

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**C.P No.S-1766 of 2016**

Date	Order with signature of Judge
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**Hearing/Priority Cases.**

1. For orders on office objection as at “A”
2. For hearing of main case.
3. For hearing of CMA No.7679/2016 (Stay)

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**26.10.2018**

Ms. Rabia Javed, advocate for the Petitioner.

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**NAZAR AKBAR; J:-** This constitutional petition is directed against the judgment and decree dated **11.5.2016** passed by the II-Civil/Family Judge, West Karachi in Family Suit No.1340/2015 whereby suit filed by the Petitioner was decreed ex-parte dissolving marriage of the Petitioner with Respondent No.1 by way of Khula in lieu of her dower, subject to return of received dower of 2.5 tola gold, to be deposited in the Nazarat branch for its return to Respondent No.1. It was further ordered that the Petitioner is also entitled for past maintenance since May, 2014 as such Respondent No.1 was directed to pay maintenance to the Petitioner at the rate of Rs.2,000/- per month from May, 2014 till her iddat period. It was also ordered that Petitioner is also entitled for return of dowry articles or alternatively payment of its equivalent value of Rs.20,000/- and 02 tola gold or alternatively equivalent value.

2. Precisely the facts of the case are that the Petitioner had performed Nikkah with Respondent No.1 on **24.10.2013** and dower amount was fixed as 2<sup>1</sup>/<sub>2</sub> tola gold. However, it is alleged that mother of Respondent No.1 namely Niaz bibi forcibly snatched all the gold ornaments on the 10<sup>th</sup> day of marriage in presence of Respondent

No.1's sisters namely Husna, Darbar Bibi, Bismeen and Farzana. From the said wedlock no issue was born. It was averred that after marriage Respondent No.1 badly beaten the Petitioner and since May, 2014, Petitioner was residing at her parents' house and during that period Respondent No.1 has neither provided any maintenance nor food to the Petitioner and failed to perform conjugal rights. On **21.7.2014** Respondent No.1 entered into second marriage and in such circumstances the Petitioner has no affection for Respondent No.1 and does not want to live with him within the limits prescribed by Almighty Allah. Therefore, the Petitioner filed said suit for dissolution of marriage by way of khula and return of dower articles and maintenance.

3. Respondent No.1 was served but he failed to appear before the trial Court, therefore, service upon him was held good on 16.01.2016 and subsequently above ex-parte judgment and decree was passed by the trial Court which is impugned by the Petitioner through instant constitution petition.

4. Learned counsel for the Petitioner was directed to satisfy the Court that how this petition is maintainable against the final judgment and decree in the family suit passed by the learned family Judge. The order impugned before this Court is appealable in terms of **Section 14(1)** of the **Family Court Act, 1964** before the District and Sessions Judge since the Presiding Officer of the Court of impugned judgment was II-Senior Civil and Family Judge, East Karachi. **Section 14(1)** of the Family Court Act, 1964 is reproduced below:-

14. *Appeal. (1) Notwithstanding anything provided in any other law for the time being in force a decision given or a decree passed by a Family Court shall be appealable--*

- (a) *to the High Court, where the Family Court is presided over by a District Judge, an Additional District Judge, or a person notified by Government to be of the rank and status of a District Judge or a Additional District Judge.*
- (b) *[to the District Court, in any other case.].*

5. Despite the fact that there is clear-cut remedy available under the law, the learned counsel for the Petitioner insists that this petition should be admitted and she relied on the judgment in the case of Abdul Aleem Khan vs. Tabinda Naseer Qazi and another reported in **PLD 2011 Karachi 196**. Unfortunately the judgment relied upon by the Petitioner is also against her.

6. In view of the above and particularly on the strength of the case law relied upon by the learned counsel herself, instant petition is dismissed alongwith pending applications with no order as to costs.

JUDGE