

ORDER SHEET
LAHORE HIGH COURT
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

W.P. No. 15322 of 2024

Muhammad Ashraf Vs. Judge Executing Court, etc.

<i>Sr. No. of order/ proceedings</i>	<i>Date of order/ Proceeding</i>	<i>Order with signature of Judge, and that of Parties' counsel, where necessary</i>
--	--------------------------------------	---

15.11.2024	Sardar Faisal Karim Gopang, Advocate for petitioner. Malik Muhammad Bakhsh Khakhi, A.A.G. Mr. Kashif Nadeem Malik, Assistant Attorney General for Pakistan.
------------	---

Through this constitutional petition, Muhammad Ashraf/petitioner, who is the judgment debtor challenges the order dated 14.10.2024 passed by learned executing court, whereby instead of returning dowry articles, he has been directed to pay its value, which was the alternate relief provided in terms of decree passed by the Family Court in favour of Bushra Bibi/respondent No.2. States that petitioner is ready to return the dowry articles, however, respondent No.2 is not receiving the same without any legal justification, hence, the impugned order is not sustainable.

2. Perusal of the record shows that suit filed by the respondent No.2 for maintenance allowance, dower and dowry articles was partially decreed to the extent of dowry articles and payment of maintenance allowance subject to performance of conjugal obligations and dismissed to the extent of dower. As the instant dispute relates to execution of decree for dowry articles only, hence, the said portion of the decree dated 25.04.2024 is reproduced below:-

“ii. The plaintiff is held entitled to get dowry articles according to the list attached with the

plaint Exh: P2 except articles mentioned at serial No.16, 19 & 22 or alternate value of Rs.230,000/- in lieu thereof from the defendant.”

3. Through a consent order dated 30.07.2024 passed in the proceedings of execution of aforementioned decree, the petitioner agreed to return the decreed dowry articles to the respondent, which the court permitted to be done in the presence of Bailiff/Commission. On the next date of hearing fixed on 14.10.2024, the Bailiff submitted his report to the effect that the respondent claims that the articles being returned by the petitioner do not belong to her whereupon the impugned order directing the petitioner to pay alternate price of the dowry articles has been passed in the following terms:-

“Today, the case is fixed for awaiting report of bailiff regarding delivery of dowry articles. Report has been perused. Decree Holder stated that the items which were shown to her do not belong to her and she refused to take these articles as per report annexed with the report of bailiff. Perusal of record reveals that plaintiff/decreed holder is insisting that the dowry articles shown to her do not belong to her. Learned counsel for the judgment debtor stated that the dowry articles which are in possession of judgment debtor, he is ready to deliver the same but decree holder has refused to take the same. Perusal of judgment reveals that in case of failure to return dowry articles alternate value has been mentioned by the learned trial court. Therefore, in order to resolve the dispute regarding dowry articles judgment debtor is directed to pay alternate amount of dowry articles Rs.230,000/-. Learned counsel for the judgment debtor requested for an adjournment and stated that within one month, they will pay the alternate amount of dowry articles. In the interest of justice adjournment is granted. Now to come up for payment of decretal amount for 16.11.2024. In case of failure to deposit above said amount, coercive measure will be initiated against the judgment debtor.”

4. The petitioner challenges the said order and claims that the said order is against the facts of the case and law on the subject and is not sustainable as the articles available with him are the same for which the decree had been passed by the Family Court and the respondent has refused to receive the said articles just to blackmail and harass the petitioner without any legal justification. He also claims that the petitioner had not agreed before the executing court to pay the value of dowry articles, which observation in the impugned order is incorrect.

5. The perusal of the impugned order shows that there is dispute as to whether the articles sought to be returned by the petitioner belong to the respondent or not for which decree was passed and the other disputed fact is that whether the petitioner had agreed before the court to pay alternate price as mentioned in the impugned order, which aspect of the matter requires deeper appreciation of disputed facts for its determination, which is not permissible in constitutional jurisdiction of this Court.

6. It is pertinent to mention here that in terms of principles of law laid down in judgments reported as “*Rahim Bukhsh versus Mst. Shehzadi and others*” (2018 CLC 1789 (Lahore), “*Jabran Mustafa versus Judge Family Court and others*” (2021 MLD 847 (Lahore) and “*Abid Hussain versus Additional District Judge, Alipur, District Muzaffargarh and another*” (2006 SCMR 100) the impugned order passed by the executing court is an appealable order as the same is tantamount to a ‘decision given’ in terms of Section 14 of The Family Court Act, 1964 whereby the learned executing court has decided that the petitioner

instead of returning the decreed dowry articles is liable to pay the value of said articles in terms of decree passed in alternate by the learned Family Court to which extent the aforementioned aspect of the matter has been finally decided as in terms of the said order the petitioner has been restrained from returning the dowry articles for satisfaction of the decree to absolve him from future liability and he has been burdened with duty to pay the value of said articles, hence, the same cannot be treated as an interim or interlocutory order against which appeal is not maintainable in view of Section 14(3) of the Family Court Act, 1964 therefore, the same is appealable before the appellate court, which alternate remedy has not yet been availed.

7. Consequently, this petition, at this stage is pre-mature due to availability of alternate remedy and is **disposed of** accordingly with observation that the petitioner, if advised, in the first instance may avail the said remedy.

(Muzamil Akhtar Shabir)
Judge

*MuzamilMohsin**

Approved for reporting.