

THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. S-144 of 2023

[Mst. Amna Shaikh v. Imran Ahmed and another]

C. P. No. S-107 of 2024

[Mst. Amna Shaikh v. Imran Ahmed and another]

Petitioner by : Mr. Shabbir Ali Bozdar, Advocate

Respondent No.1 by : Mr. Abdul Mujeeb Shaikh, Advocate

Respondent No.2 by : Mr. Ali Raza Baloch, Additional A.G. Sindh

Date of Hearing : 18.09.2026

Date of Announcement : 28.09.2026

JUDGMENT

ARBAB ALI HAKRO, J. – These two connected petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, arise between the same spouses from two family suits tried by the same Family Court. They were heard together and disposed of in a single order. The petitioner was the plaintiff in both suits, and respondent No. 1 was the defendant in both suits.

2. By C. P. No. S-144 of 2023 the petitioner assails the judgment dated 17.05.2023 passed by the learned Additional District Judge-III, Sukkur, in Family Appeal No. 01 of 2023 (hereinafter referred to as “**the first impugned judgment**”), whereby the judgment and decree dated 22.11.2022 passed by the learned Family Judge, Sukkur (hereinafter referred to as “**the trial court**”), in Family Suit No. 493 of 2020, her suit for dissolution of marriage by way of khula, were set aside, and she was directed to return the Haq Mahar to respondent No. 1 immediately.¹

3. By C. P. No. S-107 of 2024, she assails the judgment and decree dated 16.05.2024, passed by the learned V-Additional District Judge, Sukkur, in Family Appeal No. 03 of 2024 (hereinafter referred to as “**the second impugned judgment**”), whereby the judgment and decree dated 27.11.2023 passed by the

¹ Judgment dated 17.05.2023 in Family Appeal No. 01 of 2023, operative paragraph under Point No. 2.

trial court in Family Suit No. 85 of 2021, her suit for return of dowry articles, were modified and her claim to cash, gold and silver was disallowed.²

4. The Nikah of the parties was solemnized in Karachi on 24.11.2018, and the dower was fixed at ten tola of gold. Rukhsati took place on 01.08.2019, after which the petitioner resided with respondent No. 1 in Karachi. The marriage is issueless. The parties separated in November 2019 and have lived apart since then.

5. On 18.12.2020, the petitioner instituted Family Suit No. 493 of 2020 for dissolution of marriage by way of khula, pleading that she had developed a fixed aversion to respondent No. 1 due to his maltreatment and his demands for a flat and a motor car from her parents, and that the dower of ten tola gold had never been paid to her. She prayed that the marriage be dissolved on the ground of khula, *“for that the plaintiff is ready to forgo her dower amount”*.³

6. Respondent No. 1 filed his written statement on 01.06.2021. He denied the maltreatment, pleaded that ten tola of gold, comprising one complete set and a bracelet, had been handed over to the petitioner the day before the Nikah, relied on an attested copy of the Nikahnama and a photograph of the petitioner wearing gold ornaments, and prayed that, if khula were granted, she be directed to return the dower as Zar-e-Khula.

7. Pre-trial reconciliation failed on 09.06.2021. The trial court thereupon dissolved the marriage by khula and, as the question of dower was disputed, framed issues, the material one being *whether respondent No. 1 had paid the dower to the petitioner*. The petitioner and her brother were examined and cross-examined. Respondent No. 1 deposed on 08.11.2022 and did not examine any other witness. By the judgment and decree dated 22.11.2022, the trial court answered the issue of payment in the negative, held that respondent No. 1 had failed to prove payment, was not entitled to receive the dower from the petitioner, and decreed the suit as prayed.

² Judgment and decree dated 16.05.2024 in Family Appeal No. 03 of 2024, operative paragraph under Point No. 2.

³ Prayer clause (a) of the plaint in Family Suit No. 493 of 2020, reproduced in paragraph 2 of the judgment dated 22.11.2022. The suit is numbered as of 2020 in the judgments of the courts below and as of 2021 in some of the pleadings; the numbering adopted by the courts below is followed.

8. In the meantime, on 04.03.2021, the petitioner instituted Family Suit No. 85 of 2021 for the return of her dowry articles, annexing a list of household articles valued, exclusive of gold and silver, at Rs. 23,63,515/-, and claiming, in addition, gold ornaments weighing 21.5 tola and silver ornaments weighing 20 tola, together with her academic and personal documents. Respondent No. 1 denied that any dowry had been brought, save clothes and articles of ordinary daily use purchased with Rs.5,00,000/- said to have been paid by him before Rukhsati, and pleaded that whatever was purchased had been carried away by the petitioner's relations in bags. During the trial, he admitted a substantial part of the list, and on 25.09.2023 his learned counsel filed a statement admitting the articles enumerated by the trial court.⁴ By the judgment and decree dated 27.11.2023, the trial court decreed the suit, holding the petitioner entitled to the dowry articles as prayed for, or their equivalent amount, and directing the return of her documents, while declining her claim to the cash amount and to the twenty tola silver ornaments.

9. Both decrees were challenged on appeal. The first impugned judgment set aside the decree in the khula suit in its entirety and directed the petitioner to return the Haq Mahar specified in the Nikahnama immediately. The second impugned judgment confined the decree in the dowry suit to the articles admitted during the trial, valued at Rs.16,21,615/-, directed the return of the documents, and held that the petitioner had failed to prove her claim to cash, gold and silver.

10. In his para-wise comments in C. P. No. S-144 of 2023, respondent No. 1 maintains that the dower was paid one day before the Nikah; that the Nikahnama, a public document attested by the Nikah Registrar, records the mode of payment as prompt; that the petitioner neither produced her own copy of the Nikahnama nor challenged it before any forum; that she admitted her signature on it during cross-examination; and that, having obtained khula, she is bound in Shariah to restore the dower. He relies on *verse 229 of Surah Al-Baqarah* and on the two well-known traditions concerning the wives of *Hazrat Sabit bin Qais*, and contends that the scope

⁴ Paragraph 9 of the judgment dated 27.11.2023; statement of the learned advocate for the defendant dated 25.09.2023.

of interference by the constitutional jurisdiction in the judgment of the last court of fact is narrow.

11. Learned counsel for the petitioner contended that both the impugned judgments were the result of a hasty approach and a failure to apply the judicial mind to the material on the record. In C. P No. S-144 of 2023, he submitted that the dower of ten tola gold was never paid; that the Nikahnama nowhere records its payment; that column 13 contains only the words “10 tolas” without any description of the ornaments; that column 14 was filled in after the ceremony, as the difference in the handwriting shows; that respondent No. 1, who admits that the date of birth entered in that very document is not his own, cannot ask that its recitals be treated as conclusive; that the learned appellate court misread her cross-examination, in which she authenticated no more than the photograph and deposed that the ornaments she was wearing were her own; and that the absence of the marriage witnesses was explained, two of them being at Karachi and one abroad, whereas respondent No. 1 examined no one at all. In C. P No. S-107 of 2024, he submitted that the receipts for the dowry articles were placed upon the file through a statement and were never looked at; that respondent No. 1, having denied the dowry in his written statement, admitted in cross-examination that the articles were brought to his house and thereafter admitted a substantial part of the list through a statement of his counsel; that the finding upon the financial position of her family was reached without regard to the material produced; and that the case law relied upon was neither noticed nor discussed.

12. Learned counsel for respondent No. 1 supported the impugned judgments. He contended that a party who comes to Court must prove her own claim and cannot shift the burden to the other side; that the petitioner did no more than deny payment of the dower without producing a single document; that respondent No. 1 brought documentary evidence in the form of the Nikahnama attested by the Nikah Registrar and photographs; that the Nikahnama, being a public document, one copy of which is supplied to the bride, was deliberately withheld by her and was never challenged, whether by an application to the Deputy Commissioner or by a suit for cancellation;

that it is the custom of the country for the jewellery prepared for the bride to be sent by the bridegroom's side before the recitation of the Nikah, which is what the photograph shows; and that, having been granted khula, she is bound in Shariah to restore the dower. As to the dowry articles, he contended that the petitioner travelled beyond her pleadings; that the scribe of the list was not examined and the list was never exhibited; that no witness spoke to the delivery of the articles and no receipt was produced; and that the evidence of the witness examined on behalf of respondent No. 1 was not weighed in juxtaposition with hers. He lastly contended that the Act of 1964 is a special law providing a single appeal; that the appellate court is the last court of fact; and that the scope for interference in constitutional jurisdiction is correspondingly narrow.

13. Learned Additional Advocate General, Sindh, pointed out that respondent No. 2 has been impleaded as a formal party and that no relief is claimed against the Province. He assisted the Court by reference to the statutory provisions and left the controversy between the spouses to be decided on its own merits.

14. I have heard the learned counsel for the parties and the learned Additional Advocate General, Sindh, and, with their assistance, have perused the material on record.

15. The following questions arise:

- (i) whether the first impugned judgment, which set aside the decree of dissolution of marriage and directed the petitioner to return the dower, is sustainable in law;
- (ii) whether the second impugned judgment, by confining the decree to the admitted articles and by disallowing the claim for gold, is sustainable in law and
- (iii) what relief, if any, ought to follow.

16. The Act of 1964⁵ provides for a single appeal and no further appeal or revision. That silence is deliberate and does not convert this Court into a court of further appeal. The Supreme Court has settled the limits within

⁵ The West Pakistan Family Courts Act, 1964 (hereinafter referred to as "the Act of 1964").

which this jurisdiction may be exercised against the findings of a Family Court and of the appellate court: this Court is not to interfere with findings upon controversial questions of fact based upon evidence, and judicial review is confined to misreading or non-reading of evidence, or to a finding based upon no evidence, which occasions a miscarriage of justice.⁶ A factual controversy which the two fora below have in fact examined and decided is not to be reopened here.⁷ It is necessary at the outset to note where the findings of the two courts below are concurrent and where they are not, because the restraint just described operates with its full force upon the former. Upon the dower and upon the petitioner's claim to the gold ornaments, the findings are not concurrent: in the one case the learned appellate court reversed the trial court's decision, and in the other it disallowed what the trial court had decreed. The articles admitted during the trial, following the petitioner's documents, and upon her claims to the cash amount and to the twenty tola silver ornaments, the findings are concurrent and are approached on that footing.

17. What the Nikahnama proves, and what it does not. Dower is a mandatory condition of a valid and effective marriage contract. It is the exclusive right of the bride; it vests in her upon the execution of the Nikahnama, and she cannot be deprived of her rights in this regard in any manner. It may be prompt or deferred, and where the parties have not specified the nature of the payment, it is presumed to be prompt under section 10 of the Ordinance of 1961.⁸ Its payment is an obligation imposed by Allah Almighty and is an intrinsic and integral part of a Muslim marriage.⁹ An obligation of that character is not to be presumed discharged; it must be shown to have been discharged.

18. The case of respondent No. 1 rests substantially on the Nikahnama, and it is therefore necessary to be precise about what that instrument records. Form II, prescribed under the Rules framed under the Ordinance of 1961, provides, in column 13, for the amount of dower; in column 14, for

⁶ *Fozia Mazhar v. Additional District Judge, Jhang* PLD 2024 SC 771; *M. Hamad Hassan v. Mst. Isma Bukhari* 2023 SCMR 1434.

⁷ *Muhammad Shamim Ali v. Mst. Asma Begum* 2024 SCMR 1642.

⁸ *Mst. Fakhra Jabeen v. Wasif Ali* PLD 2026 SC 20.

⁹ *Haseen Ullah v. Mst. Naheed Begum* PLD 2022 SC 686.

how much of the dower is prompt and how much deferred; and in column 15, separately and in terms, for “*whether any portion of the dower was paid at the time of marriage*” and, if so, how much.¹⁰ The Supreme Court has held that these columns are distinct and that the entry in column 13 is not a rider to the entries in columns 14, 15 and 16.¹¹ Each column answers its own question. The mode and time of payment is one matter; the fact of payment is another.

19. Under the Nikahnama in this case, the dower of ten tola gold is entered as prompt. That much is common ground, and the learned appellate court itself described the instrument no more broadly as “*showing that the Haq Mahar, in the shape of 10 Tola Gold, is prompt/Moajil*”. The trial court, having the document before it, found that it bears no entry that the dower was paid, nor any entry that it was paid before the Nikah or in the shape of gold ornaments.¹² That finding as to the contents of the instrument was not displaced on appeal. It follows that the Nikahnama establishes the obligation and its eligibility, not its discharge. Prompt dower is payable on demand; unpaid prompt dower remains a subsisting debt. To move from “prompt” to “paid” is not to construe the document but to add to it, and it is precisely that addition which the Supreme Court has forbidden by holding that one column is not a rider to another.

20. If it were said that the entries leave the matter in doubt, that doubt does not assist respondent No. 1. The Supreme Court has held that where an ambiguity or doubt arises in relation to a term or column of the Nikahnama, the benefit ought to go in favour of the wife unless there is a preponderance of evidence that she was informed of her rights, understood each column, and had the freedom to negotiate and settle the terms out of free consent. Where the columns have been filled by others without her meaningful consultation, a doubt or ambiguity cannot be interpreted against her rights or interests.¹³ Here, the Nikah was reduced to writing in a Masjid at Clifton while the petitioner was at the hotel. Her uncles came to her only

¹⁰ Form II in the Schedule to the West Pakistan Rules under the Muslim Family Laws Ordinance, 1961 (hereinafter referred to as “the Ordinance of 1961”), columns 13 to 16, read with rules 8 and 10.

¹¹ *Mst. Fakhra Jabeen v. Wasif Ali* (n. 8 above).

¹² Paragraphs 9 and 10 of the judgment dated 22.11.2022.

¹³ *Muhammad Yousaf v. Huma Saeed* 2024 SCMR 1078.

to confirm her acceptance, and respondent No. 1 himself deposed that the date of birth entered in the instrument was written by the petitioner's father. The columns were not filled by others. The construction pressed upon the Court is therefore foreclosed twice over.

21. The petitioner pleaded that the dower had not been paid; respondent No.1 pleaded that it had. Non-payment was a negative averment; payment was an affirmative plea of discharge, and a party who sets up the discharge of a subsisting obligation must establish it. The trial court accordingly placed the onus on the respondent, and was right to do so.

22. Respondent No. 1 did not discharge it, and what he withheld is as significant as what he produced. He produced no receipt, cash memo or voucher for the purchase of ten tola of gold, and in the dowry suit he admitted that he had not produced any purchase receipt for the gold at all.¹⁴ He examined none of the persons named in the Nikahnama, neither the Vakil appointed by the bride, nor the witnesses to that appointment, nor the witnesses to the marriage, who, upon his own showing, were his first cousins. He did not examine the Nikah Khuwan, nor the Nikah Registrar who attested the very copy upon which he founds his case, nor did he apply for their summoning. He conceded in cross-examination that he had produced no witness to authenticate his claim, offering only that he resided at Karachi.¹⁵

23. The photograph carries him no further. A photograph of a bride in bridal dress wearing gold ornaments proves that she wore ornaments on that occasion. It does not prove whose ornaments they were, nor that they were delivered to her in discharge of the dower. The petitioner deposed in the same breath that the Golden Duhri she was wearing was not given by respondent No.1. Nor is the answer in cross-examination that the bridal dress and other articles had been received one day before the marriage an admission of receipt of ten tola gold; read as it stands, it speaks of the customary sending of bridal attire before the ceremony and identifies neither any quantity of gold nor anything as delivered in satisfaction of the dower. Her further answer, that it is mentioned in the Nikahnama that the dower

¹⁴ Cross-examination of respondent No. 1 recorded on 03.04.2023 in Family Suit No. 85 of 2021.

¹⁵ Cross-examination of respondent No. 1 dated 08.11.2022 in Family Suit No. 493 of 2020.

amount is paid as ten tola gold ornaments, was accompanied in the very same sentence by her statement that she had not received the same. An answer in cross-examination must be read as a whole and cannot be split so as to retain what assists one party and discard the qualification which does not. In any event, the instrument is the best evidence of its own contents.

24. The petitioner's own case is not free from difficulty, and it is right to say so. Her plea that column 14 was interpolated after the ceremony fails. She admitted that the signature on the document produced by respondent No. 1 is hers; she did not plead interpolation in her affidavit-in-evidence; she obtained no certified copy from the concerned Union Council; she did not move the Deputy Commissioner, the controlling authority, to have any wrong entry corrected, and she instituted no proceedings for cancellation. To that extent, the reasoning of the learned appellate court is unexceptionable and is affirmed, and the Nikahnama is read as it stands. However, she does not need the plea of interpolation, because the instrument as it stands does not record payment. For the same reason, the authority relied upon by the learned appellate court does not carry respondent No. 1 home: the rule that the entries of a Nikahnama are to be given solemn affirmation unless rebutted by strong evidence, faithfully applied, affirms the entries that the dower is ten tola gold and prompt, and it cannot affirm an entry of payment which the instrument does not bear.¹⁶

25. The proviso to section 10(4) of the Act of 1964, as it stands in this Province, provides that, in a suit for dissolution of marriage, if reconciliation fails, the Family Court shall pass a decree for dissolution of marriage forthwith and shall also restore to the husband "*the Haq Mahar received by the wife in consideration of marriage at the time of marriage*".¹⁷ The words "received by the wife" are words of limitation. The statute commands the Court to restore only the dower which the wife has received; it does not command the restoration of a dower which was never delivered. Restoration

¹⁶ *Muhammad Aslam v. Mst. Suraya* PLD 2000 Lahore 355, paragraphs 8 to 10 whereof are reproduced in the first impugned judgment.

¹⁷ Proviso to section 10(4) of the Act of 1964. The West Pakistan Family Courts (Sindh Amendment) Act, 1997 (Sindh Act No. II of 1997) does not touch section 10.

therefore presupposes a finding of receipt, and receipt is a fact to be established, not a recital to be read from a register.

26. That the liability of a wife upon khula is one created and bounded by statute is now settled by the Supreme Court. In a case governed by section 10(5) of the Act of 1964 as it stands in the Punjab, where the prompt dower was admitted and its payment was not in issue, the High Court directed the return of the entire prompt dower; the Supreme Court set that direction aside and confined the wife's liability to the statutory ceiling, observing that she had not pleaded that the admitted prompt dower was unpaid.¹⁸ The provision applicable in this Province is differently framed and imposes no percentage ceiling, but the principle holds with greater force here: where the wife does plead non-payment, where an issue is framed upon it, and where the husband fails to prove payment, there is nothing which the statute permits to be restored. A direction to restore the whole of a dower never received is without foundation in the proviso and cannot stand.

27. The form of the direction is open to the same objection. The petitioner was required to "*return the Haq Mahar/Dower mentioned in Nikahnama ... immediately*". It identifies no article, fixes no weight, quantity or value, and provides no machinery. Even if restoration had been due, a direction in those terms could not be executed.

28. There remains the question, argued on both sides in relation to verse 229 of Surah Al-Baqarah, of what the petitioner gives in consideration of her release. The answer lies in her own prayer. She sued for dissolution "*for that the plaintiff is ready to forgo her dower amount*", and the trial court decreed the suit as prayed. Her relinquishment of a subsisting and unsatisfied claim to ten tola gold is the *Zar-e-Khula*; it is a real and substantial consideration, not a formal one, and it is the course contemplated by the Qur'anic injunction, for what the wife is enjoined to return is what she has received. It also disposes of any apprehension that she might sue for the same dower in future: having relinquished it as the price of her release, she cannot claim it, and it is declared accordingly.

¹⁸ *Mst. Rafia Yaqoob v. Suleman Ayub* 2026 SCMR 561.

29. One further matter must be noted. The marriage was dissolved by khula on 09.06.2021 after the failure of pre-trial reconciliation. No appeal lies from a decree dissolution of marriage, except in the case of dissolution for the reason specified in the exception, which does not apply to dissolution by khula.¹⁹ The appeal was therefore competent only in respect of the ancillary claim to the dower. The first impugned judgment, in setting aside the judgment and decree dated 22.11.2022 in their entirety, purported to undo the dissolution itself, and to that extent it was passed without jurisdiction and is of no legal effect. Neither party has understood it as having revived the marriage, but an order which leaves the marital status of the parties in doubt cannot be permitted to remain upon the record.

30. It ought finally to be recorded that respondent No. 1, in his written statement and in his affidavit-in-evidence, levelled allegations touching the petitioner's chastity and named a man with whom he alleged she was involved. Not a particle of evidence was led in support of them. The Supreme Court has lately had occasion to emphasis the standard of proof which courts must adopt in family cases,²⁰ and pleadings of this character, made against a woman and then abandoned, fall far short of it. The conduct so disclosed lends support to, rather than detracts from, the petitioner's case of a fixed aversion not of her own making.

31. The test by which a claim to dowry articles is to be judged. Under section 17 of the Act of 1964, the Qanun-e-Shahadat Order, 1984 does not govern proceedings before a Family Court, and the Supreme Court has held that its provisions are not *stricto sensu* applicable to family matters. Accordingly, an argument based on the production of receipts for dowry articles and on the effect of the non-production of their authors is misconceived.²¹ In the same case, the Supreme Court laid down what suffices. Where the wife appears as a witness, gives details of the dowry articles, places her affidavit on the record, is subjected to a lengthy cross-examination from which nothing helpful to the husband emerges, and a witness on her behalf states that the articles were given by her parents at

¹⁹ Section 14(2)(a) of the Act of 1964.

²⁰ *Dr. Seema Hanif Khan v. Waqas Khan* PLD 2026 SC 91.

²¹ Section 17 of the Act of 1964; *Shafique Sultan v. Mst. Asma Firdous* 2017 SCMR 393.

the time of the marriage, and where the husband, beyond denying delivery, produces no evidence of any nature to substantiate his position, the claim stands proved. The Supreme Court added that where the list consists of articles of daily use generally given to brides, containing nothing which may be termed extravagant or beyond the resources of the wife's family, it is to be accepted, because the giving of dowry articles to daughters is in line with custom and tradition deeply rooted in our society and is followed by parents of all classes irrespective of their financial status.

32. By that test, the petitioner's claim was established before the trial court. She filed her affidavit-in-evidence, set out the articles in the list annexed to the plaint, was subjected to a lengthy cross-examination, and remained consistent, denying that her parents had given her anything beyond clothes and that she had carried the articles away.²² Her brother supported her and deposed that the articles were given. Respondent No.1, on the other hand, did nothing beyond denial. He pleaded that he had paid Rs.5,00,000/- for the purchases but produced no receipt, no proof of withdrawal, and no witness to the payment. Far from displacing her case, he admitted in cross-examination that he was present, along with the petitioner's uncle, when the dowry articles were brought,²³ and his own witness admitted that she brought articles to the house after the marriage and that a golden locket and other precious articles are lying there.²⁴ His affirmative case that she removed the articles in bags rested on his word and that of his brother and on nothing else; both admitted that they never examined the bags and did not prevent her from taking them. The list itself answers the description in the authority cited. It comprises furniture, bedding, crockery, kitchen appliances, clothing and articles of daily use, together with the gold and silver ornaments and the petitioner's documents. There is nothing extravagant about it.

33. It follows that the two grounds on which the learned appellate court reduced the decree cannot be sustained. The first was that the list was "out of understanding" because the petitioner's father earned about Rs.1,00,000/-

²² Paragraphs 11 to 14 of the judgment dated 27.11.2023.

²³ Cross-examination of respondent No. 1 dated 03.04.2023 (n. 14 above).

²⁴ Cross-examination of Irfan Ali recorded on 03.04.2023 in Family Suit No. 85 of 2021.

per month. That reasoning is directly contrary to the Supreme Court's holding that the custom is followed by parents of all classes irrespective of their financial status,²⁵ and it rested in any event on no evidence but upon the Court's own estimate of what a family of that station ought to be able to afford. The second was that the expenses of the marriage were borne by respondent No. 1's family and that some of the dowry articles were purchased by him. The only material relied on for that conclusion was that the petitioner's brother said he did not know whether respondent No. 1 had given five lacs or more and did not know how much had been received. An answer of ignorance is not evidence of the fact of which the witness is ignorant; it neither proves nor disproves, and an affirmative finding could not be built upon it.

34. The disallowance of the gold ornaments is accompanied by a further independent error. The sole reason given is that "*the trial court had already declined the same*". That is not so. The trial court declined only the cash amount and the twenty tola silver ornaments; the gold ornaments were within its decree.²⁶ The learned appellate court thus disallowed a substantial head of claim upon a misreading of the very decree before it on appeal, without appraising the evidence upon which it relied and without adverting to the receipts which the trial court recorded as having been produced and as forming part of the judicial file. It also maintained the direction to return the petitioner's documents while disallowing the gold, although the reasoning of the trial court which it displaced had spoken of the gold ornaments and of the documents together, as articles lying in one and the same locked Almirah. Upon this head, the second impugned judgment is at war with itself.

35. The claims to the cash amount and to the twenty tola silver ornaments are treated differently. Both courts below disallowed them for want of evidence. Those findings are concurrent; they disclose no misreading, rest upon no misapplication of law, and are maintained. The decree upon the gold must likewise be confined to what was pleaded: the plaint and the affidavit-in-evidence both speak of 21.5 tola, whereas the list

²⁵ *Shafique Sultan v. Mst. Asma Firdous* (n. 21 above).

²⁶ Paragraphs 15, 16 and 17 of, and the decree drawn upon, the judgment dated 27.11.2023.

annexed to the plaint describes a bridal set of 24.5 tola, and a plaintiff cannot recover more than she has claimed.

36. As to the shape of the relief, the Supreme Court has approved allowing a percentage deduction from the value of dowry articles on account of depreciation through use over the years of the marriage, as an approach showing careful and circumspect application of mind.²⁷ It has held that where the return of gold ornaments in specie is not possible, the executing court may direct payment of their current market value.²⁸ The cohabitation here lasted about four months, so depreciation through the petitioner's own use is slight, but the articles have remained in the custody of respondent No. 1 for close to seven years. The decree is therefore best worked out by directing the articles to be handed over in specie, with a money alternative for whatever is not handed over or is handed over unserviceable, the Family Court being left to compute it upon the list and the receipts on its file, with a reasonable deduction for depreciation upon clothing and like perishable articles and none upon the gold.

37. For the foregoing reasons:

- i. C. P No.S-144 of 2023 is **allowed**. The first impugned judgment dated 17.05.2023 is set aside and the judgment and decree of the trial court dated 22.11.2022 are restored. It is declared that the marriage of the parties stands dissolved by khula with effect from 09.06.2021; that the consideration for the dissolution is the petitioner's relinquishment of her unpaid dower of ten tola gold, which she shall not hereafter be entitled to claim and that the claim of respondent No. 1 for restoration of the dower stands **dismissed**.
- ii. C. P No. S-107 of 2024 is **allowed**. The second impugned judgment dated 16.05.2024 is set aside and the judgment and decree of the trial court dated 27.11.2023 are restored, subject to the following, that the decree shall operate in respect of the dowry articles set out in the list annexed to the plaint, excluding the cash amount and the twenty tola silver ornaments, as to

²⁷ *Shafique Sultan v. Mst. Asma Firdous* (n. 21 above).

²⁸ *Shafqat Ali v. Mst. Zaib Un Nisa* 2026 SCMR 494.

which the trial court's refusal is maintained and that the gold ornaments shall not exceed 21.5 tola.

- iii. Respondent No. 1 shall, within sixty days of the date of this order, hand over to the petitioner the dowry articles so decreed, including the gold ornaments weighing 21.5 tola, and shall return to her the academic and personal documents, passport and national identity card mentioned in the plaint. In respect of any article which is not handed over, or is handed over in an unserviceable condition, the petitioner shall be entitled to its value, which the Family Court shall determine upon an application in execution on the basis of the list and the receipts forming part of its record, allowing a reasonable deduction for depreciation in respect of clothing and like articles but none in respect of the gold, the value whereof shall be computed at the rate prevailing upon the date of payment.
- iv. Nothing in this order shall be construed as an expression of opinion on the merits of F. C. Suit No. 111 of 2022, pending before the learned II-Senior Civil Judge, Karachi South, except that the question of payment of the dower of ten tola gold is concluded between these parties by this order.

38. There shall be no order as to costs. Office shall transmit a copy of this order, together with the record and proceedings, to the courts below. Let a signed copy of this order be placed in the captioned connected matter.

JUDGE

Abdul Basit