

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Const. Petition No. S- 724 of 2018

Waseem Ahmed PanhyarPetitioner

Versus.

Mst. Husna and others..... Respondents

For Hearing of main case.

Mr. Noor Muhammad Soomro Advocate for the petitioner.

Mr. Abdul Ghaffar Memon, State Counsel.

Nemo for the private respondent.

Date of hearing: 26-04-2019

Date of decision: 26-04-2019

J U D G M E N T

ZAFAR AHMED RAJPUT J., Respondent No.1 herein filed a Family Suit No. 116 of 2017 against the petitioner for recovery of dower, Shartia property, dowry articles and her maintenance of Iddat period and of child alleging therein that she contracted marriage with the petitioner on 05.01.2013 and out of said wedlock she has one issue, namely, Muhammad Naseem. It was also alleged that at the time of her marriage, her parents had given her gold ornaments, one gold chain, one Tiko, two gold rings weighing 3 Tolas and also one buffalo along with calf besides other articles/utensils of personal / domestic use, details whereof is mentioned in para-5 of the plaint. It was further alleged that an agreement to marriage was executed between the parties containing terms that in case petitioner pronounced divorce, he shall be liable to pay Rs. 600,000/- to the respondent No.1. It was also alleged that the petitioner sent a copy of

divorce deed dated 29.06.2017 when she was at her parents' house to celebrate Eid ul Fitr.

2. The petitioner contested the suit by filing written statement, wherein, inter alia, he claimed that all the articles were taken away by the respondent No.1 on tractor-trolley in presence of the whole villagers.

3. Learned Family Judge after framing issues and recording evidence of the parties decreed the suit vide judgment and decree dated 16.05.2018 denying the relief to recover the conditional amount under agreement dated 05.01.2013 entitling the respondent No.1 to recover the dowery articles, estimated amount of Rs. 200,000/- so also entitling to recover the maintenance of her Iddat period at the rate of Rs. 3000/- per month and maintenance of minor Muhammad Naseem at the rate of Rs. 5000/- per month with increased rate of Rs. 10% per annum till he reaches the age of majority or otherwise custody handed over to the petitioner.

4. The petitioner impugned said judgment and decree in Family Appeal No. 32 of 2018 which was dismissed by learned District Judge, Khairpur vide judgment and decree dated 25.08.2018. It is against the said concurrent findings of the Courts below on issue of facts, instant Constitutional Petition has been preferred by the petitioner.

5. Learned counsel for the petitioner, at the very outset, submits that so far maintenance amount upto Iddat period is concerned, the

petitioner agrees to pay the same, however, the amount of maintenance towards child at the rate of Rs.5000/- per month being an exorbitant amount is out of paying capacity of the petitioner, who is serving in Pak Army as Cook and drawing salary of Rs. 16,000/- per month, so also findings of the Courts below on the issue of dowry articles is being contrary to the facts and law is liable to be set aside. While elaborating his contention, he added that onus was on the respondent No.1 to prove that the dowry articles were in possession of the petitioner as petitioner in his written statement had categorically stated that same were taken away by the respondent No.1 in tractor-trolley. He has also contended that the respondent No.1 failed to file any receipt of the dowry articles showing worth of dowry articles, hence fixing of the value at Rs. 200,000/- by making an estimation in absence of any evidence is not warranted under the law. On query, he has admitted that the petitioner was paying Rs. 5000/- per month in compliance of interim orders passed by learned trial Court towards payment of maintenance of minor, however, the petitioner stopped depositing said amount in the trial Court after passing of the judgment and decree.

6. Heard learned counsel for the parties and perused the material available on record. It appears that the petitioner has taken two inconsistent pleas. In para-3 of the written statement, he has contended that respondent No.1 was not given dowry articles by her parents while in para-7 of the written statement, he has contended that the petitioner left his house without his permission and took away all

the articles wither on tractor-trolley. Again in his deposition, he has stated that no article was given to the respondent No.1 by her parents. So far burden of respondent No.1 to prove issue of dowry articles is concerned, she has successfully discharged the same by asserting it in her pleadings as well as deposition which then shifted to the petitioner to prove otherwise, wherein he has miserably failed by taking inconsistent pleas as mentioned above. So far worth of dowry articles is concerned, learned trial Court valued it at Rs. 200,000/- which is a reasonable considering the details of the dowry articles. So far issue of maintenance of minor is concerned, nothing has been brought on record that the petitioner is receiving an amount of Rs. 16,000/- per month towards his salary. It also reflects that an amount of Rs.5000/- towards maintenance of the minor was fixed at the admission of the petitioner to give interim maintenance at the same rate vide order dated 30.11.2017 and the said order was passed by the learned trial Court after considering willingness and affordability of the petitioner to pay the maintenance to his minor child, hence said interim maintenance order was made final by the trial Court, which admittedly is not being paid by the petitioner after passing of the judgment and decree by the trial Court on 16.05.2018.

7. Accordingly, this Constitutional Petition being devoid of any merit is dismissed with costs of Rs.25,000/-, which shall be paid by the petitioner within 30-days hereof in the trial Court to be paid to the respondent No.1.

JUDGE