IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-95 of 2023

[Mirza Faizan……v…… Nazish & others]

Date of Hearing	:	07.02.2023
Petitioner through	:	Mr. M. Younus Shad, Advocate.
Respondents through	:	*Nemo*

O R D E R

Zulfiqar Ahmad Khan, J:- This petition assails the concurrent findings of the learned trial Court dated 05.04.2022 as well as first Appellate Court dated 27.10.2022.

2. The respondent No.1 filed a family suit bearing No.510/2021 before learned Family Judge South Karachi for recovery of dower amount, maintenance and dowry articles which was decreed by the learned trial Court and petitioner was directed to return three tola gold and amount of Rs.50,000/- and petitioner was also directed to pay iddat period maintenance of Rs.5000 and dowry furniture was also directed to be returned. The petitioner impugned the said judgment of the learned trial Court before the Appellate Court by filing Family Appeal No.85/2022 which appeal of the petitioner was dismissed, hence the petitioner is before this Court against the concurrent findings.

3. The petitioner's entire case was premised on the argument that the respondent No.1 entered into a free will marriage with the petitioner and no question of dowry articles arises but the learned courts below failed to consider this aspect and passed the concurrent findings against the petitioner in haphazard manner.

4. Since this is a fresh petition and fixed before the Court in a category of "Fresh Case". I have heard learned counsel for the petitioners at length and have also scanned the available record. It is considered pertinent to initiate this deliberation by referring to the settled law that learned trial Court i.e. Family Court is the fact finding authority and the purpose of appellate jurisdiction is to reappraise and reevaluate the judgments and orders passed by the lower forum in order to examine whether any error has been committed by the lower court on the facts and/or law, and it also requires the appreciation of evidence led by the parties for applying its weightage in the final verdict. It is the province of the Appellate Court to re-weigh the evidence or make an attempt to judge the credibility of witnesses, but it is the Trial Court which is in a special position to judge the trustworthiness and credibility of witnesses, and normally the Appellate Court gives due deference to the findings based on evidence and does not overturn such findings unless it is on the face of it erroneous or imprecise. The learned Appellate Court having examined the entire record and proceedings made so available as well as having gone through the verdict of learned trial Court i.e. learned Family Court went on to hold as under:-

> "8. After hearing the learned counsel for both the sides, I have carefully gone through the record. The appellant/defendant challenged the grant of 03 tola gold and Rs.50,000/- as dower fixed in the Nikahnama at Ex. P/2. It is the contention of the appellant/ defendant that earlier Nikah was solemnized through free-will Ex.P/2 but subsequently on the request of respondent's parents a Nikah ceremony was held and rukhsati was of respondent was made, therefore, the condition of first Nikahnama Ex. P/2 were abolished. **This contention has got no force for the reasons that the appellant/defendant failed to prodeuce any oral or documentary evidence to prove that the condition with regard to dower as mentioned in the first Nikahnama were repudiated by the subsequent Nikahnama. It is pertinent to mention here that the**

> **appellant produced 02 witnesses namely Muhammad ASif S/o Muhammad Afzal and Qazi Ghulam Mustafa S/o Haji Ahmed Mian Abbasi, but both these witnesses in their evidence has not stated that through the subsequent Nikahnama; the conditions of first Nikah were repealed nor wiped out or it was settled between the parties that the dower as fixed during subsequent Nikah ceremony would prevail. Moreover, the learned counsel for the appellant t has also conducted a lengthy cross-examination of the respondent but it was neither asked nor suggested that the conditions regarding the dower amount of first Nikahnama were terminated by subsequent Nikahnama. Thus the appellant failed to prove the dower amount as mentioned in earlier NIkahnama Ex P/2 has been repudiated by subsequent Nikahnama. It is matter of record that the subsequent Nikah is only a ceremonial exercise for rukhsati of respondent under the patronage of her parents and family. The learned trial Court rightly allowed the dower mentioned in the Nikahnama as (Ex. P/2.**
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> [Emphasis supplied]

5. It is gleaned from appraisal of the foregoing that the petitioner failed to produce any concrete evidence before the learned trial Court that he had paid the dower amount to the respondent No.1. It is well settled that learned trial Court is the fact finding authority where the learned trial Court having examined the entire record made available before it reached to the conclusion that the petitioner never paid off the dower amount mutually fixed at the time of marriage.

6. It is common knowledge that the object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”) is to foster justice, preserve rights and to right the wrong where appraisal of evidence is primarily left as the function of the trial court and, in this case, the learned Family Judge which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of

the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken. No such avenues are open in this case as both the judgments are well jacketed in law. It has been held time and again by the Apex Court that findings concurrently recorded by the courts below cannot be disturbed until and unless a case of non-reading or misreading of evidence is made out or gross illegality is shown to have been committed.[1]

7. In view of the rationale and deliberation delineated above, the petition at hand is dismissed alongwith the applications fixed for order today.

Karachi
Dated: 07.02.2023.

JUDGE

Aadil Arab.

[1] Farhan Farooq v. Salma Mahmood (2022 YLR 638), Muhammad Lehrasab Khan v. Mst. Aqeel un Nisa (2001 SCMR 338), Mrs. Samina Zaheer Abbas v. Hassan S. Akhtar (2014 YLR 2331), Syed Shariq Zafar v. Federation of Pakistan & others (2016 PLC (C.S) 1069).