

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.S-442 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on M.A. 1223/2024
2. For orders on office objection
3. For orders on M.A. 1224/2024
4. For hearing of main case

21.10.2024

Mr. Shoukat Ali Qureshi Advocate for Petitioner.

1. Granted.
3. Granted subject to all just exceptions.

2&4. The petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning the Judgment rendered by the Model Civil Appellate Court-II/6th Additional District Judge, Hyderabad in Family Appeal No.69 of 2024, whereby the underlying Judgment and Decree dated 17.04.2024 passed by the learned Family Judge-X Hyderabad in Family Suit No.2106/2023, was partly modified so as to accept her entitlement for return of dowry articles as per the list submitted, except certain gold ornaments.

A perusal of the record reflects that the Family Suit had been filed by the Appellant seeking dissolution of marriage by way of Khulla, recovery of dowry articles and maintenance which was partly decreed with the marriage being dissolved in view of the dower amount and the appellant also being held entitled for maintenance for her Iddat period in the sum of Rs.12000/- as well as maintenance for two minor children at the rate of Rs.5000/- per month from the date of filing of the Suit onwards with an annual increment of 10%, whereas the prayer for recovery of dowry articles was declined, whereafter the Petitioner filed the aforementioned Appeal, which was allowed subject to the modification aforementioned.

This Petition essentially seeks an enhancement of maintenance as well as the recovery of ornaments, with being alleged that the financial position of Respondent No.3 is such that a more significant award ought to have been made. A perusal of the impugned Judgment of the Appellate Court reflects that all such aspects have been properly considered, with the relevant excerpt reading as follows:

“11. The appellant in her prayer clause (a) has claimed for dissolution of marriage by way of Khula on the grounds of non-maintenance, hatred and she cannot reside with the respondent. It is a well-settled principle of law that spouses cannot be compelled to live together against their will/consent and since appellant does not want to live with the respondent as his wife and prays for dissolution of marriage by way of Khulla therefore, the learned trial Court has rightly dissolved the marriage of appellant with respondent by way of Khulla in lieu of the dower amount and Khulla will attain finality after the period of 90 days during which period parties are at liberty to approach each other for reconciliation, in accordance with law.

12. The appellant in her prayer clause (b) has claimed to return of dowry articles worth of Rs:400,000/- or in failure thereof to pay it's equivalent amount. The appellant during her evidence has produced the original list of dowry articles. The list of dowry articles Ex.13 reflects that the articles mentioned in the list are very much common & simple and being given by the parents to their daughters in our society, as per custom and traditions at the time of marriage. Record reveals that the claim and evidence of appellant in respect of dowry articles has gone un-challenged and un-rebutted as respondent despite publication chosen to remain absent not only from the trial Court but also this Court. The marriage between parties was solemnized on 25.01.2015 and appellant got independence from respondent on 12.03.2019 and some articles mentioned in the list of dowry articles are daily used nature and lost its worth with the span of time but all articles are not used nature and as per appellant are lying in the house of respondent. As far as the claim of the appellant regarding Gold ornaments is concerned, it is common practice in our society that gold ornaments always keeps in personal custody of woman/appellant by considering it security of her future and during evidence she has not alleged that gold ornaments were snatched by the respondent/defendant or his family members. The learned trial Court has failed to consider that the appellant during her evidence has proved dowry articles mentioned in the list Ex.13 except gold ornaments, hence the impugned judgment and decree is modified to the extent that appellant is entitled for recovery of dowry articles Ex.13 except gold ornaments.

13. The appellant in her prayer clause (c) has claimed for her past maintenance at the rate of Rs:10,000/- and iddat period maintenance. The appellant has claimed that she was ousted by respondent from his house and never came to return back her and respondent proceeded exparte and no rebuttal came against the appellant's claim and her claim gone unchallenged and un-rebutted. It is settled principle of law that wife is entitled for her maintenance if marriage is intact and since the appellant has obtained khulla from defendant, therefore, she is only entitled for her Iddat period maintenance and

trial Court has rightly awarded iddat period maintenance of Rs:12,000/-

14. So far prayer clause (d) in concerned, the appellant has claimed maintenance of both minors Baby Dua-e-Amna aged about 08 years and Master Muhammad Mustafa aged about 5^{1/2} years each at the rate of Rs:10,000/- per month. The appellant during her evidence has annexed school fee receipts of minor Dua-e-Amna, which shows that minor is getting education in school and all the expenditures towards her growth are being borne by her or by her parents. The respondent being father of minors is duty bound to provide the maintenance, although respondent proceeded Ex-parte and no rebuttal came against the appellant's claim and her claim gone unchallenged and un-rebutted, yet appellant has proved her case. Record reveals that the appellant has failed to produce any documentary proof of defendant's earning. Admittedly, the respondent is father of minors, therefore, he is legally and morally bound to maintain his minors. Therefore the learned trial Court has rightly held that appellant is entitled for maintenance of both minors each at the rate of Rs:5000/- per month from filing of the Suit i.e 25.11.2023 and future maintenance at the same rate with 10% annual increment, till their legal entitlement.

15. The record reflects that the learned trial court has rightly passed the impugned judgment and decree with speaking, valid & cogent reasons and not committed any illegality or irregularity except declining recovery of dowry articles except gold ornaments, hence the impugned judgment & decree is modified to that extent. I, therefore, find no reason to interference further with the impugned judgment and decree. Thus the point No.1 is answered in Negative.”

Under such circumstances, no error or infirmity warranting interference on a constitutional plane has been pointed out during the course of proceedings today. The Petition stands dismissed in limine accordingly.

JUDGE