

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-741 of 2020

[Mst. Nabeela Kausarv..... Ehtisham ul Haq & others]

Date of Hearing : 16.02.2023
Petitioner through : Mr. Muhammad Farooq, Advocate.
Respondents through : *Nemo*

ORDER

Zulfiqar Ahmad Khan, J:- This petition assails the concurrent findings of the learned trial Court dated 31.10.2019 as well as first Appellate Court dated 20.08.2020.

2. Precise facts of the case are that the petitioner filed a suit for maintenance and recovery of dower articles which was decreed by the learned trial Court vide order dated 31.10.2019, however, petitioner impugned the said findings of the learned Family Court by filing Family Appeal No.119/2019 which was partly allowed vide judgment dated 20.08.2020, but the petitioner impugned the said findings of the courts below in this constitution petition.

3. The petitioner's entire case was premised on the argument that the learned Trial Court fixed the amount of maintenance with regards iddat period which was enhanced from Rs. 4000 to Rs.8000/- but the learned Courts below failed to appreciate the evidence produced by the petitioner with respect to return of three tola gold items as well as dowry articles which the petitioner is entitled to recover, therefore, interference in the concurrent findings is sought.

4. None present for the respondent. I have heard learned counsel for the petitioner at length and have also scanned the available record. It is considered pertinent to initiate this deliberation by

referring to the settled law that learned trial Court i.e. Family Court is the fact finding authority and the purpose of appellate jurisdiction is to reappraise and reevaluate the judgments and orders passed by the lower forum in order to examine whether any error has been committed by the lower court on the facts and/or law, and it also requires the appreciation of evidence led by the parties for applying its weightage in the final verdict. It is the province of the Appellate Court to re-weigh the evidence or make an attempt to judge the credibility of witnesses, but it is the Trial Court which is in a special position to judge the trustworthiness and credibility of witnesses, and normally the Appellate Court gives due deference to the findings based on evidence and does not overturn such findings unless it is on the face of it erroneous or imprecise. The learned Appellate Court having examined the entire record and proceedings made so available as well as having gone through the verdict of learned trial Court i.e. learned Family Court went on to hold as under:-

“9. The claim of the plaintiff/appellant has gone un rebutted, however, the Court has to examine and decide the quantum of maintenance allowance besides the claim of dowry articles and the claim that the defendant will pay Rs.1,50,000/- in case of divorce to the plaintiff. Certainly, the maintenance allowance of Rs.4000/- p.m. as fixed by the learned family Court will not meet the monthly expenses of a single person, therefore, keeping in view the rate of inflation and as the defendant is the service man it would be appropriate that the maintenance allowance be fixed to Rs.8000/- p.m. for the Iddat period. Secondly as regard the return of dowry articles or in alternative the claim of the plaintiff the total value of Rs.7,40,000/- the learned family court has examined the list of dowry articles at Ex P/2 to P/8 and upon perusal of purchase receipts Exh. 9 dated 13.02.2018 while the marriage was solemnized in 2015. The family Court has also examined Exh. P/2 and has observed that the receipt of gold ornaments has not been produced and even no independent witness had been produced to corroborate her version regarding the gold ornaments as mentioned in Exh. P/2 and P/9. There is no doubt that at the time of marriage the

parents of the bride as a custom prevail in the society give dowry articles to their daughters and this factum cannot be denied therefore, keeping in view this aspect the other dowry articles at Exh P/3 to P/8 excluding the gold ornaments has rightly been decided by the family Court, however, in case of failure of the defendant/respondent the family Court in alternative has fixed an amount of Rs.1,00,000/- which appears to be less even after considering the depreciation in the value of the dowry articles after passage of more than three years to the marriage, therefore, in alternative of return of dowry articles the defendant/respondent is liable to pay an amount of Rs.2,00,000/- to the plaintiff.

[Emphasis supplied]

5. It is gleaned from appraisal of the foregoing that the learned First Appellate Court drew his findings and having observed the pros and cons of the matter went on to modify decree of the learned Family Court to the extent of Iddat period maintenance from Rs.4000/- to Rs.8000/- and with regards return of dowry articles, the learned First Appellate modified the decree of the Family Court to the extent that in case the respondent No.1 fails to return the dowry articles, he is directed to pay to the petitioner an amount of Rs.200,000/- instead of Rs.100,000/- as well as issued directions to adhere to the terms of column-19 of Nikahnama for the payment of Rs.1,50,000/- to the petitioner, therefore, the findings of the learned First Appellate Court in my humble view do not call for any interference by this Court reasoning that the learned First Appellate Court having seen the rate of inflation enhanced the amount as discussed supra and kept commitment under column-19 intact.

6. It is common knowledge that the object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") is to foster justice, preserve rights and to right the wrong where appraisal of evidence is

primarily left as the function of the trial court and, in this case, the learned Family Judge which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken. No such avenues are open in this case as the findings of the learned First Appellate Court is based proper appraisal and appreciation of evidence as well as material placed before it and do not call for interference by this Court.

7. In view of the rationale and deliberation delineated above, the petition at hand is dismissed upholding the judgment dated 20.08.2020 passed by learned respondent No.3/Vth Additional District Judge, Karachi West.

Karachi
Dated:16.02.2023.

JUDGE

Aadil Arab.