

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S – 1563 of 2014

M/S Mehmood Habibullah and Fahim Zia,
advocates for the petitioner a/w the petitioner.

Ms. Uzma Khan, advocate for respondents 2 to 5
a/w respondent No.2.

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ORDER

NADEEM AKHTAR, J. – Through this Constitutional Petition under 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has impugned the order passed on 13.10.2014 by the learned IIIrd Civil & Family Judge Karachi Central in Execution Application No.45/2013 filed against him by respondents 2 to 5, whereby his application for recalling the order dated 12.08.2014 was dismissed.

2. Relevant facts of the case are that the petitioner was the husband of respondent No.2 and the real father of minor respondents 3 to 5. He had pronounced divorce to respondent No.2 on 24.12.2010. Family Suit No.1912/2010 was filed against him by respondents 2 to 5 for recovery of the respondent No.2's dower amount of Rs.20,000.00, for maintenance of minor respondents 3, 4 and 5 at the rate of Rs.5,000.00 per month per child from the date of their birth till the subsistence of their legal entitlement with 20% increase therein per annum, for maintenance of respondent No.2 at the rate of Rs.5,000.00 per month from the date when she was left by the petitioner till completion of her *iddat*, for recovery of the respondent No.2's dowery articles or Rs.150,000.00 in lieu thereof, and for recovery of Rs.300,000.00 and Rs.20,000.00 borrowed by the petitioner from the parents of respondent No.2. The Suit was contested by the petitioner, however after hearing the parties, the same was decreed by the learned trial Court vide judgment and decree dated 19.10.2012, whereby respondent No.2 was awarded an amount of Rs.10,000.00 towards the remaining dower amount and maintenance at the rate of Rs.5,000.00 per month only for the period of her *iddat*, and maintenance was granted to minor respondents 3, 4 and 5 at the rate of Rs.3,000.00 per month from the date of institution of the Suit with 10% increase per annum till they attain the age of majority. The claim of respondent No.2 in respect of her dower articles and other amounts was rejected.

3. Thereafter, respondents 2 to 5 filed Execution Application No.45/2012 against the petitioner seeking execution of the decree passed in their favour. Vide

order dated 28.02.2014, the Execution Application was allowed by the learned executing Court with direction to issue writ of attachment in terms of the judgment and decree. It is pertinent to mention here that the aforesaid order dated 28.02.2014 was not challenged by the petitioner. In pursuance of the said order, writ of attachment was issued on 12.08.2014 for attachment of the monthly salary of the petitioner. On 29.08.2014, an application was filed by the petitioner for recalling / setting aside the order dated 12.08.2014, which was dismissed through the impugned order dated 13.10.2014 on the ground that no cogent ground was shown for recalling the said order.

4. It is an admitted position that the judgment and decree passed by the learned trial Court whereby the Suit was decreed, and the order dated 28.02.2014 passed by the learned executing Court whereby the Execution Application filed by respondents 2 to 5 was allowed with direction to issue writ of attachment, had attained finality as the same were not challenged by the petitioner. As far as the impugned order dated 13.10.2014 is concerned, the petitioner did not avail his remedy by filing an appeal against it. Without availing and exhausting the remedy provided under the law, this petition is not maintainable under Article 199 of the Constitution. The petition is, therefore, liable to be dismissed.

5. These are the reasons of the short order announced by me on 22.01.2016, whereby this petition was dismissed along with CMA No.6741/2014 with no order as to costs.

J U D G E