ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
C.P No.S-151 of 2023

Date	Order with signature of Judge

1. **For orders on office objections**
2. **For orders on CMA No.445/2023**
3. **For orders on CMA No.446/2023**
4. **For hearing of main case.**

11.08.2023

Mr. Abdul Haseeb, Advocate for the Petitioner

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ARBAB ALI HAKRO, J: Through this constitution petition, Petitioner impugns judgment dated 14.06.2023, passed in Family Appeal No.04 of 2023, by learned District Judge (MCAC)Ghotki, by dismissing the appeal and maintained judgment and decree 30.11.2022, passed in Family Suit No.17 of 2022, by the Court of 2nd Guardian and Family Judge, Ubauro.

2. Precisely facts of the suit are that Respondent No.1 filed suit seeking dissolution of the marital union through khula and retrieval of dowry items from the Petitioner. This legal action was based on the assertion that the Respondent had married the Petitioner on 15.5.2022, with parental consent in accordance with the principles of Shariat-e-Muhammadi. Moreover, the Rukhsati ceremony occurred, and a Haqmahar (dowry payment) of Rs. 5000/- was agreed upon. The Respondent claimed to have received particular dowry articles, including gold ornaments, from her parents at the time of Rukhsati. It was further stated that said articles were then subsequently shifted to the residence of the Petitioner. It has been asserted that the Petitioner is an individual who consumes alcoholic beverages excessively, and this behaviour has resulted in the Petitioner mistreating the Respondent. The Petitioner's acts of maltreatment have caused the Respondent significant emotional and physical distress due to his illicit relationship. As a result, the Respondent has

initiated legal action, seeking the dissolution of the marriage and the retrieval of dowry items

3. After being served, the Petitioner submitted a written statement wherein he refuted the allegations mentioned in the plaint. Notwithstanding, the Petitioner acknowledged the presence of certain dowry items brought by the Respondent at the time of Rukhsati. It was further asserted that the list attached to the suit is spurious, there are no dowry articles in his possession, and the claim of Respondent No.1 is false.

4. Learned trial Court dissolved the marriage by way of Khula under Section 10 of the West Pakistan Family Court Act, 1964, by proceeding of pre-trial and framed the issue regarding recovery of dowry articles. Respondent No.1 led the evidence and examined witnesses supporting her contention. However, Petitioner filed a statement and stated that he did not opt to examine himself or any other witnesses before the trial Court. Learned trial Court, after considering the material on record, decreed the suit and directed the Petitioner to return the dowry articles except Serial No.6 (being Consumable Item), Serial No.18 (being repeated item) and Serial No.22 (being cash amount). The Petitioner, being aggrieved from the judgment and decree, preferred Family Appeal, which was also met in dismissal.

5. Learned Counsel for the Petitioner contends that the learned Family Court did not provide the opportunity to lead the evidence, and the suit of Respondent No.1 was decreed without adjudicating the rights of the Petitioner involved in the lawsuit. He further contended that the statement for non-leading the evidence was just an act of a Counsel he engaged before the trial Court. He submits that Respondent No.1 did not produce original bills of alleged dowry articles as mentioned in the list. He further urged that the question of territorial jurisdiction was involved and learned Family Judge, without adjudicating such preliminary question, decreed the suit of Respondent No.1. He finally concluded that the

judgment and decree of both the Courts are suffering from misreading and non-reading of oral as well as documentary evidence, hence required to be interfered by this Court in its constitutional jurisdiction.

6. I have heard learned Counsel for the Petitioner and perused the material on record minutely.

7. It is essential to acknowledge that Respondent No.1 initiated legal proceedings under the West Pakistan Family Court Act of 1964 (**"the act of 1964"**), a special law that grants jurisdiction to the Family Court to hear such cases as outlined in Section 5 of the aforementioned Act. In response to the initial argument put forth by the learned Counsel representing the Petitioner pertaining to the territorial jurisdiction of the Court, it is my opinion that the determination of jurisdiction, whether it be pecuniary or territorial in nature, is imperative to be addressed at the initial stage. On specific query, the Counsel representing the Petitioner displayed a lack of ability to respond adequately to the inquiry as to why the Petitioner did not submit such an application to address their concerns regarding the Court's territorial jurisdiction before the trial. In accordance with the provisions outlined in Section 5 of the Act of 1964, it vests the Family Court with the authority to address disputes pertaining to spousal relationships. Accordingly, I find no substantive merit in the argument put forth by the learned Counsel representing the Petitioner in this respect. In this context, I rely upon the case of **Muhammad Arif and others vs District and Sessions Judge, Sialkot and others (2011 SCMR 1591)**, wherein Apex Court has held as under: -

> *"14. On Court question, the learned Advocate Supreme Court for the petitioners admitted that the petitioners never objected to their impleadment in their written statement before the Family Court or in their appeal before the first appellate Court or in the Writ Petition before the High Court or in the memo of this CPSLA before this Court. The learned Advocate Supreme Court*

> *also conceded that the question of jurisdiction of the Family Court was also not raised before any of the Courts. Had the petitioners been improperly impleaded, they would have protested and sought their deletion from the suit by proving themselves to be irrelevant or unnecessary in the dispute between the spouses. The petitioners without demur submitted to the jurisdiction of the Family Court. They fully participated in the suit trial, filed their appeal and then a writ petition. The petitioners are thus debarred from claiming such a ground now for the first time in the Supreme Court. Even otherwise the impleadment of petitioners as co-defendants did not affect the jurisdiction of the Family Court to try the petitioners. Had the learned Advocate Supreme Court for the petitioners only glanced through the law, he would have advised himself against raising such a frivolous ground in the Supreme Court in clear violation of the provisions of the law on the' subject."*

8. Another aspect/argument put forward by the learned Counsel for the Petitioner asserts that the statement made before the trial Court was merely a strategic manoeuvre by the Counsel and was done without any consultation with the Petitioner. After thoroughly examining the record, it is evident that no objection or ground has been raised in the Family Appeal pursued by the Petitioner. However, it is pertinent to note that the Petitioner has asserted this point before this Court within the context of constitutional jurisdiction. In accordance with well-established legal doctrine, it is firmly established that the actions undertaken by a Counsel hold legal weight and have binding implications for their respective clients or parties involved. In the event of formal submission, it would be necessary to contemplate this matter, despite the Petitioner's failure to request redress from the Family Court regarding the aforementioned complaint. In lack of such omissions on the part of Petitioner, it does not provide a room to reopen the case, which has been adjudicated on the special law. The intent of the legislation for the promulgation of such special law was to simplify the dispute regarding the relation of the spouse, so the legislature's intent was simplifying the

procedure, and the law-maker was aware of the facts and circumstances involved in the case.

9. Another argument made by the learned Counsel representing the Petitioner is that the Respondent failed to provide authentic bills or receipts as evidence in substantiating the existence of the dowry items in question. It is a tradition of our society/ custom that everyone makes arrangements for the marriage of one's daughter with the hope that she will lead life happily. It is reasonably believed that when a Muslim girl marries and there is no feeling of separation, and every parent (mother and father) used to give dowry articles to their daughter, and it may not be possible for them. Section 17 of the Act of 1964 provides that the provisions of Qanun-e-Shahadat and the code of Civil Procedure shall not apply to the proceedings before any Family Court. The purpose of excluding the Civil Procedure Code and Qanun-e-Shahadat is to dispose of family matters expeditiously, and the cases shall not be prolonged unnecessarily. The non-production of receipts of the said dowry articles is not fatal to the case of the plaintiff/respondent No.1. In this respect; reference may be made to the case reported as **Muhammad Habib v. Mst. Safiai Bibi and others (2008 SCMR 1584).**

10. In this discourse, it is evident that the Family Court must duly consider both testimonial and documentary evidence presented by the parties involved. However, it is essential for this evidence to be thoroughly examined through cross-examination, which regrettably failed to refute the case put forth by Respondent No. 1. I have perused the evidence reproduced by the trial Court and discussion of the Appellate Court in the impugned judgment which did not reflect any illegality or infirmity to arrive at conclusion under which the dowry articles with certain expectations as per list awarded to the Respondent No.1. Based on the aforementioned discussion, I assert my viewpoint that the absence of receipts

or original bills as the evidence does not present any prohibitive obstacle for the Courts in determining the matter pertaining to the dowry articles.

11. The issue regarding the return of dowry articles, as mentioned in the dowry article's list, is elaborately discussed, and concurrent findings of fact regarding the said issue are recorded by the Judge Family Court and the appellate court after considering the record. Even otherwise, it is a settled principle of law that the High Court, in exercising its constitutional jurisdiction, is not supposed to interfere with the controversial question of facts, even if such findings are erroneous. The Scope of judicial review of the High Court under Article 199 of the Constitution, in such cases, is limited to the extent of misreading and non-reading of evidence or if the findings are based on evidence which may cause a miscarriage of justice, but it is not proper for this court to disturb the findings of the facts through a reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as a substitute of an appeal. In this respect, reference may be made to the case reported as **Farhat Jabeen v. Muhammad Safdar and others (2011 SCMR 1073), Shajar Islam v. Muhammad Siddique and 2 others (PLD 2007 Supreme Court 45).**

12. For the foregoing reasons, I am not convinced with the arguments of learned Counsel for the Petitioner and the judgments of Family as well as Appellate Court do not suffer from any irregularity, illegality, misreading or non-reading of evidence, which do not require any interference of this Court by invoking constitutional jurisdiction. Consequently, this petition, sans merits, is accordingly dismissed in limine.

JUDGE

Faisal Mumtaz/PS