

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. S – 152 of 2022

(*Abdul Wahab Memon v. Mst. Saima Channa & others*)

Date of hearing : 04.11.2024

Date of decision : 04.11.2024

Mr. Parmanand, Advocate for petitioner.  
Mr. Sundar Khan Chachar, Advocate for respondent No.1.  
Mr. Ghulam Abbas Kubar, Assistant Advocate General Sindh.

## J U D G M E N T

**Zulfiqar Ahmad Khan, J.** – By means of this petition, the petitioner challenges the concurrent findings of the lower Courts i.e. the judgment and decree dated 11.02.2022, passed by learned Family Judge, Sukkur in Family Suit No.53 of 2021, and the judgment and decree dated 31.08.2022, rendered by learned Additional District Judge-II, Sukkur in Family Appeal No.14 of 2022.

2. The petitioner (defendant) states that respondent (plaintiff) No.1 filed a suit seeking maintenance for her and the minor children, as well as the return of dowry articles, wherein she claimed that their marriage was solemnized on 17.11.2005, with a fixed *Haq Mehar* of Rs.1,00,000/-, which the petitioner has failed to pay despite repeated demands. The couple has five children, including respondents No.2 to 5 in the custody of respondent No.1 and Abdul Rafay in the petitioner's custody. Respondent No.1 further asserted that she had received dowry items, including gold ornaments, furniture and household goods, all of which remain in the petitioner's possession. She alleged that the petitioner mistreated her over trivial matters and refused to provide maintenance, despite his significant income from his business, Kainat General Store in Shahi Bazaar, Rohri, which reportedly generated Rs.1,50,000/- per month. Respondent No.1 claimed that, despite her best efforts to maintain the marriage, she

suffered cruelty at the hands of the petitioner. On 14.12.2020, the petitioner allegedly subjected respondent No.1 to severe mistreatment, forcing her and the children to leave his house and seek refuge at her parents' home. Hence, she sought the following reliefs before the Family Court:

- a) *To pass Judgment and Decree in favour of Plaintiff thereby directing the Defendant to pay maintenance to the Plaintiff @ Rs.10,000/ per month and Rs.5000/- for minors each per month total Rs.30,000/- at present and in future with increase of 20% per annum till final decision of this Suit.*
- b) *To direct the Defendant to return all dowry articles to the Plaintiff which were given to her by her parents at the time of marriage as the same are in possession of the Defendant.*
- c) *Award the cost of the suit.*
- d) *To grant any other relief, which this Honourable Court may deems fit and proper under the circumstances of the case.*

3. In response, the petitioner filed a written statement before the Family Court, asserting that the *Haq Mehar* was paid to respondent No.1 on the first night of their marriage. He further claimed that respondent No.1 left his house, taking all the dowry articles with her. The petitioner stated that he operates an Easy Load Shop in Rohri and not a General Store, as alleged by respondent No.1. He also leveled allegations regarding respondent No.1's character and denied any accusations of maltreatment.

4. The matter was initially fixed for pretrial, but it was declared failed by the Family Court through order dated 20.04.2021, after which the issues were framed. In the meantime, respondent No.1 filed an application under Section 17-A of the Family Courts Act, 1964, seeking interim maintenance for the minors. This application was partly allowed by the Family Court on the same date, directing the petitioner to pay Rs.2,000/- per month for each minor as interim maintenance until the final disposal of

the suit. However, the petitioner failed to comply with this order. The petitioner's conduct was deemed unacceptable, and the Family Court's observations in this regard are worth noting and are reproduced below:

*“It is also mentioned that plaintiff has also filed application u/s 17-A of Family Act 1964 for interim maintenance for minors which was partly allowed vide order dated 20.04.2021 and the defendant was directed to pay Rs.2000/- per month for each minor as interim maintenance till the final disposal of the suit. Since then the defendant failed to deposit the same. On dated 31.01.2022 the learned counsel for the plaintiff moved application for striking off the right of defendant u/s 17-A of the Family Court Act 1964. Notice was given to the other side but he clearly refused to accept the notice and also failed to appear the court. Such attitude clearly shows that he has no respect for the court orders. Therefore he was barred to file objections on the application vide order dated 11.02.2022. Learned counsel for the plaintiff was heard on the application and as the defendant has not made compliance of the interim maintenance and it has been 10 months since that order, therefore the instant application was allowed. Section 17-A of Family Courts Act, 1964 provides that upon failure of defendant to pay interim maintenance, the Court may strike off the defense of defendant and decree the suit. I reproduce the relevant section as under:-*

*Provisions of Section 17-A lay down that “at any stage of proceedings in a suit for maintenance, the Family Court may passed an interim order for maintenance, where under the payment shall be made by the fourteenth of each month and if the payment is not made, the Family Court which passed such interim order may strike off the defence of defendant and decree the suit”.*”

5. The Family Court, by judgment and decree dated 11.02.2022, decreed the suit filed by respondent No.1, granting her maintenance of Rs.2,500/- per month from the date of filing the suit until the date of

judgment, and Rs.3,000/- per month as future maintenance, with a 10% annual increment, as long as the marriage remains intact or otherwise. Regarding the minors, the Family Court held that each minor is entitled to Rs.2,000/- per month from the date of filing the suit until the date of judgment, and Rs.2,500/- per month as future maintenance, with a 10% annual increment. The Family Court also reviewed the list of dowry articles and ruled that respondent No.1 is entitled to the dowry or a sum of Rs.2,00,000/- in case of damage. However, certain items were excluded, including two 'Q-Mobile' phones, on the grounds that the marriage took place in 2005, while the company was launched in Pakistan in 2009. Additionally, fifty bed-sheets and forty pairs of clothes were not accounted for, as it was noted that they had been used during the 15 to 16 years the respondent had lived with the petitioner. The claim for the return of gold ornaments was also rejected, as it is generally understood that such items remain in the wife's safe possession. The petitioner, challenging these findings, filed an appeal, which was dismissed by the appellate Court. Consequently, this petition has been filed.

6. Heard learned Counsel for the parties and perused the material available on record.

7. On 22.12.2023, this Court passed the following order:

*“Respondent is absent despite of service. Learned Counsel for the Petitioner submits that BWs have been issued against the Petitioner by the Executing Court for implementing the judgment and decree, which has been impugned through this constitutional petition. Learned Counsel further submits that petitioner is ready to deposit the decretal amount of maintenance. To evaluate the decretal amount, Accountant of this Court is directed to calculate the decretal amount of maintenance and the same would be deposited by the petitioner to the Additional Registrar as a security within 15 days. Subject to deposit of decretal amount, further proceedings of the Executing Court shall remain stayed.”*

8. The Accountant's reports available in the Court's file shows that decretal amount of maintenance in favour of the respondents was calculated as Rs.4,35,500/- for the period from February 2021 to December 2023, which the petitioner deposited vide receipt No.5312 dated 05.01.2024 before the Additional Registrar of this Court.

9. The primary claim of the petitioner is that he paid the *Haq Mehar* to respondent No.1 on the first night of their marriage. However, this claim appears to be false upon review of the *nikahnama*. The document reveals that while the petitioner set the *Haq Mehar* at Rs.1,00,000/-, he himself noted the words "عند الطلب" (on demand) against Condition No.15, which asks, "Whether any part of the dower has been paid, and if so, how much?" This notation indicates that the *Haq Mehar* was to be paid upon the wife's demand. Such a practice is typically employed when the husband either does not wish to pay the dower at the time of marriage or is not in a position to do so. If the petitioner had indeed paid the *Haq Mehar* amount at the time of marriage, it raises the question as to why he chose not to record the payment in the *nikahnama*. Prima facie, this inconsistency casts doubt on the credibility of the petitioner's claim from the outset.

10. The petitioner has failed to provide sufficient proof to establish that respondent No.1 took all the dowry articles with her, as he has not specified who assisted her in removing the articles from his house. Furthermore, the Courts below have addressed this matter in a manner favourable to the petitioner, while excluding several items listed by respondent No.1.

11. It is deeply troubling that the petitioner has claimed that he learnt from "reliable sources" or "heard" that the character of respondent No.1 is questionable or that she has a bad character. These are serious and unfounded accusations, and it is clear that the petitioner is attempting to

damage her reputation without any evidence. Respondent No.1 was married to him, lived in his house for many years, and gave birth to five children. To make such harmful statements about her, without any proof, seems to be an attempt to avoid paying maintenance. This kind of behaviour — attacking someone's character to escape responsibility — is unacceptable and unfair. It is a deliberate effort to undermine her dignity and avoid his obligations. Such actions cannot be tolerated.

12. In the memo of petition, the petitioner's Counsel refers to an FIR (Crime No.82 of 2011) registered at Police Station Abad, in an attempt to argue that respondent No.1, who filed the FIR, stated that she married the petitioner 16 years ago, had five children, and was divorced by him seven years ago. However, the petitioner has mistakenly cited the year of the FIR as 2011, when, in fact, the FIR was registered in 2021, on 21.05.2021, as confirmed by its photo stat copy in the Court's file. This error reflects the petitioner's lack of sincerity. The petitioner also refers to a statement made by respondent No.1 on 17.05.2021, where she mentioned that she had remarried to Syed Parvez Ali Shah approximately 3-4 months earlier. The evidence regarding these claims has also been cited.

13. Although the suit was decreed on 11.02.2022 and the appeal was dismissed on 31.08.2022, none of the aforementioned documents were presented before the Courts below. Even if these documents are considered at this stage, they would be of no benefit to the petitioner, as he did not raise this plea before the Courts below and has not approached this Court with clean hands, as demonstrated above.

14. In this case, the petitioner (father) has attempted to avoid paying maintenance for his minor children. It is a well-established principle that a father has a fundamental duty to provide for the maintenance of his children. This obligation remains, even if it requires physical labour, as long as the father is able-bodied. A UNICEF report on child nutrition in

Pakistan highlights that many minors suffer from malnutrition, often not receiving the minimum daily caloric intake of 1200 calories. Given these circumstances, the maintenance amount of Rs.2,000/- per month from the filing of the suit until the judgment, and Rs.2,500/- per month for future maintenance, with a 10% annual increase, is considered minimal. This is likely why the appellate Court upheld the trial Court's decision. Therefore, no further intervention is warranted in this matter under the constitutional jurisdiction.

15. It is gleaned from the appraisal of the foregoing that the learned trial Court, after considering the petitioner's living conditions, fixed the maintenance amount for the respondents, a decision that has been upheld by the learned appellate Court. It is well settled that the trial Court is the primary fact-finding authority, and having thoroughly examined the entire record presented to it, the trial Court fixed the maintenance amount, which does not warrant any interference. Therefore, the petition at hand is **dismissed**. Since the decretal amount of maintenance for the respondents from February 2021 to December 2023 has already been deposited by the petitioner with the Additional Registrar of this Court, the same shall be released to the respondents.

J U D G E

Abdul Basit