

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-987 of 2017

[Mst. Sania Karimv.....Zahir Naseem & others]

Date of Hearing : 22.02.2024
Petitioner through : Mr. Munsif Jan, Advocate.
Respondents through : Mr. Taqdir Ali Khan, Advocate for the Respondent No.1
Mr. Ahmed Khan Khaskheli, AAG.
Mr. Zulfiqar Ali, Advocate.

ORDER

Zulfiqar Ahmad Khan, J:- This petition assails the Judgment and Decree dated 31.03.2017 (“Impugned Judgment & Decree”) passed in Family Appeal No. 275 of 2016 by learned Respondent No.2.

2. Briefly stated, the petitioner filed a suit No.155/2014 for dower amount against the respondent No.1 before the Family Judge South, Karachi which was decreed vide Judgment & Decree dated 11.03.2016 and the learned trial Court directed the respondent No.1 to handout 100 coins of Gold which was the dower of the petitioner. The respondent No.1 impugned the said Judgment & Decree of the learned Family Judge before the learned respondent No.2 by filing Family Appeal No.27/2016 and that the learned Appellate Court modified the Judgment of the learned Trial Court and went on to hold that 12 coins of Gold towards Dower has been paid to the petitioner and only 88 coins of Gold is to be paid by the respondent No.1 to the petitioner vide impugned Judgment dated 31.03.2017, hence the petitioner is before this Court against the impugned Judgment & Decree.

3. Learned counsel for the petitioner contended that the learned trial Court decreed the suit filed by the petitioner for payment of dower but the learned Appellate Court modified the Judgment & Decree of the learned trial Court to the extent that the Respondent No.1 has paid 12 coins of Gold as dower whereas 88 coins of gold are to be paid by him, however, the 100 coins which was dower as per Nikahanama has never been paid which fact was recorded by the learned trial Court, therefore, the Judgment & Decree recorded by the learned trial Court be maintained.

4. Learned counsel for the respondent No.1 supported the impugned Judgment and contended that 12 coins of gold as dower has already been paid by the respondent No.1 to the petitioner at the time of marriage, therefore, the petitioner is not entitled for the relief claimed in the petition. He further contended that the petition is not maintainable, therefore, the petition filed by the petitioner be dismissed maintaining the impugned Judgment & Decree.

5. I have heard learned counsel for the parties 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.

6. The facts leading to the filing of the instant petition have been set out in sufficient detail in operative part, and need not be recapitulated. The delivery of dower/Mahr is one such right, the duty of which is bestowed upon the husband for the financial support and stability of his wife. Such entitlement to dower has the origin in the Holy Quran, and the inspiration of the same entitlement has been made part of the statutory law. The Holy Quran presses upon the presentation of dower to wife by commanding: “present them ‘their Mahr’” (the Quran IV:4). The inspiration of the guiding principles of the Holy Quran is made part of Section 5 of the Dissolution of Muslim Marriages Act, 1939 (the “Act”), which reads as under:

“5. Right to dower not be affected. Nothing contained in this Act shall affect any right which a married woman may have under Muslim tutu to her dower or any part thereof on the dissolution of her marriage” .

7. Dower, therefore, is a right rendered by Islam and has a footing in statutes. It is a well-known fact that no estoppel lies against a statute and it has been held by Hon’ble Supreme Court in the case of Bahadur Khan and others v. Federation of Pakistan [2017 SCMR 2066], that there could be no estoppel against the statute or the rules having statutory force. Since right to dower has its footing in Section 5 of the Act, therefore, a wife cannot be estopped from such right. The learned trial Court which is a fact finding body having examined

the evidence so produced by the litigating parties reached to the conclusion that no dower paid by the respondent No.1 to the petitioner. The learned trial Court went on to hold that the respondent No.1 alleged to have paid 12 gold coins out of 100 coins to the petitioner as her dower, however, neither any witness nor any evidence introduced on record by the respondent No.1 that in whose presence he has tendered the dower to the petitioner, therefore, the learned trial Court being a fact finding body decreed the suit of the petitioner for payment of dower, however, the learned Appellate Court erred in examining the evidence, therefore, the petition at hand is allowed, and the impugned Judgment dated 31.03.2017 passed by respondent No.2 in Family Appeal No. 27/2016 is set aside.

Karachi
Dated: 22.02.2024

JUDGE

Aadil Arab.