

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD
CP No. S- 1248 of 2015

DATE	ORDER WITH SIGNATURE OF JUDGE
29.01.2016	

1. For Katcha Peshi
2. For Hearing of MA 15036/15

Mr. Muhammad Aslam Bhatti, Advocate a/w petitioner
Mr. Noman Raja Khan, Advocate for Respondent

MUHAMMAD IQBAL KALHORO, J.- Respondent Mst. Hina filed Family Suit for recovery of dower amount & maintenance against the petitioner in the court of Vth Family Judge, Hyderabad. The suit was decreed vide judgment dated 7.1.2014 and decree dated 18.1.2014. The terms of the judgment show that the petitioner was directed to pay dower amount of Rs.50,000/- to the respondent; Additionally, he was also directed to pay maintenance to her @ Rs.3000/- per month from November, 2010 till her iddat period as she was divorced by him on 22.12.2010. With regard to the child of the petitioner namely baby Rabia, learned Family Judge ordered him to pay past maintenance since November, 2010 @ Rs.1500/- and Rs.3000/- as future maintenance with 20% increase per annum.

The petitioner challenged the above judgment and decree in Family Appeal No. 16 of 2014. It was decided by the learned IX- Additional District Judge, Hyderabad vide judgment dated 25.11.2015 upholding the findings of the Family Judge as stated above.

Mr. Muhammad Aslam Bhatti, Advocate for petitioner has argued that the judgments of two courts below are illegal and misconceived as both the courts below have not appreciated the evidence brought before them by the petitioner. He further states that even the status of the petitioner has not been determined by the courts below while determining the quantum of maintenance to be paid to the respondent. He further states

that the dower amount was paid by the petitioner to the respondent on the night of marriage, therefore, there was no occasion for the courts below to grant it to the respondent, hence such findings are illegal and against the law. With regard to maintenance of the respondent, he states that she was unfaithful wife and as per case law reported in 1995 MLD 121 an unfaithful wife is not entitled to any maintenance, but both the courts below have not appreciated such fact. His case is that the petitioner is earning approximately Rs.9000/- per month and the amount that has been granted by both the courts below towards the maintenance is not affordable by him.

Mr. Noman Raja Khan, Advocate has argued that it is the duty of the petitioner to maintain her child. Rs.3000/- is a meager amount keeping in view the high prices of essential commodities now a days. According to him this much amount the petitioner can afford as he apart from driving the rikshaw is also doing a business, which fact he himself has admitted in para-2 of his written statement.

I have heard the counsel for the parties and perused the material that has been produced by the petitioner, including the case law cited at the bar. It goes without saying that the scope of the constitutional petition is very limited. Admittedly while exercising such jurisdiction this court cannot enter into factual controversies between the parties. Record reflects that both the courts below have dealt with the issues properly and judiciously and on the basis of appreciation of evidence have given their verdict. The case of the petitioner that the respondent was unfaithful wife has not been proved by him. I have seen the entire material, there is nothing on record to show that the petitioner was able to establish this fact before the courts below by producing any evidence in this regard. Mere bald allegations leveled by the petitioner against the respondent that she was not a faithful wife would not be sufficient to establish such fact. I have therefore no reason to disagree with the findings of the courts below in this regard. Petitioner's claim that he had paid the dower amount to the respondent on the first night of marriage has also been properly and meticulously attended to by both the courts below. It appears that about such assertion, the petitioner has taken divergent views as in the written statement he has stated that he had paid dower amount to the respondent on night of the marriage,

but during his evidence he has not stated so, but has taken a different stand. The learned Appellate Court at page 3 of its judgment has reproduced the relevant part of his cross-examination that relates to the above fact wherein he has admitted that there was an agreement and according to which the dower was to be paid to the respondent as per decision of 25th April. In view of such admission, petitioner's stance that he had paid the dower amount on the night of marriage does not stand anywhere. When a particular plea was taken by the petitioner in regard to the payment of dower amount, the burden was upon him to prove the same. During evidence he has taken a different stance to that of the written statement, therefore, the conclusion reached by both the courts below obviously cannot be interfered with.

In so far as the quantum of maintenance and the objection of the petitioner to his status are considered, it was he, who was to prove his status and his income as asserted by him to establish his point. He was afforded ample opportunity in the trial but he failed to bring on record anything to support his claim. His counsel has stated that he is earning Rs.200/- to Rs.300/- per day, however, in absence of any evidence in this regard, this court cannot lean in favour of the petitioner on this point. Learned counsel has stated in his arguments that the petitioner has contracted second marriage and out of that marriage he has got a child and apart from maintaining his that family, he is also maintaining his mother, therefore, he cannot afford the amount of maintenance granted by both the courts below. I have paid attention to his arguments. Petitioner's second marriage or maintaining his second wife and mother would not relieve him of the responsibility to maintain his child that was born out of his first marriage. In the law, it is the responsibility of the petitioner to maintain her. The objection to the quantum of maintenance in my view is not sustainable also keeping in view the current situation whereby admittedly the prices of every essential commodity has gone high. Lastly counsel for petitioner states that 20% increase per annum in the maintenance is exorbitant and if it is calculated, then within few years, it would be so high that the petitioner would not be able to afford it. The counsel for respondent to such contention has shown grace that it may be reduced from 20% to 10%.

Accordingly this petition is dismissed; both the judgments of courts below are maintained. However, with one modification that instead of 20% increase per annum, 10% increase would be read in both the judgments.

With this observation, this petition is dismissed.

JUDGE

*Karar/-