

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

C.P No.S-192 of 2024

[Syed Kashan Ali Vs. Mst. Uroosa & others]

C.P No.S-242 of 2024

[Mst. Uroosa & another Vs. IX-ADJ, Hyderabad and others]

Mr. Munawar Ali Abro, Advocate for Petitioner in C.P No.S-192 of 2024 and for respondent No.3 in C.P No.S-242 of 2024.

Mr. Muhammad Ishtiaque Khan, Advocate for Petitioner in C.P No.S-242 of 2024.

Date of hearing & Order: 19.05.2025

ORDER

Arshad Hussain Khan, J.- Captioned constitutional petitions are arising out of similar question of law and facts as well as between the same parties, as such, the same being decided through this common order.

2. Through Constitutional Petition being C.P No.S-192 of 2024 the petitioner-Syed Kashan Ali has assailed the Judgment dated 17.04.2024 and Decree dated 19.04.2024, passed by learned 9th Additional District Judge, Hyderabad in Family Appeal No.138 of 2023, whereby the judgment and decree dated 31.10.2023, passed in Family Suit No.1598 of 2022, filed by the respondent No.1 was partially modified. While, the petitioner Mst. Uroosa through Constitutional Petition being C.P NoS-242 of 2024 has assailed both the aforesaid judgment(s) and decree(s).

3. Concisely, facts of the case are that Mst. Uroosa had filed a Suit being Family Suit No.1598 of 2022 against Syed Kashan Ali with the following prayers:-

- a) *To direct the defendant to return all dowry articles as per list attached to the plaintiff or in alternate to pay its cost of Rs.15,00,000/-*
- b) *That this Honourable Court may be pleased to direct the defendant to pay the maintenance for the plaintiff and minor daughter since 14.09.2022 the rate of Rs.10,000/- per month and future maintenance with 15% enhancement.*

- c) That this Honourable Court may be pleased to direct the defendant to pay the dower amount of Rs.1,00,000/- to plaintiff.*
- d) Any other relief which this Honourable Court deems fit and proper may be pleased be awarded to the plaintiff.*

4. In response to that suit, Written Statement was filed wherein Syed Kashan Ali denied all the allegations leveled against him and submitted that respondent No.1 being disobedient wife is not entitled for any maintenance as she herself left her matrimonial abode.

5. Thereafter, the trial Court after framing the issues, recorded the evidence and hearing both the respective parties, decreed the suit vide judgment dated 31.10.2023, and being aggrieved by the said judgment, Mst. Uroosa preferred an appeal being Family Appeal No.138 of 2023 before the 9th Additional District Judge, Hyderabad, which appeal was partially allowed vide judgment dated 17.04.2024; and against the said judgment, both the parties have preferred captioned petitions.

6. Learned counsel for the petitioner in C.P No.S-192 of 2024 contends that the impugned judgments are outcome of misreading, non-reading and miss-appreciation of the evidence causing the miscarriage of justice, as such, liable to be set-aside; that the appellate Court has failed to consider that the petitioner is paying maintenance to the minor as awarded by the learned Family Court, however the same was arbitrarily enhanced without any reason which is not maintainable. He lastly prayed that the impugned judgments are liable to set-aside.

7. Conversely, counsel appearing on behalf of the petitioner in C.P No.S-242 of 2024 and for the respondent No.1 in C.P No.S-192 of 2024 contends that the petitioner / plaintiff has prayed for maintenance towards Iddat period at the rate of Rs.10,000/- per month however, the learned Family / trial Court has only awarded Rs.15,000/- in total, despite the fact that respondent has failed to establish his case; that the petitioner has produced all the relevant documents to establish purchase of dowry articles at the time of marriage ceremony however, the trial Court as well as appellate Court did not consider the same; that the Courts below have failed to consider the return of the dowry articles which are still lying with respondent No.1. Lastly, prayed for allowing the instant petition.

8. I have heard the arguments of learned counsel for the respective parties and perused the record.

Before going into further discussion, it would be conducive to reproduce the relevant portions of the judgments of trial Court as well as appellate Court. Relevant excerpts from the judgment of trial court dated 31.10.2023 are as under:

“Issue No.1

“.....It is matter of record that plaintiff has failed to produce any proof by which the financial status of the defendant could be determined, therefore, keeping in view the status of middle-class persons in the society as well to meet day to day expenditure. The Plaintiff is found entitled for iddat period maintenance i.e. Rs.15000/- in total and maintenance of minor at the rate of Rs. 4000/- per month since filing of the suit viz. 05.10.2022 till to date and future maintenance at the rate of 5000/- per month with 10% annual increment till her legal entitlement. The amount if any paid by defendant as interim maintenance is to be adjusted since filing of the suit.”

“Issue No.2

In this issue plaintiff has claimed dowry articles and burden of proof lies upon her, during pendency of the suit, the bailiff was appointed for taking and handing over the dowry articles and submit the report. The perusal of bailiff's report transpire that he handed over all dowry articles except, gold ornaments, kheer set, iron, 20 ladies and gents suits gifted to family of defendant. However, the claim of the plaintiff regarding remaining dowry article seems to be unjustified, as the same are day to day used items and depreciates its value with the span of time, so far clothes gifted to in-laws are concerned they do not fall within the ambit and they were used/become valueless. It is a common practice in our society that no other thing is dearer to a woman than her gold ornaments which she always keeps in her personal custody by considering its security of her future and usually women are familiar about its placement, and proving such claim plaintiff was required to produce the strong evidence however, the perusal of the plaintiff evidence or plaint, the plaintiff has not alleged that gold ornaments were snatched by the defendant/husband or any family hence nothing was produced for proving the claim of gold ornaments. Reliance in this regard is placed upon the case law of Honourable Apex Court reported as NLR 2013 CIVIL 369 wherein it is observed, *“Jewellery is daily use of wife which could not be left by wife while leaving husband's house”*. Thereafter, in view of the foregoing discussion, I am of the view that the plaintiff failed to prove this issue, therefore, she is not entitled to remaining dowry articles, Issue No.2 is answered in negative.”

Relevant portion of the judgment of the appellate Court dated 17.04.2024 are reproduced as under:

“11. Record shows that during pre-trial proceedings the learned trial court has settled the issue of maintenance to the extent of minor and applicant being her mother that respondent/defendant shall pay maintenance of Rs.4000/- per month for minor since filing of the suit viz. 05.10.2022 till to date and future maintenance at the rate of Rs. 5000/-per month with 10% annual increment till his legal entitlement but the learned trial court did not allow the maintenance to the

appellant/plaintiff as prayed in prayer clause 'b' of the family suit No.138 of 2023 (Re. Mst. Uroosa and another verses Syed Kashan Ali). It is also an admitted position that marriage between the parties was dissolved on the ground of Khula in lieu of dower amount. In the present case the appellant/plaintiff claimed maintenance for herself and her minor daughter at the rate of Rs.10,000/- per month since 14.09.2022 and future maintenance with 15% enhancement.

12. So far as, the prayer of the plaintiff for recovery of dowry article is concerned, I have examined the judgment passed by the learned trial court and I have come to the conclusion that such findings of the learned trial court as to recovery of the dowry articles is based upon true and lawful observation, therefore, I am agreed to such findings of the trial court.....

13. In the above circumstance, I am of the humble view that the impugned judgment and decree requires interference of this court. Accordingly, the impugned judgment and decree is modified to the extent of maintenance of the appellant/plaintiff only for iddat period and that of the minor daughter baby Reejha with enhancement 4000/- till her legal entitlement...”

9. In the instant case admittedly, both the parties have challenged the impugned judgment dated 17.04.2024, passed by 9th Additional District Judge, Hyderabad, whereby the appellate court while partially allowing the appeal filed by Mst. Uroosa modified the judgment of the trial court to the extent of maintenance only. The appellate court enhanced the maintenance amount of the minor from Rs.4000/- per month to Rs.8000/- per month with 10% annual increment till her legal entitlement.

10. The counsel appearing on behalf of Syed Kashan Ali submits that his client is residing in a joint family and operates a stall to earn his livelihood; therefore, his source of income is quite meager while Mst. Uroosa claims that the defendant is earning Rs.100,000/- per month, however, she did not produce any documentary evidence to prove the same. Furthermore, Mst. Uroosa while assailing the impugned judgment(s) and decree(s) passed by the courts below prayed for returning of her dowry articles from the possession of Syed Kashan Ali.

11. It may be observed that when the findings of fact by the trial and appellate courts are contrary to the evidence and material on record, or are against the law, this Court, in the exercise of its writ jurisdiction, has the power to rectify such findings in order to align them with the evidence on record or to remove any illegality arising from the judgment. The Supreme Court of Pakistan in the case of *Mst. Tayyeba Ambareen and another v. Shafqat Ali Kiyani and another* [2023 SCMR 246], while dilating upon the

jurisdiction of this court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, inter alia, has held as under:

“8. 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. The appraisal of evidence is primarily the function of the Trial Court and, in this case, the Family Court which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on misreading 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.”

12. From perusal of the judgments impunged herein, it appears that the decision of the trial court is based upon the evidence, whereas the findings of the appellate court with regard to the maintenance are merely based on the statement of Plaintiff-Uroosa in the plaint. The appellate court enhanced the maintenance allowance of the minor without giving any plausible reason and justification, as such, the findings of learned appellate court to that very extent are not sustainable being not based upon the evidence. The learned counsel appearing on behalf of Mst. Uroosa has also failed to point out any evidence on record that was either ignored or misread, initially by the trial court and subsequently by the appellate court.

13. For the foregoing discussion, Constitutional Petition No. 192 of 2024 filed by Syed Khan Ali is allowed whereas Constitutional Petition No. 242 of 2024 filed by Mst. Uroosa is hereby dismissed being devoid of merit.

JUDGE

Hafiz Fahad