IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-893 of 2020

[Zulfiqar ……v…… Mst. Saba Gul & others]

Date of Hearing	:	24.01.2023
Petitioner through	:	Syed Shahnawaz Hussain, Advocate.
Respondents through	:	Mr. Pervez Ahmed Mastoi, AAG.

O R D E R

Zulfiqar Ahmad Khan, J:- The petitioner impugns the concurrent findings dated 25.01.2020 passed by learned Family Judge Karachi South in Family Suit No.924 of 2019 and Judgment dated 23.09.2020 passed by learned VIIth Additional District Judge South, Karachi through this petition.

2. The respondent No.1 filed a family suit bearing No.924/2019 before learned Family Judge South Karachi for recovery of dower amount as well as dowry articles which was decreed by the learned trial Court. The petitioner impugned the said judgment of the learned trial Court before the Appellate Court by filing Family Appeal No.28/2020 which appeal of the petitioner was dismissed, hence the petitioner is before this Court.

3. The crux of arguments of learned counsel for the petitioner is that the respondent No.1 took away all dowry articles with her and so far the dower amount is concerned, he submits that the dower was deferred by the respondent No.1 but this aspect was not considered by the courts below.

4. Learned AAG supported the concurrent findings and argued that concurrent findings cannot be disturbed and the learned counsel

failed to point out the case of misreading and nonreading of the evidence, therefore, the petition be dismissed.

5. Heard the arguments and perused 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:-

> "In such circumstances, there is no proof that dower was fixed at Rs.35,000/- as deposed by respondent, however, the fact that 5 tola gold as dower has been corroborated by the respondent's witness and also admitted by the appellant in the written statement, therefore, it can safely be said that the dower was fixed as 5 tola gold, which is admittedly unpaid. The contention of the learned counsel for the appellant that since the marriage was ceremonised about 17 years and dower is still unpaid, therefore, it is presumed to be deferred. This contention carries no weight for the reasons that Section 10 of Muslim Family Law Ordinance 1961 clearly says that where no details about the mode of payment of the dower are specified in the Nikahnama or the marriage contract; the entire amount of the dower shall be presumed to be payable on demand. Hence the respondent is entitled for the recovery of her dower amount of 5 tola

> gold. The findings of the learned trial Court is modified accordingly.
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> As far as the claim of dowry articles is concerned, the appellant challenged the judgment and decree to the extent of the gold ornaments and prayed that the impugned judgment and decree be set-aside to the extent of gold ornaments of 5 tolas as per Ex. P/2 to Ex.P/5. The evidence of respondent No.2 reveals that she had produced receipts of jewelry at Ex.P/3 to Ex. P/5. The respondent No.2 was cross-examined at length but not a single suggestion was put to her that she had taken away the gold jewelry or the same were not in possession of appellant/defendant. On the other hand, it is own admission of the appellant/defendant during his cross examination that at the time of Nikah, plaintiff's parents gave the gold ornaments to the respondent No.2, which she took with her at the time of rukhsati at the house of appellant. **The appellant has not specifically mentioned the date and time as to when the respondent No.2 allegedly took away the gold from the house of appellant/defendant. In absence of any evidence, the learned trial Court rightly held that the plaintiff/respondent No.2 is entitled for return of her gold ornaments as per receipts Ex.P/3 to Ex.P/5 or their current market value**.
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> In the light of the above discussion, **the impugned judgment and decree suffers no illegality or irregularity and same requires no interference**. The instant family appeal merits no consideration and the same is hereby dismissed with above modification.
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> [Emphasis supplied]

4. It is gleaned from appraisal of the foregoing that the petitioner failed to produce any concrete evidence before the learned trial Court that he had paid the dower amount to the respondent No.1. It is well settled that learned trial Court is the fact finding authority where the learned trial Court having examined the entire record made available before it reached to the conclusion that the petitioner never paid off the dower amount mutually fixed at the time of marriage.

5. 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 both the judgments are well jacketed in law. It has been held time and again by the Apex Court that findings concurrently recorded by the courts below cannot be disturbed until and unless a case of non-reading or misreading of evidence is made out or gross illegality is shown to have been committed.[1]

9. In view of the rationale and deliberation delineated above, the petition at hand is dismissed.

Karachi
Dated: 24.01.2023.

JUDGE

Aadil Arab.

[1] Farhan Farooq v. Salma Mahmood (2022 YLR 638), Muhammad Lehrasab Khan v. Mst. Aqeel un Nisa (2001 SCMR 338), Mrs. Samina Zaheer Abbas v. Hassan S. Akhtar (2014 YLR 2331), Syed Shariq Zafar v. Federation of Pakistan & others (2016 PLC (C.S) 1069).