

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

C.P. No. S-466 of 2021

Petitioner : Nemo for petitioner

Respondent : Through Mr. Muhammad Jameel, Advocate

Date of Hearing & Decision : 06 .12.2021

ORDER

ADNAN-UL-KARIM MEMON J: Through instant petition, the petitioner has prayed as under:-

- a. That this Honourable Court may be pleased to call the R&Ps of Family Appeal No. 02 of 2021 from the court of learned 1st Additional District Judge, Umerkot and R&Ps of Family Suit No. 61 of 2019 (Re-Mst. Urooj v. Aijaz-ul-Haque) from Civil Judge & Family Judge, Kunri, District Umerkot.
 - b. That this Honourable Court may kindly be pleased to set-aside the impugned Judgment and Decree dated 12.08.2021 passed by respondent No.3 or pass any other appropriate order in the circumstance of matter in hand.
2. Brief facts of the case as per memo of the petition are that respondent No.1 filed Family Suit No. 61 of 2019 against petitioner for dissolution of marriage by way of khula, recovery of delivery/maternity expenses, recovery of dower, dowry articles, and maintenance. It is asserted that the marriage of the parties took place on 18.4.2016; out of wedlock one son namely Hassan Ali is two years old; that after marriage the respondent came to know that the petitioner was already married and addicted to narcotics, he used to quarrel and maltreat her; therefore, she filed the above suit.
3. After the filing of suit, the petitioner filed written statement denying the allegation of respondent No.1.
4. Pre-trial proceedings stood failed and khula was granted to respondent No.1 in lieu of dower amount and for remaining controversy following issues were framed.
- i. Whether the plaintiff is entitled to delivery expenses of minor Hassan Ali?

- ii. Whether the plaintiff is entitled to gold ornaments of five tola and dowry articles as per the list?
- iii. Whether the plaintiff is entitled to maintenance for herself and minor Hassan Ali? If yes, since when and at what rate?
- iv. What should the Decree be?

5. Learned trial court on the pleading of the parties recorded evidence and after hearing counsel for the parties passed Judgment dated 13.02.2021 partly decreeing the suit of respondent No.1; an excerpt whereof is as under:-

“REASONS

ISSUE NO.1:

(Whether the plaintiff is entitled to delivery expenses of minor Hassan Ali?)

10. It is settled principle that one asserts any fact burden to prove whereof lies on his shoulder. As far as the question of medical expenses is concerned, the plaintiff claims Rs.65,000/- towards delivery expenses, and in this regard she deposed that she herself bore all her delivery expenses while PW Zahida Parveen also supported the version of the plaintiff by deposing that her daughter (plaintiff) had borne expenses of her delivery. Perusal of record shows that plaintiff is residing in Kunri along with her parents while defendant is resident of Mirpurkhas. The plaintiff deposed that she resided with the defendant for about 13 to 14 months, meaning thereby after marriage spouses resided in Mirpurkhas and as per deposition of plaintiff herself, she gave birth to minor Hassan at American Hospital at Mirpurkhas and in this regard plaintiff's mother (PW Zahida Parveen) also admitted during her cross examination that at the time of delivery she was residing with her husband, hence, it is established that at the time of delivery the plaintiff was in Mirpurkhas with her husband/defendant. The defendant deposed that he had taken the plaintiff to hospital, while the plaintiff has not deposed as to who took her to American Hospital Mirpurkhas or as to who was accompanied with her when she was admitted in hospital, but in this regard PW Zahida Parveen deposed in cross examination that the defendant had called her and then she had gone to Mirpurkhas and taken the plaintiff at hospital which means only mother of the plaintiff was accompanied with her when she was hospitalized as per their evidence. Whereas, in respect of expenses the plaintiff has already deposed that she herself bore expenses of her delivery, but in para No.6 of the plaint she mentioned that her parents had paid the expenses. The version of the plaintiff is self contradictory besides, PW Zahida Parveen, who was said to be accompanied with the plaintiff, has not deposed as to how much expenses were incurred on delivery of the plaintiff or who paid the hospital bills. Moreover, the plaintiff has not produced even a single receipt of hospital to establish her claim. The burden of proving the instant issue was on the shoulder of the plaintiff by producing sound evidence, but the plaintiff remained failed in doing so, therefore, she is not entitled to delivery expenses. Consequently, issue No.1 is replied as negative.

ISSUE NO.2:

(Whether the plaintiff is entitled to gold ornaments of 5 tola and dowry articles as per list?)

11. As far as issue of dowry articles is concerned, it is an admitted fact that at the time of marriage parents of bride give her dowry articles according to their financial capacity. During evidence, the plaintiff deposed that “At the time of marriage my parents had given me dowry articles i.e. 05 tolas gold including one Necklace Set, one Chain Set and two male rings; furniture including bed, divider, almirah, dressing table and sofa set; fridge, LCD, Oven, Swing Machine, Washing Machine, Iron, Sandwich Maker, Juicer, Marble Dinner Set, Plastic Dinner Set, Two Water Sets, Spoon and Fork set, and other crockery, 15 suits, bathroom set, one iron box, 10 Bistar, 10 razai, 03 kambal, 06 bedsheets”. In support of her evidence she has produced list of dowry articles and fourteen (14) original receipts and also examined her mother who deposed that “At the time of marriage we had given dowry articles i.e. bed, almirah, divider, dressing table, sofa set, washing machine, swing machine, Fridge, LCD, juicer, microwave, Sandwich machine, 04 Degchey, spoons and fork set, Bathroom set, two iron boxes, 10 bistra, 10 razai, 03 kambal, 10 Khais (rali), 15 suits, 02 bags, 05 tolas gold”. Whereas, the defendant has denied if the plaintiff was given dowry articles as per list and deposed that the plaintiff has exaggerated list of dowry articles, however, he admitted that dowry articles were given to her and in this regard he deposed that “He did not know what dowry articles are lying at my house as the plaintiff herself locked the room which is still locked and all keys are lying with the plaintiff”, while in para No.2 of written statement he mentioned that plaintiff was given dowry articles worth of Rs.30,000/-. The plaintiff has categorically mentioned in her evidence the items/articles which are ordinarily given to a bride at the time of her marriage and she also produced receipts of articles. Reliance is placed on the case of **“Shafique Sultan v. Mst. Asim Firdous & others” (2017 SCMR 393)**, wherein Honourable Supreme Court has held that *“we have also gone through the list of dowry articles (Ex.P2) and found that the same consist of articles of daily use which are generally given to brides at the time of their marriages. We have not found any articles(s) which may be termed as extravagante or beyond the financial resources of the respondent’s family. Giving dowry articles to daughters is in line with custom/tradition and practices which are deeply rooted in our society and are followed by parents of all classes irrespective of their financial status”*, while the defendant though has not admitted dowry articles as per list yet he admitted that the plaintiff was given dowry articles and further deposed that he has no objection if plaintiff takes away her dowry articles.

12. So far as the claim of the plaintiff for recovery of gold ornaments is concerned, the plaintiff also claims that she was given five tolas of gold at the time of her marriage. It is general presumption that the gold ornaments are always possessed by females. In para No.8 of the plaint the plaintiff mentioned that defendant had snatched gold ornaments at the time of ousting her from his house, but during evidence she has not uttered a word if her gold ornaments were snatched by the defendant at the time of ousting, therefore, in absence of any evidence of snatching, version of the plaintiff cannot be believed. In this regard I place reliance on the judgment reported in the case of **“Javed Iqbal v. Additional District Judge Faisalabad & another” (2017 CLC Note 25)** wherein it is held that *“however, it has failed to appreciate a generally accepted principle that gold ornaments are always retained by the women in her personal possession and, therefore, in absence of any evidence of its snatching away the same are presumed to be with them.”*

13. In view of above reasons and case law cited supra, the plaintiff is entitled to dowry articles as per list or their value for an amount of Rs.2,50,000/- except gold ornaments, hence, instant issue is replied as partly affirmative.

14. The plaintiff during evidence has also prayed for return of amount of Rs.1,43,000/- borrowed by the defendant from her through

cheques during her stay with the defendant. The claim of the plaintiff does not fall within the jurisdiction of this court being a family court and that the plaintiff is at liberty to approach competent court.

ISSUES NO.3:

(Whether the plaintiff is entitled to maintenance for herself and minor Hassan Ali? If yes, since when and at what rate?)

15. As far as question of maintenance of the plaintiff is concerned, the plaintiff alleges that the defendant failed to provide maintenance to her, therefore, burden to prove this issue lies on her shoulder. It is settled principle that the husband is legally bound to maintain his wife till she is obedient and faithful to him. Reliance is placed on the judgment reported in the case of "Mst. Amreen v. Muhammad Kabir" (2015 YLR 170) wherein it is held that *"it can safely be concluded that it is the duty of the husband to maintain a wife till she is faithful to him and ready to live with him in his house and perform her part in this respect, but if a wife abandons the residence of his husband voluntarily without any reason and is not ready to live with him as his wife, then she is not entitled to past or future maintenance. It is further observed that if a wife is ousted from the house by husband or she is forced to leave the house of her husband due to cruelty-physical or mental by the husband or other inmates of his family, she is entitled for maintenance charges."*

16. The plaintiff alleged that the defendant never maintained her properly and that he had ousted her from his house. In order to prove this issue, the plaintiff testified herself and stated that her marriage with the defendant was solemnized on 18.04.2016. She has deposed that after five days of her delivery the defendant ousted her and did not pay maintenance since then. PW Zahida Parveen also deposed that the defendant had ousted the plaintiff after 4 or 5 days of her delivery. The plaintiff further deposed that the defendant neither came to take her back home nor did he come to see his child or provided maintenance. The plaintiff has nowhere deposed if the defendant failed to provide her maintenance prior to her delivery and from the record it appears that the plaintiff is claiming maintenance for herself and minor after she gave birth to minor Hassan Ali, hence, inference can be drawn that the plaintiff was being maintained till the date of her delivery. Besides, it has come on record that the plaintiff is a primary school teacher and during her cross examination she deposed that *"I was posted in Kunri during the period of my stay with the defendant"*, but she denied if she was residing in Kunri and in this regard she deposed that *"It is incorrect to suggest that I was residing in Kunri due to my posting Vol: says that I was availing earned leaves and I had also applied for my transfer"*. It is now proved that the plaintiff being a primary school teacher was posted in Kunri and there is no any proof if she had availed any earned leave. The plaintiff had to perform her job in Kunri, hence, it can safely be presumed that due to her posting she was herself residing in Kunri, hence, it was not obligatory on the defendant to maintain his wife as she was herself residing in Kunri due to her job, hence, she is not entitled to maintenance. However, it is admitted position that the wedlock between the plaintiff and the defendant ended on 28.01.2020 when Khula was granted to the plaintiff, hence, it is obligatory on the defendant to provide maintenance to the plaintiff for Iddat period. Thus, the plaintiff is entitled to maintenance for Iddat period. As far as duration of Iddat period is concerned, it is already settled by the Honourable Supreme Court of Pakistan in the case of "Allahdad v. Mukhtar" reported in 1992 SCMR 1273 that the duration of Iddat period is 39 days. Hence the plaintiff is entitled for maintenance of Rs,10,000/- for Iddat period.

17. With regard to maintenance of the minor, there is no record if the defendant has ever paid maintenance to his minor. It is admitted

fact that the defendant is father of the minor and he is under obligation to maintain his minor and bear all his expenses who has been continuously residing with her mother/plaintiff since birth, but he/defendant failed to perform his parental obligation, therefore, plaintiff is entitled to maintenance of the minor since his birth.

18. As far as quantum of maintenance is concerned, the plaintiff claims past and future maintenance for the minor at the rate of Rs.20,000/- per month with 20% increase per annum. In order to determine the quantum of maintenance, factors of social status of the husband and his capacity of payment are to be considered according to his income. During evidence neither the plaintiff nor her witness utter a single word about the job/work and earning of the defendant, and there is no any record as to how much is monthly earning of the defendant. However, the defendant during his evidence himself disclosed to be a zameendar (landlord), hence, he has reasonable source of earning, therefore, I find Rs.8,000/- per month sufficient towards past and future maintenance of the minor with 10% increase per annum. In view of reasons discussed supra, issues No.3 is replied as partly affirmative.

ISSUE NO.4:

19. For what has been discussed above the suit of the plaintiff is hereby partly decreed as per prayer clause (c) & (e) to the extent of dowry articles as per list except gold ornaments, maintenance of minor at rate of Rs.8,000/- per month from July, 2017 with 10% increase per annum and maintenance of the plaintiff for an amount of Rs.10,000/- in total only for iddat period. The defendant is directed to pay decretal amount and return dowry articles of their value of Rs.2,50,000/- to the plaintiff within two months from the date of judgment. There is no order as to costs. Let such decree be prepared accordingly.”

6. Against the said Judgment the petitioner preferred Family Appeal No. 02 of 2021 before learned 1st Additional District Judge, Umerkot, who after hearing the parties passed Judgment dated 11.8.2021 modified the Judgment and Decree of the trial Court; an excerpt whereof is reproduced:-

“REASONS

POINT NO.1

From the perusal of the entire record available in the record of the case file, it shows that suit was filed before the Court of learned Civil/Family Judge Kunri on 02-12-2019 thereafter, the suit of the plaintiff was decreed by the said Court on 13-02-2021. Then, the appellant/defendant filed the instant appeal on 04-03-2021, and accordingly same is maintainable.

POINT NO.2

From the perusal of record and judgment passed by learned trial Court dated: 13-02-2021 shows that learned Civil and Family Judge decreed the suit as per clause (c,) and (e) to the extent of dowry article as per list except gold ornaments and maintenance of minor at the rate of 8,000/- per month from July 2017 with 10% increase per annum and the maintenance of plaintiff for an amount 10,000/- in total only for Iddat period. Today, the appeal was fixed for arguments,

however, both the learned advocates with consent of parties agreed to decrease the maintenance of minor from Rs. 8000/- to Rs. 6000/- per month with 10% increase per annum. Hence, appellant/defendant is directed to pay maintenance of the minor at the rate of 6000/- per month from July 2017 with 10% increase per annum. The appellant/defendant is further directed to return all the dowry articles to the respondent/plaintiff within a period of one month in presence of bailiff of this Court.”

7. The petitioner being aggrieved by the said Judgments has now filed the instant petition. However, when the matter was called he has chosen to remain absent, thus I have no option but to hear the parties present in this case.

8. As per pleadings of the petitioner, respondents 2 and 3 did not consider that the parents of respondents at the time of marriage did not give any dowry articles and the list provided by respondent No.2 is fake and managed one; that learned trial court did not consider that the petitioner presently is jobless and deals with the business of vehicles on daily basis and there is no permanent source of income of the petitioner, hence imposing huge amount of maintenance is against the basic spirit of law; that the father of petitioner supported the 2nd marriage of petitioner and he has children from the first marriage, hence the petitioner cannot bear the huge amount of maintenance and dowry articles; that learned appellate court also did not consider the documentary as well as oral evidence properly and passed the impugned Judgment and Decree. He prayed for allowing the instant petition.

9. Prima-facie the issue involved in the present matter has already been settled by the learned Appellate Court as discussed supra. Only I would like to add that Maintenance’ means and includes food, clothing, and lodging which is the responsibility of the father to pay to 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 and decent manner in keeping with its family status.”

10. The petitioner though called absent, however, I have gone through his pleadings but do not see that he has been able to point out any illegality or infirmity or jurisdictional defect in the impugned judgment and decree passed by learned Appellate Court in Family Appeal No. 02 of 2021 (Re. Aijaz-ul-Haq Vs. Mst. Urooj).

11. 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 child. The mere statement of the Petitioner that he is not earning much does not discharge him from the said responsibility.

12. 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).

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

14. Consequently, this Petition being meritless is accordingly dismissed with no order as to costs.

JUDGE

Karar_Hussain/PS