

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

JUDGMENT SHEET

Writ Petition No.631-A/2018

Date of hearing:13.06.2018.....

*Petitioner....(Qalandri Bibi) by Mr.Zafar Iqbal,
Advocate,*

*Respondents...(Mst. Irum Bibi& others) by Mr. Zulfiqar
Ali Tanoli.....*

SYED MUHAMMAD ATTIQUE SHAH, J. The

petitioner has approached this Court through instant writ petition, with the following prayer;

“It is, therefore, humbly prayed that on acceptance of the instant writ petition, the impugned order dated 21.04.2018 passed by the respondent No.2 may kindly be set-aside and the respondent No.2 may kindly be directed to modified the order dated 21.04.2018 as for allowing the application of defendant No.3 for recording her statement (Examination-in-chief + cross-examination) through attorney and give permission to put forth her statement in shape of affidavit which would remain as part and parcel of the pleadings in the trial /family Court II Haripur. So to ascertain the real controversy between the parties or any other relief which this Honourable Court may deem fit be announced.”

2. Brief facts of the present writ petition are that the respondent No.1 filed a suit for Dissolution of Marriage, recovery of dower amounting to Rs.100,000/-, recovery of dowry articles, recovery of golden

ornaments weighing 15 *tolas*, recovery of maintenance against present petitioner and proforma respondents No.1 and 2. During trial of the case, the present petitioner and proforma respondent No.1 submitted their separate applications for recording their statements through their attorney. The applications were contested by respondent No.1 by submitting written replies thereto. The learned Judge Family Court, after hearing learned counsel for the parties, allowed the application of proforma respondent No.1/defendant No.1, while, the application submitted by the petitioner/defendant No.3 was rejected vide order dated 21.04.2018. The petitioner impugned the said order before this Court by filing the present writ petition.

3. Arguments of learned counsel for the parties heard and record perused.

4. Perusal of the record reveals that respondent No.1 filed a suit for dissolution of marriage, recovery of dower, dowry articles etc etc against the petitioner and proforma respondents No.1 and 2. During the pendency of the said suit, the present petitioner as well as respondent No.1 submitted their separate applications for recording their statement through their attorney. The learned trial Court vide impugned order dated 21.04.2018 allowed the application of proforma respondent No.1 for recording his statement through attorney i.e.

respondent/defendant No.2, however, the application of the petitioner/ defendant No.3 was rejected on the ground that she could not produce any proof regarding her ailment. It is worth mentioning that section 18 of the Family Court Act, 1964, explicitly provides a right to a ***Parda Nasheen lady*** to be represented by a duly authorized agent. For the sake of convenience provisions of section 18 of the Family Court Act are reproduced below:

“18. Appearance through agents. If a person required under this Act to appear before a Family Court, otherwise than as a witness, is a pardanashin lady, the Family Court may permit her to be represented by a duly authorized agent.”

5. The above referred provision of section 18 of the Act *ibid* clearly provides a right to a ***‘Parda Nasheen’ lady*** to be represented through her duly authorized agent. Thus, when a ***‘Parda Nasheen’ lady*** could be represented before the Court through her authorized agent, then no embargo could be imposed on recording her statement through her special attorney. Therefore, the learned trial Court was legally required to have recorded statement of the petitioner through her special attorney. It also transpires from the record of the case that both the petitioner as well as proforma respondent No.1 had submitted their written statement through proforma respondent No.2 and subsequently they

both sought recording of their statements through him. However, the learned trial Court allowed the request of respondent No.1 for recording his statement through his attorney, whereas, the same request has been denied to the present petitioner on the grounds contrary to law. It is also worth mentioning that during the course of arguments, learned counsel for the petitioner produced copy of her CNIC, showing her date of birth as 01.01.1939, which clearly suggests that the petitioner is an old lady of 79 years, which further strengthen her case for recording her statement through her special attorney. Moreover, the contention of learned counsel for respondent No.1 that the petitioner had already appeared before the Court in other proceedings has no force because earlier appearance of petitioner in other proceedings before the Court would not debar her to seek recording of her statement through her attorney in the present proceedings. In case titled '*Muhammad Javed Iqbal Vs. Mst. Tahira Naheed and others*' (2002 CLC 1336), it has been very eloquently observed that:

“Adverting to the 6th ground taken up by Mr. Naveed Hashmi, Advocate, it may be observed that section 18 of the West Pakistan Family Courts Act, 1964 invests a Court with power to dispense with legal requirement in relation to appearance by any person and to allow that person to be represented through an authorized agent. In the present case, the Family Court has recorded the statement of Mian Abdul Ghaffar, father of the plaintiff who was also her special attorney and was fully

conversant with the relevant facts of the case. Since appearance of agent was legally permissible hence adverse inference was rightly not drawn by the Family Court due to non-appearance of the plaintiff (respondent No.1) in the witness-box, in support of her claim.”

6. Thus, in view of above legal discourse it is observed that the grounds mentioned by the learned trial Court for rejection of application of petitioner in the impugned order are contrary to the law applicable to the case in hand, which needs interference by this Court in its constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

7. Therefore, keeping in view the above stated facts, circumstances and discussion made thereupon, the instant writ petition is allowed and the impugned order of the learned trial Court is set aside to the extent of rejection of application of the petitioner for recording her statement through her attorney. The learned trial Court is directed to proceed with the case and to record the statement of petitioner through her attorney, in accordance with law.

Announced.
Dt.13.06.2018.
M. Saleem/*

J U D G E

(SB) Mr. Justice Syed Muhammad Attique Shah