

IN THE HIGH COURT OF SINDH, SUKKUR BENCH AT SUKKUR

C.P No.S-22 of 2024

Petitioner : Abdul Razzak Bozdar  
Through Mr. Nusrat Hussain Memon,  
Advocate

ORDER

Date of hearing : 21<sup>st</sup> May, 2024

Decision of decision : 21<sup>st</sup> May, 2024

>>>>>>>>> <<<<<<<<<<<

**ARBAB ALI HAKRO, J:** In this writ petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has approached this Court to challenge the judgments and decrees issued by the lower courts regarding a family law dispute. Specifically, the petitioner seeks to set aside the impugned judgment and decree dated 19th December 2023, passed by the Additional District Judge, Mirwah, in Family Appeal No. 37/2023 (Abdul Razaq vs Mst. Saba Gul). This decision upheld an earlier judgment and decree dated 4th May 2023, issued by the Civil & Family Judge-II, Mirwah, in Family Suit No. 75/2022. The lower Court's decision decreed the dissolution of the marriage on the grounds of Khula and ordered the recovery of dowry articles in favour of the respondent.

2. The gravamen of the instant petition, distilled from the facts, is that the marital bond between the respondent and the petitioner was solemnized on 6th September 2017, subsequent to which the respondent cohabited in the petitioner's domicile. The said conjugal union resulted in the birth of two offspring, specifically referred to as Bisma and Baby Saiba. Regrettably, as time elapsed, the petitioner's demeanour towards his lawfully wedded wife, the respondent, underwent a drastic transformation. He embarked on a course of conduct that subjected her to maltreatment, thereby rendering her existence unbearable. In an ultimate act of cruelty, he expelled her

and the minor children from the matrimonial home, unlawfully appropriating all the property she had acquired from her progenitors in the guise of dowry articles, inclusive of gold ornaments. The minors, being in their infancy and dependent on breastfeeding, necessitate the petitioner, in his capacity as their biological father, to shoulder the responsibility of their sustenance. However, he has abdicated this duty, failing to maintain the minors adequately. This dereliction of duty has compelled the respondent to seek legal recourse, initiating a suit for the dissolution of marriage and maintenance.

3. The learned trial Court pronounced its decree on the matter by granting a dissolution of marriage via 'khulla'. Pertaining to the recovery of dowry articles, the learned trial Court made an observation. In relation to the gold ornaments, the value of the articles, as stipulated by the plaintiff in the plaint, was taken into consideration. The petitioner was directed to either return the dowry articles, as enumerated in the plaint, excluding the gold ornaments, to the respondent or, alternatively, remit a depreciated sum of Rs.220,000/-. Subsequent to the judgment and decree passed by the trial Court, the petitioner sought to challenge the decision by preferring a Family Appeal. However, the appeal was unsuccessful, thus precipitating the filing of the present petition.

4. At the very outset, learned Counsel for the Petitioner contends that the learned trial Court failed to provide an opportunity to present evidence. As a result, the suit of Respondent No.1 was decreed without a comprehensive adjudication of the petitioner's rights implicated in the suit. He further posits that the declaration for non-presentation of evidence was merely an act of a Counsel he had retained before the trial Court. He submits that post-marriage, the petitioner resided in the domicile of his father-in-law, in the capacity of a Ghar-Damad and all dowry articles were situated in his house. In reality, they expelled the petitioner and instituted a groundless suit.

He further implored that the petitioner filed an application under Order IX Rule VII CPC for the reopening of the case, as he was ready to file a written statement and wished to defend the suit; however, the learned trial Court dismissed the same without due consideration of the factual and legal dimensions of the case. He ultimately concluded that the judgment and decree of both the Courts are afflicted by misreading and non-reading of oral and documentary evidence, thereby necessitating intervention by this Court in its constitutional jurisdiction.

6. I have heard learned counsel for the petitioner and perused the material on record minutely.

7. Upon perusal of the records, it is manifest that the Respondent and the Petitioner were united in matrimony and procreated children from their union. However, their marital bond was subsequently severed. The respondent instituted Family Suit No.75 of 2022 before the trial Court seeking 'Khulla' and recovery of dowry articles. This suit was adjudicated, and a decree was passed vide judgment dated 04.05.2023. The petitioner sought to contest this decision by filing Family Appeal No.37 of 2023 before the Appellate Court, but this appeal was dismissed. The petitioner has now initiated the present petition, contending that the trial Court neglected to consider the evidence about dowry articles and directed the petitioner either to return the dower articles to the respondent or, alternatively, remit a depreciated sum of Rs.220,000/- to the respondent. This judgment and decree were subjected to scrutiny before the Appellate Court but were upheld. The petitioner now seeks redress in this Court, arguing that the lower courts failed to consider the evidence and the parties' rights adequately.

8. Under the purview of Article 199 of the Constitution, the judiciary has expansive powers to uphold justice and ensure the correct application of law. However, it exercises restraint in meddling

with concurrent factual findings. Such interference is confined to instances where there is a palpable exhibition of legal misapplication, procedural anomalies, jurisdictional errors, or other significant reasons that have culminated in an unjust outcome. The Article empowers the High Court to rectify any improper exercise of jurisdiction by subordinate Courts and redress any procedural irregularity that may have adversely impacted a case. Nonetheless, the Court is prohibited from re-examining the facts of a case already adjudicated by lower Courts. It can only intercede if there is a misinterpretation of evidence, a misapplication of the law, or an overreach or misuse of jurisdiction. Judicial review under Article 199 is circumscribed to cases where there was a misreading of evidence or an absence of evidence, resulting in a miscarriage of justice. The Court is barred from reassessing facts through re-evaluating evidence or acting as a substitute for a revision or appeal process. This principle is encapsulated in the case law reported as Shajar Islam vs Muhammad Siddique (PLD 2007 Supreme Court 45).

9. The court documents reveal that despite being the mother of minor children, the respondent solely sought the return of dowry articles. She and her witness submitted their affidavits in evidence to substantiate her claim, corroborating the averments of the plaint and the list of dowry articles. Their evidence remained unchallenged and uncontroverted.

10. A perusal of the record indicates that the petitioner initially was actively pursuing the case by engaging his Advocate. However, he abruptly ceased pursuing the case without providing any information to the Court. The sole ground advanced by the petitioner in his application for setting aside *exparte* proceedings and the *exparte* judgment and decree is that his residence was destroyed due to heavy rain and flooding, compelling him and his family members to migrate from their native place. This, he claims, prevented him from attending the Court. However, even in the petitioner's absence, his counsel, a

practising lawyer, could have appeared before the trial court to pursue the case. Furthermore, in this modern era, telecommunication facilities, including telephones and mobiles, are ubiquitously available, encompassing even rural areas. Therefore, no one can assert that being in a village rendered them incapable of contacting their counsel in the city. The ground invoked by the petitioner is, thus, unconvincing and lacks merit.

11. Dowry, a cultural norm prevalent in numerous societies, entails the bestowal of gifts or valuables upon the bride by her kin as a form of financial safeguard. It carries substantial sentimental and emotional worth for the bride and her lineage. Consequently, in instances involving the dissolution of matrimony, the partition or restitution of dowry articles emerges as a crucial issue. Family courts bear the responsibility to meticulously scrutinize the evidence about dowry articles to ensure an equitable and just resolution of the dispute. The learned counsel has been unsuccessful in pinpointing any irregularity, misinterpretation or non-consideration of evidence in the impugned judgments and decrees promulgated by the lower courts. This further bolsters the legitimacy of the maintenance accorded to the minor.

12. It is imperative to underscore that for this Court when deliberating on the prospect of interference, superior courts necessitate concrete evidence that substantiates a misreading or non-reading of evidence. This insinuates that the evidence under scrutiny must be substantially significant to justify interference. In the absence of substantial and significant evidence indicative of a misreading or non-reading of evidence, as well as material illegality, infirmity, or irregularity, it is incumbent upon the Court to refrain from interfering with the determinations rendered by the lower courts. This principle pays homage to the autonomy and expertise of lower court judges, who are better equipped to evaluate the evidence and adjudicate based on their comprehension of the case. Non-interference fosters

finality in legal outcomes and bolsters the efficient operation of the judicial system.

13. Consequently, this petition, which lacks merit, is hereby **dismissed** limine.

JUDGE

*Faisal Mumtaz/PS*