ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P.No.S-764 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

For hearing of main case.

13.12.2021.

Mr. Farhad Ali Abro, Advocate for petitioner.
Mr. Asif Shaikh, Advocate for respondent No.1.

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MUHAMMAD IQBAL KALHORO, J.- Against petitioner his ex-wife, respondent No.1, filed a suit for maintenance and recovery of dower amount and dowry articles before learned Family Court-XIth, Hyderabad. The suit was partially decreed vide judgment and decree dated 19.09.2017 in the terms whereby petitioner was directed to handover dower amount of Rs.300,000/- and to pay maintenance to her, married with him on 24.01.2014, and divorced on 25.03.2014, till her iddat period at the rate of Rs.2000 per month.

2. Petitioner filed appeal (Family Appeal No.95 of 2017) against the judgment and decree agitating mainly that dower of respondent was fixed as Rs.50,000/- but by manipulation and tampering, Rs.3,50,000/- have been written on the nikahnama. This appeal has been decided vide impugned judgment dated 27.03.2018 dismissing such contention of petitioner and upholding the findings of learned Family Judge. Petitioner through this petition challenging the said findings has brought the same contention before this Court. His Counsel has submitted that petitioner has been able to substantiate his case by examining Nikahkhuwa namely Ali Gul (Ex-39) and witness Habibullah (Ex-38) that dower amount was fixed as Rs.50,000/-. Further, the nikahnama was written by brother in law of respondent namely Ali Hassan as admitted by Nikahkhuwa and as such manipulation and tampering in it in favour of ex-wife of petitioner is but a foregone conclusion. On the other hand, learned Counsel for respondent has supported the impugned judgment.

3. I have considered submissions of the parties and perused material available on record. It is well settled proposition of law that documentary evidence shall always prevail over the oral evidence. In this case, a copy of

nikahnama (original) was not only produced by the lady but by the Nikahkhuwa himself as Ex-31/A & 39/A respectively. Both copies of nikahnamas show dower amount fixed as Rs.3,50,000/- and apparently there is no sign or mark of any tampering on it. As per Rule 10 of West Pakistan Rules under the Muslim Family Laws Ordinance, 1961, at the time of marriage four leaves of nikahnama are to be prepared. One leaf is to be given to the bride, the second to the bridegroom, third one will go to Nikahkhuwa and the last one has to be sent to the Nikah Registrar. By this arrangement sanctioned by law, the petitioner should have one copy of nikahnama with a mention of claimed amount of Haq Mahar but he failed to produce the same in the trial to substantiate his plea of manipulation therein. He did not even move an application to call for copy of the nikahnama from the Nikah Registrar either, in order to prove his claim. He simply led oral evidence of Nikahkhuwa and DW Habibullah. The Nikahkhuwa has admitted in his evidence that the figure of Rs.50,000/-, which he was postulating as amount of dower fixed was based on his memory. The figure given in deposition based on memory cannot reduce a fact mentioned in a document to insignificance and take away its probative value. As against it, his wife has filed nikahnama herself, and so also by Nikahkhuwa. Both the documents (original) bear endorsement against Sr.No.13 in the same ink and writing in relation to fixation of Haq Mahar as Rs.3,50,000/-. The Nikahkhuwa has not explained that as to when he came to know, since he was having nikahnama, that instead of Rs.50,000/-, Rs.3,50,000/- have been written on the nikahnama as Haq Mahar and why he didn't try to rectify the mistake and take action. His evidence is not trustworthy over this fact, therefore. The marriage between the parties took place on 24.01.2014 and lasted for only two months till 25.03.2014. The suit was filed on 23.09.2014 after six months but during that period also petitioner never agitated quantum of Haq Mahar mentioned in the nikahnama and tried to get it rectified.

4. Further, there are concurrent findings on the issue of fact against petitioner. Under constitutional jurisdiction re-appraisal of evidence in order to have a different conclusion than already inferred by the learned Courts below has never been considered an option to be upheld. The Court under this jurisdiction has to see whether any illegality has been committed by the forums below or the findings of the fact are based on material extraneous to the pleadings of the parties to justify interference on its part. In the present case, the

findings of the fact rendered by both the Courts below are based on documentary evidence and as stated above the documentary evidence shall prevail over the oral evidence and secondly there is apparently no illegality in findings recorded by both the Courts below. This being the position, I do not find any merits in this petition and accordingly dismiss it with no order as to cost.

JUDGE

Shahid