

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

C.P. No.S-316 of 2019

Noman Butt
Versus
The Court of the learned Illrd Additional District Judge & others

Date	Order with signature of Judge
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Date of hearing 21.01.2020:

Mr. Muhammad Ali Waris Lari for petitioner.
Mr. Kh. Muhammad Azeem for respondent No.3.

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Muhammad Shafi Siddiqui, J.- Respondent No.3 filed suit for dissolution of marriage, recovery of dowry articles and in the alternate for recovery of its equivalent amount. The suit being Family Suit No.170 of 2015 was contested by the petitioner. On behalf of respondent No.3 being plaintiff in the suit one Qasim Butt son of Mushtaq Butt as attorney filed affidavit-in-evidence and was subjected to cross-examination whereas Noman Butt, the petitioner being defendant in the suit filed his affidavit-in-evidence and was also subjected to cross-examination.

The trial Court framed three following issues:-

1. Whether the plaintiff is entitled to recover her dowry articles/ golden ornaments from defendant? If yes, which articles?
2. Whether defendant has paid the dower amount to the plaintiff? if yes, in what shape?
3. What should the decree be?

Based on the examination-in-chief and cross-examination, the trial Court decided issue No.1 and the claim of golden ornaments was decreed to the tune of Rs.25 lacs whereas issue No.2, which relates to the payment of dower amount, was also decided in favour of the

respondent No.3/plaintiff as defendant/petitioner failed to produce any documentary proof regarding payment of dower amount, apart from his admission in the evidence.

Aggrieved of the judgment and decree petitioner filed an appeal bearing No.39 of 2018 which also failed hence as a consequence thereof this petition was filed against concurrent findings of facts of two Courts below.

I have heard learned counsel for parties and perused the material available on record.

Petitioner's counsel has made an attempt to argue that it is a case of misreading and non-reading of evidence hence he read cross-examination of plaintiff/respondent No.3's attorney. The relevant part that deals with dowry articles is reproduced as under:-

".. It is correct to suggest that marriage or functions were held at Gujranwala. I say that dowry articles were purchased from Karachi and Gujranwala. Vol. says that gold ornaments were purchased from Karachi. I say that gold ornaments were not purchased by plaintiff herself. Vol. says that same was purchased by her father. It is correct to suggest that at the time of purchasing of articles as mentioned at Ex.P/3 to Ex.P/5 I was not present. It is correct to suggest that I did not produce any documentary proof regarding the presence of plaintiff's father at the time of purchasing of gold ornaments mentioned at Ex.P/2 to Ex.P/5. Vol. says that plaintiff's father is businessman and he frequently visits Karachi to Gujranwala and the document of same can be produced. I say that gold ornaments were purchased from jewelers situated at Korangi. Vol. says that I have no knowledge that same shop is presently running at the same place or not. I say that I have no knowledge in which mode payment was made at the time of purchasing of gold ornaments. It is correct to suggest that I did not produce any documentary proof of source of payment of gold ornaments. It is correct to suggest that I did not produce any documentary proof regarding the business of plaintiff's father. I say that Ex.P/2 to Ex.P/5 duplicate receipts can be taken from jewelers shop. I say that at the time of signing Power of Attorney by the plaintiff I was present. It is incorrect that signature of plaintiff bearing on suit as well as Power of Attorney are different. Vol. says that a little bit difference in signature is natural. It is incorrect that I am deposing falsely because I am uncle of plaintiff."

In the entire cross-examination petitioner never suggested even once that dowry articles weighing 50 tolas of gold and other Jahez articles were not given to the respondent, apart from cash amount of Rs.200,000/- and a brand new vehicle. All that was suggested in cross-examination was that the receipts of jeweler were not genuine or that it was not purchased by respondent No.3 and/or by her father. These questions could hardly be a root cause to deny the fact mentioned in the affidavit-in-evidence filed by respondent No.3 in support of the pleadings. Paragraph 7 of the affidavit-in-evidence of respondent No.3 is clear in this regard.

Though on the claim of 50 Tolas golden ornaments, apart from other precious items, Rs.200,000/- cash, the two Courts below came to conclusion that an alternate amount of value of gold Rs.25 lacs would be appropriate for which receipts were produced, the two Courts also came to the conclusion that there was no proof regarding payment of dower amount by the petitioner to the respondent No.3, hence it remained unpaid. The petitioner cannot challenge the source wherefrom such golden ornaments were purchased, either by respondent No.3 or her father. All that is important for such controversy is that ornaments, which were given to respondent No.3, were retained by petitioner.

Insofar as cross-examination of petitioner is concerned, apart from admission of non-payment of dower amount he agreed to a suggestion that he did not mention any description of payment of dower amount, which he voluntarily stated that it remained unpaid. He admitted in the later part of the cross-examination that plaintiff/respondent No.3 left the house in three wearing clothes.

The view that has already been formed by the two forums below apparently is based on the available evidence and no other view could

be formed or conceived as the cross-examination of the petitioner and respondent No.3/attorney speaks for itself hence after the concurrent findings of two Courts below, the findings of fact cannot be altered on the counts that respondent No.3 or her father had no source to procure such golden ornament for gifts etc.

Insofar additional amount, on account of increase in gold price, as claimed by respondent No.3 and agitated by learned counsel during the course of arguments, is concerned I am not inclined to enhance the decretal amount since no appeal was preferred by respondent No.3 insofar as alternate value of the gold ornaments are concerned. Respondent No.3 having not preferred an appeal thus conceded to the decree passed by the trial Court and as maintained by appellate Court.

In view of above I am of the view that the findings of the two Courts below do not require any interference and resultantly petition is dismissed.

Dated:

Judge