

Order Sheet  
**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

CP No. S- 931 of 2019

Date of hearing & decision : 16.12.2019  
Petitioner : Aijaz Ali through Mr. Badal Gahoti, Advocate  
Respondent No.1 : None present for respondent

**ORDER**

**ADNAN-UL-KARIM MEMON, J:** - This petition is arising out of judgment passed in Family Appeal No. 89 of 2019, in terms whereof the judgment and decree passed in Family Suit No. 668 of 2016 was maintained.

2. Brief facts of the case are that a Family Suit for recovery of dower, maintenance, delivery expenses and dowry articles was filed against the petitioner, which suit after full-fledged trial was decreed vide judgment dated 11.1.2018; against the said judgment both the parties preferred appeals which were subsequently decided by learned VIIIth Additional District Judge, Hyderabad by setting aside the judgment and decree of Trial Court and remanded the case to the trial court with direction to decide the case on merits after framing of additional issues with regard to dower amount and divorce and after providing opportunity to both the parties to adduce their evidence and produce documents and accordingly the following additional issues were framed:-

1. Whether the plaintiff is entitled for recovery of dower amount?
2. Whether the defendant pronounced divorce to plaintiff and same was communicated to plaintiff according to law, if yes then when, where and in what manner?
3. What should the decree be?

3. On the above issues, parties were directed to submit the list of witnesses, lead their evidence and produce documents but both the parties neither produced any document nor witness; however, both of them entered into witness box and examined themselves; learned trial court after hearing the parties decreed the suit to the extent of issue No.1. Against the said decision the petitioner preferred Family Appeal No. 89 of 2019. The appellate Court decided the controversy in the same manner as it stood decided by the Family Court. Petitioner being aggrieved by and dissatisfied with the aforesaid decisions has filed the instant petition.

4. Mr. Badal Gahoti learned counsel for the petitioner argued that the judgments and decrees of both the courts below are against the law and equity, not sustainable in law hence are liable to be reversed; that a case was registered against the father of respondent No.2 in respect of issuance of cheque, and since he was in need of money, the petitioner paid him the dower amount of respondent No.2, hence the decision of trial court on issue No.1 that the dower amount was not paid is against the law and equity; that the petitioner pronounced talaq to respondent No.2 on proper divorce deed and handed over to her but she concealed such facts from the trial court, hence she is not entitled for any maintenance; that respondent No.2 has cited his father as witness hence his evidence cannot be taken into consideration being interested; that learned Appellate Court gave more advantage of benefit of doubt to respondent No.2 though she failed to prove her case at any stage and on the contrary the petitioner produced substantial documentary evidence in support of his case.

5. I have heard the learned counsel and perused the record.

6. The two questions are involved in this case i.e. payment of dower amount and maintenance. Respondent No.2 adduced the evidence and succeeded to prove that she is entitled for the aforesaid relief. The learned appellate court appreciated the factual position of the case and opined as under:

*“ So far the issue regarding recovery of dower amount is concerned, the respondent in her suit at para No.1 of the plaint stated that she married with appellant on 12.11.2012 against the dower amount of Rs.500,000/- which was not paid by the appellant inspite of repeated demands. The appellant in reply to such statement made in para No.1 of the plaint, admitted such fact in his written statement at para No.1 thereof. Thus, the burden lies upon the appellant to prove the fact that he had paid such amount. The appellant in his written statement and so also evidence adduced and further his counsel in his argument taken the sole plea that the dower amount shown in the plaint of the suit was paid to the father of respondent as he was in need of money because a criminal case was got registered against him in consequence of the loan obtained by him for which he had issued a cheque to realize such amount of loan. The appellant in his evidence recorded at Ex.27 while adopting his earlier evidence recorded at Ex.16 produced Photostat copy of divorce deed. In his cross, he made a volunteer statement that he paid dower amount to the father of respondent to settle the loan which was received by him on the request of his ex-wife. Admittedly he failed to discharge such burden by adducing any credible evidence except his oral statement though he was afforded second time an opportunity to prove the same. His statement that he paid the dower amount to the father of respondent at the request of his ex-wife but he even failed to examine any independent witness to support his like claim. Nothing is made available on record to show that on which date and time and in which manner he paid the dower amount to respondent or her father. In his*

*earlier evidence recorded at Ex.16 which he also adopted subsequently he only made a statement that he paid the dower amount in presence of his father in law and other family members and his like statement too, without cogent proof, has least support in it. In the circumstances, the learned trial court rightly answered Additional issue No.1 after proper appraisal of evidence made available on record. As regards the issue No.2 regarding pronouncement of divorce to respondent by appellant, certainly burden lies on appellant and to prove such issue he produced Photostat copy of divorce deed at Ex.27/A. This document shows the date of divorce as 26.7.2014 which he also admitted in his cross. He also adopted his earlier evidence recorded at Ex.16 in which he had also taken plea that the pronounced talaq to respondent in writing. However, he failed to produce on record any notice as provided Under Section 7 of Muslim Family Law Ordinance, 1961, which is mandatory in nature that in case a man divorces his wife shall after pronouncement of the Talaq in any form give notice to the Chairman in writing of his having done so and copy whereof was also mandatory to be sent to the wife whereas present in the case in which the appellant only claims that he pronounced talaq to the respondent but is silent as to mandate of the above provision of law to which he was subject and if is is so; the learned trial court correctly answered the issue No.2. No misreading or non-reading or any illegality has been pointed out in the judgment and decree impugned through above appeal, therefore, the same do not call for interference of this court. The point under discussion is answered in negative”*

7. I am of the view that in family matter Constitutional Jurisdiction of this Court is limited and confined only to ascertain whether the Appellate Court has flouted the statute or failed to follow the law relating thereto?
8. In the instant case, neither there is any jurisdictional error nor any perversity, illegality or infirmity in the orders passed by both courts below. Besides, I do not see any misreading or non-reading of evidence which could warrant interference of this Court.
9. In the light of facts, circumstances of the case, the instant Constitution Petition is dismissed along with pending application(s).
10. These are the reasons of my short order dated 16.12.2019, whereby I have dismissed the captioned petition.

JUDGE