

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Constitution Petition No. S – 1176 of 2024
Constitution Petition No. S – 1332 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGES
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C.P. S – 1176/2024

Rameez Abbas Petitioner.
Versus,
Mst. Arisha Respondent.

Hearing/Priority

1. For hearing of CMA No.8989/2024.
2. For hearing of main case.

C.P. S – 1332/2024

Mst. Arisha Petitioner.
Versus,
Rameez Abbas & another Respondents.

Hearing of cases

1. For orders on office objection as at 'A'.
2. For hearing of main case.

30.05.2025

Mr. Imtiaz Ali Solangi, Advocate for the Petitioner in C.P. No.S-1176/2024 and Respondent No.1 in C.P. No.S-1332/2024.

Mr. Muhammad Rashid Mahar, Advocate for the Petitioner in C.P. No.S-1332/2024 and Respondent in C.P. No.S-1176/2024.

JUDGMENT

Muhammad Jaffer Raza, J. - Both the Constitutional Petitions noted above impugn the judgment and decree dated 19.09.2024 passed in Family Appeal No.48/2024. The above mentioned Family Appeal emanated from the judgment and decree of the learned Family Judge dated 22.12.2023 and 04.01.2024, respectively, in Family Suit No.4500/2022. The aforesaid judgment and decree were impugned by Petitioner in C.P. No.1176/2024 by filing Family Appeal No.48/2024.

2. Brief facts of the case are that Respondent in C.P. No. S-1176/2024 filed Family Suit No.4500/2022 for dissolution of marriage by way of khula, recovery of maintenance, recovery of gold ornaments and dowry articles with the following prayers: -

- “a) To dissolve the marriage of the Plaintiff with the Defendant by way of Khulla on grounds of cruelty, disliking, mental torture, psychological abuse, non-maintenance, create strong hatred in the heart against the Defendant and Defendant is important.
- b) To direct the Defendant to pay maintenance from July-2022 till the legal entitlement of the Plaintiff and passing Iddat period at the rate of Rs.30,000/- per month.
- c) To direct the Defendant to handover all the dowry articles as per list or an equal amount as per market value.
- d) Any other relief which this Honourable Court may be deems fit and proper.
- e) To award costs of the suit.”

3. Thereafter, after recording of evidence of both the parties, the learned Family Judge was pleased to decree the above Family Suit vide judgment and decree dated 22.12.2023 and 04.01.2024, respectively, in the terms mentioned below: -

- “a. The Defendant is direct to pay the monthly maintenance at the rate of Rs.30,000/- per month to Plaintiff from July-2022 till her Iddat period.
- b. The Defendant is directed to return the dowry articles to Plaintiff as per list or it alternate value as order.”

4. Thereafter, the Petitioner in C.P. No.S-1176/2024 filed the above noted Family Appeal and the same was disposed of vide Impugned judgment mentioned above, modifying the judgment passed earlier by the learned Family Judge by reducing the maintenance from Rs.30,000/- to Rs.10,000/-.

5. Learned counsel for the Petitioner in C.P. No. S-1176/2024 has contended that he is not aggrieved with the Impugned judgment in respect of the reduction of the maintenance amount from Rs.30,000/- to Rs.10,000/-. However, he

aggrieved with the findings of both the Courts below to the extent that he was directed by the learned Trial Court to return the dowry articles to the Respondent as per list or in alternate value. He has further averred that the learned Appellate Court directed him to return the dowry articles including gold ornaments to the Respondent. He has further contended that no specific issue in this regard was framed by the learned Family Court and the learned Appellate Court exercised jurisdiction beyond the scope of judgement and decree impugned before it. He has further contended that the direction to the Petitioner to return the dowry articles, including gold ornaments, is unfounded, as no reason has been given to substantiate such finding. He has further contended that the Petitioner is unable to return the gold ornaments to the Respondent.

6. Conversely, learned counsel for the Petitioner in C.P. No. S-1332/2024 and Respondent in C.P. No. S-1176/2024 has argued that the Impugned Judgement was within the scope of the appeal. He has further invited my attention to the cross-examination of the parties and more particularly the examination-in-chief of the Respondent. He has specifically stated that the list of dowry articles was exhibited in evidence before the learned Family Judge and therefore it cannot be said that the learned Appellate Court has passed the impugned judgment erroneously. Further, he has stated that no specific cross-examination was conducted by the Petitioner in respect of the gold ornaments, which are specifically mentioned in the list of dowry articles. According to him, the mother of the Respondent was also cross-examined by the learned counsel for the Petitioner, but not a single question was put to her in regards to gold ornaments. The gold ornaments ought to have been returned to the Respondent by the Petitioner. He has lastly argued that he has filed Constitutional Petition bearing No.1332/2024 impugning the abovementioned judgment of the learned Appellate Court only in respect of reduction of the maintenance amount from Rs.30,000/- to Rs.10,000/-.

7. I have heard both the learned counsels for the parties and perused the record. It is evident that the learned Trial Court after recording evidence passed the judgment. I have more particularly perused the cross-examination of the respective parties. I agree with the contention of learned counsel for the Respondent in C.P. No. S-1176/2024, and hold that no specific question was put in respect of gold ornaments by learned counsel for the Petitioner, which would disentitle the Respondent from the same. Learned counsel for the Petitioner conducted a lengthy cross-examination of the Respondent, however, failed to ask questions which would disentitle the Respondent. Learned counsel for the Respondent in this regard has fittingly contended that list of dowry articles has been exhibited, in which gold ornaments have been mentioned. Further, the suggestion of the learned counsel for the Petitioner during the cross-examination of the Respondent's mother is detrimental to his case. Further, it is also held that the reduction of maintenance amount from Rs.30,000/- to Rs.10,000/- was unwarranted and without any justification. No cogent reason has been assigned by the learned Appellate court for the said reduction. Ironically, the Petitioner has even failed to pay the reduced amount.

8. The limited scope of Constitutional Petitions, more specifically in matters related to family law, was expounded in the case of **M. Hamad Hassan v. Mst. Isma Bukhari and 2 others**¹ in the following words: -

“6. The objective of Article 199 of the Constitution is to foster justice, protect rights and correct any wrongs, for which, it empowers the High Court to rectify wrongful or excessive exercise of jurisdiction by lower courts and address procedural illegality or irregularity that may have prejudiced a case. However, it is emphasized that the High Court, in its capacity under Article 199, lacks the jurisdiction to re-examine or reconsider the facts of a case already decided by lower courts. Its role is limited to correcting jurisdictional errors and procedural improprieties, ensuring the proper administration of justice. In the present case, the Petitioner pursued his case through the family court and its appeal in the district court and then also invoked the High Court's constitutional jurisdiction to reargue his case amounting to a wrongful exercise of jurisdiction whereby the High Court upheld the factual findings of appellate court after making its own assessments on the same.

¹ 2023 SCMR 1434

Allowing a re-argument of the case constituted to arguing a second appeal which should not have been entertained regardless of the outcome of the case.

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.”

(Emphasis added)

9. In light of what has been held above, Constitutional Petition No. S-1176/2024 is dismissed with direction to learned counsel for the Petitioner to comply with the judgment and decree passed by the learned Family Court. Consequently, Constitutional Petition No. S-1332/2024 is allowed and the maintenance granted by the learned Family Court is upheld. No order as to cost.

JUDGE

Nadeem Qureshi “PA”