

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.S-184 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For orders on office objection
For hearing of M.A. No.806/2023
For hearing of main case

02.11.2023

Syed Khalid Ali Advocate for Petitioner.

This petition challenges concurrent judgments rendered in the family jurisdiction. Family Suit No.2011 of 2021 was filed for recovery of dower amount and maintenance and the same was decreed vide Judgment dated 19.11.2022. The Petitioner filed Family Appeal No.157 of 2022 before the 7th Additional District Judge Hyderabad and the same was dismissed vide Judgment dated 15.04.2023.

It is contended herein that the respective judgments have been rendered in misappreciation of the evidence and further that there was insufficient evidence to sustain the conclusion recorded. An extraneous issue of recovery of some loan amount by a third party has also been raised, however, it does not find any mention in the judgments impugned.

The issue of admissibility of weightage of evidence is to be considered by the Trial Court and subsequently by the Appellate Court, ordinarily being the last fact finding forum. Same appears to have been done as apparent from paragraph 18 of the Appellate Court Judgment and paragraph at page 7 of the Trial Court Judgment. A party's case is predicated on the strength of the evidence adduced; lawsuits are decided on preponderance of evidence; and the Court has to see which party has discharged the onus of proof¹. In the present case the evidence was appreciated by the respective courts and the judgments rendered upon findings of adequacy thereof. The judgments impugned appear to have been rendered upon deliberated appreciation of evidence and no infirmity in such regard could be identified before this court.

No jurisdictional defect has been identified in the judgments impugned, hence, no case appears to have been made out to entertain this matter in the writ jurisdiction. Learned counsel also remained unable to show that the conclusions drawn by the respective forums could not be rested on the rationale relied upon. The matter has been conclusively determined and per statute, finality is attached to the appellate order referred to supra.

This petition *prima facie* unjustifiably assails the concurrent findings of the statutory hierarchy in the writ jurisdiction of this Court; the same has been disapproved by the Supreme Court in *Hamad Hasan*² and earlier similar views were also expounded in *Arif Fareed*³. Therefore, in *mutatis*

¹ Per *Muhammad Ali Mazhar J* in the yet unreported judgment dated 20.09.2023 in *SNGPL vs. Muhammad Arshad (CP 3598 of 2020)*.

² Per *Ayesha A. Malik J* in *M. Hamad Hassan vs. Mst. Isma Bukhari & Others* reported as 2023 SCMR 1434.

³ Per *Amin ud Din Ahmed J* in *Arif Fareed vs. Bibi Sara & Others* reported as 2023 SCMR 413.

mutandis application of the reasoning and ratio illumined, this petition is found to be misconceived, hence, dismissed with listed application.

Judge