THE HIGH COURT OF SINDH KARACHI

C.P. No. S-1258 of 2023
[Zain Arshad Khan vs. Mst. Raeesa Usmani & others]

Petitioner	:	Zain Arshad Khan through Mr. Faheem Ahmed Abro, Advocate.
Respondent No.1	:	Mst. Raeesa Usmani through Mr. Ghulam Mustafa, Advocate.

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Date of hearing	:	02.11.2026
Date of decision	:	02.11.2026

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O R D E R

Zulfiqar Ali Sangi J.– Through the instant constitutional petition, the petitioner has called into question the judgment and decree dated 25.09.2023, passed by the learned IXth Additional District Judge (MCAC), Karachi East, in Family Appeal No.247 of 2022, whereby the appeal preferred by the petitioner against the judgment and decree dated 29.08.2022, passed by the learned XVIth Family Judge, Karachi East, in Family Suit No.275 of 2021, was dismissed with modification in the quantum of maintenance. The petitioner has also sought suspension of further proceedings in Execution Application No.38 of 2023.

2. Briefly stated, respondent No.1 instituted Family Suit No.275 of 2021 against the petitioner, seeking recovery of maintenance, dower amount and dowry articles. Her case was that her marriage with the petitioner was solemnized on 15.01.2017 against dower of Rs.125,000/-, which remained unpaid. She further alleged that on 20.07.2020, the petitioner expelled her from the matrimonial home and subsequently pronounced divorce upon her. The petitioner contested the suit by filing written statement, denying the allegations and asserting, inter alia, that respondent No.1 had voluntarily left the matrimonial home and that he was willing to pay the outstanding dower amount. Upon completion of the pleadings, the learned Family Court framed issues, recorded evidence of the parties and, vide judgment and decree dated 29.08.2022, decreed the suit to the extent that respondent No.1 was held entitled to past maintenance at the rate

of Rs.6,000/- per month from 20.07.2020 till her legal entitlement, including the period of iddat, whereas the minor was awarded maintenance at the rate of Rs.10,000/- per month with 10% annual enhancement. The learned Family Court also directed the petitioner to pay Rs.125,000/- towards the unpaid dower. As regards dowry articles, it was observed that the relevant articles had already been delivered to respondent No.1 through the bailiff of the Court and that she was not entitled to receive any further articles.

3. Being dissatisfied, the petitioner preferred Family Appeal No.247 of 2022, primarily challenging the findings regarding dower and maintenance. The learned appellate Court, after hearing the parties and examining the available record, maintained the finding regarding entitlement of respondent No.1 to dower, observing that there was nothing available on record to establish that she had obtained khula from a competent Court. However, taking into consideration the financial circumstances of the petitioner, his admissions during cross-examination and the prevailing economic conditions, the learned appellate Court modified the quantum of maintenance and decreed the claim of the plaintiffs to the extent prayed for in the suit. Hence, the instant petition.

4. Learned counsel for the petitioner contended that both the Courts below failed to properly appreciate the evidence available on record, particularly the admission of respondent No.1 during her cross-examination that she had obtained khula from the Court. He argued that, in view of such admission, respondent No.1 was not entitled to claim the dower amount and maintenance in the manner awarded by the learned Courts below. He further contended that respondent No.1 had herself left the matrimonial home and had declined to resume cohabitation despite proceedings allegedly initiated by the petitioner for restitution of conjugal rights. Learned counsel further submitted that the quantum of maintenance awarded in favour of the minor was excessive and beyond the financial capacity of the petitioner, who claimed to be earning a meagre amount. He, therefore, prayed that the impugned judgments and decrees be set aside.

5. Conversely, learned counsel for respondent No.1 supported the impugned judgments and contended that the learned Family Court had passed its judgment after recording and appreciating the evidence of both parties. It was argued that the petitioner had failed to discharge his legal obligation towards his wife and minor child and

that the learned appellate Court had rightly assessed his financial status on the basis of his own admissions. It was further contended that no documentary material establishing the alleged decree of khula had been produced before the Courts below. Accordingly, dismissal of the petition was sought.

6. I have heard the learned counsel for the parties and examined the available record with their assistance.

7. The controversy requiring consideration in the instant matter primarily relates to the entitlement of respondent No.1 to dower and maintenance in the backdrop of her assertion during cross-examination that she had obtained khula from the Court. A perusal of the material placed on record reflects that respondent No.1, during her cross-examination before the learned Family Court, admitted that she had obtained khula. The deposition is also available at page-125 of the present petition (cross-examination). However, while deciding the appeal, the learned appellate Court observed that nothing was available on record to establish that respondent No.1 had obtained khula (para-12 of the Appellate Judgment page-33 of the present petition) and, on that basis, maintained the decree for payment of the entire dower amount. In my considered view, the aforesaid aspect required proper examination and determination by the learned appellate Court, particularly when the alleged admission had been specifically relied upon by the petitioner. An admission made by a party during cross-examination constitutes relevant evidence and cannot be brushed aside without examining its context, evidentiary value and legal effect. At the same time, the mere assertion of having obtained khula, in the absence of examination of the relevant decree or proceedings, may not by itself be sufficient to conclusively determine the nature and legal consequences of dissolution of marriage. The Court is required to ascertain whether a decree of khula was actually passed, the terms and conditions thereof, and the legal consequences flowing therefrom, particularly with regard to the outstanding dower and the period for which maintenance may lawfully be claimed.

8. It is also noticeable that the learned Trial Court, while deciding the claim of respondent No.1 for maintenance, proceeded on the basis that the matrimonial relationship had terminated through divorce and awarded maintenance from 20.07.2020 till her legal entitlement, including the period of iddat. However, the specific plea of the petitioner regarding dissolution of marriage through khula and its

consequential effect upon the claim of dower and maintenance does not appear to have been examined in the manner required by law. The learned appellate Court, while dealing with the said controversy, was also required to address the admission appearing in the cross-examination and record a clear finding thereon.

9. As regards the maintenance awarded to the minor, it is an established legal obligation of a father to maintain his minor child according to his financial capacity and the reasonable needs of the child. Such obligation cannot be avoided merely on the ground that the father claims to have limited or insufficient income. In the present case, the learned appellate Court has considered the admissions of the petitioner regarding his living standard, use of an expensive mobile phone, family circumstances and other circumstances appearing from the evidence. The petitioner has not been able to demonstrate any patent illegality, jurisdictional defect or perversity in the assessment made by the learned appellate Court warranting interference by this Court in its constitutional jurisdiction. The mere assertion that the petitioner is unable to afford the awarded maintenance, without any convincing material demonstrating an erroneous assessment by the Courts below, does not furnish sufficient ground for interference.

10. It is a settled principle that constitutional jurisdiction is not intended to provide another forum for reappraisal of evidence or substitution of one possible view for another merely because a party is dissatisfied with the findings recorded by the Courts below. Nevertheless, where a material piece of evidence having direct bearing upon the controversy has not been considered or properly appreciated, and the resulting finding may affect the determination of substantive rights of the parties, interference becomes warranted to the extent necessary to rectify such omission. In the present case, the admission attributed to respondent No.1 regarding obtaining khula, coupled with the absence of a specific determination of its legal effect, raises an issue which requires reconsideration by the learned appellate Court.

11. In view of the foregoing discussion, I am of the considered opinion that the impugned appellate judgment cannot be sustained to the extent of determination of the entitlement of respondent No.1 to dower and her claim for maintenance without proper examination of the aforesaid aspect. Consequently, the instant petition is allowed to the extent indicated above. The judgment and decree dated 25.09.2023, passed by the learned IXth Additional District Judge

(MCAC), Karachi East, in Family Appeal No.247 of 2022, to the extent of the claim of respondent No.1 regarding dower and her maintenance, are set aside, and the matter is remanded to the learned appellate Court for fresh decision, after affording an opportunity of hearing to both parties and examining the relevant record, particularly the alleged admission of respondent No.1 regarding obtaining khula and, if available, the decree and proceedings relating thereto. The learned appellate Court shall record independent and reasoned findings regarding the legal effect of such dissolution upon the claim of dower and maintenance, strictly in accordance with law.

12. It is clarified that the findings of the learned appellate Court regarding entitlement of the minor to maintenance and the quantum thereof shall remain undisturbed. The learned appellate Court shall endeavour to decide the matter expeditiously, preferably within a period of two months from receipt of this order. Needless to observe that the observations made herein are confined to the controversy under consideration and shall not prejudice the independent determination of the matter by the learned appellate Court.

13. As regards the execution proceedings, the petitioner shall be at liberty to approach the competent Court for appropriate orders in accordance with law. No automatic suspension of the execution proceedings shall follow from this order.

The petition stands *disposed of* in the above terms.

JUDGE