

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-244 of 2023

[Ghulam Qadirv..... Ramsha Ghaffar & others]

Date of Hearing : 14.03.2023
Petitioner through : Mr. Muhammad Ali Jat, Advocate.
Respondents through : *Nemo*

ORDER

Zulfiqar Ahmad Khan, J:- This petition assails the concurrent findings of the learned trial Court dated 06.09.2022 as well as first Appellate Court dated 22.12.2022.

2. The respondent No.1 filed a family suit bearing No.2510/2021 before learned Family Judge South Karachi for recovery of maintenance and dowry articles which was decreed by the learned trial Court. The petitioner impugned the said judgment of the learned trial Court before the Appellate Court by filing Family Appeal No.178/2022 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 learned trial Court directed the petitioner to pay the actual price of the dowry articles which in fact was used by the respondent No.1 for four years, therefore, this is very unfair and on this score alone the impugned judgments be set aside.

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:-

“The learned counsel for the appellant did not put any question or suggestion to disprove the statement of the respondent No.2. **The photographs of the dowry articles are also available on record; which shows that the dilapidated condition, which has not been controverted by the appellant, rather the appellant has admitted that picture of furniture attached in the case were captured at his house while receiving the same. It is also the own statement of appellant that some articles were missing. In such circumstances; the learned trial Court rightly allowed to pay the price of dowry and the findings of the learned trial Court on the issue of dowry articles requires no interference.**”

[Emphasis supplied]

5. It is gleaned from appraisal of the foregoing that the petitioner never controverted dilapidated condition of the furniture rather admitted that photographs of the dowry articles were taken at his residence as well as further admitted that some of the dowry articles

were missing.. 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 will pay the amount of dowry articles.

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 in limine.

Karachi
Dated: 14.03.2023.

JUDGE

Aadil Arab.

¹ Farhan Farooq v. Salma Mahmood (2022 YLR 638), Muhammad Lehasab 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).