. I, therefore set aside the same, accepting the present petition. Since the said question has to be adjudicated upon by the learned trial court after framing the issues and recording the evidence of the parties, therefore, I remand the case to learned

trial court to decide the said question in the light of the precedent judgments rendered by superior Courts and the observations made by this Court, providing complete audience to both the sides, within a period of two months from the receipt of certified copy of this judgment, under intimation to this Court through Deputy Registrar (Judicial).

(TANVEER AHMAD SHEIKH)
JUDGE

APPROVED FOR REPORTING.

JUDGE

Shahzad Ahmad Nasir