

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. S – 238 of 2024

(Ayaz Ali Kalwar v. Mst. Shaista Kalwar & others)

Date of hearing : 12.12.2024

Date of decision : 12.12.2024

Petitioner Ayaz Ali, present in person.

Respondent No.1 Shaista, present in person.

Mr. Shahryar Imdad Awan, Assistant Advocate General Sindh.

ORDER

Zulfiqar Ahmad Khan, J. – Through this Constitutional Petition, the petitioner (defendant) has prayed as follows:

- a) *That this Honourable Court may be pleased to suspend / set-aside the impugned judgment and decree passed by learned trial Court as well as appellate Court.*
- b) *To suspend the operation of impugned judgment and decree passed by learned trial Court as well as appellate Court.*
- c) *To grant any other relief as deem fit under the circumstances of the case.*

2. The petitioner's case is that respondent No.1 (plaintiff) filed a suit for recovery of dowry articles and maintenance, wherein 32 items were listed as dowry articles, valued at Rs.5,26,500/-. Additionally, the respondent No.1 claimed maintenance of Rs.10,000/- per month, along with Rs.25,000/- for her medical treatment expenses.

3. The trial Court (learned Family / Civil Judge, Ghotki) framed the relevant issues, recorded the evidence of the parties, and after hearing their submissions, passed the judgment and decree dated 27.04.2024 in Family Suit No.131 of 2022. The trial Court directed the petitioner to pay a lump sum amount of Rs.1,50,000/- for one set of dowry articles valued at Rs.3,64,000/-, and Rs.97,000/- for another set, the latter of which were

admitted by the petitioner during cross-examination. The trial Court also granted the respondent No.1 maintenance of Rs.5,000/- per month, with a 10% annual increment, from the date of filing the suit (August 2022), to continue for as long as the marriage remains intact. However, the respondent No.1's claim for Rs.25,000/- as medical treatment expenses was declined due to the non-submission of original bills / receipts, as only photocopies were attached, which the trial Court did not consider sufficient to grant the relief.

4. The petitioner appealed the trial Court's decision before learned District Judge (MCAC), Ghotki, through Family Appeal No.11 of 2024, which was disposed of by judgment and decree dated 16.09.2024, wherein the trial Court's judgment was modified regarding dowry articles and medical treatment expenses. The appellate Court held that respondent No.1 was entitled to the return of the dowry articles listed in the plaintiff's memo, including gold ornaments, except for those already delivered through her father on 02.02.2024, as per the Court Bailiff's report. The petitioner was directed to either return the remaining dowry articles or pay their depreciated value of Rs.2,45,000/-, along with the maintenance amount as decreed by the trial Court. Additionally, the petitioner was ordered to pay Rs.10,000/- per month towards respondent No. 1's medical treatment expenses from the date of filing the suit.

5. Heard arguments of the parties and perused the material available on record.

6. Regarding the dowry articles, the appellate Court observed that the petitioner (the appellant in the appeal) did not contest the evidence presented by respondent No.1 and her witness concerning the dowry articles. On the contrary, the petitioner implicitly acknowledged that certain simpler dowry items were provided instead of those specifically listed in the plaint. The list of dowry articles presented in the plaint consisted

largely of articles of daily use, which are typically given by the bride's family at the time of marriage. These items are of a nature that is customarily provided as part of the dowry, and the petitioner did not provide adequate evidence to challenge their existence or value. Given this, the appellate Court's decision to uphold the inclusion of these dowry articles, with the only exception being the articles already delivered on 02.02.2024, as per the report of the concerned Court's Bailiff, was fully justified.

7. As far as maintenance is concerned, the petitioner failed to provide any evidence or convincing argument to suggest that respondent No.1 was a disobedient wife or otherwise disentitled to the maintenance claim. The maintenance amount claimed by the plaintiff was Rs.10,000/- per month. However, the trial Court had already reduced this amount to Rs.5,000/- per month, keeping in view the petitioner's financial position and the circumstances of the case. The appellate Court upheld this reduction, finding no justification to alter the trial Court's decision.

8. Furthermore, the petitioner did not dispute the fact that respondent No.1 suffers from kidney failure and requires regular dialysis. More importantly, he admitted that the father of respondent No.1 is currently bearing the expenses of her medical treatment. In light of this, the appellate Court's decision to award Rs.10,000/- per month towards the medical treatment of respondent No.1 is entirely reasonable and consistent with both the law and the principles of justice and fairness.

9. During the course of the hearing, respondent No.1 asserted that, aside from the payment of Rs.10,000/- already received, no further payments had been made by the petitioner. In response, the petitioner has produced photocopy of an application along with his affidavit submitted before the trial Court, stating that he had made a payment of Rs.10,000/- on 09.12.2024. However, apart from this isolated payment, the petitioner

failed to provide any additional documentation or evidence to substantiate that other payments had been made in compliance with the orders of the Courts below.

10. In view of these findings, the petitioner has not presented sufficient grounds or factual evidence to warrant interference with the well-reasoned judgments of the Courts below. The appellate Court thoroughly considered all relevant factors, including the petitioner's admission regarding the dowry articles, the evidence of respondent No.1's medical condition and the petitioner's failure to establish a case of disobedience or non-entitlement to maintenance. The appellate Court's judgment, which upheld the trial Court's decision with modifications, was entirely justified.

11. Accordingly, the instant Constitutional Petition is **dismissed**, and the judgment and decree of the appellate Court are maintained. The petitioner is directed to comply with the Court's orders without further delay and pay the amounts as specified by the appellate Court.

J U D G E

Abdul Basit