

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S – 698 of 2021

Date	Order with signature of Judge
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1. For order on office objections 1 and 18 as at 'A' :
2. For orders on CMA No.4501/2021 (Exemption) :
3. For orders on CMA No.4501/2021 (Stay) :
4. For hearing of main case :

02.11.2021 :

Ms. Afroz Haq, advocate for the petitioner.

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NADEEM AKHTAR, J. – Family Suit No.292/2020 was filed by respondents 2, 3 and 4 against the petitioner for maintenance of respondent No.2 (wife) and respondents 3 and 4 (minor children), and recovery of dower amount of respondent No.2. Vide impugned judgment and decree dated 07.01.2021, the learned Family Court decreed the Suit to the extent of maintenance of respondents 2, 3 and 4, however, the dower amount claimed by respondent No.2 was declined on the ground that she had sought khula.

The main ground urged on behalf of the petitioner is that he was condemned unheard by the learned trial Court as the Suit was decreed against him ex-parte, and that the Suit ought to have been decided on merits. This contention is misconceived as the petitioner had contested the Suit by filing his written statement therein whereafter issues were settled by the learned trial Court. Perusal of the impugned judgment shows that the petitioner / defendant not only failed to cross-examine respondent No.2 / plaintiff, but also failed to lead evidence. In the above circumstances and after evaluating the evidence produced by respondent No.2, it was held by the learned trial Court that the evidence produced by her had remained unchallenged and un-rebutted. The record shows that the petitioner himself had chosen to remain absent at the time of cross-examination of respondent No.2 and also at the time of his own evidence. In view of the above, it cannot be said or claimed that the petitioner was condemned unheard or the Suit was decided ex-parte.

The other ground urged on behalf of the petitioner is that the transfer application filed by him, seeking transfer of the Suit from the learned trial Court to some other Court, was pending before this Court when the Suit was decreed. It is a matter of record that no restraining order was ever passed and or operating in the said transfer application when the Suit was pending before the learned trial Court or at the time when the decree was passed therein. It is well-

settled that merely filing of an appeal and or transfer application does not operate as a stay.

Through the impugned judgment and decree, an amount of only Rs.5,000.00 per month was granted to respondent No.2 (wife) towards her maintenance till the completion of her iddat, and only an amount of Rs.5,000.00 each was granted to respondents 3 and 4 (minor children) towards their maintenance from the date of institution of the Suit till January 2021 with an increase of 10% therein per annum. The above mentioned amounts granted by the learned trial Court do not appear to be arbitrary, unjust or excessive. It may be observed that even a small pet cannot be maintained these days in Rs.5,000.00 per month. The impugned judgment and decree do not suffer from any illegality or infirmity and as such do not require any interference by this Court.

Accordingly, this petition and listed applications are dismissed in limine with no order as to costs.

J U D G E