

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

CP No. S- 1858 of 2018

[Mst. Dr. Urooj Fatima v. Khurram Aijaz and others]

Date of hearing & Order:

20.03.2023

Mr. Noor Ahmed Memon, advocate for petitioner
None present for respondent No.1

ORDER

ADNAN-UL-KARIM MEMON, J- This petition has been directed against the concurrent findings of the Courts below. Petitioner / plaintiff had filed Family Suit bearing No.04 of 2016 for maintenance, recovery of Dower and Dowry Articles against the respondent / defendant before learned Civil & Family Judge & Judicial Magistrate-I, Kot Ghulam Muhammad, which vide Judgment & Decree dated 11.12.2017 was partly decreed in the following manner:

“16. In view of my discussion on above issues, suit of plaintiff is partly decreed and partly dismissed plaintiff is entitled for her own maintenance of iddat period at the rate of Rs. 10,000/- per month and maintenance of minor Muhammad Arham Khurram is entitled at the rate of Rs. 8000/- per month since the date of divorce of plaintiff dated 5.3.2015 with increase of 10% per annum till the minor attains the age of majority. Plaintiff is entitled to recover 5000 dower (Haq Mahar). Plaintiff is entitled to recover dowry articles which were admitted by defendant as per list Ex-D-1 or like amount. The claim for the recovery of cash amount is dismissed.”

2. The petitioner / plaintiff being aggrieved by and dissatisfied with the aforesaid Judgment & Decree preferred Family Appeal bearing No.01 of 2018 before learned Additional District Judge-II, Mirpurkhas (Appellate Court), but the same was dismissed vide impugned Judgment & Decree dated 2.08.2018 and as a result whereof the Judgment & Decree passed by learned Family Court, reproduced above, was maintained as follows:

“11. For what has been discussed above, it is my humble considered opinion that learned trial court / Family Judge

passed the Judgment and Decree dated 11.12.2017 in accordance with law in the light of evidence of the parties which came on record and no misreading or non-reading of the evidence was found on the part of trial court on the basis of which this court could interfere in the above Judgment and Decree of trial court which is hereby maintained. Resuntantly, the instant family appeal is dismissed accordingly having no merits for consideration in above circumstances.”

3. learned counsel submitted that it is not possible for any bride/wife to keep the record / receipts of purchase articles, prepare the list of dowry articles, and obtain signatures from bridegroom/husband side. He submitted that mothers start collecting, purchase and preserving of articles for her daughter, when she starts growing. He emphasized that in-laws, of any bride/ wife are extended esteem respect and it is considered an insult to prepare the dowry list for the purposes of obtaining signature from them. In support of his case, learned counsel for the petitioner argued that the judgments and decrees passed by the courts below are opposed to law, facts, equity, and principles of natural justice; that the judgment and decree passed by the Appellate Court is blind endorsement to judgment and decree of trial Court, which is not warranted by law. He relied upon the cases *Muhammad Habib v. Mst.Safia Bibi and others* **2008 SCMR 1584** and *Mirza Arshad Baig v. ADJ* **2005 SCMR 1740**. He lastly prayed for setting aside the impugned judgments and decrees to the aforesaid extent.

4. The private respondent is called absent though he was served, perhaps he has chosen to remain absent to defend the case.

5. I have heard learned counsel for the petitioner and perused the record with his assistance.

6. So far as recovery of dowry articles is concerned the evidence produced by the petitioner prima facie suggests that the petitioner has no complete knowledge about the list of dowry articles which was purportedly produced in court. Petitioner also admitted in evidence that she did not sign the dowry articles list. She also admitted that there was no signature of private respondent or his family members on the subject list. She also admitted that list of dowry articles was prepared at the time of filing of family suit. Thus, mere deposing would not absolve the petitioner from her duty to prove that the articles mentioned in the list were the same

which were brought by her in the house of private respondent. The question whether the petitioner had taken away dowry articles after divorce with her or not; this aspect cannot be considered in this Constitutional Petition, though it is custom of our locality that brides are given dowry articles but whenever it is disputed then the same must have been proved though cogent and reliable evidence. Prima facie, the dowry articles as claimed cannot be thrashed out under Article 199 of the Constitution for the reason that the trial court as well as appellate court have appreciated the evidence and opined contrary to the claim of the petitioner as such her stance at this stage cannot be appreciated.

7. 12. So far as the case for enhancement of maintenance allowance of minor Muhammad Arham is concerned this court has power to increase or decrease the maintenance allowance according to financial position of father and keeping in view the rate of inflation in the country and increase of demands of minor with the passage of time for the reason that maintenance includes food, clothing, and lodging which is the responsibility of the father to pay to his children and wife. In this regard, it is noted that section 17(A) of the West Pakistan Family Courts Act, 1964 specifically provides in subsection to fix maintenance. The Honorable Supreme Court of Pakistan has considered the aforesaid issue in the case of Humayun Hassan v. Arslan Humayun and another (PLD 2013 SC 557) and held as under:-

"Again in interpreting the word "maintenance" some reasonable standard must be adopted. Whilst it is not confined merely to food, clothing, and lodging, it cannot, by any stretch of the imagination, be extended to incorporate within its education at higher levels ad infinitum. What is necessary to decide in this connection is to find out as to what amount of education has to be attained by the child concerned, having regard to the status and other circumstances of his family, to enable it to earn a complete livelihood by honest and decent means. Thus it may not be sufficient to say that the child of a tradesman can maintain itself by working as coolly or by thieving. What is required is that the child must be maintained until it is in a position to earn its livelihood, in an honest ad decent manner in keeping with its family status."

8. In the present case, I have been informed that the respondent has not challenged the order passed by the learned Family Court whereby the trial court has fixed Rs.8,000/- per month of maintenance allowance with

increase of 10% per annum till the minor attains the age of majority, so, keeping in view the expenditure of minor in terms of education, clothes, food and other necessary daily items and rate of inflation and financial position of the father, who is a Engineer in KNOP and can provide expenditure of his son, it is in the interest of justice to save the minor from knocking the door of Court again and again praying for enhancement of maintenance which is too difficult, the maintenance allowance of minor is liable to be enhanced from Rs.8,000/-to Rs. 10,000/- along with 10% annual increment from the date of Judgment of trial court.

9. With the above modification in the Judgment of trial court, the instant constitutional petition is disposed of.

JUDGE

Karar_Hussain/PS*