

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-655 of 2019

[Adnan Ali Syedv..... Nazia Ayub Khan & others]

Date of Hearing : 13.01.2023
Petitioner through : Ms. Uzma, Advocate.
Respondents through : *Nemo*

ORDER

Zulfiqar Ahmad Khan, J:- This petition assails the concurrent findings of the learned trial Court dated 06.11.2017 as well as that of the Appellate Court dated 13.03.2019.

2. The petitioner's entire case was premised on the argument that he had been paying money through online transaction to the respondent No.1 in terms of her dower which was fixed in the sum of Rs.10,00,000/- at the time of marriage. It was further argued that an amount of Rs.580,000/- as dower had also been paid to the respondent No.1 (wife) hitherto through online transaction, however the remaining amount of Rs.420,000/- is yet to be paid by the petitioner to the respondent No.1.

3. Heard the arguments and perused 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 available to it as well as having gone through the verdict of learned trial Court i.e. learned Family Court went on to hold as under:-

“13..... From perusal of the R&Ps it appears that first of all, in cross-examination, respondent has admitted the suggestion that appellant had borne her shopping expenses and provided better life style to her. This admission of the respondent reveals that during the marriage, appellant was used to maintain the respondent and provide necessities to her. From this suggestion of the appellant to the respondent it further appears that appellant was used to pay the expenses of the respondent. On this background, transaction of money from the account of the appellant to the account of respondent as well as use of debit card is the aspect makes the circumstances clear. Perusal of the appellant’s evidence reveals that Nikahnama at ExP-11/2 at page No.61 in the R&Ps is an undisputed document and in column No.15 of the Nikahnama, it is specifically mentioned that dower amount was Indul-Talab means on demand. Word “complete” is used in same column No.15 in Nikahnama, it means that complete dower amount was subject to demand. From the evidence of the appellant it appears quite clear that he has not stated in the same that respondent ever demanded the payment of dower amount. The question arises when respondent did not demand the dower amount then how the same was paid in installments. Apparently, dower amount was never paid but appellant was used to maintain the respondent in better life style and was used to pay her expenses. Such payment through bank account cannot be termed as payment of dower amount in installments. This makes it clear that findings of learned Family Court are based on proper appreciation of facts on record.

[Emphasis supplied]

4. 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.

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 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

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

Karachi
Dated: 13.01.2023.

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).