

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.S-831 of 2021
[Mst. Hadiqa Iqbal v. Muhammad Hamza Jawed and another]

Date	Order With Signature Of Judge
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1.For hg of CMA No.5398/2021
2.For hg of main case
22.08.2024.

Mr. Azhar Ahmed Shah, advocate for the petitioner.
Mr. Umer Memon, advocate for respondent No. 1.

J U D G M E N T

MUHAMMAD IQBAL KALHORO, J:- Petitioner filed a family suit for dissolution of marriage by way of Khulla, maintenance, recovery of dowry articles and personal belongings. The suit was decreed as prayed vide judgment dated 10.04.2021. However, respondent No. 1 filed a Family Appeal No.91 of 2021, which has been decided by VIIth Additional District Judge, (MCAC), Karachi-South vide judgment dated 09.10.2021 in the terms whereby the Court has held that the petitioner is entitled to her past maintenance from 20.07.2018 when she left house of respondent No. 1 and gold ornaments as per evidence produced by her as Exh. P/9, P/10, P/12 an P/13.

2. The dispute which is still lingering on between the parties is that in the Bank Islamic, a joint locker was being used by both the parties, in which, all the gold ornaments were kept, which petitioner claims to belong to her exclusively and in respect of which an inventory was prepared by the Nazir under the direction of the trial Court. This contention has been contested by respondent No. 1 on the ground that it was a joint locker and not only gold articles of the petitioner but the gold articles belonging to his family members, sister etc. were also kept there for safety.

3. Learned counsel for respondent No. 1 has drawn attention of the Court to page 41 with the counter affidavit, which contains a statement of advocate of the petitioner listing the articles given to petitioner in dower by her parents, which is not disputed by the parties. What the petitioner has further setup her case on is the issue of bridal gifts, which she claims were given to her at the time of marriage by husband and his relatives and which are her property under the Muslim Family Law. There is no denial to the fact that the bridal gifts given to the bride becomes her property under the law, but here in the entire plaint, the petitioner has not given any detail of the bridal gifts given to her at the time of marriage, nor the identification of a person who had given her such gifts.

4. When this issue came up for discussion before the Appellate Court, it has observed that “this contention is unsupported and uncorroborated as the petitioner in her entire plaint or evidence did not distinguish the articles, which were given to her by respondent No. 1 on the occasion of marriage or subsequently as gifts”. Further, it has been observed by the Appellate Court that “the petitioner in her plaint or evidence neither described the articles of gold, she had received as her bridal gifts from respondent No. 1 nor his family or friends nor she specifically prayed for recovery of the same. Moreover, the petitioner did not specify the details of the gold ornaments, which she kept in the said locker”.

5. In view of such findings of the Appellate Court based on appreciation of evidence, no second view of the matter can be taken, particularly, in the Constitutional jurisdiction, which has a limited scope to see whether any illegality has been committed by the forums below or not. Besides, no material or extra evidence has been offered here to justify shift in the view of the Court in favour of the petitioner. Further, the impugned judgment shows that the Appellate Court while deciding

the entitlement of the petitioner to her jewelry, has observed that she would be entitled to gold ornaments kept in the joint locker as per her evidence produced at Exh.P/9, P/10, P/12 and P/13. Learned counsel for respondent No. 1 has admitted that as per statement available at page 41 of his counter affidavit, all the articles mentioned therein belong to petitioner and he and respondent No. 1, who is present in person, have no objection to delivery of these articles to the petitioner by opening the locker, which has been sealed under the orders of the Court.

6. Since the petitioner has failed to produce any evidence that all the articles available in the locker are her property, she cannot be declared to be the owner of the same and entitled to their delivery. Since, on the contrary, the list at page 41 of the counter affidavit is admitted by both the parties, she is held entitled to delivery of all such articles, the list of which is already available on the record. Accordingly, the Nazir is directed to de-seal the locker in presence of both the parties and hand over the articles/gold ornaments listed in the statement at page 41 of the counter affidavit and admitted by the respondent. This exercise shall be conducted in presence of both the parties by the Nazir within one month of this order and the Nazir shall, thereafter, submit compliance report for perusal in Chamber.

The petition is disposed of along with pending application.

JUDGE

HANIF