

IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

C.P. No.S-153 of 2020

Pervez Laghari -----

Petitioner

Vs.

Mst. Naseema & another -----

Respondents

Mr. Pir Bux Laghari advocate for petitioner.

Date of hearing & Decision: 21.08.2020

ORDER

ADNAN-UL-KARIM MEMON, J. - The version of the respondent No.1/ plaintiff is that she filed Family Suit No.62/2019, for Maintenance, Recovery of Dowry Articles and Dower Amount, before Civil & Family Judge-I, Tando Muhammad Khan, which was Decreed vide judgment dated 08.02.2020 with the observation that respondent No.1/ plaintiff was entitled for maintenance at the rate of Rs. 5000/- per month for herself and Rs.3000/- per month for minor Farhan from the date of institution of aforesaid suit with increment of 10% per annum till his legal entitlement and the petitioner was directed to pay the same on or before 10th of each calendar month before Nazir of the Court; however, respondent No.1/ plaintiff was also held entitled for dower amount of Rs. 5000/- and with regard to dowry articles, learned Family Court held that respondent No.1/ plaintiff was not entitled for the same. The petitioner / defendant being aggrieved by and dissatisfied with the aforesaid Judgment and Decree preferred Family Appeal No. 1 / 2020 before learned District Judge / MCAC, Tando Muhammad Khan which was dismissed vide Judgment and Decree dated 24.03.2020. An excerpt of the same is reproduced as under:

"In view of my finding on point No: 1, 2 & 3, the Family Appeal No.01/2020 is partly allowed and the maintenance amount of respondent/plaintiff for herself is reduced from Rs.5000/- to Rs.3000/- per month; the Judgment & Decree dated 08.02.2020 passed by Civil & Family Judge-I, Tando Muhammad Khan stands modified in the terms given in the preceding paragraph No.14. The other terms and conditions already determined by learned trial Court will remain same. The parties will bear their own cost."

2. We asked learned counsel to satisfy this Court with regard to maintainability of instant petition, he replied that the impugned judgments rendered by the Courts below are against the fundamental rights of the petitioner on the premise that respondent No.1 refused to join the Petitioner without any justifiable cause, therefore, she is not entitled for maintenance allowance as directed by both the Courts below; that the Courts below have failed to appreciate that maintenance can only be claimed if there is overact on the part of petitioner, but in this case the respondent No.1 has blatantly refused to perform her conjugal rights, even refused to obey his command; that the petitioner is ready and willing to pay the maintenance of minor; that the judgments and decrees of courts below are against law and facts; that learned courts below have not taken into consideration the evidence adduced by the parties in its true perspective; that the petitioner is unable to pay the maintenance allowance as awarded by learned courts below; that the impugned judgments and decrees are based upon surmises and conjectures; that learned courts below have committed material irregularities while passing the impugned judgments and decrees, therefore, this writ petition may be allowed and the impugned judgments and decrees of both the courts below be set aside and the suit of respondent No.1/plaintiff be dismissed.

3. I have heard the learned counsel for the petitioner on the issue of maintainability of the captioned petition.

4. During the course of arguments, I have noticed that learned Family Court while trying family case between the parties, framed the issues and appreciated the factual as well as legal aspect of the case by giving cogent reasons on the subject issues; however, learned appellate Court while modifying the judgment and decree dated 08.02.2020 passed by learned Family Court to the extent of maintenance amount and finally concurred the same with justifiable reasons as discussed supra:

5. I have notice that under Section 14 (2) (b) of the Family Courts Act, 1964, no appeal is entertainable against decree of dowry articles up to Rs.100,000/-. Since appeal was not provided by the statute, the writ in hand is not competent as there is no misreading or non-reading of evidence, floating on the surface of record. Learned counsel for Petitioner has not been able to point out any infirmity or illegality in the findings of Courts below or any misreading or non-reading of evidence by them. So far as maintenance allowance awarded to the respondent / plaintiff is concerned, Section 14(2) (c) of the Act reads as under:

"14 (2) No appeal shall lie from a decree passed by Family Court-

(a) ...

(b) ...

(c) For maintenance of Rupees five thousand or less per month"

6. Bare reading of above provision of law makes it clear that no appeal will lie against a decree for maintenance if such maintenance is Rs.5,000/- or less per month. In my considered view, it is a matter of right of minor and wife who are constrained to live a deserted life and Section 14(2) (c) of the Act mentions the amount of maintenance allowance for a single person and not the accumulative one for all the children and wife. As such, I am of the considered view that since the amount of maintenance allowance / granted to Respondent No.1 / plaintiff was less than Rs.5,000/-, the appeal keeping in view Section 14(2) (c) of the Act was not maintainable and was rightly rejected.

7. I have been informed that no appeal has been preferred by Respondent No.1 / plaintiff against the findings of learned Appellate Court with regard to entitlement of dowry articles, therefore no findings can be given at this stage. Furthermore, there are findings of law and facts against the petitioner which are based upon due appraisal of evidence. Under the law, such findings are not to be interfered with until and unless there is some gross illegality, misreading or non-reading of evidence or some jurisdictional defect which could not be pointed out by learned counsel for the petitioner. In the circumstances, no interference is called for.

8. For the foregoing discussion, this petition fails, same stands dismissed with no order as to costs.

9. The above are the reasons of my short order dated 21.08.2020, whereby this petition and pending stay application were dismissed in limine.



JUDGE