

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

C.P No.S-23 of 2021

| DATE | ORDER WITH SIGNATURE OF JUDGE |
|------|-------------------------------|
|------|-------------------------------|

1. For hearing of MA 75/2021.
2. For hearing of main case.

Date of hearing: 08.03.2021
Date of order: 08.03.2021.

Mr. Asif Ali Talpur, Advocate for petitioner.
Mr. Imdad Ali Memon, Advocate for respondent No.1.
Mr. Wali Muhammad Jamari, Assistant A.G. Sindh.

Arshad Hussain Khan, J: Through instant constitutional petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has made the following prayers:

“(a) To declare that respondent No.1 is not entitled for Dower amount of 06 Tola since the same is already paid by the petitioner;

(b) To declare that the relief granted in issue No.2 of Judgment dated 06.10.2020 passed by learned respondent No.2 is illegal, unlawful and nullity in eyes of law;

(c) Any other relief which may deems fit and proper in favour of the petitioner.”

2. Concisely, facts of the case are that respondent No.1 / plaintiff had filed a Suit being Family Suit No.63 of 2018 before the Court of IInd Civil & Family Judge, Matiari @ Hala, for recovery of dower amount, dowry articles and maintenance allowance, against the petitioner / defendant stating therein that she married with petitioner on 23.10.2013 against the dower of ten (10) Tola Gold Ornaments, which was unpaid despite repeated demands by her. At the time of marriage, valuable dower articles were also given to respondent No.1. It is also stated that after *rukhsati* the petitioner and respondent No.1 started living together as husband and wife at petitioner’s residence. Out of said wedlock one baby boy, namely Hussain Ali was born. However, subsequently due to irreconcilable differences between the parties the marriage could not last long and respondent No.1 was constrained to file the above family suit.

3. Upon notice of summons in the said suit, written statement was filed by the petitioner / defendant wherein he denied the allegations leveled against him and sought dismissal of the said suit.

4. Learned trial Court upon framing of issues recorded the evidence and after hearing counsel for the parties, decreed the suit of respondent No.1, vide judgment dated 06.10.2020. The petitioner being aggrieved by the said judgment, preferred Family Appeal No.12 of 2020 before learned Additional District Judge, Hala, which was subsequently dismissed, vide judgment dated 22.12.2020. The petitioner, thereafter, filed the present petition seeking declarations as mentioned in prayer clauses reproduced hereinabove.

5. Learned counsel for the petitioner during his arguments while reiterating the facts has contended that the judgment impugned herein is not sustainable in law and fact both. It is contended that learned Courts below while passing the impugned judgments have failed to consider the material / evidence available on record and have also failed to apply their judicious mind. Further contended that the findings of learned family Court on the issue of dower amount and dowry articles are erroneous and the same requires interference by this Court. Lastly, argued that the petition may be allowed as prayed.

6. Conversely, learned counsel for respondent No.1 while supporting the impugned judgments has contended that the judgment and decree passed by learned trial Court as well as appellate Court are in accordance with law and based on the material and evidence available on the record and as such do not warrant any interference by this Court in the present proceedings. Lastly, argued that the present petition having no merits is liable to be dismissed.

7. Learned Assistant Advocate General, Sindh, also supported the impugned judgments and prayed for dismissal of the present petition.

8. I have heard the arguments of learned counsel for the parties and with their assistance have perused the material available on the record.

9. Admittedly, this petition was filed against the concurrent findings of the Courts below in the family matter where disputed questions of facts based on evidence have been assailed as to the enlistment recovery of dower amount, dowry articles and maintenance, which cannot be entertained in a constitutional petition. Furthermore, both the Courts below have given due attention to the pleadings of the parties, evidence adduced by them before the Family Court and after proper appreciation of the evidence awarded the decree in favour of respondent No.1. Perusal of the judgments impugned in

the instant proceedings, it also appears that learned Courts below while delivering the impugned judgments have given cogent and sound reasons and there appears no error, illegality or irregularity on the surface and further no misreading and non-reading of evidence is either apparent or pointed out and as such the same do not call for any interference by this Court. In this regard I am fortified with the dictum laid down by the Apex Court in the case of Abdul Razzak v. Shabnam Noonari and others (2012 SCMR 976), may be referred.

10. The upshot of the above is that there is no illegality or gross irregularity and infirmity in the concurrent findings of both learned Courts below; more particularly, the impugned orders are not passed without jurisdiction. Learned counsel for the petitioner has also failed to point out any error and or any illegality, infirmity or jurisdictional error in the impugned judgments, which could warrant interference by this Court in exercise of its constitutional jurisdiction. Consequently, the petition in hand, being devoid of any force and merit, was **dismissed** along with listed application by my short order dated 08.03.2021 and these are the reasons for the same.

JUDGE

Dated.11.03.2021.

Tufail