

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. S – 159 of 2024

(Jabbar Khan Almani v. Mst. Sodhi Almani)

Date of hearing : **18.11.2024**

Date of decision : **18.11.2024**

Mr. Rashid Ali Sindhu, Advocate for petitioner.

ORDER

Zulfiqar Ahmad Khan, J. – Through this petition, the petitioner has impugned the judgment and decree dated 30.08.2024 and 06.09.2024, respectively, passed by learned Additional District Judge, Ubauro in Family Appeal No.05 of 2024, whereby the appeal has been allowed and the judgment and decree dated 17.02.2024, passed by learned I-Civil & Family Judge, Ubauro in Family Suit No.44 of 2023 has been set aside, decreeing the suit of the respondent in certain terms.

2. It appears that the respondent (plaintiff) filed a suit for dissolution of marriage by way of *Khula*, maintenance and recovery of dowry articles, stating that her marriage with the petitioner (defendant) took place 10 years ago, but the agreed-upon *Haq Meher* of Rs.2,000/- was never paid. The respondent, who is disabled due to polio, alleged that after marriage, the petitioner subjected her to cruel treatment and failed to provide proper maintenance. It has been claimed that seven years ago, the petitioner kicked the respondent out of his house, but the dowry articles, which the respondent claims, were never returned. The respondent, therefore, sought *Khula*, maintenance of Rs.10,000/- per month since last seven years till the period of *Iddat* (in case marriage is dissolved), the return of dowry articles as per list or compensation thereof.

3. The trial Court partly decreed the suit, finding that the plaintiff (respondent) testified to her marriage with the defendant (petitioner) in

2012, with dowry articles given by her parents as per a list provided in the suit. However, during cross-examination, she admitted that specific other household articles were not listed and only a value of Rs.50,000/- was mentioned. She acknowledged that items like clothes and slippers were used during her marital life and stated that she had left the defendant's house seven years ago, but failed to provide evidence of being ousted. The trial Court noted contradictions between her testimony and the evidence from her witness, revealing that the plaintiff had voluntarily left with her father. Regarding the dowry articles, while acknowledging the custom of dowry, the trial Court found that the plaintiff failed to prove her case, as she could not substantiate the non-return of items like gold ornaments and household goods. The defendant's evidence, which showed the couple residing with the plaintiff's parents and no evidence of her being ousted, was considered more reliable. The trial Court also ruled that the plaintiff failed to provide evidence entitling her to maintenance, particularly since the marriage had been dissolved through *Khula*. As a result, the trial Court declined her claims for maintenance and dowry articles, granting only the dissolution of the marriage.

4. The appellate Court identified several flaws in the trial Court's judgment, which led to its reversal. On one hand, the trial Court had accepted that dowry is a customary gift from parents to daughters, often provided out of love and affection. However, it simultaneously rejected the respondent's (plaintiff) claims for dowry articles. The appellate Court emphasized that the plaintiff's evidence, including her affidavit and witness testimony, had not been effectively challenged during the trial. The plaintiff consistently maintained her stance regarding the dowry articles, and her statements during cross-examination were found to be largely consistent with her initial claims. While some minor contradictions were noted, such as the exact nature of the other household dowry articles amounting to Rs.50,000/- only, which deem to be insignificant and did not undermine

the core of her evidence. It has been highlighted that it is a common practice in many families for dowry articles to be given without formal receipts; hence, the plaintiff's testimony is sufficient for her claim. Regarding maintenance, it was found that the respondent (plaintiff) had provided adequate oral and documentary evidence regarding her non-maintenance, which was not rebutted by the petitioner (defendant). Therefore, the petitioner was directed to return the dowry items as per the list provided by the respondent or compensate her for their depreciated value. Additionally, the appellate Court awarded her maintenance for three years prior to the filing of the suit at a rate of Rs.2,000/- per month, covering the period until the completion of her *Iddat*.

5. Learned Counsel for the petitioner contended that the appellate Court either misread or failed to consider the evidence properly, and that a key issue in the suit for recovery of dowry articles i.e. whether the articles were consumed by the wife (respondent / plaintiff) during their marriage, especially in light of the marriage's duration and the practical use of the dowry items over time has been ignored. He further argued that the appellate Court wrongfully allowed the recovery of all dowry articles without considering their age or condition. Regarding maintenance, learned Counsel submitted that the appellate Court erred in granting it, despite the wife's admission that her father voluntarily took her from the petitioner's house, which indicates she was not driven out and, thus, not entitled to maintenance.

6. Learned Counsel for the petitioner, on the last date of hearing, sought time to bring a latest judgment of the Apex Court to establish that whenever a lady leaves the house of her husband, she takes along with her gold ornaments. However, learned Counsel has only placed a single judgment of the Lahore High Court, which, in the circumstances, does not appear to be relevant. The trial Court, while passing judgment and decree,

held that the petitioner has to return all dowry articles as per the list or their depreciated value. Learned Counsel for the petitioner asserts that the trial Court has not specified the depreciated value of each and every dowry article, and that the dowry articles, viz. one washing machine, one pedestal fan, two iron box (6 and 3 feet, respectively) and ten quilts were jointly used by the couple, who lived together for almost 10 years; therefore, it should be a least amount.

7. The plaintiff's personal circumstances were highlighted in her testimony and the written statement filed by the defendant. She is described as a disabled woman, suffering from polio that has affected both of her legs, which significantly hindered her ability to find a suitable marriage partner. The admission of the petitioner (defendant) that no one else was willing to marry her due to her disability adds weight to the argument that her marriage was not an ordinary union but one that had brought additional responsibilities for him. This makes it all the more important to ensure that her rights are protected, particularly regarding maintenance and dowry articles.

8. The appellate Court rightly awarded a maintenance amount of Rs.2,000/- per month for the three years prior to the filing of the suit till completion of the *Iddat* period. This is a reasonable amount, given the plaintiff's disability and her dependence on the defendant for financial support. Reducing or removing this maintenance would be an injustice to the plaintiff, who, as a disabled woman (a maternal cousin of the defendant as well), has limited means of supporting herself. The maintenance amount awarded by the appellate Court is a reflection of the principle that a woman, especially one in such vulnerable circumstances, should be provided in accordance with her needs.

9. In line with the earlier discussion, the appellate Court's decision is both fair and reasonable, and does not warrant interference. The

maintenance awarded and the directions for the return of dowry articles or their equivalent value are in accordance with the law and the facts of the case, considering the circumstances surrounding the marriage and the plaintiff's entitlements. Any reduction or denial of these would be an unjust denial of the plaintiff's rightful claims, particularly in light of her disability and the involuntary nature of the marriage.

10. The petitioner's request for a reduction in the value of the dowry articles, particularly those items that were jointly used by the couple during their time together, is also considered. The depreciated value of the articles should be no less than 50% of their original value. This seems to be a fair and reasonable concession, given that these items, such as the washing machine, pedestal fan, iron boxes and quilts, were indeed used by both parties during the marriage.

11. Therefore, the appeal is **dismissed in limine**, and the decision of the appellate Court is upheld. However, the direction for the return of dowry articles or their depreciated value is affirmed, with the value to be considered at a minimum of 50% for the jointly used items as per the respondent's claim, including stitched clothes and other household articles, **except gold, silver and unstitched clothes**.

J U D G E

Abdul Basit