

Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.S-1145 of 2023

[Asif Iqbal vs. Mst.Shamshad]

Petitioner	Through Mr. Arif Awan Advocate.
Respondent-1	Nemo
Respondent-2	Through Syed Aly-e-Maqbool Rizvi, AAG Sindh
Date of Hearing:	08.08.2025.
Date of Order:	08.08.2025.

ARSHAD HUSSAIN KHAN, J.- Through this Constitutional Petition the petitioner [Asif Iqbal] has assailed the Judgment and Decree dated **12.08.2023**, passed by VIth Additional District Judge, Karachi [East] in Family Appeal No. 03 of 2023, which was dismissed by maintaining the judgment and decree dated **30.09.2022**, passed by Family Judge/Consumer Protection Court Karachi [East] in Family Suit No.3763 of 2020, filed by the respondent/Plaintiff- Mst. Shamshad for return of dowry articles, delivery expenses, maintenance of *iddat* period, medical expenses and the dower amount.

2. Succinctly, the facts of the present petition are that the respondent/plaintiff was married with the petitioner/defendant on 16.08.2019, against the dower of two tola gold ornaments, out of which one tola was paid but later on the defendant kept one tola in his possession and the remaining one tola was never paid, so the whole dower was unpaid. That at the time of marriage, the parents of the plaintiff gave precious dowry articles to the plaintiff which remained under custody of defendant, despite repeated demands of plaintiff, he did not return the same. That after the Nikkah, Rukhsati took place and out of this wedlock plaintiff delivered a dead child at pre-mature stage and all the expenses in respect thereof were borne by the parents of the plaintiff. The defendant did not pay a single penny in respect of the medical/delivery expenses of the plaintiff and at the time of delivery the plaintiff was at the house of her parents, after delivery the defendant never came back to see the plaintiff and his child. Defendant without any reason pronounced divorce and refused to return dower, dowry articles, medical expenses & maintenance of the plaintiff. Hence, she filed instant suit with the following prayers:

- a) To direct the defendant to hand over the dowry articles which are still under the possession of defendant, if he fail to hand over dowry articles/precious gold ornaments then further be directed to pay the alternative value @ Rs. 3,00,000/- to plaintiff.
- b) To direct the defendant to pay the past maintenance of plaintiff at the rate of Rs.15,000/- PM since 08.11.2019 total amount of Rs. 180,000/-.
- c) To direct the defendant to pay the maintenance of iddat period @ Rs. 30,000/- per month till completion of 90 days total amount of Rs. 90,000/-
- d) To direct the defendant to pay Rs.50,000/- of medical/delivery expenses of the child which were borne by the parents of plaintiff.
- e) To direct the defendant to pay the dower amount i.e two tola gold ornaments forthwith without any further delay.
- f) To grant cost of the suit or any other relief(s) which this Honorable Court under the facts and circumstances of the matter may deem fit and proper.

3. Upon notice, before the learned trial court, the petitioner /defendant contested the family suit by filling written statement, denied the claim of the respondent/plaintiff and prayed for dismissal of the family suit. As per record, the pre-trial proceedings were held but declared as failed. Thereafter, the issues were framed, evidence of the parties were recorded and the suit was decreed, which was challenged in Family Appeal No.03/2023. The appellate court dismissed the aforesaid appeal being time barred through its judgment dated **12.08.2023**. The petitioner herein filed the instant petition against the concurrent findings of the courts below.

4. Learned counsel for the petitioner has argued that the learned trial court has failed to consider that the respondent on her own left the house of the petitioner without any cogent reason therefore she is not entitled for maintenance as claimed by her but the learned trial court allowed huge past maintenance, which is liable to be set aside. He has further argued that the learned trial court did not consider the source of income of the petitioner while passing the impugned judgment. He has argued that the dowry articles are lying “as is where is basis” and the petitioner is ready to return the same. It is further argued that the respondent failed to annex the medical bills or receipts. The fact is that she carried out the medical treatment in Jinnah Hospital where the

treatment is free of cost. It is argued that the respondent was given two tola gold but this fact has not been considered by the trial court. That the articles of the petitioner have also not been returned by the respondent, which are in her possession. Learned counsel has further argued that the appeal filed against the order of the learned trial court was dismissed as time barred. That both the impugned orders, being against the Law, are liable to be set aside. Lastly, he has argued that both the courts below have failed to apply their judicial mind while deciding the instant matter and prayed for interference by this Court in its constitutional jurisdiction.

5. In the instant case, despite notices, none has appeared on behalf of respondent No.1, Mst Shamshad, in whose favour the family suit filed by her has been decreed by the learned trial court. However, learned AAG Sindh supported the impugned judgments and has prayed for dismissal of the instant petition.

6. Heard learned counsel for the petitioner as well as the learned AAG, perused the record and the relevant law.

From perusal of the record, it is evident that the respondent/plaintiff had instituted Family Suit No. 3763 of 2022 seeking return of dowry articles, dower amount, medical/delivery expenses, and maintenance [including iddat period maintenance], which suit was decreed by the learned Family Judge/Consumer Protection Court, Karachi [East] on **30.09.2022**. Thereafter petitioner/defendant's appeal was dismissed by the appellate court on **12.08.2023** on the ground of limitation. The petitioner now assails the concurrent findings of both courts.

7. It is observed that dragging the matter from one court to another, especially the family case, constitutes vexatious litigation, adds undue delay, and unnecessarily overburdens the courts. Such practice is strongly discouraged by the Supreme Court of Pakistan¹.

¹ Shahzad Amir Farid v. Mst. Sobia Amir Farid [2024 SCMR 1292] and *M. Hamad Hassan v. Mst. Isma Bukhari and 2 others* [2023 SCMR 1434].

8. It is settled law that the High Court, while exercising constitutional jurisdiction under Article 199 of the Constitution, does not function as an appellate court to reappraise the evidence, unless the findings of the courts below are shown to be perverse, based on misreading/non-reading of material evidence, or suffering from jurisdictional defect. The petitioner must establish that the impugned judgments are contrary to law or that the courts acted without lawful authority.

9. In the instant case, the petitioner has admitted that the dowry articles are in his possession and has offered to return them on “as is where is” basis. This admission itself supports the decree passed by the trial court for return of such articles or their alternate value. The trial court, therefore, rightly directed either the return of such articles or payment of their assessed value. The “as is where is” offer at the appellate or constitutional stage cannot displace the decree already passed, particularly when the petitioner has not demonstrated any error in the valuation or list of articles accepted by the trial court.

10. The trial court, on the basis of the evidence, recorded a finding that the dower remained unpaid. The petitioner’s contention that two tolas of gold had already been given is a question of fact, which was rejected upon appreciation of the evidence.

11. The petitioner has argued that no bills were produced and that the respondent availed treatment at a government hospital free of cost. However, the trial court, after considering the testimony and circumstances, accepted the claim. In family matters, especially involving delivery expenses, oral testimony can be sufficient when supported by circumstantial evidence. No material has been placed before this Court to demonstrate, conclusively, that the finding of the trial court is either perverse or wholly unsupported by the record.

12. The petitioner’s main plea is that the respondent left the matrimonial home without justification, thus disentitling her to maintenance. This plea was examined and rejected by the trial court on the basis that the petitioner failed to prove abandonment without cause. Once the court found that the petitioner had failed to maintain the

respondent during the subsistence of marriage and post-divorce iddat, the award of past maintenance and iddat period maintenance was justified. The petitioner's contention about his limited income was also considered; however, in absence of credible proof of incapacity, the maintenance fixed by the trial court cannot be said to be arbitrary.

13. The dismissal of the petitioner's appeal by the appellate court on the ground of limitation is a separate legal hurdle. The petitioner has not challenged the findings of limitation with any cogent material showing that the delay was condonable under the law or that sufficient cause was shown. Therefore, the appellate court's dismissal stands on a sound legal basis.

14. In the instant case, the learned trial court has given its comprehensive findings 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. Similarly, while dealing with the appeal filed by the petitioner against the judgment of the learned trial court, though the said appeal, being time barred, was dismissed, the appellate court has also very elaborately given its findings discussing the relevant law and the procedure. 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.

15. It may also be observed that the constitutional petition cannot be considered as second appeal against the order passed by lower appellate court. Furthermore, learned counsel for the petitioner could not point out any illegality, infirmity or jurisdictional error in the impugned judgments, which could warrant any interference by this Court in its extraordinary jurisdiction.

16 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 injustice². It may also be observed that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically

² Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others [2015 PLC 259]

become such a forum in instances where no further appeal is provided³, 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 the same was contrary to law or usage having the force of law.

17. In view of the above discussion, no ground exists for interference by this Court in its constitutional jurisdiction. The petitioner's arguments mainly involve reappraisal of evidence, which is not permissible under Article 199 of the Constitution unless exceptional circumstances are shown, which are absent here. The impugned judgments are well-reasoned, in accordance with law, and do not call for interference. Consequently, instant petition is dismissed.

JUDGE

Jamil

³ Shajar Islam v. Muhammad Siddique [PLD 2007 SC 45] & Arif Fareed v. Bibi Sara and others [2023 SCMR 413].