

# IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-1062 of 2012

Present

**Mrs. Justice Kausar Sultana Hussain**

Mst. Naureen D/O Mukhtar Ahmed Mughal.....Petitioner

Versus

Nadir Ali Rajpur S/O Nizamuddin Rajpur & 2 others.....Respondents

Date of hearing : 28.03.2018

Date of Order : 28.06.2018

Mr. Aziz-ur-Rehman Akhund, advocate for petitioner

Mr. Muhammad Arshad Khan Tanoli, advocate for respondent No.1

## ORDER

**Kausar Sultana Hussain, J.:-** Through this constitution petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the Petitioner has impugned judgment dated 19.07.2012, passed by the learned IIIrd Additional District & Sessions Judge, Karachi East in Family Appeal No.165 of 2010, preferred by the Petitioner challenging therein the findings of the learned Family Judge to the extent of question of maintenance for herself, her minor baby and her dowry articles, whereby the learned Appellant Court has maintained the judgment dated 30.09.2010 passed by the learned XXth Civil & Family Judge, Karachi East in family Suit No.1659 of 2008 filed by the petitioner against the respondent for dissolution of her marriage by way of Khulla, maintenance and recovery of her dowry articles.

2. The necessary facts spelt out from instant petition are that petitioner/plaintiff got married with the respondent/Defendant on 26.01.2000 against dower amount of Rs.100,000/= (forgiven by the Petitioner/Plaintiff in lieu of Khulla). From the wedlock one daughter namely Aisha was born on 25.01.2001 at Karachi and all the delivery expenses were borne by the father of the petitioner/plaintiff. On 13.08.2006 at midnight, the respondent turned her

out alongwith the minor baby on instigation of his mother without any cogent reasons in wearing clothes and she was not even allowed to take her belongings and since then the petitioner/plaintiff is residing with her parents.

3. The respondent/defendant filed written statement, wherein he has denied the allegations imposed by the petitioner/plaintiff in her plaint.

4. The learned Family Judge / Trial Court proceeded the matter and at the stage of pre-trial, marriage of the parties was dissolved by way of Khulla in lieu of dower. However, the learned Trial Court after leading evidence of both the side while passing judgment in Family Suit dated 30.09.2010, granted maintenance allowance of the petitioner/plaintiff at the rate of Rs.3000/= per month from August 2006 till iddat period and maintenance of minor baby at the rate of Rs.8000/= per month from same period till the judgment dated 30.09.2010 and further maintenance at the rate of Rs.12,000/= per month from the date of said judgment till her marriage. The petitioner/plaintiff was declared entitled for the dowry to the extent of such articles which has been admitted by respondent/defendant in his written statement i.e. Blankets, bad sheets, water set, spoon set, Hotpot, few pairs of clothes and 04 bags. The learned Appellate Court while deciding the family appeal of the petitioner/plaintiff did not interfere in findings of the Family Court discussed supra for dowry and maintenance of the petitioner/plaintiff and her minor baby.

5. The learned counsel for the petitioner/plaintiff during course of the arguments questioned the findings of the learned both Courts below. He contended that impugned judgments of the learned trial court as well as leaned appellate Court are improper, unjust, unfair, arbitrary, unlawful being null and void has no legal effect in the eye of law. He further contended that the judgment of learned trial Court is based on misreading of facts and evidence therefore is not sustainable under the law. Per learned counsel for the petitioner/plaintiff, the courts below did not consider welfare of minor (ward) while deciding her monthly maintenance and also did not consider the

properties and income of the respondent/defendant which is about Rs.5,00,000/= per month. The learned counsel for the petitioner/plaintiff argued that admittedly the respondent/defendant is the owner of the apartment located in Askari Apartments worth of Rs.1.5 Crore, Agriculture lands and a car worth of Rs.14 lacs. He further argued that respondent/defendant is alcohol drinker and used to drink alcohol for Rs.5000/= per day, which fact was not denied by the respondent/defendant in his written statement. He pointed out that respondent/defendant was elected Nazim of native area and the learned courts below in spite of strong financial position of the respondent/defendant granted maintenance for the petitioner/plaintiff and her minor at very low rate which is insufficient for them. According to the learned counsel for the petitioner/plaintiffs, the tuition fee, school expenses, transport, books, food and medicines prices have gone exorbitant high for which the amount fixed by the courts below for minor baby is insufficient and not as per status and position of the respondent/defendant. Regarding plea of the respondent/defendant that the respondent/defendant. Regarding plea of the respondent/defendant that the petitioner/plaintiff took away gold ornaments from his house, given from his side to her at the time of marriage, the learned counsel for the petitioner/plaintiff argued that neither any notice was given by the respondent/defendant to the petitioner/plaintiff nor he produced any documentary evidence before the learned trial court in support of his claim, while his claim was denied by the petitioner/plaintiff in her cross examination. He has pointed out that the respondent/defendant has complied the order of interim maintenance granted by the learned trial Court vide order dated 08.03.2010, but the learned trial Court did not strike off the defense of the respondent/defendant in spite of moving and application by the petitioner/plaintiff in this regard and admitted the respondent/defendant has no proof regarding his claim of taking away the dowry articles by the petitioner/plaintiff. The learned counsel for the petitioner/plaintiff prayed for setting aside the negative findings of learned trial

Court discussed issues No.1 and 2 of its judgment dated 30.09.2010, passed order for returning her gold ornaments and fixed maintenance amount of the petitioner/plaintiff and her minor baby at the rate of Rs.25,000/= with 20% increased per annum. He further prayed that due to non-compliance of the order dated 08.07.2009 (for interim maintenance), the defense of the respondent/defendant may be struck off.

6. Conversely, the learned counsel for the respondent/defendant argued that contents of the petitioner/plaintiff are false and incorrect, however, admittedly after marriage, solemnized at Karachi on 26.01.2000 both the parties resided together in very nice and cordial manners and he did his level best to give his full love and affection of the petitioner/plaintiff in order to lead peaceful and happy matrimonial life. He further argued that after one year of marriage, one daughter namely Aisha was born on 25.01.2001 at Karachi, but all of sudden on instigation of her father she started demanding separate accommodation and in the month of August, 2006 without his permission, she left his house and took away all her gold ornaments. Per learned counsel for the respondent/defendant he and elite of the family tried to patch up their differences, but all efforts were proved as fruitless, however, respondent/defendant had continuously being visited her and paying necessary maintenance to the petitioner/plaintiff and minor daughter and got her admitted in Prestigious School of the vicinity as per his income and continuously paying the tuition fee of the minor. He further argued that in compliance of Court's order regarding payment of interim maintenance of the minor, he has regularly being depositing the same before the Nazir of the trial court till filing of the appeal, while marriage of the parties have been dissolved by way of Khulla on 30.09.2010 as the petitioner/plaintiff was not ready at any case to live with the respondent/defendant, therefore grant of past maintenance to petitioner/plaintiff is in absolute violation of settled norms of the Family Law as held by the Apex Courts. Per learned counsel for the respondent/defendant, the learned trial court has erred in enhancing future

maintenance of the minor without taking to consideration the means of income of respondent/defendant as disclosed by him in his deposition. He prayed for dismissal of present petition against the petitioner/plaintiff and in favour of the respondent/defendant.

7. After hearing arguments and perusal of the record available before this Court, I am of the considered view that the learned trial court while deciding the issue related with the claim of the dowry articles of the petitioner/plaintiff has committed no illegality or erred as the petitioner/plaintiff neither produced as single receipt of her alleged dowry articles including gold ornaments nor she produced list of dowry articles duly secured by the respondent/defendant or his any family member. In normal circumstances, when parties purchase gold ornaments for marriage of their daughter, they keep its receipts in their sale custody but in present case not a single receipt she produced therefore, the learned courts below rightly and legally taken view that petitioner/plaintiff not prove her claim of any gold ornaments by her parents as maintained in the list which was admitted prepared later-on after birth of minor and before filing Family Suit. However, the learned Trial Court did not consider the status and income of the respondent/defendant while fixing monthly maintenance of the petitioner/plaintiff and minor admittedly the respondent/defendant has his apartment in Askari apartments Karachi valued more than 1 Crore and admittedly having car of Rs.1,450,000/=. The minor daughter of the parties is studying in a reputed school and fee of the school was more than Rs.9,000/= per quarter, therefore, as per claim of the respondent/defendant that he got her admitted in that school, he should pay sufficient amount for the school fee, books, uniforms, school activities, food, clothes and health and the fixed amount of Rs.8,000/= or Rs.12,000/= is not sufficient amount, hence I increased it from Rs.12,000/= per month to Rs.20,000/= per month from August, 2006 with 10% increase per annum till her marriage. As far as maintenance of the petitioner/plaintiff is concerned, I am of the view that in Islam, husband is

bound to maintain his wife throughout the period she remains in matrimonial bonds with him unless it is proved that she is residing separately without any just cause and reason. The maintenance is neither a nature of gift nor a benefit but is an undeniable legal obligation on the shoulders of husband to maintain his wife. In instant case, the petitioner/plaintiff has not produced any witness to corroborate the version of the petitioner/plaintiff that the respondent/defendant has turned her out in midnight in three clothes. She filed a suit for Khulla and during reconciliation proceeding, at the time of pre-trial meeting the petitioner/plaintiff refused to join the respondent/defendant even for the sake of welfare of her daughter and preferred to live separate from her husband and kept the daughter away from her father. I relied upon the case law reported in 2004 CLC 1200 and 2003 YLR 1006 that "It is well settled law that if a wife refuses without any lawful justification to live with her husband, she is not entitled to any maintenance". The petitioner/plaintiff has not made any claim that during her stay with the respondent/defendant, she was not being maintained by the respondent/defendant besides she also failed to prove that she was ousted from the house of by the respondent/defendant in the midnight alongwith minor, therefore the learned trial Court and appellate court have not misread the evidence of the parties. I therefore, set aside the judgments of both the court below for fixation of monthly maintenance of the petitioner/plaintiff from August 2006 to the date of announcement of Khulla i.e. 30.09.2010, however, she is entitled for maintenance for iddat period at the rate of Rs.20000/= per month. Constitution petition is therefore allowed to the extent of the maintenance of the minor as elaborated above and partly dismissed for her claim of dowry and her maintenance from 13.08.2006 to 30.09.2010.

JUDGE