

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 606 OF 2020

PERVEZ

VS.

HUMA ISRAR AND OTHERS

Petitioner by : **Ms. Saima Uzma Chatha, Advocate.**

Respondents by : **Ex-parte.**

Date of Decision : **07.09.2022.**

SAMAN RAFAT IMTIAZ, J.:- Through the instant writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the Petitioner [Pervez] has assailed the concurrent Judgments & Decrees dated 28.02.2019 and 14.11.2019 (“**Impugned Judgments & Decrees**”) passed by the learned Judge, Family Court, West-Islamabad (“**Family Court**”) and the learned Additional District Judge (West) Islamabad (“**Appellate Court**”), respectively.

2. The facts in brief as per the Memo of Petition are that the Respondent No.1 [Huma Israr] and Respondent No.2 [Umama Mariam] filed a Suit for Recovery of Dower in the shape of 2 *tola* Gold Ornaments, Maintenance Allowances at the rate of Rs.30,000/- per head per month and Dowry Articles/Gold Ornaments. The Petitioner contested the suit by filing written statement. Thereafter issues were framed by the learned Family Court and after recording of evidence, the learned Family Court decreed the suit of the Respondents No.1 & 2 on 28-02-2019 as follows:-

“(i) *That the plaintiff No.1 is entitled for her maintenance w.e.f. 01-01-2012 to 25-08-2013 at the rate of Rs.3000/- per month.*

(ii) *The Plaintiff No.2/minor is entitled for her maintenance at the rate of Rs.5,000/- per month w.e.f. the date of her birth till her marriage with increase of 15% annually.*

(iii) *The Plaintiff No.1 is entitled to take back possession of dowry articles as per receipts Ex.P/3 to Ex.P/10 or in alternate lump sum amount of Rs.1,00,000/-*

(iv) *To the extent of rest of the claim of plaintiff, the suit stands dismissed.”*

3. Feeling aggrieved of the Impugned Judgment and Decree dated 28-02-2019, the Petitioner filed an appeal before the learned Appellate Court. The learned Appellate Court modified the Impugned Judgment and Decree dated 28-02-2019 of

the Family Court vide Impugned Judgment & Decree dated 14-11-2019 which is reproduced as under:-

“it is ordered that the instant appeal is accepted only to the extent that the annual increase in the maintenance of the respondent/plaintiff well be @, 10% instead of 15% and alternate lump sum amount of decreed dowry articles is reduced to Rs.75,000/- from Rs.1,00,000/-. The impugned judgment and decree are modified accordingly.”

4. Being aggrieved and dissatisfied by the Impugned Judgments & Decrees dated 14-11-2019 and 28-02-2019 passed by the learned Appellate Court and the learned Family Court the Petitioner has preferred the instant writ petition for setting aside the same.

5. The learned counsel for the Petitioner submitted that the appeal was filed in respect of Issues No.1, 2, and 5 as framed by the learned Family Court which pertain to the maintenance allowance of Respondents No.1 & 2 and recovery of dowry articles, gold ornaments or price thereof at the prevailing market rate. In respect of maintenance, she submitted that the Respondent No.1 admittedly did not have any proof with regard to her allegation that the Petitioner's monthly income is Rs.30,000/- despite which both the lower courts have granted the Respondents No.1 & 2 maintenance allowance at an excessive rate which is beyond the means of the Petitioner. With regard to the dowry articles the learned counsel for the Petitioner drew the attention of this Court to the affidavit-in-evidence submitted by the witnesses produced by the Petitioner who stated that the dowry articles were returned to the Respondent No.1 and accepted by her father on her behalf in their presence. She argued that the learned Family Court erred in concluding that the said witnesses i.e., DW-2 & 3 failed to recognize their signatures on the list produced as Ex-DW-1/2 and that as such the said exhibit lost its efficacy given that no such question was asked in cross-examination. She further pointed out that the learned Appellate Court's finding that the Petitioner neither pleaded in his written statement nor the DWs deposed date, time, occasion or the names of witnesses in whose presence the Respondent No.1 received back her dowry articles was erroneous as the Petitioner had specifically pleaded the same in his Written Statement. She argued that for all the foregoing reasons the Impugned Judgments & Decrees are erroneous and suffer from misreading and non-reading and as such are liable to be set-aside.

6. Despite issuance of notices, no one has entered appearance on behalf of the Respondents No. 1 & 2 and as such they were proceeded ex-parte vide order dated 20-10-2020.

7. Heard arguments. Record perused.

8. First and foremost, it has to be borne in mind that this Court in exercise of Constitutional jurisdiction does not act like a Court of appeal. It neither reappraises evidence nor does it substitute the concurrent findings of fact recorded by the Family Court with its own findings solely on the ground that another view was possible on the same evidence. A party approaching the High Court under Article 199 of the Constitution has to demonstrate that there is a gross misreading or non-reading of evidence or jurisdictional error or such legal infirmity that has caused miscarriage of justice.

9. Though the Respondent No.1 admittedly did not have proof that the Petitioner's salary is Rs.30,000/- per month, the Petitioner himself produced his salary slip for the month of January, 2019 as Ex-DW-1/1 which shows that the total pay & allowances aggregated to Rs.37,610/- and after deduction/recovery of Rs.6,962/- the net payable amount was Rs.30,648/-. The learned counsel's contention that the Petitioner's basic pay is Rs.21,910/- is without merit in view of the net payable amount. No other instance of misreading or non-reading has been pointed out with regard to maintenance allowance granted by the lower courts. Even otherwise I do not find the grant of Rs.3,000/- per month to the Respondent No.1 from 01-01-2012 to 25-08-2013 and Rs.5,000/- per month to the Respondent No.2 from the date of her birth till her marriage to be excessive by any stretch of imagination especially in view of the fact that the learned Appellate Court has already shown indulgence to the Petitioner by reducing the annual increment fixed by the learned Family Court for Respondent No.2's maintenance from 15 % to 10% per annum.

10. As far as the claim of return of dowry articles are concerned, bare perusal of the relevant paragraph of the written statement filed by the Petitioner as pointed out by the learned counsel shows that he had submitted that the Respondent No.1 had received her complete dowry articles from the Petitioner in the presence of witnesses. On cross-examination he reiterated that Respondent No.1 had taken the dowry articles. Nowhere has he stated that the dowry articles were received by the Respondent No.1's father or that the list produced as Ex-DW-1/2 was signed by

him. No question was asked in cross-examination of the PWs No.1 & 2 as to whether or not Ex-DW-1/2 was signed by the Respondent No.1's father. On the contrary one of the alleged witnesses produced by the Petitioner stated that the Respondent No.1's father signed the list produced as Ex-DW-1/2 whereas the other alleged witness stated that not only did the Respondent No.1's father receive the dowry articles but that he also signed the list produced as Ex-DW-1/2. On the other hand, neither the father was summoned as a witness nor any question was asked in cross-examination of the PWs No.1 & 2 with regard to his or the Respondent No. 1's signature on the said list and the same has not been established through any other means either.

11. In view of the foregoing, the Petitioner has failed to establish that the dowry articles, admittedly given to the Respondent No.1 at the time of marriage, were returned to her after the divorce and therefore, no reasonable grounds have been made out for interference with the concurrent findings of the Courts below in exercise of writ jurisdiction. As such, the instant petition is **dismissed** as being devoid of merit.

(SAMAN RAFAT IMTIAZ)
JUDGE