

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
C.P. No.S-322 of 2023

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Date	Order with signature of Judge
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- 1.For order on office objection
- 2.For hearing of CMA No.2590/2023
- 3.For hearing of main case

02.04.2024

Mr. Irfan Bashir Bhutta, Advocate for the petitioner.  
Ms. Arjumand Khan, Advocate for the respondent No.1

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This petition challenges judgment passed by the Appellate Court in Appeal No. 196/2022 which appeal challenged the trial Court's findings particularly with regard to the return of dowry articles. With regard to the dowry articles, the learned trial Court on issue No.2 read the evidence to the effect that certain articles detailed in para 11 and 12 of the plaint belonged to the lady and considered the list of the dowry articles produced in evidence alongwith the original receipts of the gold ornaments which were produced as Exh. P-4 to P-7 and reached to the conclusion that the plaintiff/petitioner was entitled to recover the dowry articles mentioned in the receipts produced at Ex. P-4 to P-7.

Learned counsel for the respondent mainly argued that the list was prepared on simple paper and does not bear any signature on which case law 2013 CLC 1780 (Muhammad Iqbal v. Mst. Zahidan & others) was relied upon and after due consideration the issue was decided in favour of the lady and the Court held that the lady was entitled to recover the dowry articles including Gold ornaments

receipt of which have been provided as Exh. P-4 to P-7 and the respondent was directed to handout to the plaintiff/petitioner all such articles as it on where basis, however, if there was a damage or on account of non handing over, the market value was directed to be handed out to the plaintiff. As stated earlier the respondent challenged these findings and the grounds of appeal inter alia was that there was a issue of Limitation, therefore, the claim after period in excess of three years was not maintainable reliance was placed on 2016 MLD 693. It was pleaded that the presumption would be that the lady took away the jewelry articles at the time of leaving the house of the respondent husband. Learned counsel for the respondent vehemently argued on both the points as the point of limitation and second that it is customary for the wife whenever she leaves home she takes the jewelry articles with her. On account of limitation, learned counsel has placed reliance on the judgment she referred earlier in the Appellate Court as 2016 MLD 693 as well as a recent view of Balochistan High Court in the case of Hameeda v. Khan Muhammad (2024 MLD 51) to suggest that under Article 104 as well as Article 49 of the Limitation Act period to claim dowry articles cannot be extended more than three years. Before any reference to the said judgment could be made, I take opportunity to reproduce Articles 104 as well as 49 of the Limitation Act, 1908 hereunder:-

Description of suit	Period of limitation	Time from which period beings to run
49. For other specific movable property, or for compensation for wrongfully taking or injuring or wrongfully detaining	Three years	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful

the same.		
104 By a Muslim for deferred dower (mu ajjal).	Three years	When the marriage is dissolved by death or divorce

It could be noted that Article 104 which in clear terms pertains to “dower”, prescribes that deferred dower can only be claimed within three years once the marriage is dissolved by death or by divorce. In the present case the parties were separated by way of Khula having been granted on 03.02.2021 thus Article 104 would only apply from the said date creating a limitation upto 02.02.2024. Khula suit was admittedly filed sometime in February, 2021, hence no violation of the said Articles is made.

With regard to Article 49 which is more of a general natured article (i.e. does not pertain to family circumstances), and deals with movable property which was wrongfully taken away from a person. If one attempts to implement Article 49 within family jurisdiction during the subsistence of marriage, a wife could file a claim against any article taken by her husband “wrongfully” probably every day. Such eventuality would probably stall entire judicial system and it is for these reasons Article 104 has been put into place with regard to family disputes. I do not see a wife whose husband in the subsistence of marriage had taken away any valuable from her allegedly “wrongfully” as such assumptions will completely destroy the family jurisprudence. Thus the above circumstances are distinguishable on the facts viz the case reported as 2016 MLD 693 where claim was made against the father of the husband after 26 years and the Court rightly held that such a claim cannot be made against any person under Article 49. The latter case of Hon’ble Balochistan High Court reported as 2024 MLD 51 while deals with

Article 104 but holds that the article 104 is to be applicable from three years of the date of dissolution of marriage (by death or divorce) and in the said case since that period was more than three years, the suit was accordingly dismissed, which is not the case at hand. I do not see both of these cases applicable to the facts of the case at hand for the above reasons.

Now, coming to the point that a wife takes away her jewelry when she leaves her husband's house, learned counsel has placed reliance on the Judgment reported as NLR 2013 Civil 369 rendered by the Hon'ble Supreme Court in the case of Mst. Samiya Iqbal butt and Rehan Zafar. In that case there were concurrent findings before the Hon'ble Supreme Court where such a claim of dowry articles was disallowed and the Court held the view that jewelry being item of "daily use" cannot be left by the wife while leaving house. This case is also not applicable in the circumstances of the present case as first of all there are no concurrent findings of the courts below and secondly the items before this Court per the list are Gold sets of 7.5,3,2.5 and 1.5 Tolas. This Court cannot imagine that a lady in normal circumstances would be using these jewelry articles on daily basis and whenever she would leave husband's house she would be wearing all of the said jewelry, therefore, the circumstances described in the case decided by the Hon'ble Supreme Court judgment are not prevalent in the present case.

Now coming to the judgment of the Appellate Court which upset the findings of the trial Court, a perusal of the judgment suggests that the point of statutory limitation has not been considered in a judicial manner as ground for allowing the said appeal that "since there is a long time lapse" if that was the reason,

it was incumbent upon the Court to show as to how it came to the conclusion that the lady has not lost control over her gold ornaments. To me such a frivolous, non-speaking and contextless assumption is not strong enough to override the trial Court's factual findings. In the circumstances, this petition is allowed and the impugned Judgment and decree of the Appellate Court is set aside.

JUDGE

Aadil Arab