

Stereo. H C J D A 38.
Judgment Sheet
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

W.P No.14105/2023

Zahid Saleem
Versus
Mst. Gulshan Shaukat etc.

J U D G M E N T

Date of Hearing	16.05.2023
Petitioner By:	Ch. Hamid Mahmood, Advocate.
Respondent No.1 By:	Rai Muhammad Umar Rafique, Advocate.

Anwaar Hussain J: Briefly stated facts of the case are that respondent No.1/plaintiff/decree holder (“**respondent/decree holder**”) instituted a suit for recovery of the dowry articles or its alternate value against the petitioner/defendant/judgment debtor (“**petitioner/judgment debtor**”), which was decreed, *vide* judgment and decree dated 11.12.2021, passed by learned Family Judge and alternate value was adjudicated as Rs.350,000/- whereas when the appeal was preferred by the respondent/decree holder, the same was partially allowed without mentioning any amount as regards the alternate value of dowry articles in the decree sheet drawn by the learned Appellate Court below.

2. Learned counsel for the petitioner/judgment debtor submits that when the execution petition was filed, the petitioner/judgment debtor filed objections that decree of learned Appellate Court below is uncertain, however, the same have been turned down by the learned Executing Court, *vide* order dated 15.11.2022, which finding has been upheld by the learned Appellate Court below, *vide* judgment dated 08.02.2023 on the ground that any deficiency in the decree drawn by the learned Appellate Court below is merely a technicality, without appreciating that it is the decree which is to be executed and satisfied and not the judgment. Conversely, learned counsel for the respondent/

decree holder could not deny that the decree sheet drawn by the learned Appellate Court below does not reflect the exact amount of alternate value of dowry articles that has been awarded to the respondent/decree holder, however, states that the term ‘appeal partially allowed’ reflected in the decree sheet needs to be interpreted keeping in view the judgment of learned Appellate Court below that clearly depicts that alternate value of dowry articles have been enhanced from Rs.350,000/- to Rs.500,000/-.

3. Arguments heard. Record perused.
4. The legal question that requires determination by this Court is to examine whether in the absence of any explicit amount mentioned in the decree sheet drawn by the learned Appellate Court below, in a family matter, can the learned Executing Court seek guidance from the judgment of the learned Appellate Court below, while executing the said decree.
5. Admittedly, the respondent/decree holder was successful in her suit for recovery of dowry articles or its alternate value of Rs.2,740,500/-, which was decreed by the learned Trial Court and the respondent/decree holder was held entitled to recover Rs.350,000/- as alternate value of dowry articles, *vide* judgment and decree dated 11.12.2021, against which the petitioner/judgment debtor admittedly has not preferred an appeal whereas on the appeal preferred by the respondent/decree holder, the learned Appellate Court below, partially accepted the appeal of the respondent/decree holder and decree sheet was drawn with the following remarks:

“The appeal is partially Allowed. No order as to costs”

(Emphasis supplied)

6. There is no cavil to the proposition that the decree is the formal expression of adjudication rendered by the Court. Sub-rule (2) of Rule 35 of Order XLI of the Code of Civil Procedure, 1908 (“**the CPC**”) contemplates that the decree shall contain the number of the appeal,

the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made. No doubt that it is the decree and not the judgment that is to be executed and the learned Executing Court cannot go beyond decree. In the instant case, the decree drawn by the learned Appellate Court below does not reflect the exact amount awarded by the learned Appellate Court below while partially allowing the appeal preferred by the respondent/ decree holder.

7. What is the effect of such uncertainty in the decree drawn in appeal and how to resolve the same is the nub of the matter. In this regard, at the outset, it is imperative to observe that Section 13 of the Family Courts Act, 1964 (“**the Act**”) clearly stipulates how the decrees passed by the Family Court are to be enforced whereas Section 17 of the Act clearly contemplates that the provisions of *Qanun-e-Shahadat Order, 1984* and the CPC, except Sections 10 & 11 thereof, shall not apply to the proceedings before any Family Court. Therefore, application of the petitioner was misconceived. In case titled “*Amjad Iqbal v. Mst.Nida Sohail and others*” (**2015 SCMR 128**), the Supreme Court of Pakistan has held as under:

“7. On the legal plane, it may be noted that section 17 of the West Pakistan Family Courts Act, 1964 (the Act) provides that the provisions of Qanun-e-Shahadat Order, 1984 and the Code of Civil Procedure, 1908 except sections 10 and 11 shall not apply to the proceedings before any Family Court. Thus the technical trappings of execution provided in the C.P.C. are excluded from application before the Family Court in execution of a decree for maintenance. Section 13(3) of the Act itself provides that "Where a decree relates to the payment of money and the decretal amount is not paid within the time specified by the Court [not exceeding thirty days] the same shall, if the Court so directs to recover as arrears of land revenue, and on recovery shall be paid to the decree-holder."”

(Emphasis supplied)

8. Having above-examined legal position in sight regarding the powers of the learned Executing Court in family matters to execute the decree, this Court is of considered opinion that though an Executing Court cannot travel beyond the decree while implementing the same, however, that does not mean that it has no duty to find out true effect of the decree. For construing a decree, the learned Executing Court can in appropriate cases, opt to take into consideration the pleadings as well as proceedings leading upto the judgment that forms the foundation of the decree. In order to find out meaning and scope of the words employed in the decree, the Executing Court often has to ascertain the circumstances under which those words have been or can be used. In fact, this is plain duty of the learned Executing Court and, in the instant case, it is admitted feature of the case that initial claim in a suit for recovery of dowry articles or its alternate value was Rs.2,740,500/- and the learned Trial Court only decreed an amount of Rs.350,000/-, which the petitioner/judgment debtor acknowledges as no appeal was preferred by him but when the appeal of the respondent/decree holder was taken by the learned Appellate Court below, the same was partially allowed as reflected in the impugned decree that has attained finality and in order to ascertain the exact scope as to what extent, appeal of the respondent/decree holder was accepted, the judgment dated 20.05.2022 can be looked into and its paragraph 11 is unequivocally clear, operative part whereof is reproduced hereunder:

“11. ...Therefore, the alternate amount in lieu of dowry article is enhanced to Rs.5,00,000/-. In view of my observations, the findings of the learned Judge Family Court on issue No.1 are modified and the Appellant is held entitled to receive Rs.5,00,000/- as alternate amount of dowry articles.”

(Emphasis supplied)

It is para 11 of the judgment dated 20.05.2022 that is foundation of the impugned decree and, hence, clarifies the scope of the words

‘partially allowed’ used in the impugned decree. The learned Executing Court as well as the learned Appellate Court below have rightly appreciated this aspect and sought clarification from para 11 of the judgment, reproduced above.

9. In view of the above discussion, this Court is of the view that both the learned Courts below have not committed any illegality, procedural impropriety or misconstruction of the record. As a natural corollary, no interference is called for. The instant petition is **dismissed**.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting.

Judge

A.B**