IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

ConstitutionPetition No.S–139 of 2021
Constitution Petition No.S–181 of 2021

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.

1. For orders on O/objection as at flag-"A".
2. For hearing of main case.
3. For orders on CMA No.4783/21.
4. For orders on CMA No.5342/22.

03.03.2022

Mr. Abdul Wahab Shaikh Advocate for petitioner.
Mr. Fayaz-u-ddin Rajper, Advocate for respondent No.1.
Mr. Noor Hassan Malik Assistant Advocate General.

****

Aggrieved of the Decree of maintenance and dowery Articles or in lieu thereof Rs.100,000/- [rupees one hundred thousand], Constitution Petition No.S-139 of 2021 is seeking setting-aside of the impugned judgment and Decree dated 19.05.2021 passed by the learned Appellate Court, in the Family Appeal No. 5 of 2021, filed by the present Petitioner, maintaining the Judgment and decree dated 18.01.2022, given by the learned Family Judge, Sukkur in Family Suit No.532/2019 instituted by present Respondent No.1 (Mst. Asma) who was previous wife of present Petitioner. The second petition is against the Order dated 18.06.2021 passed by the learned Family Judge, Sukkur as an Executing Court in Execution Application No.13 of 21.

The learned Family Court earlier granted "Khula" Decree, whereafter both parties led the evidence and vide impugned judgment the learned Family Court partly decreed the suit of the Respondent lady to the extent of grant of maintenance during her Iddat period and past maintenance from the date of the institution of the Suit, so also return of dowery articles or Rs.100,000/- [as stated above]. Since, it is determined that Dower amount was not paid, therefore, there is a negative finding against present Petitioner by holding that Respondent No.1 is not liable to return the same to Petitioner after "Khula" decree.

Learned counsel for Petitioner in both the subject Petitions has stated that both Courts have not properly appraised the evidence resulting in miscarriage of justice. He further states that after a "Khulla" decree, the past maintenance could not be granted and on this ground alone both judgments are liable to be set at naught. He has cited case reported in *2006 MLD 853 (Muhammad Siddique v. Additional District Judge, Arifwala and 3 others), 1991 MLD 1732 (Said Rasool Khan v. The Additional District Judge, Lakki Marwat, District Bannu and others) and (NLR 2006 Civil-1 Muhammad Asad Khan v. Mst. Sadaf Niaz).* The gist of the case law is that wife who developed aversion and hatred towards her husband, though can seek 'Khula' but is not entitled to past and future maintenance; case was remanded to the appellate court as it has not discussed the evidence and decision was not in accordance with Order 41, Rule 31 of Civil Procedure Code.

Learned counsel for the Respondent No.1 has supported both the judgments and states that maintenance only from the date of institution of the suit and not from the period before that is awarded; secondly, since

dower amount was not proved, hence, it is determined that present Respondent NO.1 is not liable to return the same. He has cited case law of this Court reported in *2020 YLR 1586 (Muhammad Arif v. Additional Sessions Judge-VIII, Karachi West and 2 others)* ***and*** *2018 YLR 128 [Sherzaman versus Mst. Maharishi and 2 others]*.

Crux of the above case law is that, under the Islamic law, a husband is liable to maintain his wife and children from the date when marriage is solemnised and when a child is born; after Nikah, 'rukhsati' of respondent [of the reported case] was not done for thirteen long years and she ultimately obtained Khula decree, wherein, past maintenance was awarded, considering the fact, ***inter alia***, that the conduct of husband was cruel towards wife/respondent.

From the perusal of record, it is quite apparent that both the impugned judgments have considered the evidence led by the parties. With regard to the contention of the learned counsel for petitioner about return of dower amount, the learned Trial Court has specifically given its findings that same was never paid and this finding is upon the appraisal of the evidence, which was not interfered with by the Appellate Court. As far as main stance of petitioner is concerned about non-liability of petitioner to pay the past maintenance, the same in view of the above discussion, is misconceived in nature; because both the Courts have not awarded maintenance for the period before filing of the Suit, but, maintenance is given from the date of filing of the Suit, **when present Respondent No.1 was admittedly the wife of Petitioner.** Lis was filed on 23.12.2019 and the Decision was handed down on 18.01.2021, that is, past maintenance of only three months was awarded at the rate of Rs.3000/- whereas, Rs.5000/-

was awarded as maintenance for Iddat period which comes to Rs.15000/-. With regard to dowry articles, there is no justification to interfere with the concurrent finding of fact, as it is not shown that the same is contrary to record. Both the impugned Decisions [of the learned Trail Court and the Appellate Court] have appraised the evidence.

Since, both the impugned judgments are maintained; thus, C.P. No. S-139 of 2021 is dismissed. Consequently, the impugned Order passed in execution proceeding does not call for any interference and subsequent C.P No.S-181/2021 is also dismissed.

J U D G E

Ihsan