

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Writ PETITION NO.544 OF 2020.

Mst. Nighat Yasmin, etc

Vs.

Muhammad Waheed, etc.

Petitioner by : Ch. Muhammad Jehangir, Advocate.

Respondents by : Mr. Yasir Arfat Abbasi, Advocate.

Date of Hearing : 21.04.2022.

SAMAN RAFAT IMTIAZ, J.:- Through the instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 ("Constitution") the Petitioners have assailed Judgments & Decrees dated 22.09.2018 and 23.02.2019 passed by learned Family Court (East) Islamabad and learned Additional District Judge-III (East) Islamabad, respectively.

2. Brief facts are that the Petitioners filed a suit for recovery of maintenance allowance, house rent, dowry articles including gold ornaments and possession of a room of residential house with the averments that the Petitioner No.1 and the Respondent No.1 were married on 02.07.2000 against dower of Rs.5000/-, seven Tolas ornaments and a residential room of house. That the cash dower was never paid, 7 Tolas gold ornaments were given but the same were snatched by the Respondents after marriage, whereas the possession of residential room has not been handed over to the petitioners. That at the time of marriage, parents of Petitioner No.1 gave her dowry articles and gold ornaments weighing 11 Tolas, which are still in possession of the Respondent No.1. From this wedlock four minors (Petitioners No.2 to 4 and Omar Waheed son (who died during the pendency of the suit) were born, who are living with Petitioner No.1. That after the marriage the Respondent No.1 maltreated Petitioner No.1 and he was in the habit of humiliating, harassing, beating, abusing, and insulting Petitioner No.1 on petty matters. That on number of occasions, the Respondent No.1 ousted Petitioner No.1 from his house but she rejoined on the intervention of elders of their families and Jirgas. That the Respondent No.1 never maintained the petitioners and all the

delivery expenses/medicines and other miscellaneous expenses were borne by the parents of Petitioner No.1. That on 23.11.2012 the Respondent No.1 verbally divorced Petitioner No.1.

3. The suit was contested by the Respondent No.1 by filing written statement. Issues were framed. The parties produced their evidence and after hearing the arguments, learned Family Court vide Impugned Judgment & Decree dated 22.09.2018 partially decreed the suit to the effect that Petitioner No.1 is granted Khula as an alternative relief, subject to relinquishment of dower @ Rs.5000/-. Petitioner No.1 is entitled to receive maintenance @Rs.5000/- per month for the Iddat period. Son of Petitioner No.1 Omar Waheed (who died during pendency of the suit) was found entitled for past maintenance @Rs.1500/- per month from the date of institution of the suit till the date of his death. The Petitioners No.2 to 4 are entitled for recovery of past maintenance @Rs.1500/- since 05.12.2012, till decision of the case and for recovery of future maintenance @Rs.2700/- from decision of the case till their legal entitlement with 10% annual increase due in September, 2019. Petitioner No.1 is entitled to recover Rs.10,000/- in alternate of the remaining dowry articles mentioned in the list Ex-P4, whereas the remaining claims of Petitioner No.1 were dismissed.

4. Feeling aggrieved by the Judgment & Decree of Family Court, both Petitioner No.1 and Respondent No.1 filed their appeals before the Court of learned Additional District (East) Islamabad. Appeal filed by the Petitioner was partially allowed and the matter was remanded to learned trial court to decide afresh issue No.1 pertaining to the claim made by the appellant to the extent of recovery of 11 Tolas gold, whereas appeal filed by the Respondent No.1 was dismissed vide Impugned Judgment & Decree dated 23.02.2019.

5. The instant writ has been filed by the Petitioner challenging the Judgments & Decrees dated 22.09.2018 and 23.02.2019 passed by learned Family Court (East) Islamabad and learned Additional District Judge-III (East) Islamabad only to the extent of recovery of maintenance allowance, house rent and dowry articles.

6. Learned counsel for the Petitioner contended that Impugned Judgments and Decrees dated 22.09.2018 and 23.02.2019 to the extent of past and future maintenance of the petitioners are illegal, perverse, arbitrary as the petitioners No.2

to 4, who are minor and school going and their expenses are increasing day by day due to inflation; that Impugned Judgments and Decrees are based on presumptions; that Impugned Judgments and Decrees are result of misreading and non-reading of evidence; that Impugned Judgments and Decrees are against the law and facts of the case.

7. Learned counsel for the Respondent No.1 contended that maintenance is always fixed keeping in view financial status of father; that the Respondent No.1 is daily wage/labourer; that no evidence was produced by Petitioner No.1 regarding financial status of the Respondent No.1, therefore, maintenance of the petitioner has not been fixed in accordance with law.

8. I have heard the arguments and perused the record.

9. 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. As such, the Court cannot embark upon a reappraisal of evidence. It is settled law that a High Court in such jurisdiction cannot substitute the concurrent findings of the courts below 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.

10. The Impugned Judgment dated 22-09-2018 passed by the learned Judge Family Court reflects that the Petitioner was admittedly unaware of the source of income of the Respondent No. 1. On the other hand, it is noted from the Impugned Judgment dated 22-09-2018 that the Respondent No. 1 stated in his cross-examination that he worked at a shop and earned Rs.1,000/- per month at the time of his marriage with the Petitioner and that at present he earns Rs.6,000/- to Rs.7,000/- per month. The learned counsel for the Petitioner admitted that no proof of the Respondent No. 1's income was produced by her. In view of the above, the learned Family Court correctly passed the Judgment whereby the Petitioners No.2 to 4 were found entitled for recovery of past maintenance

@Rs.1500/- since 05.12.2012, till decision of the case and for recovery of future maintenance @Rs.2700/- from decision of the case till their legal entitlement with 10% annual increase due in September, 2019, which was rightly upheld by the learned Appellate Court. No misreading or non-reading of evidence could be pointed out by the learned counsel for the Petitioner.

5. The sole argument raised was that the amount of maintenance is too meager. However, he was unable to satisfy this Court as to how factual disputes involving the Respondent No. 1's income and the needs of the Petitioners No. 2 to 4 can be decided in writ jurisdiction. Even otherwise, in answer to a specific query in this regard, the learned counsel for the Petitioner stated that according to him the maintenance for each minor child should be Rs.5000/- per month. He also acknowledged that learned Family Court had also allowed 10% annual increase on the maintenance allowance decreed. On calculation, he conceded that the current amount of monthly maintenance is substantially close to what is admittedly a reasonable amount of maintenance. Therefore, there appears to be no miscarriage of justice. Even otherwise, the Petitioners have an alternate remedy to approach the learned Family Court for enhancement of maintenance allowance.

11. In view of the foregoing, 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**

Announced in the open Court on 27th of April, 2022.

JUDGE