Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.371 of 2021

Nasreen Akhtar and 03 others
Versus
Additional District Judge (West), Islamabad and others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
11.	**30.05.2022.**	**Mr. Ashiq Hussain Tarar and Ms. Ayesha Malik, Advocates for petitioner.** **Mrs. Shireen Imran, Advocate for respondents.** The petitioners have impugned (i) the judgment and decree passed by the learned Judge Family court dated 12.11.2019, and (ii) the judgment and decree passed by the learned Additional District Judge dated 27.10.2020, pursuant to which the learned trial Court and the learned Appellate Court determined the maintenance payable by respondent No.3 to the petitioner No.1 for petitioners 2, 3 and 4 and determined the entitlement of petitioner No.1 to recover dowry articles. **2.** Learned counsel for the petitioner No.1 submitted that the petitioner No.1 was aggrieved by the impugned judgments and decrees on two counts. One, that the maintenance in the amount of Rs.12,000/- for each child was insufficient in view of the means of respondent No.3 and ought to be enhanced. And two, the learned Additional District Court erred when it reversed the judgment and

decree of the learned Family court to the extent of petitioner No.1's entitlement to recover a necklace and two earrings from respondent No.3. Learned counsel for the petitioner submitted that the learned Judge Family Court had correctly appreciated the evidence adduced before him and held that respondent No.3 had acknowledged the receipt of jewelry, including a necklace and earrings as part of dowry articles. And consequently to such extent the claim of petitioner No.1 to receive the same from respondent No.3 was established. Thus the learned Additional District Court had erred in holding that petitioner No.1 had failed to discharge the onus to prove that the necklace and two earrings had been kept by respondent No.3 and had not been returned to petitioner No.1.

3. Learned counsel for respondent No.3 supported the impugned judgment passed by the learned Additional District Court.

4. Perusal of the judgment of the learned Judge Family Court reflects that the entitlement of petitioner No.1 to receive the necklace and the earrings as pieces of jewelry was based on respondent No.3's admission that the said items formed part of the dowry articles received by respondent No.3 from the parents

of petitioner No.1. And that respondent No.3 had failed to lead evidence to establish that such articles had been returned to petitioner No.1. The learned Additional District Court had reversed this finding by holding that in the admission made by respondent No.3 it had been stated that the jewelry in question (i.e. a necklace and two earrings) had been handed over to petitioner No.1 when she rejoined respondent No.3 in GIK and these items were not returned to petitioner No.1's family along with other dowry articles as petitioner No.1 was wearing these jewelry articles. The learned Additional District Court found that the onus to establish that the articles had been retained by respondent No.3 while the remaining dowry articles were returned was on petitioner No.1 who had failed to discharge the onus and that she had adduced no evidence in support of her claim.

5. This court finds that the learned Additional District Court had correctly appreciated the evidence and corrected an error made by the learned Judge Family Court. The finding of the learned Judgment Family Court in relation to the jewelry items was based on the admission of respondent No.3. But within such admission, respondent No.3 had

also claimed that the jewelry articles were in the possession of petitioner No.1 and not with respondent No.3. It was therefore not for the learned Judge Family Court to partly accept the statement of respondent No.3 in relation to the jewelry items having been received as part of dowry and disregard the statement of respondent No.3 to the extent that he asserted that the said jewelry articles had been handed back to petitioner No.1. As the finding was based on an admission by respondent No.3, the entire statement ought to have been accepted or rejected by the learned Judge Family Court, which was not done. And to such extent the findings of the learned Judge Family Court suffered from infirmity, which had been corrected by the learned Additional District Court.

6. On the issue of maintenance, after appraising the evidence the learned Judge Family Court determined that the petitioner was entitled to receive maintenance in the amount of Rs.12,000/- for each of the three children (i.e. petitioners No.2, 3 and 4). The learned Additional District Court reviewed the evidence adduced and confirmed the amount of maintenance allowance granted by the learned judge Family Court. Learned counsel for the

petitioners has failed to point out any infirmity or illegality in the manner in which the evidence had been appreciated by the learned trial Court and the learned Appellate Court. This Court is not convinced that there is reason to exercise its extra ordinary constitutional jurisdiction to interfere with the maintenance fixed by the learned trial Court and the learned Appellate Court in their concurrent findings. It is settled law that in constitutional jurisdiction this Court cannot second guess the judgment exercised by the Family Court after appraisal of evidence so long as such exercise of discretion does not suffer from any illegality.

7. For the aforementioned reasons, this petition is without merit and is ***dismissed.***

(BABAR SATTAR)
JUDGE

M.A. Raza