

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-615 of 2022

[Wahajuddinv..... Mst. Roohi & others]

Date of Hearing : 30.01.2023
Petitioner through : Petitioner present in person.
Respondents through : Respondent No.1 is also present in person.

ORDER

Zulfiqar Ahmad Khan, J:- This petition assails the concurrent findings of the learned trial Court dated 03.12.2021 as well as first Appellate Court dated 11.04.2022.

2. Concise facts of the case are that the respondent No.1 filed suit for maintenance, recovery of dowry articles and dower amount which was decreed vide judgment dated 03.12.2021 whereby, petitioner was directed to pay past maintenance at the rate of Rs.2000/- and maintenance for iddat period at the rate of Rs.3000/- and petitioner was also directed to pay dower amount of Rs.6500/-. Respondent No.1 impugned the meager rate of maintenance to the learned Appellate Court by filing Family Appeal No.04/2022 which was allowed vide Judgment dated 11.04.2022 and petitioner was directed to pay past maintenance at the rate of Rs.5000/-, hence the petitioner before this Court against the concurrent findings.

3. Petitioner present in person was asked as to whether he paid the past maintenance as well as maintenance for iddat period fixed by the learned trial Court and dower amount, he replied "No". He stated that the respondent No.1 herself left his house and never turned up to reconcile the matter. Respondent No.1 present in

person denied to have left the house but the cruelty on the part of petitioner compelled her to leave the petitioner's house.

4. 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. Record reveals that learned trial Court has determined appellant's maintenance at the rate of Rs.2000/- per month but the criteria based on such quantum is nowhere available in the judgment. Although appellant is residing at her parents house where she must be enjoying all the necessities of life **but the favour extended by appellant's parents does not absolve respondent from performing his liability. Meager amount of Rs.2000/- comes to Rs.66/- approximately per day which cannot be sufficient to meet the basic requirement of a person of even a low middle class. Maintenance determined by the learned trial Court cannot be considered as sufficient hence the same is hereby extended to Rs.5000/- per month w.e.f. the date as per mentioned in the impugned judgment till expiry of her iddat period.**

[Emphasis supplied]

4. It is gleaned from appraisal of the foregoing that the learned Appellate Court having examined the husband's obligation towards his wife to maintain the later and enhanced the amount of maintenance from the meager sum of Rs. 2,000/- to Rs.5,000/- which does not need any interference.

5. 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 the judgment of the Appellate Court is well-reasoned and according to law.

9. In view of the rationale and deliberation delineated above, the petition at hand is dismissed alongwith the applications.

Karachi
Dated: 30.01.2023.

JUDGE

Aadil Arab.