

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.**

C.P. No.S-865 of 2019.

Atta Hussain	-----	Petitioner
	VERSUS	
Mst. Nazia & another	-----	Respondents

Date of hearing & decision: 05 .10.2020.

Mr. Abdul Sattar Sarki advocate for the petitioner.

\* \* \* \* \*

ORDER

**ADNAN-UL-KARIM MEMON, J -** The captioned Petition is directed against the judgment dated 6.9.2019 and decree dated 7.9.2019 passed by the learned 8<sup>th</sup> Additional District Judge Hyderabad whereby he maintained the judgment and decree of learned Family Court in Family Suit No. 1320 of 2017.

2. The precise facts of the case are that respondent No.1 married with petitioner on 15.05.2014. Out of the said wedlock, one baby boy namely Muhammad now aged about 1 & half year was born. The relationship between the couple remained strained, compelling respondent No.1 to file Suit No.1320 of 2017 for Dissolution of Marriage by way of Khulla, Recovery of Dowry Articles, and Maintenance before Family Court Hyderabad. Petitioner contested the matter and controverted the allegations leveled against him. From the pleadings of the parties, following issues were framed.

1. Whether the plaintiff is entitled to recovery of remaining dowry articles as per the list if yes in what shape?
2. Whether the plaintiff is entitled to the maintenance for herself? If yet at what rate? for what period?
3. What should the decree be?

3. On the above issues both the parties adduced their respective evidence. The learned trial court after hearing the parties passed the impugned judgment and Decree dated 02.05.2018. The petitioner being aggrieved by and dissatisfied with the aforesaid judgment and decree filed Family Appeal No. 79 of 2018 before Additional District Judge Hyderabad, who concurred with the decision of

learned Family court vide judgment dated 6.9.2019 and decree dated 7.9.2019 with the following observation:-

“POINT NO. 1:-

10. On this point the respondent has deposed that she was given dowry articles at the time of her marriage including gold ornaments. No, any single suggestion was put to the respondent during her cross-examination, and as such the version of the respondent to the extent had gone unchallenged and un-rebuttal. Moreover, the appellant in his written statement stated that some household articles including a Tea set, Water set, Dinner Set, and one Charpai were given to the respondent which was used by the respondent during her stay with the appellant. So far the gold ornaments given at the time of marriage to the respondent by her parents, the respondent has failed to prove that gold ornaments were given to her by her parents. However, it is custom in our society that the parents of the wives always give articles to their daughters, and the said custom is followed by parents of all classes irrespective of their financial status. The reliance can be placed on 2017 SCMR 393.

11. It may be observed that the respondent has annexed the list of dowry articles though not produced in evidence, along with her plaint. So far the maintenance of the respondent is concerned. It is the case of the respondent that she was ousted out in three cloths from his house by the appellant. No single question or suggestion was put during the cross-examination of the respondent

to rebut her version. Hence it is settled law that when a portion of evidence deposed against the other party is not disputed or denied during cross-examination, the presumption would be that the party against whom such fact is deposed has accepted the same. Moreover, there is a contradictory version of the appellant regarding the ousting house the respondent from his house. In the written statement the appellant says that the plaintiff/respondent left his house after pre-planning at night time without his permission, while in evidence he says that in the year 2017 the respondent left his house with her brother and took away gold ornaments and other valuable articles in his absence without his permission and left minor at his house. The appellant has also failed to prove that the respondent was a disobedient wife. Admittedly the respondent is residing at her parent's house and the appellant has failed to prove that he had provided maintenance to the respondent. Admittedly the minor is residing with the respondent. Therefore the appellant being the real father of the minor is duty-bound to provide maintenance to the minor.

12. In view of the above discussion I find that the learned trial court has passed the impugned Judgment and Decree legally and did not commit any irregularity or illegality. Hence the same does not require any interference. The point No.1 is answered in Negative.

POINT NO.2:-

13. In view of my findings on point No.1, the impugned Judgment and Decree are hereby maintained. Consequently, the appeal in hand stands dismissed with no order as to costs.”

4. Mr. Abdul Sattar Sarki learned counsel for the petitioner, contended that the Petitioner being a father of minor can be held responsible for payment of maintenance to Respondent No.1 according to his financial position; that the Petitioner is denied relief based on technicalities; that even in absence of any evidence, learned Family Court was obliged to consider all the relevant factors while fixing the quantum of maintenance; that the impugned Judgment and Decree lacks application of judicious mind by learned Family Judge. Learned

counsel added that even otherwise the Petitioner has a meager source of income to satisfy the Decree of learned Appellate Court, which is harsh and arbitrary. It is contended that Appeal is dismissed by learned Additional District Judge arbitrarily based on extraneous factors; that learned Appellate Court has failed to discuss the age factor of the minor; that learned Family Court erroneously relied upon the photocopies of documents produced by Respondent No.1 which were never produced in evidence; that the impugned Judgment and Decree of learned Family and Appellate Court are not sustainable under the law. Therefore, prayed for setting aside the same.

5. I have heard learned counsel for the petitioner on the point of maintainability of instant petition.

6. Prima-facie the issue involved is 'maintenance allowance' for Respondent No.1 and minor child by the Petitioner.

7. 'Maintenance' means and includes food, clothing, and lodging which is the responsibility of the father to pay his children and wife. In this regard, it is noted that Section 17(A) of the West Pakistan Family Courts Act, 1964 specifically provides in sub-section to fix maintenance. The Honorable Supreme Court of Pakistan has considered the aforesaid issue in the case of Humayun Hassan v. Arslan Humayun and another (PLD 2013 SC 557) and held as under:-

"Again in interpreting the word "maintenance" some reasonable standard must be adopted. Whilst it is not confined merely to food, clothing, and lodging, it cannot, by any stretch of the imagination, be extended to incorporate within its education at higher levels ad infinitum. What is necessary to decide in this connection is to find out as to what amount of education has to be attained by the child concerned, having regard to the status and other circumstances of his family, to enable it to earn a complete livelihood by honest and decent means. Thus it may not be sufficient to say that the child of a tradesman can maintain itself by working as coolly or by thieving. What is required is that the child must be maintained until it is in a position to earn its livelihood, in an honest ad decent manner in keeping with its family status."

8. Learned counsel for the Petitioner has not been able to point out any illegality, infirmity or jurisdictional defect in the impugned judgments and decrees passed by learned Family and Appellate Court.

9. In the light of the foregoing, I have formed a view that it is the responsibility of the Petitioner (father) to take care of his minor children as well as his estranged wife. The mere statement of the Petitioner that he is not earning much does not discharge him from the said responsibility.

10. Under the law, the object of determining maintenance is to ensure in all probability that the minor(s) is/are maintained by the father in a dignified manner

with reasonable comfort, and the mother is not left to bear the financial burden of the minor(s).

11. From the foregoing legal as well as the factual aspect of the case, I hereby conclude that the decision of learned Family as well as Appellate Court is fair, and just hence, the same is maintained.

12. Consequently, this Petition is dismissed with no order as to costs.

**JUDGE**

Karar\_hussain/PS\*