

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P. No.S-385 of 2012

Date of hearing : 21.08.2013.

Applicant Ghayas Ahmed Khan through : Mr. Moulvi Iqbal Haider, Advocate.

Respondent No.2 Mst. Ambreen Islam through : Mr. S.A. Khokhar, Advocate.

ORDER

IRFAN SAADAT KHAN, J: The instant Constitutional Petition has been filed against the order passed by the IXth Civil & Family Judge, Karachi Central, in Execution Application No.23/2011 of Family Suit No.241/2012.

2. Briefly stated the facts of the case are that the petitioner was married to respondent No.2 (hereinafter referred to as “the respondent”) on 28.07.2010 against a dower amount of Rs.50,000/-. After the marriage relationship between the petitioner and the respondent strained, as such, the respondent filed a suit for dissolution of marriage as well as another suit for recovery of dowry articles against the petitioner. The learned Family Judge then vide her order dated 19.4.2011 dissolved the marriage by way of khulla in lieu of dower amount. So far as the suit filed for recovery of dowry articles, the learned Judge vide her order dated 23.09.2011, as against the claim of Rs.3,00,000/- for return of gold ornaments, decided the matter in favour of the respondent by determining the value of the gold ornaments to the extent of Rs.64,200/-, however, directed the petitioner to return the dowry articles as per the list except Baree items. The petitioner then filed an application under Section 9(6) read with Section 17-A of the West Pakistan Family Court Act (hereinafter referred to as “the Act”) before the learned Family Judge with the prayer to recall the ex-parte order dated 29.03.2011 as, according to him, proper opportunity of hearing was not provided to the petitioner. This application also was dismissed, by considering the same to

be without any merits, vide order dated 16.03.2012. It is against this order that the present petition has been filed.

3. Mr. Moulvi Iqbal Haider, Advocate has appeared on behalf of the petitioner and stated that the learned Family Judge has not considered that a suit for conjugal rights was filed by the petitioner and while allowing khula the learned Judge should have considered the said case and should have heard that case also alongwith khula suit filed by the respondent. He submitted that the learned Judge has failed to consider the provisions of Section 9(4) of the Act. He stated that since proper opportunity of hearing has not been provided to the petitioner, the order passed by the learned Judge is liable to be set aside. He, however, frankly conceded that the petitioner is ready to return the dowry articles, which are lying with him, subject to the condition that the dower amount paid by him may be adjusted against the value of the gold ornaments and dowry articles of the respondent.

4. Mr. S.A. Khokhar, Advocate has appeared on behalf of the respondent and stated that a number of opportunities were provided to the petitioner, which is evident from the order of the learned Family Judge. He stated that the petitioner has failed to adduce his evidence before the Court and thereafter his side was closed vide order dated 22.08.2011. He further stated that the petitioner never bothered to appear before the learned Judge and the learned Judge thereafter was fully justified in passing the order for return of dowry articles and for paying the cost of the gold ornaments determined at Rs.64,200/-. He further stated that the provisions of law relied upon, by the counsel for the petitioner, are not applicable in the present case. He further stated that since counsel for the petitioner has himself agreed that the dowry articles are lying with him, the same be ordered to be returned to the respondent, immediately. He further stated that khula has been obtained in lieu of dower amount hence question of adjustment does not arise in the instant case. He stated that the facts mentioned by the counsel for the petitioner in the petition clearly depicts that the said dower amount has been adjusted against the amount alleged to have been given to the mother of the

petitioner as loan. He, therefore, stated that the instant petition has been filed just to linger on the matter and to frustrate the execution and is liable to be dismissed with heavy cost.

5. I have heard both the learned counsel at considerable length and have perused the record. There is no denial to the fact that summons were issued to the petitioner, which were served and thereafter the petitioner engaged a counsel and submitted his written statement wherein the allegation leveled against him were denied. There is also no denial to the fact that the petitioner was called a number of times by the learned Family Judge to appear and to cross examine the witnesses but no appearance was made by the petitioner. There is also no denial to the fact that since no evidence was adduced, the side of the petitioner was closed, vide order dated 22.08.2011. A perusal of the order further reveals that the learned Judge herself, while passing the order dated 23.09.2011, has not accepted the value of the gold ornaments as claimed by the respondent but has fixed the same at Rs.64,200/- looking to the factual aspects of the case. It is also an admitted position that the dowry articles are lying with the petitioner. It is also seen from the record that statement of the witnesses recorded by the learned Family Judge had remained unshaken and un-rebutted. In view of the matter since, as per the available record, a number of opportunities were provided to the petitioner for appearing before the Court, which he chooses otherwise, none other than the petitioner is responsible for such casual attitude. It is also seen from the record that attempts for reconciliation were made but the same failed, as both the parties refused to cooperate with each other.

6. In the light of the above facts, I am of the view that the order passed by the learned Family Judge suffers with no legal infirmity. This petition is found to be bereft of any merit and is hereby dismissed alongwith the listed application.

Above are the reasons of my short order.

JUDGE