Order Sheet

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.S-298 of 2024

[Sajeel Ahmed v.the learned Additional District Judge-I and 02 others]

Petitioner	:	Sajeel Ahmed s/o Muhammad Roshan Through Mr.Abid Hussain Chang, Advocate
Respondent No.1	:	The learned Additional District Judge-I, Kotri
Respondent No.2	:	The Learned Family Judge/Consumer Protection Court, Kotri, District Jamshoro Through Mr.Muhammad Ismail Bhutto, Additional A.G Sindh
Respondent No.3	:	Ms.Shagufta Sorath d/o Abdul Rasheed Junejo Through Mr.Irfan Ali Khaskheli, Advocate
Date of hearing	:	**19.01.2026**
Date of Decision	:	**19.01.2026**

JUDGMENT

ARBAB ALI HAKRO, J.- The petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution, calling into question the legality, propriety and correctness of the Judgment dated 13.05.2024 and decree dated 15.05.2024[1], whereby the appellate Court maintained the Judgment and decree dated 13.01.2024[2], of the Trial Court. In the said Judgment, the suit filed by Respondent No. 3 for recovery of dower, dowry articles, and past, present, and future maintenance was decreed in toto.

2. The essential factual matrix, as emerges from the record, is that the marriage between the petitioner and Respondent No.3 was solemnised on 05.01.2021. The Nikahnama[3] records the dower as 18 tola gold and Rs.500,000/- in cash. Respondent No.3 instituted Family Suit No.11/2023, alleging non-payment of dower, non-return of dowry articles valued at Rs. 640,000/- and non-payment of maintenance since March 2022, asserting that

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[1] passed by the learned Additional District Judge-I, Kotri in Family Appeal No.06/2024 (Available on Page-21)

[2] passed by the learned Family Judge / Consumer Protection Court, Jamshoro, in Family Suit No.11/2023 (Available on Page-55)

[3] Available on Page-111)

she had been maltreated and ultimately left at her parents' house by the petitioner and his family.

3. The petitioner filed a written statement denying the allegations, asserting that the dower in the form of gold jewellery had already been delivered, that he was willing to return the dowry articles and that Respondent No.3 had voluntarily left the matrimonial home. He further pleaded financial incapacity and unemployment.

4. During the pendency of the suit, the Trial Court, vide order dated 20.09.2023, directed the petitioner to pay interim maintenance at the rate of Rs.15,000/- per month. The petitioner did not comply with the said order. Consequently, invoking Section 17‑A of the Family Courts Act, 1964 ("**the Act, 1964**"), the Trial Court struck off the petitioner's defence and proceeded to record the evidence of Respondent No.3 alone.

5. Upon appraisal of the un-rebutted evidence, the Trial Court decreed the suit, holding Respondent No.3 entitled to (a) Maintenance at Rs.20,000/- per month from the date of suit with annual increase; (b) 18 tola gold and Rs.500,000/- as dower; (c) Return of dowry articles or their value and (d) Return of 4 tola gold allegedly given by her father.

6. The petitioner preferred Family Appeal No.06/2024, which was dismissed. The appellate Court held that the petitioner had failed to comply with the interim maintenance order, had not produced any evidence despite opportunities and had not rebutted the testimony of Respondent No.3. It further held that the amendment regarding 4 tola gold was rightly allowed and that the Nikahnama clearly reflected the dower amount.

7. Learned counsel for the petitioner contended that both courts below acted mechanically and in derogation of the scheme of Section 17‑A of the Act, 1964. He argued that Section 17‑A applies only to suits for maintenance, whereas the present suit involved multiple and distinct claims, dower, dowry articles and maintenance; thus, the defence could not have been struck off wholesale. It was urged that the courts below abdicated their duty to adjudicate

the matter on merits and instead decreed the suit merely on account of non-payment of interim maintenance. Learned counsel further submitted that the petitioner was performing Umrah at the relevant time and was therefore unable to comply with the interim order. It was argued that the Trial Court failed to consider this explanation and denied the petitioner a fair opportunity to lead evidence. It is also argued that the Nikahnama itself reflects that 18 tola gold had already been delivered in the form of jewellery, and that the decree for 18 tola gold was therefore patently illegal. Regarding the 4 tola gold, learned counsel submitted that the amendment was allowed after more than a year, solely to fill lacunae and that no evidence existed to support such a claim. The impugned judgments were termed perverse, arbitrary, and contrary to settled law. In support of his contentions, he relied upon case law reported as **2025 SCMR 1003, 2015 SCMR 1608, 2024 CLC 863, 2024 MLD 1749, PLD 2023 Lahore 669 and PLD 2022 Lahore 715.**

8. Conversely, learned counsel for Respondent No.3 supported the impugned judgments, submitting that the petitioner had consistently avoided the proceedings, failed to comply with the interim maintenance order, and did not lead any evidence despite repeated opportunities. It was argued that the trial Court rightly exercised its jurisdiction under Section 17-A of the Act, 1964, and the appellate Court correctly affirmed the same. Learned counsel maintained that the Nikahnama unequivocally records the dower as unpaid, and the petitioner failed to produce any proof of payment. It was further submitted that the amendment regarding 4 tola gold was based on an inadvertent omission and was rightly allowed, causing no prejudice to the petitioner. The decree, according to him, is well-reasoned, evidence-based and calls for no interference. In support of his contentions, he relied on case law reported as **2023 SCMR 1434** and produced a receipt for gold dated 27.9.2020.

9. Learned Additional A.G. Sindh, submitted that the scope of constitutional jurisdiction in family matters is narrow and supervisory in nature. He argued that concurrent findings of fact recorded by both courts below cannot be disturbed

unless shown to be perverse, arbitrary, or to suffer from a jurisdictional defect, and that the courts below acted strictly within the statutory framework.

10. I have heard the learned counsel for the petitioner, learned counsel for Respondent No.3, and the learned Additional A.G. Sindh at considerable length. The impugned judgments of the courts below have been meticulously examined, as have the case law relied upon by both parties. The matter requires determination within the narrow constitutional parameters of Article 199, where this Court does not sit as a Court of appeal nor reappraise evidence, unless the findings are perverse, arbitrary or in patent disregard of law.

11. The petitioner's primary grievance revolves around the striking off of his defence under Section 17-A of the Act, 1964. The statutory language of Section 17-A is explicit that the penal consequence of striking off the defence is attracted only in a suit for maintenance and only upon failure to comply with an interim maintenance order. The present suit, however, was a composite claim comprising (i) dower, (ii) dowry articles, (iii) 4 tola gold and (iv) past and future maintenance.

12. The correct legal position is that striking off the defence under Section 17-A of the Act, 1964, does not and cannot extend to non-maintenance claims, nor does it empower the Family Court to decree all other reliefs mechanically. The Family Court must still independently assess the evidence available on record for each distinct claim.

13. The record, however, reveals that although the defence was struck off, the Family Court did not decree the suit unquestioningly. Rather, it proceeded to record the plaintiff's evidence, permitted cross-examination and thereafter repeatedly fixed the matter for the defendant's evidence. The case diaries unmistakably show that the petitioner was afforded multiple opportunities to lead evidence but chose not to avail themselves. Thus, even if Section 17-A was invoked in a composite suit, the decree ultimately rests not on the penal consequence alone but on the petitioner's own failure to lead rebuttal evidence despite repeated adjournments.

14. The next limb of controversy concerns the dower. The Nikahnama, though not formally exhibited, was admitted by both parties in their pleadings. Under Section 17 of the Act, 1964 strict rules of evidence do not apply. Therefore, the non-exhibition of the Nikahnama constitutes a procedural irregularity that does not affect the parties' substantive rights.

15. Column No.13 of the Nikahnama records that 18 tola gold was “already given” and Rs.500,000 was payable as *andal-talab*. Column No.14 describes the dower as *Mujjal* (prompt). The petitioner argues that the recital “already given” conclusively proves payment. This contention is legally untenable. The law is firmly settled that the Nikahnama is a record of the terms of dower, not conclusive proof of payment. A recital of “already given” creates only a rebuttable presumption. Once the wife asserts non-receipt of the dower, the burden shifts to the husband to prove actual delivery. Payment of prompt dower is a positive fact, and the husband must establish it through cogent evidence.

16. In the present case, the plaintiff categorically deposed that the 18 tola gold was never delivered to her and that her mother-in-law took her ornaments on the first night of marriage. PW-2 corroborated her version. The petitioner, despite being repeatedly afforded opportunities, never entered the witness box or produced proof of delivery of the alleged gold. His failure to lead evidence is fatal. In such circumstances, the Family Court was justified in treating the recital "already given" as unproven and decreeing the dower as outstanding.

17. The 04 tola gold claimed by the plaintiff is not part of the dower but a dowry article allegedly given by her father at the time of marriage. The plaintiff and her father both testified that this gold was handed over to her and remained in the matrimonial home. Their testimony remained unrebutted.

18. It is a matter of common experience that families seldom preserve receipts for dowry articles. Courts have repeatedly held that oral evidence is sufficient to establish dowry items, particularly when the husband fails to rebut the claim. The petitioner neither produced evidence nor denied possession through any credible material.

19. The plaintiff produced a detailed list of dowry articles. She and PW-2 both testified that these articles were taken to the matrimonial home and remained there. The petitioner, despite multiple opportunities, did not produce any counter-list, receipts or evidence to show that the articles were returned or did not exist. Under Section 17 of the Act, 1964, the Family Court is empowered to rely on oral testimony and surrounding circumstances. The findings of both courts below on the dowry articles are based on material available on record and do not suffer from perversity.

20. The findings of both courts below are concurrent, evidence-based and in accordance with settled principles. No jurisdictional defect, illegality or perversity has been demonstrated. This Court, in its constitutional jurisdiction, cannot reappraise evidence or substitute its own view merely because another view is possible. The petitioner's own conduct, persistent absence, failure to lead evidence and non-production of any material disentitle him to relief.

21. For the reasons recorded in the foregoing detailed findings, I find no jurisdictional defect, illegality, perversity, or misreading/non-reading of evidence in the concurrent judgments and decrees of both the Courts below. Consequently, the same are accordingly maintained in their entirety. Resultantly, the petition stands **dismissed** in the above terms. No order as to costs.

JUDGE

AHSAN K. ABRO