

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.556/2018

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before: Mr. Justice Nazar Akbar

Petitioner: Muhamad Zeeshan through
Mr. Qayyum Nawaz Kundi, Advocate.

Versus

Respondent No.1: Sidra Mehmood Mughal,
Respondent No.2: Dua Gul,
through Mr. Muhammad Faisal,
advocate.

Respondent No.3: XIth ADJ & Session Judge, South
Karachi.

Respondent No.4: XXI Family Court, South, Karachi.

Date of hearing: **06.03.2020**

Date of Judgment : **06.03.2020**

JUDGMENT

NAZAR AKBAR, J. The petitioner through this constitutional petition has challenged the order dated **29.11.2017** passed by XIth Addl. District Judge, South Karachi, in Family Appeal **No.29/2017**, whereby the order dated **21.03.2017** passed by XXIth Family Judge, South Karachi in Family Suit **No.10/2016** was modified in favour of the petitioner and case was remanded to the trial Court.

2. Briefly stated the facts of the case are that Respondent No.1 filed Family Suit **No.10/2016** for maintenance, past and present, recovery of Delivery Expenses and dowry amount in the Family Court. On service the petitioner filed written statement wherein he partially admitted and denied all claims and allegations and raising

dispute of factual nature. The trial Court struck off the defence of the defendant/petitioner on **18.10.2016** for non-compliance of order passed on application 17-A.

3. After framing of issues, recording of evidence and hearing the parties, learned trial Court by order dated **21.03.2017** decreed the suit of Respondent No.1 in the following terms:-

“Suit of the plaintiffs is decreed with no order as to cost, Defendant is directed to pay past maintenance of Plaintiff No.1 at the rate of Rs.10,000/- from the month of April, 2015 till the eddat period, Defendant is further directed to return the dowry amount of Rs.1,30,000/- and defendant is directed to pay the medical expenses only of Rs.50,000/-. Defendant is directed to pay past maintenance of plaintiff No.2 as per the interim order and pay the arrears till March, 2017. Defendant is directed to pay future maintenance at the rate of Rs.18,000/- as monthly future maintenance for plaintiff No.2 i.e. from the month of April, 2017 onwards till her legal entitlement with increment of 20% per annum for future maintenance”.

Petitioner filed appeal and the appellate Court in appeal again examined the facts of the case and the evidence and modified the judgment in the following terms:-

“As a result, decrease the rate of annual increase in the future maintenance of Respondent No.2 to ten percent per annum and maintain the impugned judgment accordingly and dismiss this appeal to the extent of maintenance of respondents No.1 and 2 while I would partly allow this appeal and set aside the impugned judgment to the extent of dowry money claimed by respondent No.1 from appellant. Let the case be remanded to learned Family Judge concerned with direction to proceed with family suit on issue No.3 only and decide it afresh after recording of evidence of both the sides on that issue. Appeal stands partly dismissed and partly allowed”.

The petitioner has preferred instant petition against the two judgments.

4. I have heard learned counsel for the parties and perused the record.

5. Learned counsel for the petitioner has assailed both the orders but unfortunately he has not identified any misreading and non-reading of evidence in coming to the conclusion by both the Courts below, not a single sentence from the evidence has been referred to by the learned counsel to assert that the two judgments suffer from any illegality on account of misreading of evidence.

6. It is settled law that constitution petition does not lie against concurrent findings of facts and therefore, this petition is dismissed alongwith listed application being not maintainable.

JUDGE

Karachi
Dated:06.03.2020

SM