

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

C.P No.S-78 of 2025

[Gulzaib v. Mst. Umme Lubaba & others]

Petitioner : Through Mr. Dev Parkash Kheemani,
Advocate.

Respondents 1 &2 : Through Ms. Tasleem Pasha, Advocate

Date of hearing & order : **19.05.2025**

JUDGMENT

Arshad Hussain Khan, J: This Constitutional Petition challenges the impugned Judgment and Decree dated 13.01.2025, passed by learned 2nd Additional District Judge, Tando Allahyar in Family Appeal No.16 of 2024, whereby the judgment and decree dated 05.04.2024, passed in Family Suit No.117 of 2023, filed by the respondent No.1 was partially modified.

2. Concisely, facts of the case are that respondent No.1 / plaintiff had filed a suit being Family Suit No.117 of 2023 against the petitioner / defendant and made the following prayers:-

- a) *To direct the defendant to pay the maintenance since 2020 to the plaintiff at the rate of Rs.20,000/- till iddat period as well as past and future maintenance of minor since birth at the rate of Rs.20,000/- per month and increase 20% annum to plaintiff, as well as return of dower two tola gold, alternate amount current market value and return the dowry articles, 6 tola gold ornaments, and fancy dresses, worth Rs.900000/-.*
- b) *To direct the defendant to pay the maintenance since birth of minor at the rate of Rs.20,000/- per month till the marriage of minor with 20% annum increase.*
- c) *To direct the defendant to pay the medical and delivery expenses both minor worth Rs.200000/-.*
- d) *Cost of the suit be saddled upon the defendant.*
- e) *Any other relief as deems fit and proper under the circumstances.*

3. In response to that suit, Written Statement was filed wherein the petitioner / defendant denied all the allegations leveled against him and submitted that respondent No.1 being disobedient wife is not entitled for any

maintenance as she herself left the house of the petitioner. Further, it was claimed that the medical and delivery expenses were borne by the petitioner and the dower amount has also been paid to respondent No.1.

4. Thereafter, the trial court after framing the issues and hearing both the respective parties, partially decreed the suit of the plaintiff / respondent No.1 vide judgment dated 05.04.2024, and being aggrieved by the said judgment, both parties preferred appeals being Family Appeal No.15 of 2024 (filed by respondent No.1) and Family Appeal No.16 of 2024 (filed by the petitioner) before the 2nd Additional District Judge, Tando Allahyar. The Appellate Court after hearing the parties and considering the record dismissed the appeal of the petitioner and partially allowed the appeal of respondent No.1 vide consolidated judgment dated 13.01.2025; and against the said judgment, instant petition has been filed by the petitioner.

5. Learned counsel for the petitioner has contended that the impugned judgments are outcome of misreading, non-reading and miss-appreciation of the evidence, resulting the miscarriage of justice, as such, liable to be dismissed; that courts below have failed to consider that the petitioner has successfully proved / established that he is maintaining the minor by providing each and everything but the same has not been considered by the learned courts below; that the courts below have failed to consider that the petitioner has already paid the dower amount and borne all medical as well as delivery expenses of respondent No.1.

6. Conversely, counsel appearing on behalf of respondent No.1 has supported the impugned judgments.

7. I have heard the arguments of learned counsel for the respective parties and with their assistance also perused the material available on the record.

From the perusal of the record, it appears that initially the trial court partially decreed the suit of respondent No.1 in the following manner:

“40. Accumulative effect of the above discussion is that the suit of plaintiff is decreed in the following terms:-

1. Plaintiff is entitled to receive her iddat period maintenance at the rate of Rs.10,000/- i.e in total 30,000/-
2. Plaintiff is entitled to receive Rs. 5000/- w.e.f date of institution of the case till date of decree as past maintenance and further Rs. 5000/-w.e.f May 2024 till date marriage of plaintiff No.2 as future maintenance with 10% annual increment.

3. Plaintiff is entitled to recover her dower amount i.e. 02 tola gold ornaments, 21 karat purity.
4. Plaintiff is entitled to recover her dower dowry articles as list at Ex.P1/B, excluding the perishable items i.e. article No. 62 (40 suits) article 63 (sandals), article (shoes), article 65 (pumps), article 83 (make up set), article 84 (perfumes) and article 85 (body spray) or in the alternative Rs. 356,000/- Claim of the plaintiff for recovery of 06 tola gold ornaments is declined.
5. Plaintiff is entitled to receive Rs. 45,500/- as medical and delivery expenses.”

Both the parties challenged the above said findings of the trial court in their respective family Appeals before the Additional District Judge, Tando Allahyar, who after hearing the parties dismissed the appeal of the present petitioner and whereas the appeal of the respondent was partially allowed with modification in the judgment and decree passed by the trial court with the following findings:

Point No.1

9. After perusal of the record, pleadings, evidence, and arguments of the learned counsel for both parties, this court observes the following:

(a) Dower (HaqMehar):

The Nikahnama at Exhibit P-1/A shows the agreed dower as 2 Tola of gold has been paid & the respondent also claimed the dower had been paid, while appellant claimed that the same has not been paid as per original Nikahnama but said Nikahnama not produced by appellant/plaintiff in her evidence to testify that no payment was made. She during her evidence deposed that another Nikahnama presented by respondent and obtaining her signature on a blank document, since, she relied upon nikahnama which is produced by her at Exhbit-P-1/A and also admitted her signature on it even otherwise she during period of her marriage never ever claim that this Nikahnama forged and fabricated. It is a settled principle of law that the burden of proof lies on plaintiff to establish that payment of the dower not paid but in this regard she failed to produce convincing evidence to discharge this burden. Consequently, the appellant is not entitled to recover the dower of 2 Tola of Gold as same already paid her as per Nikahnama on record.

(b) Dowry Articles and Gold Ornaments:

The appellant claimed dowry articles worth Rs.30,00,000/- and 6 Tola of gold ornaments. The respondent partially admitted possession of dowry articles but denied the claimed value. The appellant produced receipts and corroborating evidence, including the testimony of jeweler Hera Lal Menghwar, confirming the purchase of gold ornaments. In the absence of rebuttal evidence by the respondent, the appellant's claim stands partially proved. The appellant is entitled to recover dowry articles as per the verified list allowed by the learned trial court and gold ornaments totaling 6 Tola.

(c) Maintenance:

Under Section 9 of the Muslim Family Laws Ordinance, 1961, a husband is obligated to provide maintenance to his wife during the subsistence of marriage and the iddat period, as well as to his children. The appellant claimed maintenance for herself and her minor daughter, asserting that she had been financially abandoned and respondent Gulzaib at para no. 15 of his W/S stated that plaintiff / appellant residing with her parents since two and half years and this fact also admitted by respondent Gulzaib during his cross examination even otherwise, the respondent failed to produce evidence to prove that maintenance was provided by him during this period. Therefore, plaintiff / appellant is entitled for the maintenance of past two years till pronouncement of divorce on 03.11.2023, at the rate of Rs 5,000/- per month, however, the learned trial court's award of maintenance to the appellant for iddat period and the minor was appropriate but w.e.f August 2022 till her marriage.

(d) Medical and Delivery Expenses:

The appellant submitted receipts showing medical expenses of incurred by her parents during the birth of her children. The respondent neither challenged the authenticity of these receipts nor provided evidence of having borne such expenses. The claim for Rs 45,500, as awarded by the trial court, is justified and in line with the principles of fairness.

Point No.2.

10. Based on the above findings, the appeal of the appellant Umme Lubaba is allowed in part, and the following reliefs are granted:

- (ii) The appellant Umme Lubaba is entitled to recover dowry articles as per the verified list as already allowed by the trial court and 6 Tola of gold ornaments corroborated by the jeweler's testimony from respondent Gulzaib.
- (iii) The respondent (Gulzaib) shall pay the appellant (Umme Lubaba) maintenance at the rate of Rs 5,000 per month from last 2 years till pronouncement of divorce on 03.11.2023 and Rs 10,000 per month for the iddat period.
- (iv) The minor child, Gul-e-Jannat, is entitled to get maintenance from respondent (Gulzaib) at the rate of Rs 5,000 per month from August 2022, with a 10% annual increment till her marriage.
- (v) The respondent (Gulzaib) shall reimburse the appellant Rs 45,500 towards medical and delivery expenses.

11. The appeal filed by the respondent (Gulzaib) being appellant challenging the trial court's decision is dismissed for lack of merit.

12. In light of the above, the appeal of the appellant Umme Lubaba, is partially allowed, while the appeal of the respondent Gulzaib, is dismissed. The trial court's decree is modified as per this judgment.

13. Let the decree be prepared accordingly, and a copy of this judgment be forwarded to the learned trial court for compliance.”

[Emphasis supplied]

From perusal of the impugned judgment, it appears that the appellate court reappraised the evidence available on record in respect of dowry articles,

medical expenses as well as maintenance and with sound reasoning modified the judgment of trial court to the extent of gold ornaments and maintenance.

8. It is settled proposition of law that in the event of conflict of judgment, view expressed by the appellate court should ordinarily be preferred unless the same is contrary to evidence on record or in violation of the settled principles for administration of justice¹.

9. Besides above, the jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice². It may also be observed that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided³, and is restricted inter alia to appreciate whether any manifest illegality is apparent from the order impugned. It is also well settled that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law.

10. It is also well settled principle of law that the High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the findings on the controversial question of facts, even if such findings are erroneous. The scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of mis-reading or non-reading of evidence or if the findings are based on evidence which may cause miscarriage of justice but it is not proper for this Court to disturb the findings of facts through reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as substitute of revision or appeal. Moreover, question regarding appreciation of evidence is concerned, it needs no reiteration that appraisal of evidence is the function of the Family Court firstly and then the Appellate Court. Nothing is found that there is mala fide, arbitrary and perverse or the court has acted in excess of its jurisdiction, which may consider exercising of writ jurisdiction.

¹ Mir Muhammad alias Miral v. Ghulam Muhammad [PLD 1996 Kar. 202]

² Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others [2015 PLC 259]

³ Shajar Islam v. Muhammad Siddique [PLD 2007 SC 45] & Arif Fareed v. Bibi Sara and others [2023 SCMR 413]. M. Hamad Hassan v. Mst. Isma Bukhari and 2 others [2023 SCMR 1434],

11. Learned counsel has not been able to bring on record any concrete material whereby such findings could be termed as perverse or having a jurisdictional defect or based on misreading of evidence. It may be observed that if no error of law or defect in the procedure has been committed in coming to a finding of fact, the High Court cannot substitute such findings merely because a different finding could be given.

12. In the circumstances, there appears no error, illegality or irregularity in the impugned judgment to call for any interference. Accordingly, this petition being devoid of merit is **dismissed** along-with pending application.

JUDGE

Hafiz Fahad