

Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.S-1019 of 2024

[Muhammad Afnan vs. Mst. Anshara Naz]

Petitioner	Through Mr. Qadir Bux, Advocate.
Respondent-1	Through Mr. Masood Hussain Khan, Advocate
Date of Hearing:	07.08.2025.
Date of Order:	07.08.2025.

ARSHAD HUSSAIN KHAN, J. Through instant constitutional petition, the petitioner assails the Judgment & Decree dated **23.07.2024** passed by IV Additional District & Sessions Judge Karachi [East] in Family Appeal No.308 of 2024, whereby learned Judge while dismissing the appeal maintained the judgment and decree dated 08.11.2023 and 16.11.2023 respectively passed by Civil & Family Judge, in Family Suit No. 2346 of 2022 decreeing the suit filed by respondent for Dissolution of Marriage by way of Khula, Recovery of Dowry Articles and Maintenance.

2. Concisely, the facts of the present petition are that respondent/plaintiff filed a family suit bearing No.2346/2022 for Dissolution of Marriage by way of Khula, Recovery of Dowry Articles and Maintenance on the grounds that on 20.10.2021, she contracted marriage with the appellant / defendant against the dower amount of Rs.51,000/- which is unpaid. She was given dowry articles along with gold ornaments total worth of Rs.10,00,000/-, which are lying at the house of the appellant / defendant. After some time of marriage, dispute arose between them and on 17.03.2022, the appellant / defendant ousted the respondent / plaintiff from his house. Finally, she had filed the family suit with the following prayers:

- A) To dissolve the marriage of the plaintiff with the defendant by way of Khulla for which she is ready to forgo her dower amount.
- B) To direct the defendant to pay the Maintenance of plaintiff @ Rs.25,000/- (Rupees Twenty Five Thousand Only) per month from March, 2022 till grant of Khulla.

- C) To direct the defendant to pay the Iddat Period Maintenance Amount of plaintiff @ Rs. 25,000/- (Rupees Twenty Five Thousands Only) per month from the date of grant of Khulla in her favour till her legal entitlement.
- D) To direct the defendant to return/handover all the dowry articles of plaintiff along with Gold Ornaments as per annexed list as annexure "B". And/or if failure the same to pay its alternative amount of Rs. 10,00,000/- (Rupees Ten Lacs Only) to the plaintiff.
- E) Cost of the Suit.

3. Upon notice, before the learned trial court, the petitioner /defendant contested the family suit by filling written statement, denied the claim of the respondent/plaintiff and prayed for dismissal of the family suit. As per record, the pre-trial proceedings were held but declared as failed, consequently, the plaintiff/respondent was granted Khulla. Thereafter, for recovery of dowry articles and maintenance, issues were framed; evidence of the parties were recorded; the suit was decreed and the petitioner/defendant was directed to return the gold articles as per gold receipts to the respondent/plaintiff or its alternate market value, vide judgment & decree dated 08.11.2023 and 16.11.2023 respectively, which were challenged in Family Appeal No.308/2024. The appellate court while maintaining the judgment and decree of the family court dismissed the aforesaid appeal through its judgment dated 23.07.2024. The petitioner herein filed the instant petition against the concurrent findings of the courts below.

4. Learned counsel for the petitioner has argued that the impugned judgments of the two courts below are bad in law; liable to be set aside as both the courts below have failed to consider the real facts and the grounds agitated on behalf of the petitioner / defendant. That the impugned judgments are the outcome of misreading and non-reading of the material on record. He has further argued that both the courts below have passed the impugned judgments in hasty manners, hence the same are liable to be set aside. That the receipts of gold ornaments have not been produced and no witness has been examined in her favour supporting the delivery of gold ornaments at the time of marriage and none of the receipts showing the name of the respondent; most of the receipts are in the name of her father, which were not examined; hence there is no proof that the gold articles were purchased at the time of the

respondent's marriage and those were given as dowry articles. He has further argued that the documentary evidence produced by the respondent before the learned trial court and the learned appellate court have been misinterpreted and the rule of preponderance of evidence has also been ignored. That the courts below decided the issues in complete disregard of law as well as material available on the record in the shape of the evidence. Learned counsel has also argued that in fact respondent along with her family members took away all the gold ornaments. He has further argued that the impugned judgments are based on surmises and conjectures and are against the principles of natural justice and equity. Lastly, he has argued that both the courts below have failed to apply their judicial mind while deciding the instant matter and prayed for interference by this Court in its constitutional jurisdiction.

5. Learned counsel appearing for the respondent has argued that the impugned judgments passed by the courts below have properly been passed as per the evidence of the parties and the same do not suffer from any illegality or irregularity and need not be interfered. Learned counsel has prayed for dismissal of the instant petition, being misconceived.

6. Heard learned counsel for the parties, perused the record and the relevant law.

From perusal of the record, it appears that the petitioner has failed to satisfy the decree, the appeal preferred by the petitioner against the impugned judgment & decree of the learned trial court was also dismissed. Yet, dragging the matter from one court to another, especially the family case, constitutes vexatious litigation, adds undue delay, and unnecessarily overburdens the courts. Such practice is strongly discouraged by the Supreme Court of Pakistan. Reliance in this regard can be placed upon the case of *Shahzad Amir Farid vs. Mst. Sobia Amir Farid* [2024 SCMR 1292].

7. Precisely the stance of the petitioner is that respondent has taken away her gold ornaments with her as such the petitioner is not liable for any payment towards the gold ornament.

From perusal of the record, it appears that there are contradictory statements of the petitioner about the golden ornaments viz: In his written statement filed before the family court in para-4, the petitioner / defendant has taken the plea that *she went to her mother house on formal visit and she took all valuable articles along with her and wore the jewelry to attend the family programme at mother's house and did not turn up*. Whereas, In his complaint before the SHO, PS Pak Colony, he has taken another stance that *on 22.06.2022 my In-laws came to my house and started bitter talk and during this my wife together with her Aunt [Khala] took and kept the precious ornaments and gifts in her bag, which I had informed my father and brother, until they arrived, they [inlaws] left my house by quarrelling*. Besides, the petitioner in para-5 of his affidavit-in-evidence has taken the plea that *on 17.03.2022, the plaintiff along with her relatives came to my residence and took away all gold items and other expensive articles with her rendering house empty in absence of my family*.

All the aforesaid statements and stances of the petitioner not only demonstrate that he has failed to take a definite and consistent position to establish the issue pertaining to the golden ornaments before the two courts below, but also reflect the lack of veracity in his statements on the said issue.

8. It may also be observed that the constitutional petition cannot be considered as second appeal against the order passed by lower appellate court. Furthermore, learned counsel for the petitioner could not point out any illegality, infirmity or jurisdictional error in the impugned judgments, which could warrant interference by this Court in its extraordinary jurisdiction.

9. In the instant case, the two courts below have given concurrent findings against, which the petitioner has not been able to bring on record any concrete material or evidence, whereby, such findings could be termed as perverse or having a jurisdictional defect or based on misreading of fact. It is well settled that if no error of law or defect in the procedure has been committed in coming to a finding of fact, the High Court cannot substitute such findings merely because a different findings could be given. It is also well settled law that concurrent

findings of the two courts below are not to be interfered in the constitutional jurisdiction, unless extra ordinary circumstances are demonstrated, which in the present case is lacking.

10. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice¹. It may also be observed that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided², and is restricted inter alia to appreciate whether any manifest illegality is apparent from the order impugned. It is also well settled that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law.

11. Furthermore, the Supreme Court of Pakistan in the case of *M. Hamad Hassan v. Mst. Isma Bukhari and 2 others* [2023 SCMR 1434] while dilating upon the scope of constitutional jurisdiction of the High Court has observed as under:

“7. The right to appeal is a statutory creation, either provided or not provided by the legislature; if the law intended to provide for two opportunities of appeal, it would have explicitly done so. In the absence of a second appeal, the decision of the appellate court is considered final on the facts and it is not for High Court to offer another opportunity of hearing, especially in family cases where the legislature's intent to not prolong the dispute is clear. The purpose of this approach is to ensure efficient and expeditious resolution of legal disputes. However, if the High Court continues to entertain constitutional petitions against appellate court orders, under Article 199 of the Constitution, it opens floodgates to appellate litigation. Closure of litigation is essential for a fair and efficient legal system, and the courts should not unwarrantedly make room for litigants to abuse the process of law. Once a matter has been adjudicated upon on fact by the trial and the appellate courts, constitutional courts should not exceed their powers by re-evaluating the facts or substituting the appellate court's opinion with their own - the acceptance of finality of the appellate court's

¹ Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others [2015 PLC 259]

² Shajar Islam v. Muhammad Siddique [PLD 2007 SC 45] & Arif Fareed v. Bibi Sara and others [2023 SCMR 413].

findings is essential for achieving closure in legal proceedings conclusively resolving disputes, preventing unnecessary litigation, and upholding the legislature's intent to provide a definitive resolution through existing appeal mechanisms.”

[emphasis supplied]

12. In view of the facts of the instant case, and the authoritative pronouncement of the Supreme Court, in the case of *M. Hamad Hassan v. Mst. Isma Bukhari and 2 others* [supra], no case for interference is made out. The concurrent findings of the two courts below are upheld, and the instant constitutional petition is dismissed.

JUDGE

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