

IN THE HIGH COURT OF SINDH, SUKKUR BENCH AT SUKKUR

C.P No.S-240 of 2023

Petitioner : Kamran Ali Memon
Through Mr. Muhammad Uzair
Shaikh, Advocate

Respondents No.1&2: Agha Qurat-ul-Ain and another
Through Mr. Azhar Ahmed Khan,
Advocate

Respondent No.1 : Mr. Ahmed Ali Shahani, AAG

O R D E R

Date of hearing : 10th May 2024

Decision of decision : 10th May 2024

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ARBAB ALI HAKRO, J: By invoking extraordinary jurisdiction of this Court under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed impugned judgment and decree dated 18.09.2023, passed by the Additional District Judge-IV, Hudood Sukkur (hereinafter referred to as "**the appellate Court**") in Family Appeal No.35/2023 (re: Agha Qurat-ul-Ain and another vs Kamran). The appeal preferred by Respondents No.2 & 3 was allowed, thereby modifying the judgment and decree dated 19.06.2023, passed by the Family Judge, Sukkur (hereinafter referred to as "**the trial Court**") in Family Suit No.489/2021 to the extent of granting Rs.53,000/- on account of delivery expenses; besides enhanced maintenance of minor baby from Rs.6000/- to Rs.8000/- with 10% annual increased till her entitlement, hence this petition.

2. Momentous facts about the filing of the present petition are that the marriage of the petitioner was solemnized with Respondent No.2 on 02.01.2021; after that, she resided in the petitioner's house and during the sojourn, Respondent No.2 became pregnant. Thus, she required more care and attention, but he failed. However, the

attitude of the petitioner and his family members towards Respondent No.2 suddenly altered by compelling her to hand over their monthly salary to her husband, which she earned as a Pharmacist at Children's Life Foundation, Sukkur. Besides, she stressed asking her parents to buy a flat with a car and handing over the same to the petitioner. Eventually, he ousted her on 07.02.2021, seizing all the property she had received from her parents through dowry articles, including gold ornaments. Despite trying to settle the dispute amicably, she failed. On 29.10.2021, she delivered a baby girl, Respondent No.3, to the hospital, and all the delivery expenses were borne by her parents. The respondent obtained a khulla (divorce) through a competent court of law. However, the learned trial Court partly decreed the suit with the observation that Respondent No.2 (plaintiff) was entitled to Iddat period maintenance as well as maintenance of minor with future increment; however, she was not entitled to medical expenses. Being dissatisfied with the observation rendered by the trial Court about the maintenance of minor and medical expenses incurred upon delivery, Respondent No.2 preferred an appeal, which was allowed. Against that, the petitioner preferred an instant petition.

3. At the outset, the learned counsel for the petitioner contends that the learned Appellate Court committed gross negligence by hastily passing the impugned judgment and decree without applying a judicious mind. Counsel argues that it is a well-settled principle of law that the burden of proof lies over the claimant. Still, in the present case, no documentary evidence was produced by the Respondent No.2 to support her claim as Respondent No.2 took various pleas with regard to expenses incurred on delivery in the memo of the plaint, she disclosed an amount of Rs.80,000/-, but on the contrary, she prayed for an amount of Rs.180,000/-. However, in her cross-examination, she disclosed an amount of Rs.53000/- thus, the trial Court rightly observed that she was disentitled to medical expenses,

but the learned Appellate Court modified this by granting medical expenses as well as an enhanced maintenance amount of minor. Counsel believes there are reasonable grounds to suspect a significant miscarriage of justice. Therefore, the counsel prays that the impugned judgment and decree passed by the learned Appellate Court may be set aside by allowing the instant petition.

4. Conversely, the learned counsel representing the respondents contends that the learned Appellate Court has correctly passed the impugned judgment and decree by granting medical expenses and enhanced maintenance as there was an admission of the petitioner regarding medical expenses incurred on delivery. Hence, there is no misreading or non-reading of evidence. Furthermore, the learned Appellate Court did not commit any illegality, gross irregularity, or infirmity while passing the impugned judgment and decree that appears comprehensive and well-reasoned. In support of his contention, learned counsel placed reliance on the case law reported as **2023 SCMR 1434**.

5. While adopting the arguments advanced by the learned counsel for the respondents, the learned AAG supports the impugned judgment and decree passed by the learned Appellate Court on the pretext that there is no denial of the petitioner regarding the admission of Respondent No.2 in Hospital for delivery purpose, but the dispute is with regard to expenses incurred, which cannot be decided in constitutional jurisdiction.

6. I have heard the arguments of learned counsel for the parties and perused the record.

7. A thorough review of available records, it is evident that the Respondent and the Petitioner were previously united in matrimony and had children together. The marriage has since been legally dissolved, with the petitioner filing a suit for its dissolution, which was granted by the Court. The trial court did not assess this matter

regarding the return of dowry articles. However, it ruled that Respondent No.2/Plaintiff is entitled to maintenance during the Iddat period and an increase in maintenance for the minor while being disentitled to medical expenses incurred during delivery. Respondent No.2 appealed the decision and was granted an additional amount of Rs.53,000 for delivery expenses, along with an increase in the maintenance of the minor baby from Rs.6000 to Rs.8000 with a 10% annual increase until her entitlement. In response, the petitioner has filed a petition, contending that the Appellate Court failed to consider crucial evidence related to the different stances taken regarding medical expenses incurred during delivery. The petitioner argues that the Appellate Court overlooked this factual aspect.

8. Article 199 of the Constitution serves as a safeguard for justice, rights protection, and rectification of any injustices. It grants the High Court the authority to correct any wrongful or excessive exercise of jurisdiction by lower Courts and to address any procedural illegality or irregularity that may have adversely affected a case. However, it is crucial to note that Article 199 does not grant the Court the power to re-evaluate or reconsider the facts of a case that has already been decided based on evidence by lower Courts. It is not permitted to re-evaluate the evidence or disrupt the findings of facts. Its jurisdiction is limited to reviewing a case in instances of misreading or non-reading of evidence, misapplication of law, or an excess or abuse of jurisdiction. The scope of judicial review under Article 199 of the Constitution is confined to cases where there has been a misreading or non-reading of evidence or when the finding is based on no evidence, resulting in a miscarriage of justice. Moreover, findings of facts cannot be disturbed through a reappraisal of evidence in constitutional jurisdiction, nor can this jurisdiction be used as a substitute for a revision or appeal. In this regard, I am fortified with the case law reported as Shajar Islam vs Muhammad Siddique (PLD 2007 Supreme Court 45).

9. The case records reveal that the respondent's claim for reasonable maintenance and medical expenses incurred during delivery was denied by the learned trial Court. This decision was based on the observation that the respondent failed to produce or exhibit medical documents as evidence to support her claim. As a result, her failure to substantiate her stance weakened her position, leading to the denial of her entitlement to medical expenses. However, Respondent No.2, aggrieved by this decision, filed an appeal before the Appellate Court, arguing that the trial Court failed to properly assess the factual aspect regarding the amount expended on delivery. Respondent No.2 contended that there was no denial on the part of the petitioner regarding that amount. As a result, the appeal was allowed, granting her Rs. 53000 for medical expenses and an enhanced maintenance amount with an annual increment until the entitlement of the minor. The learned counsel representing the petitioner has emphasized that the amount set by the Appellate Court is deemed inadequate. The petitioner's argument revolves around the assertion that there is a factual denial regarding the expenses incurred during delivery. In a constitutional petition, the scope is generally narrow, and findings on controversial questions of facts based on evidence, even if those findings were erroneous cannot be reversed in constitutional jurisdiction unless they are deemed illegal and erroneous. The records indicate that the petitioner has not denied the expenses related to the delivery. The petitioner's contention is solely focused on the amount awarded by the Appellate Court, which is considered unwarranted, given that Respondent No.2 was admitted to a private hospital and delivered a baby. It is also settled law that the decision of the appellate court is considered final on the facts and it is not for High Court in its constitutional jurisdiction to offer another opportunity of hearing, especially in family cases where the legislature's intent to not prolong the dispute is clear. Counsel has not identified any irregularity, misreading, or

non-reading of evidence in the judgment and decree passed by the Appellate Court.

10. The evidence under scrutiny must meet a standard of substantiality and significance that justifies this Court's intervention. The Court's interference is based on the premise that the evidence presented is strong enough to challenge the decisions made by the lower courts. However, upon meticulous examination of the case, no material illegality, infirmity, or irregularity that could potentially undermine the integrity of the proceedings has been found. The absence of such critical issues, which would otherwise necessitate the Court's intervention, leads me to uphold the decision rendered by the lower courts. This Court, therefore, does not find compelling reasons to interfere with the judgments passed by the lower courts, as they have been arrived at after due consideration and are devoid of any legal or procedural anomalies.

11. Consequently, this petition lacks merit and is hereby **dismissed**.

Faisal Mumtaz/PS

JUDGE