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JUDGMENT SHEET

**LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT**

W.P. No.3346/2018

Mst. Zaib un Nisa, etc. **Versus** Additional District Judge, etc.

J U D G M E N T

Date of Hearing:	20.11.2024
Petitioners by:	Ch. Musawar Iqbal, Advocate alongwith petitioner No.1 in person.
Respondent No.2 by:	Mr. Sajjad Hussain, Advocate.

Anwaar Hussain, J. Petitioner No.1, namely, Mst. Zaib un Nisa (“**the petitioner**”) instituted a suit for recovery of her dower, dowry articles as also maintenance allowance of petitioner No.2 (minor daughter), born from the wedlock of the petitioner with respondent No.2, namely, Shafqat Ali (“**the respondent**”). The suit was decreed, *vide* judgment and decree dated 17.12.2016. The petitioner was held entitled to recover dower to the tune of 07-Tola gold ornaments or Rs.100,000/-, as alternate value. Both sides preferred separate appeals, which were dismissed, *vide* judgment and decree dated 28.03.2017, on the ground that since the maintenance has been fixed @ Rs.5000/-, for the minor, and alternate value of dower has been fixed as Rs.100,000/-, therefore, the appeals were not maintainable. No further proceedings took place. Thereafter, the execution proceedings were initiated.

2. The bone of contention is the dower in the shape of 07-Tola gold ornaments or its alternate value thereof. During the execution proceedings, the petitioner filed an application with the averments that either 07-Tola gold ornaments is to be recovered from the respondent or the present market value should be paid, which application was accepted by the Executing Court, *vide* order dated 10.07.2018, where-

against the respondent filed a revision petition, which was converted into an appeal and the order dated 10.07.2018 was set aside *vide* impugned judgment dated 05.11.2018 and it was held that the petitioner is only entitled to recover Rs.100,000/- as her dower.

3. Learned counsel for the petitioner submits that the impugned judgment dated 05.11.2018 passed in the execution proceedings, has travelled beyond the actual judgment and decree dated 17.12.2016, which clearly depicts that the petitioner is entitled to 07-Tola gold ornaments or its alternate value i.e., Rs.100,000/-.

4. Conversely, learned counsel for the respondent submits that the prayer of the petitioner was to the extent of recovery of her dower, which in the first place was clearly settled as Rs.100,000/-, in terms of entry recorded in Column No.13 of the *Nikahnama*, and the petitioner cannot deviate from the same. Adds that once the Trial Court rendered the judgment and both sides preferred appeals, the appeals were dismissed on the ground that same is not maintainable as the quantum of dower is Rs.100,000/-, from which it can be easily inferred that the dower was not 07-Tola gold ornaments but only Rs.100,000/-. Therefore, the impugned finding of the Appellate Court below has been justly passed. Further contends that during the execution proceedings, plea of the petitioner that she is entitled to 07-Tola gold ornaments or its current market value is beyond the decree, dated 17.12.2016, holding the field, therefore, the Appellate Court below has justly upended the finding of the Executing Court dated 10.07.2018, whereby the petitioner was held entitled to recover 07-Tola gold ornaments or its alternate value at the present market value. Further adds that initially the petitioner only claimed 07-Tola gold ornaments in the execution petition filed by the petitioner, to which the respondent objected and an order was passed that the execution petition be amended in accordance with the judgment and decree dated 17.12.2016. Consequently, the figure Rs.100,000/- was added in

the execution petition, which order was not assailed and the same amounts to an admission on part of the petitioner that alternate value of her dower is Rs.100,000/-.

5. Arguments heard. Record perused.

6. The nub of the matter is to examine the following points:

- i. What was the dower of the petitioner settled by the parties through *Nikahnama* dated 19.03.2007?
- ii. Whether through the impugned judgment dated 05.11.2018, the Appellate Court below, during the course of execution proceedings, was justified in holding that only Rs.100,000/- was the dower fixed by the parties when the Trial Court *vide* judgment and decree dated 17.12.2016 has clearly held that it was 07-Tola gold ornaments or its alternate value (Rs.100,000/-), which is to be paid by the judgment debtor?

7. Before rendering the opinion on the above articulated points of determination, it will be appropriate to reproduce the relevant Columns of the *Nikahnama* of the parties, which read as under:

ایک لاکھ روپے --- 100000 روپے	13. مہر کی رقم
سالم مہر معجل	14. مہر کی کتنی رقم معجل ہے اور کتنی غیر معجل
7 تولے زیورات طلائی قسم پونڈ پاسہ ہار سیٹ چوڑیاں وغیرہ عرضی سالم مہر ادا ہائے۔	15. آیا مہر کا کچھ حصہ شادی کے موقع پر ادا کیا گیا اگر کیا گیا ہے تو کس قدر۔
	16. آیا پورے مہر یا اس کے کسی حصہ کے عوض میں کوئی جائیداد دی گئی ہے اگر دی گئی ہے تو اس جائیداد کی صراحت اور اس کی قیمت جو فریقین کے مابین طے پائی ہے۔
	17. خاص شرائط اگر کوئی ہوں

The judgment and decree dated 17.12.2016 was rendered after a full-fledged trial. The appraisal of evidence led the Trial Court to conclude that the dower amount was settled as Rs.100,000/- in the year 2007

i.e., on 19.03.2007 and in lieu thereof gold ornaments weighing 07-Tola, consisting of necklace and bangles were given to the petitioner and few days prior to the marriage of sister of the respondent, the same were taken back and were used to meet marriage expenses of the said sister of the respondent. Once it was admitted that in lieu of Rs.100,000/- recorded in Column No.13 of the *Nikahnama*, 07-Tola gold ornaments were given and it was proved upon the statement of the PWs in general and PW-2, namely, Muhammad Imtiaz, who is close relative of the respondent that gold ornaments were repossessed by the respondent side, there was no reason for the Appellate Court below, while examining the matter during the course of execution proceedings, to hold that the dower was settled as Rs.100,000/- and the petitioner was not entitled to recover 07-Tola gold ornaments. Suffice to mention that once the gold ornaments were given as dower, in lieu of Rs.100,000/- the same became the property of the bride/petitioner, which she is entitled to recover as taking back of the ornaments was proved during the trial, hence, entry of Rs.100,000/- recorded in Column No.13 as dower becomes irrelevant. In this manner, the Appellate Court below, through impugned judgment has travelled beyond the judgment and decree dated 17.12.2016, which had attained finality.

8. Similarly, argument of learned counsel for the respondent that the petitioner is estopped from claiming gold ornaments as she filed the execution petition and claimed 07-Tola gold ornaments, to which the respondent objected and an order was passed that the execution petition be amended in accordance with the judgment and decree dated 17.12.2016, which requires satisfaction and accordingly the figure Rs.100,000/- was added is also misconceived inasmuch as the addition of Rs. 100,000/- in the execution petition, without deletion of 07 Tola gold ornaments, does not mean that the petitioner has waived

her claim to the gold ornaments or exercised her choice to relinquish her dower already received by her and subsequently repossessed.

9. Adverting to the second question as to whether the Executing Court was justified in accepting the application of the petitioner for payment of alternate price at the prevailing market rate regarding gold ornaments decreed in favour of the petitioner, suffice to observe that the purpose of determining alternate value is to enable the decree holder to obtain adequate compensation when the principal item (in family matters, dowry articles or the dower property) is not traceable or is in a condition/position that the same cannot be returned or recovered, for example a dowry article has been lost or damaged. Moreover, the word “alternate” has special significance. It can be used both as noun or an adjective. In the legal context, when used as an adjective, it describes something that offers or expresses a choice. When used as noun, it describes something that substitutes another. In the context of a decree passed in a case, this choice is vested with the decree holder-the petitioner in present case. In the instant case, dower is very much clear in terms of its weight i.e., 07-Tola gold and is easily available in the market. The petitioner cannot be compelled to accept its alternate value that was settled at the time of *Nikah* and/or the decree. The Executing Court is ensuring implementation of the decree dated 17.12.2016, the satisfaction whereof is being delayed by the respondent, on one pretext or the other. Such practice on part of the respondent is deprecated in terms of *dicta* laid down by Supreme Court of Pakistan in case of “Haseen Ullah v Mst. Naheed Begum and others” (PLD 2022 Supreme Court 686). The Supreme Court held that the entries recorded in Columns No.13 and 16 of the *Nikahnama* are obligations of husband and any act whereby the said obligations are not discharged in timely manner is highly deplorable. Therefore, by no stretch of imagination, alternate value of Rs.100,000/- can be treated as adequate substitute of the actual dower i.e., 07-Tola gold

ornaments. Hence, the Executing Court correctly allowed the application of the petitioner as it is for the petitioner to opt as to whether to go for the actual dower i.e., 07-Tola gold ornaments, which became her property after the same was settled and delivered to her or accept its alternate value.

10. The matter can be examined from another angle. The family law and the provisions of the enactments such as the West Pakistan Family Courts Act, 1964 and the Muslim Family Law Ordinance, 1961 have to be considered and interpreted favourably towards the females being the beneficial legislation. The same principle is to be followed in construing and interpreting a decree passed in a family suit, if any ambiguity is found or dispute arises therein between the parties regarding scope of the decree. The duty of the Executing Court is to carry out the decree and not to add to it or hang it any way. In the instant case, it would be unjust to interpret the decree dated 17.12.2016 in such a manner as put forth by the respondent and justified by the Appellate Court below, during execution, as this would amount to vesting a choice in the judgment debtor (the respondent in present case) to satisfy a decree, which favours him by adopting such means of satisfaction of such decree that are detrimental to the interest of the female – the petitioner/decreed holder. In the instant case, the gold ornaments were handed over to the petitioner as dower, which were subsequently taken back and so proved during the trial, which resulted in the passing of the decree dated 17.12.2016. Thus, the ownership of the gold ornaments became vested in the petitioner and any accretion and appreciation of the value of gold ornaments are also to be cherished and enjoyed by the petitioner and she cannot be deprived of such accretion by offering alternate value fixed at the time of her *Nikah*.

11. In view of the above discussion, the impugned judgment passed by the Appellate Court below is not sustainable. The present petition

is **allowed**. As a corollary, the impugned judgment dated 05.11.2018 is set aside, and the order of the Executing Court dated 10.07.2018 is upheld. No order as to costs.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting

Judge

Tahir Noor