

IN THE HIGH COURT OF SINDH, CIRCUIT COURT MIRPURKHAS

C.P No. S-36 of 2024

[Mst. Naz Bano v. Fahad Hussain]

Petitioner	:	Mst. Naz Bano through Mr. Imran Ashraf Panhwar, Advocate.
Respondent	:	Nemo.
		Mr. Muhammad Sharif Solangi, Assistant A.G. Sindh.
Date of Hearing	:	24.12.2025
Date of Judgment	:	24.12.2025

JUDGMENT

RIAZAT ALI SAHAR. J. - Through this constitutional petition the petitioner has challenged the Judgment and decree dated 27.01.2024 passed by learned Additional District Judge-II, (MCAC) Sanghar in Family Appeal No.44 of 2023 [Re-Mst. Naz Bano v. Fahad Hussain]whereby upheld the judgment and decree dated 10.11.2023 passed by learned Judge, Family Court, Sanghar in Family Suit No.83 of 2023. Hence, the petitioner being aggrieved has invoked writ jurisdiction seeking modification of the appellate judgment to the extent of gold ornaments.

2. The background of the case is that the petitioner filed Family Suit No.55/2023 seeking dissolution of marriage and recovery of dowry articles. The marriage between the parties was solemnized on 17.12.2022 with Haq-Mahr of Rs.5,000/-, which remained unpaid. The petitioner alleged that soon after marriage the respondent subjected her to mental cruelty, harassment and abusive conduct, being addicted to intoxicants and returning home in drunken condition. She further alleged that the respondent restrained her from meeting her adopted parents, compelling them to file an application under Section 491

Cr.P.C, where after her custody was restored to them. In the suit, the petitioner sought Khula and recovery of dowry articles valued at Rs.360,000/- along with gold ornaments. The trial Court partly decreed the suit, granting Khula and value of dowry articles but declining recovery of 4-Tolas of gold ornaments. Both sides preferred appeals under Section 14 of the West Pakistan Family Courts Act, 1964, which were dismissed by a common judgment dated 27.01.2024, maintaining the trial Court's decree.

3. Notice issued to the respondent was served, engaged his counsel on 25.04.2025. His counsel also appeared before this Court on 16.09.2025 but today he is called without intimation. However, the matter is taken up for hearing.

4. The Court queried to the learned counsel for the petitioner regarding the availability of any further statutory remedy after the dismissal of the appeal under the Family Courts Act, 1964 and whether constitutional jurisdiction may be invoked as a substitute for an appeal or revision. The counsel failed to furnish a satisfactory response. Upon consideration, it is observed that the impugned judgments have been rendered by courts of competent jurisdiction and no jurisdictional defect, mala fide, arbitrariness, perversity, or infringement of fundamental rights has been demonstrated so as to justify interference in writ jurisdiction. As appreciation of evidence squarely falls within the domain of the Family Court and the Appellate Court. So far the claim of petitioner in respect of recovery of gold ornaments is concerned, the Appellate Court in its judgment has properly discussed with sound reasoning. Since the Family Courts Act, 1964 does not contemplate a second appeal; the finality attached to appellate proceedings cannot be circumvented through constitutional proceedings.

5. It is settled that while exercising powers under Article 199 of the Constitution, this Court is not a forum for re-assessment of facts already appraised by the Family Court and the Appellate Court. The constitutional jurisdiction is confined to examining whether the subordinate forums acted within the bounds of their authority and in accordance with law and is not intended to provide a parallel or substitute avenue for re-appraisal of evidence. The Honourable Supreme

Court in the like case titled as **M. HAMAD HASSAN v. Mst. ISMA BUKHARI and 2 others [2023 SCMR 1434]** has held that:

“5. In respect to the facts before us, Respondent No.1 and her minor son filed a suit before the family court for recovery of dower, maintenance allowance and dowry articles, etc. The suit was decreed on 24.11.2018 and later upheld by the appellate court. Subsequently, the Petitioner filed a writ petition before the High Court challenging the factual determinations of the lower courts in respect of the quantum of maintenance allowance, dower amount, recovery of dowry articles amongst other grounds. Regrettably, the High Court fell in error and adjudicated upon the case on facts which falls outside the mandate of Article 199 of the Constitution. In terms of the aforementioned case law, the High Court could have interfered to prevent miscarriage of justice, which is not established in the instant case. In fact the High Court substituted and adjudicated on the facts and tendered its opinion, which amounts to having an appeal out of the Appellate Court's judgment.

6. The objective of Article 199 of the Constitution is to foster justice, protect rights and correct any wrongs, for which, it empowers the High Court to rectify wrongful or excessive exercise of jurisdiction by lower courts and address procedural illegality or irregularity that may have prejudiced a case. However, it is emphasized that the High Court, in its capacity under Article 199, lacks the jurisdiction to re-examine or reconsider the facts of a case already decided by lower courts. Its role is limited to correcting jurisdictional errors and procedural improprieties, ensuring the proper administration of justice. In the present case, the Petitioner pursued his case through the family court and its appeal in the district court and then also invoked the High Court's constitutional jurisdiction to reargue his case amounting to a wrongful exercise of jurisdiction whereby the High Court upheld the factual findings of appellate court after making its own assessments on the same. Allowing a re-argument of the case constituted to arguing a second appeal which should not have been entertained regardless of the outcome of the case.

7. The right to appeal is a statutory creation, either provided or not provided by the legislature; if the law intended to provide for two opportunities of appeal, it would have explicitly done so. In the absence of a second appeal, the decision of the appellate court is considered final on the facts and it is not for High Court to offer another opportunity of hearing, especially in family cases where the legislature's intent to not prolong the dispute is clear. The purpose of this approach is to ensure efficient and expeditious resolution of legal disputes. However, if the High Court continues to entertain constitutional petitions against appellate court orders, under Article 199 of the Constitution, it opens floodgates to appellate litigation. Closure of litigation is essential for a fair and efficient legal system, and the courts should not unwarrantedly make room for litigants to abuse the process of law. Once a matter has been adjudicated upon on fact by the trial and the appellate courts, constitutional courts should not exceed their powers by re-evaluating the facts or substituting the appellate court's opinion with their own - the acceptance of finality of the appellate court's findings is essential for achieving closure in legal proceedings conclusively resolving disputes, preventing unnecessary litigation, and upholding the legislature's intent to provide a definitive resolution through existing appeal mechanisms.”

The Honourable Supreme Court has also taken same view in the case of ARIF FAREED v. BIBI SARA and others [2023 SCMR 413].

6. In view of the above discussion, it is obvious that the impugned judgments and decrees have been passed by the courts below within the parameters of their lawful jurisdiction and no illegality, perversity, mala fide or violation of fundamental rights has been demonstrated so as to warrant interference under Article 199 of the Constitution. As the petitioner has already availed the statutory remedy of appeal, which has attained finality under the Family Courts Act, 1964, the constitutional jurisdiction cannot be invoked as a substitute for a further appeal or re-appraisal of evidence. Consequently, finding no merit or legal substance in the petition, the same stands **dismissed**.

7. These are the reasons for my short order dated 24.12.2025.

JUDGE

Abdullah Channa/PS