

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
C.P. No.S-297of 2021

Dated: Order with signature of Judge(s)

1. For hearing of CMA No. 1951 of 2021
2. For hearing of Main Case.

Date of Hearing : 1 June 2023

Petitioner : Syed Muhammad Qasim

Respondent No. 1 : Hafisa Qasim through Ms. Mariam Badar

Respondent No. 2 : Nemo

Respondent No. 3 : Nemo

**ORDER**

**MOHAMMAD ABDUR RAHMAN, J.** The Petitioner maintains this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as against the Order dated 15 January 2021 passed by the VIth Additional District and Sessions Judge Karachi (Central) in Family Appeal No. 85 of 2020 which upheld the Judgement and Decree each dated 16 October 2020 passed by the XVIth Civil and Family Judge Karachi (Central) in Family Suit No. 143 of 2018 in respect of the return of certain items of gold to the Respondent No. 1 which was in the possession of the Petitioner after their marriage had ended.

2. The Petitioner was married to the Respondent No. 1 on 16 October 2015 and from which wedlock two children namely Minor H and Minor A were born. The marriage was not a happy one and which resulted in the Respondent No. 1 separating from the Petitioner and whereafter the Petitioner divorced the Respondent No. 1. The Respondent No. 1 thereafter maintained Family Suit No. 143 of 2018 before the XVIth Civil and Family Judge Karachi (Central) seeking:

- (i) her dower of Rs. 25,000;

- (ii) recovery of her personal documents which were in the custody of the Petitioner; and
- (iii) a direction to the Petitioner to return various items that were comprised in the dowry of the Respondent No. 1 along with gold jewelry and ornaments or in the alternative a direction to the Petitioner to pay a sum of Rs. 400,000 and provide gold ornaments of an equal value.

3. The matter was heard by the XVIth Civil and Family Judge Karachi (Central) who on 16 October 2020 was pleased to pass a Judgment and Decree directing that:

- (i) the Respondent No. 1 was entitled to receive Rs. 25,000 as her dower;
- (ii) the Respondent No. 1 having been handed over all dowery articles that were in the custody of the Petitioner, the Respondent No. 1 was now only entitled to two tolas of good which had not been returned by the Petitioner or a sum of Rs. 150,000 in lieu thereof.

4. The Petitioner was aggrieved by Judgement and Decree each dated 16 October 2020 passed by the XVIth Civil and Family Judge Karachi (Central) in Family Suit No. 143 of 2018 and maintained Family Appeal No. 85 of 2020 before the VIth Additional District Judge Karachi (Central) as against the Judgement and Decree each dated 16 October 2020 passed by the XVIth Civil and Family Judge Karachi (Central) in Family Suit No. 143 of 2018. It seems that during those arguments on that Appeal, the counsel for the Petitioner conceded that the Petitioner had retained one gold set belonging to the Respondent No.1 and had on behalf of the Petitioner requested for time to return that gold jewelry "set". Against this concession, the Respondent No. 1 agreed to give three month's time to the Petitioner to return the gold jewelry "set" and the settlement in terms was recorded by

the VIth Additional District Judge Karachi (Central) on 15 January 2021 in Family Appeal No. 85 of 2020.

5. The Petitioner has now appeared and challenged the settlement recorded in the Order dated 15 January 2021 passed by the VIth Additional District and Sessions Judge Karachi (Central) in Family Appeal No. 85 of 2020 and had contended that his counsel didn't have the authority to pass such an order and also that he was not able to comply with the order on account of financial constraints. The Counsel for the Respondent No. 1 stated that the Order dated 15 January 2021 passed by the VIth Additional District and Sessions Judge Karachi (Central) in Family Appeal No. 85 of 2020 was a consent order and could not be assailed in this Petition. Both of them did not rely on any case law in support of their contentions.

6. I have heard the Petitioner and the Counsel for the Respondent No. 1 and have perused the record. In the decision reported as **Amanullah Soomro vs. P.I.A. through Managing Director/Chairman and another**<sup>1</sup> the Supreme Court of Pakistan has held that:

“ ... *Indeed Mr. Palejo also urged that litigants should not be penalized for negligence of counsel. While the argument at first sight might be attractive on a moral plain what is overlooked is whether any justification exists for depriving the opposite part of legal rights acquired owing to negligence of the petitioner or counsel retained by him? Indeed the right to recover the amount of wrongful loss caused on account of negligence is always available to a party. The record should that the petitioner himself has made an application to a statutory body regulating the conduct of advocates. In any event we are clearly of the view that undue indulgence granted by courts would only multiply such problems.*”

It is apparent that the Petitioner's counsel had, as recorded in the Order dated 15 January 2021 passed by the VIth Additional District and Sessions Judge Karachi (Central) in Family Appeal No. 85 of 2020, conceded to the settlement on behalf of the Petitioner. To my mind as the Order dated 15 January 2021 passed by the VIth Additional District and Sessions Judge Karachi (Central) in Family Appeal No. 85 of 2020 simply records a

---

<sup>1</sup> 2011 SCMR 1341

settlement it would amount to a consent order and the implementation of which is now being delayed by the Petitioner through maintaining this Petition. As it is the Petitioner's contention that his advocate was not instructed to make such a settlement as recorded in the Order dated 15 January 2021 passed by the VIth Additional District and Sessions Judge Karachi (Central) in Family Appeal No. 85 of 2020, then clearly his remedy is against his counsel and not by way of a Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Either way, the Respondent No. 1 should not be prejudiced for diligently proceeding in this matter. The Petition must therefore fail.

10. For the foregoing reasons the Petitioner having maintained this Petition against an Order dated 15 January 2021 passed by the VIth Additional District and Sessions Judge Karachi (Central) in Family Appeal No. 85 of 2020 recording a settlement as between the Petitioner and the Respondent No. 1 is misconceived and is therefore dismissed along with all listed applications with no order as to costs.

JUDGE

Karachi dated 31 August 2023