

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

CP No. S- 794 of 2021

Petitioner : Muhammad Shafique through
Mr. Agha Kousar Hussain, Advocate

Respondent : Mst. Aisha and others
Nemo.

Date of hearing
and Order : 29.08.2022

ORDER

ADNAN-UL-KARIM MEMON, J. Through the instant constitutional petition, the petitioner has called in question the judgment dated 7.10.2021 passed by learned 4th Additional District Judge / MCAC, Shaheed Benazirabad in Family Appeal No. 16 of 2021, whereby the learned Judge dismissed the appeal and maintained the Judgment dated 30.3.2021 passed by learned Civil Judge & Judicial Magistrate-I, Daur in Family Suit No. 25 of 2019, inter-alia on the ground that respondent- Mst. Aisha filed Suit for Maintenance and Delivery expenses, which was partly decreed vide Judgment dated 13.3.2021, appeal preferred was also dismissed with certain modification, hence the instant petition

2. Agha Kousar Hussain learned counsel for the petitioner has argued that trial court failed to provide hearing to the petitioner in the aforesaid; that both the courts below failed to appreciate that respondent clearly stated in her pleadings that her father had been running fruit cart in the local area. He also argued that the learned appellate court wrongly maintained suit for maintenance in Appeal No. 16 of 2021; that the appellate court has not considered that a petitioner is a labor person. Learned counsel referred to the memo of the petition and argued that the petitioner is affording all expenses of his family and is unable to pay the decretal amount. He lastly prayed for allowing the instant petition setting aside the decisions of two forums below.

3. I have heard learned counsel for the petitioner on the maintainability of the instant petition and perused the record with his assistance.

4. As per pleadings of the parties both the couples married on 8.12.2017. From the wedlock baby Hurain was born. However, due to strained relations parties took resort to family litigation, wherein the respondent succeeded in getting a Decree by way of Khulla, including, maintenance and delivery expenses in her favor.

5. Petitioner challenged the above judgment and decree in Family Appeal No. 15 of 2021 which vide judgment dated 7.10.2021 was partly allowed with some modification in the Judgment of trial court.

6. Petitioner challenged the above judgment and decree in Family Appeal No. 16 of 2021 which vide judgment dated 7.10.2021 was dismissed. An excerpt of the appellate order is reproduced as under:-

“Reverting to the case in hand, the appellant prayed for modification / reduction of maintenance on account of his financial status. Appellant has explained that he is unable to pay the amount fixed by the learned judge as the same is not justifiable. As far as the quantum of maintenance is concerned, from perusal of record it appears that, appellant himself admitted that he is earning Rs. 500/- per day. The learned family court has awarded maintenance to the respondent only for Rs. 4000/- per month which in my opinion is reasonable and justifiable and on account of high prices of daily use articles of children, the learned family court has properly taken into consideration the income and expenditures of minor child and the learned family court has rightly fixed the maintenance allowance for minor child after evaluating financial position of appellant. The appellant that requested for rectification / modification of maintenance allowance, but admittedly, quantum of maintenance is very low which has been awarded by the family court, therefore, I am of the humble view that as per financial position of the appellant the quantum of maintenance at the rate of Rs. 4,000/- per month for minor starts from the date of Judgment with 10% per annum increment in appropriate, proper, just and equitable in the present days when prices of everything are on high rates. So far, the delivery expenses are concerned, in this regard, respondent has produced the medical bills before learned family judge, on the contrary, appellant has failed to produce any documentary proof that he has himself incurred the delivery expenses; thereof, I am of the opinion that learned trial court has rightly allowed the delivery expenses of Rs. 30,000/-. Thus perusal of impugned Judgment, it shows that the findings of learned trial court are based on evidence and are also supported by plausible reasoning. No material piece of evidence appears to have been overlooked or misread. In the circumstances, I find that the appellant has failed to prove his case. I therefore, find that the learned family court has passed the impugned Judgment & Decree legally, hence the same do not require any interference by this court in its appellate jurisdiction. Therefore, the point No.1 is answered in negative.

Point No.2

In view of above, I am of the opinion that, the learned family court has decided the case after appreciating the evidence come on record and after perceiving the peculiar facts and circumstances of instant case. Therefore, this Court in its appellate jurisdiction could not interfere into the findings of the facts recorded by the court below. For what has been discussed above, this family appeal stands dismissed. However, parties are directed to bear their own costs.”

7. So far as the stance of petitioner is concerned, it is established practice, that the exercise of right of Khulla by the wife is subject to the satisfaction of judicial conscious of the Courts. The purpose of West Pakistan Family Courts Act, 1964, is to expedite family matters to save families from permanent and lengthy litigation in the Courts. Under Section 10(4) of the West Pakistan Family Courts Act, 1964, the marriage can be dissolved based on Khula in summary proceedings and the requirement in such proceedings is to provide an opportunity for reconciliation and as a consequence of failure thereof decree for dissolution of marriage can be passed and in this event, the wife has to forego her claim of dower. The Court on its own cannot deprive the lady of the dower and cannot order her to relinquish the dower because the dower is the right of the lady given by Shariah. This right cannot be

discretionarily or arbitrarily exercised by the Court. Besides if there are children from wedlock, certain responsibilities are imposed on the husband to fulfill, therefore, he is bound to pay maintenance to the minor till he attains the age of majority.

8. For the reasons discussed above, findings of both the family and appellate court are based on proper appreciation of evidence and under the law need not be interfered with; therefore, the petition being bereft of merits is hereby dismissed with no order as to costs.

JUDGE

Karar_Hussain /PS