

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
 CIRCUIT COURT, HYDERABAD**

C.P.No.S- 242 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For orders on M.A-1181 of 2019 (Exemption application).
3. For hearing of M.A-1182 of 2019 (Stay application).
4. For hearing of main case.

14.10.2020

Mr. Aqeel Ahmed Siddiqui, Advocate for the petitioner.

Mr. Aslam Baig Laghari, Advocate for respondent No.1.

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Zulfiqar Ahmad Khan, J: This Constitutional Petition impugns the Judgment and Decree dated 12.11.2018, passed by the learned VIII-Additional District Judge, Hyderabad in Family Appeal No.58 of 2018 (re: Syed Sami Hyder v. Mst. Farah Azeem), whereby the judgment dated 01.03.2018, passed by the learned Family Judge, Hyderabad in Family Suit No.362 of 2017 (re: Mst. Farah v. Syed Sameh Hyder), was maintained in respect of findings given by the trial Court on issue No.2; however, it was set aside in respect of issue No.1.

2. Concisely, facts of the case are that the petitioner / plaintiff had filed a Suit being Family Suit No.362 of 2017 against respondent No.1 for dissolution of marriage by way of Khullah and recovery of dowry articles with the following prayers:-

- a) That this Honourable Court may be pleased to pass judgment and decree in favour of the Plaintiff and dissolve the marriage of Plaintiff with defendant by way of Khula for which Plaintiff is ready to forgo her dower amount.
- b) That this Honourable Court may be pleased to direct the defendant to return the dowry articles as per list worth of Rs.1,50,000/- or alternate of non-availability of the same he may be directed to pay the amount of Rs.1,50,000/- to the Plaintiff.

- c) Cost of the suit be saddled upon the defendant.
- d) Any other relief as deems fit and proper under the circumstances.

3. In response to that suit, Written Statement was filed wherein respondent No.1 / defendant denied all the allegations leveled against him and submitted that the dowry articles of the petitioner / plaintiff were lying with her; however, as regard the payment of Haq Mehar, respondent / defendant has stated that he had paid entire dower amount of Rs.400,000/- to the petitioner / Plaintiff in shape of pay order No.17269475 dated 02.02.2017 to be drawn in Habib Bank Limited, Shahi Bazaar Hyderabad Branch for which an undertaking was executed by the petitioner / Plaintiff in presence of witnesses.

4. Thereafter, the trial Court after framing issues, recording evidence and hearing both the respective parties, decreed the suit as prayed except golden ornaments with a view that as per customary rule the golden ornaments are always to be kept in possession of the lady. Thereafter, being aggrieved by the said judgment, an appeal was preferred by respondent No.1 / defendant before the learned VIII-Additional District Judge, Hyderabad in Family Appeal No.58 of 2018, where, after considering the matter at length and perusing the record, the learned appellate Court disposed of the said appeal vide judgment dated 12.11.2018 in the terms as mentioned in the introductory para; and against the said judgment, instant petition has been filed.

5. Learned counsel for the petitioner states that the impugned judgment is outcome of misreading, non-reading and miss-appreciation of the evidence leading the miscarriage of justice, as such, liable to be dismissed; that the learned appellate Court failed to consider this important aspect of the case that as per condition No.14 of the Nikahnama half of the dower i.e. Rs.200,000/- was to be paid promptly whereas half of the same i.e. Rs.200,000/- was to be paid later on; therefore, there is no question of payment of entire dower amount promptly; hence the impugned judgment is liable to be set aside.

6. On the other hand, learned counsel for respondent No.1 has stated that though entire dower amount was not to be paid promptly, but with mutual consent the respondent No.1 has paid the same in

entirety in shape of pay order No.17269475 dated 02.02.2017 to be drawn in Habib Bank Limited, Shahi Bazaar Hyderabad Branch. Lastly he prayed for dismissal of instant petition.

7. I have heard the arguments of learned counsel for the petitioner as well as respondent No.1 and perused the record. Admittedly, this petition has been filed against the judgment passed in family matter, where disputed questions of facts based on evidence have been assailed as to the enlistment and returning back of dower amount already paid by the respondent No.1 in lieu of Khulla, which cannot be entertained in a Constitutional Petition. Significantly, the learned appellate Court while discussing the findings given by the trial Court on issue No.1 viz "*Whether the defendant has paid the dower amount to the Plaintiff...?*" has mentioned in the impugned judgment that Haq Mahar was fixed Rs.400,000/- and the same was paid to the petitioner / Plaintiff in shape of pay order and has produced original receipt of said pay order and undertaking while recording his evidence before the trial Court. The father of the petitioner in his cross-examination has admitted that "*It is correct to say that money was paid through pay order in shape of dower amount to the Plaintiff.*" He voluntarily said that said pay order was made not in the shape of cash amount but the amount was taken by them to hold the Valima of the petitioner and respondent No.1. However, the petitioner in her cross-examination had admitted that "*It is correct to say that amount of haq mahar was paid in shape of pay order to my father.*" Furthermore, the appellate Court has given due attention to the pleadings of the parties, evidence adduced by them before the Family Court and after proper appreciation of the evidence passed the impugned judgment dated 12.11.2018 in favour of respondent No.1. Learned counsel for the petitioner has even failed to satisfy this court about the illegality or irregularity in the impugned judgment.

8. In these circumstances, where appellate Court while delivering its judgment has given cogent and sound reasons and there appears no error, illegality or irregularity on the surface to call for any interference and no misreading and non-reading of evidence is apparent, I see no merits in the instant petition, accordingly, relying on the dictum laid down by the Apex Court in the case of **Abdul**

Razzak v. Shabnam Noonari and others (2012 SCMR 976), this petition is dismissed alongwith pending applications.

JUDGE

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