

**Order Sheet**

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

**C. P No. S – 23 of 2023**

Petitioner : Hamadullah through Mr. Shahbaz Ali Jiskani,  
Advocate

Date of Order: 07.04.2023

**ORDER**

**ZAFAR AHMED RAJPUT, J**;- Impugned in this Constitution Petition is the Judgment and Decree dated 19.01.2023 whereby the learned District Judge, Sukkur dismissed the Family Appeal No.51 of 2022 by maintaining the judgment and decree dated 25.10.2022 passed by learned Family Judge-I, Rohri in Family Suit No.63/2020 filed by Respondent No.1.

**2.** Briefly stated facts of the case are that the Respondent No.1 filed aforementioned Family Suit for dissolution of marriage by way of 'Khulla', maintenance, return of dowry articles against the petitioner, alleging therein that her marriage with petitioner was solemnized on 09.02.2019 in lieu of Haq Mahar of Rs.250000/- which is unpaid. She was given dowry articles as listed in para 5 of the plaint. She sought dissolution of marriage by way of 'Khulla' on the ground of mistreatment. The petitioner contested the Suit by filing written statement wherein he denied all the allegations against him by claiming that *Haq Mahar* was already paid to Respondent No.1 promptly in shape of gold ornaments. He also denied receiving dowry articles.

**3.** The learned Family Judge given number of opportunities to petitioner to appear for pre-trial proceedings; however, he did not avail the same. On 15.06.2021 the pre-trial was held failed by the learned Family Judge by dissolving the marriage of the petitioner with the Respondent No.1 by way of 'Khulla'. Subsequently the learned Family Judge framed the issues regarding entitlement of Respondent No.1 at the rate of Rs.5000/- per month since February, 2019 till 'Idat' period and dowry articles.

**4.** At the trial, the Respondent No.1 appeared in witness box. She produced her *affidavit-in-evidence* at Ex.3-A and other documents from Ex.3/B-1 to 3/B-3, respectively. She got examined her witness, namely, Tahir Latif at Ex.4. On the other hand, the petitioner examined himself at Ex.6. After recording the *pro and contra* evidence of the parties, the learned Family Judge decreed the Family Suit of the Respondent No.1 in her favour entitling her to receive maintenance from November, 2019 at the rate of Rs.5000/- per month till end of '*Idat*' period. She was also held entitled for dowry articles as mentioned in para 4 of the plaint vide Judgment and decree dated 25.10.2022. Against that the petitioner preferred Family Appeal No.51/2022 which was heard and dismissed by learned District Judge, Sukkur vide Judgment and decree dated 19.01.2023. It is against that the judgment and decree, the instant Petition has been filed.

**5.** Heard the learned counsel for the petitioner and perused the material available on record.

**6.** Learned counsel for the petitioner has contended that the courts below erred in passing the impugned judgments and decrees as it was an admitted position that a Suit for Restitution of Conjugal rights was filed before the Civil Judge-XXVI, Karachi East, which was not taken into consideration by the courts below; that the judgments and decrees of the courts below granting maintenance to Respondent No.1 at the rate of Rs.5000/- per month from November, 2019 till the end of '*Idat*' is arbitrary and illegal as the refusal of joining husband is refusal of her own maintenance from her husband unless perform conjugal rights.

**7.** Perusal of the record shows that the Counsel for the petitioner and the petitioner remained absent and failed to cross-examine the Respondent No.1 and her witness on 09.02.2022 and the matter was adjourned for evidence of petitioner side. Thereafter, the petitioner filed an application under Order 18 Rule 17 for reopening of the side of the Respondent No.1 and providing

opportunity for cross-examination, but the said application was not pressed by the Counsel for the appellant / petitioner, hence, the same was dismissed as not pressed. Thereafter, on 11.08.2022 another application was filed by the petitioner seeking opening the side of the petitioner, which was also dismissed by the Family Judge vide order dated 16.03.2022. Then another application u/s 7(2) CPC of the West Pakistan Family Courts Act, 1964 was filed with the same prayer for calling the Respondent No.1 and her witness for cross-examination and the same was also dismissed by the learned Family Court, Rohri vide order dated 18.10.2022. The said order appellant did not impugn before the appellate forum, thus the evidence of Respondent No.1 had gone un-rebutted. The perusal of the record also shows that the petitioner did not dispute the quantum of maintenance in his written statement, besides the last payment made by the petitioner to Respondent No.1 viz. Rs.20000/- for shopping purpose was admittedly made on 10.10.2019 and thereafter, the pleadings as well as evidence of the petitioner is silent with regard to payment of maintenance, hence, the learned Family Judge has rightly held the Respondent No.1 entitled for the maintenance. The Respondent No.1 has also produced documentary evidence regarding dowry articles in original, which have not been challenged by the petitioner in cross-examination, hence, the evidence of Respondent No.1 in this regard is also un-rebuttable.

**8.** For the foregoing facts and reasons, the petitioner has failed to make out a case of interfering into the concurrent findings of the Courts below on factual issue involved in this matter, hence, this petition being devoid of any merit is dismissed accordingly in *limine* along with listed application(s).

**9.** Above are the reasons of my short order dated 07.04.2023.

Judge

ARBROHI