

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitutional Petition No. S - 143 of 2022

Petitioner : Muhammad Tasleem Channa,
through Masjood Ali Memon,
Advocate.

Respondents : Mst.Nazia Mirani and others, through
Ghulam Nabi Chadhar, Advocate.

Date of hearing : 23.10.2023

JUDGMENT

YOUSUF ALI SAYEED, J. – The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, seeking to impugn the Judgment dated 13.06.2022 passed by the learned Additional District Judge-IV(H) Sukkur in Family Appeal No.32/2022, as well as the underlying orders dated 14.05.2022 and 11.01.2017 passed by the Court of learned Family Judge-III, Rohri in Execution Application No.07/2016 emanating from Family Suit No.113/2015.

2. Succinctly stated, the Suit had been filed by the Respondent No. 1 for recovery of dowry articles and past maintenance, and was decreed *ex parte* vide judgment dated 19.3.2016, with the Petitioner *inter alia* being directed to return the dowry articles, including gold ornaments of 5 tolas, which, at the time of filing, were valued in the plaint at Rs.250,000/-. The Respondent No.1 then filed the Execution Application, which was allowed vide the Order dated 11.01.2017. Subsequently, on 14.5.2022, the Executing Court allowed a Misc. Application, directing the Petitioner/JD to return the gold ornaments or alternatively pay the current value thereof at the prevailing market rate of gold on the day of payment.

3. In that backdrop, the Petitioner preferred the aforementioned Family Appeal under Section 14 Family Courts Act, 1964, which came to be dismissed on 13.06.2022, with it being observed that:

05. Admittedly per file in hand a judgment followed by a Decree and Execution order passed by the competent court of law are still in field and application U/s 12(2) CPC filed by judgment debtor (present appellant) against the same stood dismissed and such dismissal order, having not been assailed by him is also intact. As such, the learned counsel can't question legality and merit of such decisions in this round of appeal, which has been filed against the impugned order.

06. Admittedly Decree passed by the learned Trial Court has not been got executed/satisfied fully so the Decree Holder mainly sought direction for recovery of remaining gold ornaments weighing 5 tolas or payment of its current value and the learned Trial/Executing Court allowed it partly because Executing Court has to provide all legal assistance to a Decree Holder in respect of satisfaction of decree in its letter & spirit otherwise the very purpose of passing a Decree will be meaningless. Moreover, the learned counsel again and again argued about the merit and legality of judgment, decree dated 14.5.2022 which on independent perusal and judicious scrutiny by me, has been found to be quite legal and well-reasoned.

4. Proceeding with his submissions, learned counsel for the Petitioner sought to emphasise the *ex parte* nature of the underlying judgment and decree, but conceded that the Petitioners recourse to S.12(2) CPC had been ill fated and had not been pursued before a higher forum. He also sought to argue that as a valuation had been placed on the gold at the time of filing of the Suit, which also found mention in the decree, the entitlement of the Respondent No.1 was circumscribed accordingly and the executing

Court could not go beyond the decree. He prayed that the impugned Orders thus be set aside.

5. Conversely, learned counsel for the Respondent No.1 submitted that the impugned Orders had been correctly made and placed reliance on the judgments of the Supreme Court in the cases reported as Mst.Ayesha Shaheen v. Khalid Mehmood and another 2013 SCMR 1049 and Haji Muhammad Nawaz v. Samina Kanwal and others 2017 SCMR 321. He prayed that the Petition be dismissed.

6. Having examined the matter, it falls to be considered that the judgments of the Supreme Court relied upon by learned counsel for the Respondent No.1 squarely address and cover the controversy, in as much as it was held in Ayesha Shaheen's case (Supra) that where a decree for delivery of gold or its market value is granted, the value shall be determined with reference to the date of payment, as only then can the decree be fully satisfied. In the same vein, in the case of Haji Muhammad Nawaz (Supra), whilst dispelling the argument that recourse to the market value as on the date of payment would entail the executing Court going beyond the decree, it was held that:

“We are not convinced with such submission, as grant of requisite relief regarding payment of price of golden ornaments at the prevalent market rate, in case the golden ornaments are not returned, is fully justified and it cannot be said that it amounts to going beyond the terms of decree by the executing Court.”

7. In that very case, it was observed by one of the learned members of the Bench while stating his reasons for agreeing with that unanimous conclusion that:

“2. The objection that the learned Executing Court cannot go beyond the terms of the decree is derived from the Code of Civil Procedure, 1908 (“C.P.C.”). On the other hand, under the provisions of section 17 of the West Pakistan Family Courts Act, 1964 (“the Act”), the C.P.C. does not apply to the proceedings of the learned Family Court that passed the decree dated 31.01.2004 under execution in the present case. The petitioner’s objection is therefore inapplicable to the present proceedings. The said decree has two alternative parts. Firstly, it gives a direction to the petitioner/judgment debtor to return the dowry articles to the respondent/decree holder as detailed in Exb.P1 filed with the suit; in the alternative, in case of failure to return the said articles, the decree orders payment of a lump sum amount of Rs.831,700/- to the respondent/decree holder as value of the said dowry articles. The petitioner has not delivered the decretal dowry articles to the respondent. For the satisfaction of its money terms under section 13(3) of the Act, the decree is liable to be implemented within 30 days. However, even after the lapse of 12 years of its passing, the petitioner/judgment debtor has not deposited a single rupee with the learned Executing court towards the adjustment of the said decree. Execution of the decree has been delayed by the petitioner solely on the above objection although he cannot have any cavil with the amount fixed therein. Having been expressed in the alternative, the decree does not become a decree for money simpliciter for the amount stated therein. This because the price of dowry articles fixed in the alternative by the decree under execution represents their market value as on the date of decree. Such market value of the decretal dowry articles cannot remain static endlessly, therefore the alternative monetary direction in the decree cannot remain fixed after lapse of reasonable time. In terms of law, the proceedings of the learned Family Court, whether as a trial court or an executing court, are governed by the general principles of equity, justice and fair play. The circumstances of the present case, namely, delay of more than 12 years in the execution of the decree on the basis of an inapplicable objection cannot under the principles of equity, justice and fair play be allowed to defeat the decree under execution by the petitioner’s refusal to both deliver the

dowry articles and also to pay their corresponding market value as on the date of payment.”

8. In view of the foregoing the Petition is found to be misconceived and stands dismissed accordingly.

Akber.

JUDGE