

## Order Sheet

## IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.S-1480 of 2024

[Qalbe Saleem vs. Mst. Reema Dildar and others]

Petitioner: Through Mr. Ansar Mukhtar, Advocate.

Respondent No.1: None present.

Respondent 2 & 3: Through Mr. S. Arshad Hussain Naqvi, AAG.

Date of Hearing: 05.03.2024

Date of Order: 05.03.2024

**ARSHAD HUSSAIN KHAN, J.** The petitioner through instant petition challenging the judgment dated **31.07.2024**, passed by Addl. District Judge-1, Karachi [Malir] in Family Appeal No.16/2024 filed against the order dated **20.01.2024**, passed by XII Family Judge, Karachi [Malir] in Family Execution No.10/2021, has prayed as follows :

“That in view of the above facts and grounds this Hon’ble Court may be pleased to set aside impugned judgment / order of the Appellate / Trial Courts after hearing the parties and dismiss the claim of the respondent/decree holder of the remaining dowry articles”.

2. Heard learned counsel for the petitioner. At the very outset, he was asked about maintainability of the present constitutional petition, however, he has not been able to satisfy the Court.

3. From perusal of the record, it reveals that the respondent/plaintiff (Mst. Reema Dildar) filed Family Suit No.30/2017 for recovery of Dower Amount, Dowry Articles and Maintenance Allowances against the petitioner/defendant, which was decreed through the order dated **28.05.2018**, the same was appealed against in Family Appeal No.32 of 2017 before the IIIrd Additional District and Sessions Judge, Malir, who vide its order dated 07.12.2018, set aside the judgment of the trial court dated **28.05.2018** [to the extent of issue No.4 with regard to return of dowry articles] with the directions to the trial court to decide the same afresh after hearing the parties. Subsequently, vide order dated **10.07.2019**, the trial court again decreed the suit of the plaintiff partly to the extent of above issue of return of dowry articles with the directions to return the dowry articles as per annexed list to the plaintiff except gold ornaments or its alternate value for Rs.1,98,395/-. Thereafter, the plaintiff/DH filed Family Execution Application No.10 of 2021, before the trial court initially

claiming Rs.1,50,000/- [which she later on reduced to Rs.98,980/-] in respect of remaining dowry articles, the said Execution Application was granted and the defendant/JD was directed to pay Rs.98,980/- to the D/H as alternative amount of unrecovered dowry articles, vide order dated **20.01.2024**, passed by the Court of XII Family Judge, Karachi Malir. Thereafter, the JD has challenged the said order dated **20.01.2024** in Family Appeal No.16 of 2024, being the same is beyond the judgment and decree, which was dismissed by Additional District Judge-1 Malir, Karachi, vide order dated **31.07.2024**, which order is impugned in the present constitutional petition. It is an admitted position that the petitioner has not challenged the order dated **10.07.2019** whereby by learned XIIth Family Judge, Karachi Malir, reduced / modified the dowry amount from Rs.2,50,000/-to Rs.1,98,395/-.

4. It may be observed that the constitution petition cannot be considered a substitute of second appeal against the order passed by first appellate court. Furthermore, learned counsel for the Petitioner could not point out any substantial error and or any illegality, infirmity or jurisdictional error in the impugned judgment, which could warrant interference by this court in extra ordinary jurisdiction of High Court.

5. In the instant case, the two courts below have given concurrent orders against which the petitioner has not been able to bring on record any concrete material or evidence, whereby, such findings could be termed as perverse or having a jurisdictional defect or based on misreading of fact. It is well settled that if no error of law or defect in the procedure has been committed in coming to a finding of fact, the High Court cannot substitute such findings merely because a different findings could be given. It is also well settled law that concurrent findings of the two courts below are not to be interfered in the constitutional jurisdiction, unless extra ordinary circumstances are demonstrated, which in the present case is lacking.

6. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice<sup>1</sup>. It may also be observed that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become

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<sup>1</sup> Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others [2015 PLC 259]

such a forum in instances where no further appeal is provided<sup>2</sup>, and is restricted inter alia to appreciate whether any manifest illegality is apparent from the order impugned. It is also well settled that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law.

7. Furthermore, the supreme Court of Pakistan in the case of *M. Hamad Hassan v. Mst. Isma Bukhari and 2 others* [2023 SCMR 1434] while dilating scope of the constitutional jurisdiction of High Court has observed as under:

7. The right to appeal is a statutory creation, either provided or not provided by the legislature; if the law intended to provide for two opportunities of appeal, it would have explicitly done so. In the absence of a second appeal, the decision of the appellate court is considered final on the facts and it is not for High Court to offer another opportunity of hearing, especially in family cases where the legislature's intent to not prolong the dispute is clear. The purpose of this approach is to ensure efficient and expeditious resolution of legal disputes. However, if the High Court continues to entertain constitutional petitions against appellate court orders, under Article 199 of the Constitution, it opens floodgates to appellate litigation. Closure of litigation is essential for a fair and efficient legal system, and the courts should not unwarrantedly make room for litigants to abuse the process of law. Once a matter has been adjudicated upon on fact by the trial and the appellate courts, constitutional courts should not exceed their powers by re-evaluating the facts or substituting the appellate court's opinion with their own - the acceptance of finality of the appellate court's findings is essential for achieving closure in legal proceedings conclusively resolving disputes, preventing unnecessary litigation, and upholding the legislature's intent to provide a definitive resolution through existing appeal mechanisms.

In view of the above observations and the law laid down by the Hon'ble Supreme Court of Pakistan in the case of *M. Hamad Hassan v. Mst. Isma Bukhari and 2 others* [supra], the present constitutional petition is dismissed being not maintainable.

JUDGE

*Jamil*

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<sup>2</sup> *Shajar Islam v. Muhammad Siddique* [PLD 2007 SC 45] & *Arif Fareed v. Bibi Sara and others* [2023 SCMR 413].