

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

C.P. No. S- 362 of 2020

[**Dr. Ikram Baig v. 6th Additional Sessions Judge, Hyderabad & others**]

Petitioner : Dr. Ikram Baig through
Mr. Farhad Ali Abro, Advocate

Respondent-3 : Dr. Tahira Qamar through
Mr. Peeral Majeedano, Advocate

Date of Hearing : 27.10.2023

Date of Announcement: 06.11.2023

ORDER

MUHAMMAD FAISAL KAMAL ALAM, J.- Petitioner has challenged the Judgment and Decree passed by the learned Family Court and Appellate Court whereby, directing the Petitioner to pay the following _

“ ISSUE NO.07.

In view of discussion made above, it is hereby ordered that suit of the plaintiff is hereby partly decreed with no order as to costs. Defendant is directed to pay dower amount to the plaintiff at the rate of Rs.100,000/- (one lac rupees), Defendant is further directed to return all the dowry articles as per list attached with the plaint including golden ornaments or in alternate of dowry articles, pay Rs. 800,000/- (rupees eight lac) and in alternate of golden ornaments of 25 to a gold, pay amount as per market value of the gold to the plaintiff. He is also directed to pay maintenance to plaintiff at the rate of Rs. 5000/- per month since date of divorce till her iddat period. Let the decree be prepared accordingly.”

2. Succinctly, the Petitioner married the Respondent No.3, but, due to irreconcilable disputes, their marriage ended and Respondent No.3 filed Family Suit No. 1585 of 2018 against the present Petitioner with the following prayer clause :-

PRAYERS

- a) *That, this Honourable Court may be pleased to direct the defendant to pay the dower amount of Rs.100,000/- which is still unpaid by the defendant to the plaintiff from the date of marriage.*
- b) *That, this Honourable Court may be pleased to direct the defendant to return the dowry articles as per list worth Rs.10,00,000/ along*

with 25 Tola Gold, couple car or its amount which are still lying in the house of the defendant in the illegal possession of the defendant.

- c) This Honourable Court may be pleased to direct the defendant to pay maintenance of plaintiff at the rate of Rs.30,000/= per month from May 2017 the date of expelling i.e. 19-11-2018.*
- d) To Direct the defendant to pay fine in sum of Rs: 1000000/- as per condition No: 17 mentioned in the Nikhanama to the plaintiff.*
- d) Cost of the suit be borne by the defendant.*
- e) Any other / further relief (s) this Honourable Court deems fit and proper under the circumstances of the case.*

3. It was contested by present Petitioner through his Written Statement. After framing of the Issues, the evidence was led by the Parties. The learned Family Court has passed the Judgment dated 06.12.2019, operative part whereof is reproduced in the foregoing paragraphs, and on Appeal preferred by the Petitioner, the Decision was maintained vide Judgment dated 6.8.2020. Hence present Petition.

4. Mr. Farhad Ali Abro, Advocate for Petitioner argued the matter, whereas, despite notice no one appeared on behalf of the Respondent No.3.

5. Arguments heard. Record perused.

6. Learned Advocate has submitted a copy of the Nazir Report filed in the Execution No. 23 of 2022 in Family Suit No. 1585 of 2018 (The above Suit), to show that substantial compliance has already been made by making payment of the following amounts_

<i>1. Dower Amount</i>	<i>Rs. 1,00,000/-</i>
<i>2. Dowry Articles including Golden Ornaments</i>	<i>Rs. 8,00,000/-</i>
<i>3. Maintenance for Iddat Period</i>	<i>Rs. 20,000/-</i>
<i>Total</i>	<i>Rs. 9,20,000/-</i>
<i>Amount paid by defendant</i>	<i>Rs. 13,16,308/-</i>

7. It is also necessary to mention that a Restraining Order was earlier granted considering this fact that substantial amount has been paid.

8. Petitioner is aggrieved of the finding of both the Courts in respect of awarding 25 tola gold, which according to Petitioner was neither given to Respondent No.3 by her Family / Parents or by the Petitioner and this figure is imaginary, regarding which no evidence was led.

9. In this writ jurisdiction appraisal of the evidence cannot be done, but it can be seen only to such an extent, to consider, whether the Finding / Decision of the Family Court or the Appellate Court is either contrary to the undisputed record or have completely ignored the law developed on a particular issue, by the Superior Courts.

10. Learned Counsel subsequently through his Statement dated 28.10.2023 has filed documents which were exhibited during proceeding below, but, were not filed in the present Petition due to *bona fide* error.

11. Dowry Articles were given to Respondent No.3 (lady) has not been disputed in the evidence but the quantity of 25 tola. Both Courts have relied upon exhibits which are receipts of gold ornaments / jewelry. These Receipts are Exhibit 23/C, wherein, thirteen Receipts are regarding gold ornaments; this has been produced through the above Statement of the Counsel in this proceeding.

12. First Receipt is in the name of Respondent No.3 dated 22.6.2009 in which total price of gold and making is mentioned as Rs.10565/-, but, no quantity / weight of gold is mentioned. In few other Receipts also only the price is mentioned and not the weight; except, in Receipt dated 10.1.2012 weight is mentioned as 4.670 grams; in Receipt dated 7.6.2012 weight is mentioned as 2.84 grams. In another Receipt of year 2012 (as date is not legible) weight of jewelry is mentioned as 7.75 grams. Usually these Receipts are in the name of Mr. Ilyas who is father of Respondent No.3. In a cross-examination also Respondent No.3 stated that she has produced Receipts of some dowry articles and other dowry articles are only mentioned in the list. To one question, she admitted that one of the Receipts does not bear the name of Purchaser.

On the basis of this piece of evidence, giving the finding to return 25 tola of gold to Respondent No.3, is not correct, because it does not conform with the record produced in the Proceeding; it means this impugned Finding is contrary to record, which is not a proper exercise of jurisdiction vested in both the Courts.

12. Undisputedly, Petitioner has already paid a substantial amount (**supra**), including Rs. 8,00,000/- [rupees eight hundred thousand], which includes value of gold ornaments, thus, with regard to finding of 25 tola of gold, both the Decisions of the Courts below are set-aside, but, with a

clarification that amount paid so far by the Petitioner [*supra, as per the Nazir Report*] has attained finality and nothing from the above amount will be returned back to the Petitioner.

13. Case is remanded to the learned Family Court for deciding the issue of 25 tolas of gold, either on the basis of present record or by giving an opportunity to both the Parties to lead further evidence. Any observation in this Order is of tentative nature and would not influence the Decision on merits, as directed above.

14. Learned Family Court will decide the matter within two months from the Receipt of this Decision and no adjournment will be allowed. Case Remanded.

JUDGE