

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 2446/2019

Muhammad Aftab
Versus
Mst. Shahida Bano and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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01.07.2019	Mr. Attiq-Ur-Rehman, Advocate for the petitioner.
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Through the instant writ petition, the petitioner assails judgments and decrees dated 28.02.2019 and 12.06.2019, passed by learned Judge Family Court and learned Additional District Judge-III Islamabad (East), respectively, whereby the suit filed by respondent No.1 for recovery of maintenance allowance, dowry articles and gold ornaments, was partially decreed.

2. The facts essential for disposal of the case are that the petitioner and respondent No.1 got married on 08.05.2011. Differences between them lead to desertion of respondent No.1. On 07.11.2016, respondent No.1 instituted a suit for recovery of maintenance allowance at the rate of Rs.20,000/- per month along with past maintenance at the rate of Rs.15,000/- per month from August, 2011 to October, 2016; dowry articles or an alternate value of Rs.1,34,430/-; *salami* and dower to the tune of Rs.11,000/-, and five tolas of gold ornaments. On 03.01.2017, the petitioner submitted his written statement, whereby he contested the suit and raised counter claim for restitution of conjugal rights. They could not reconcile in the Court and



from divergent pleadings, the issues were framed on 09.02.2017. They produced their respective evidence. The Respondent No.1/plaintiff along with two other witnesses deposed in support of the assertions made in the plaint while respondent No.1 along with another witness deposed against the claims raised in the plaint and in support of the claim of restitution of conjugal rights. At the conclusion of the trial, learned Family Court, vide judgment and decree dated 28.02.2019, decreed the suit of respondent No.1 to the extent of past maintenance at the rate of Rs.4,000/- per month from August, 2011 to October, 2016 and Rs.5,000/- per month with 10% annual increase from institution of suit till legal entitlement, claim for recovery of dowry was decreed as per respondent No. 1's list Exh.P.3 or in alternate amount of Rs.1.34,430/-; and the claim for recovery of five *tolas* of gold ornaments was also decreed whereas to the extent of recovery of salami and dower the suit was dismissed. Counter claim of the petitioner for restitution of conjugal rights was decreed subject to provision of residence to the respondent No.1 comprising two separate rooms, one kitchen and one wash room.

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3. The petitioner assailed the said Judgment and decree dated 28.02.2019 in an appeal, which was dismissed, vide judgment and decree dated 12.06.2019. The said concurrent judgments and decrees have been assailed by the petitioner before this Court in the instant writ petition.

4. Learned counsel for the petitioner contends that learned Courts below ignored the fact that respondent No.1 left house of the petitioner without any reason and his permission; that respondent No.1 is a disobedient wife she refused to return despite efforts of the petitioner; that she is not entitled to any kind of maintenance; that respondent No.1's list of dowry articles is false and exaggerated to grab the amount; that only the dowry articles mentioned in the list of the petitioner are lying at his house; that respondent No.1 took five *tolas* gold ornaments along with her at the time of self desertion; that the maintenance awarded in the impugned judgments and decrees is exorbitant as the petitioner's monthly salary is around rupees 17,000/- in which he has to provide for other liabilities, including parents dependent upon him; and that the petitioner had constructed a separate room for residence of respondent No.1, but she is still unwilling to settle. Learned Counsel prayed for acceptance of this writ petition by setting-aside the impugned judgments and decrees.

5. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance.

6. It is an admitted fact that the marriage between the petitioner and respondent No.1 is still intact. The petitioner's version is that the maintenance fixed by the learned Courts below is beyond his paying capacity. This averment does not cohere with the record as the rate of maintenance fixed in the impugned judgments is merely Rs.5,000/- per month with 10% annual

increase. During the evidence, the petitioner deposed that his brother also contributes for the expenses of their parents. A husband is liable to pay maintenance to his wife and he is not absolved from this responsibility even when the wife is not living in his house due to their differences. In such circumstances, the quantum of maintenance cannot be termed to be excessive or harsh.

7. Respondent No.1 produced Shaukat Ali (PW-3) who categorically deposed through affidavit (Exh P-3) that he went to the house of the petitioner for reconciliation between the spouses and the petitioner's matter admitted that petitioner took back the gold ornaments from respondent No.1. This portion of the evidence was not challenged during the cross-examination. PW-3 also remained consistent during the cross-examination that father of the petitioner asked him to discontinue the reconciliation efforts which belies the petitioner's version about his willingness to bring back his wife, i.e. respondent No.1.

8. In appeal, the petitioner did not challenge the condition for provision of separate accommodation to respondent No.1 mentioned in the decree for restitution of conjugal rights. It is not his stance that he provided the separate accommodation in compliance with the decree passed by the learned Family Court.

9. On the aspect of dowry articles, respondent No.1 substantiated her list of articles (Exh-P/3) by provision of purchase receipts, but the petitioner neither cross-examined the PWs on the specific additional

articles not mentioned in his own list (Exh-D/3) nor did he produce independent evidence in support of his version. Therefore, the findings of learned Family Court on this subject do not suffer from incorrect appreciation of the evidence.

10. As mentioned above, the evidence of PW-3 regarding taking back of the gifted gold ornaments was not rebutted. Therefore, the learned Family Court in absence of the refutation had rightly decreed the claim to that extent.

11. Learned counsel for the petitioner could not point out any jurisdictional error or defect in the impugned judgments and decrees. The aspects highlighted in the present petition are related to findings of fact which have already been reappraised by the learned appellate Court, which upheld the findings of the learned Family Court. It is settled principle of law that in cases where concurrent findings of the Courts are assailed in writ jurisdiction, the scope of the writ jurisdiction is confined to matters where the judgments passed by the Courts below are not reasonable or have been passed in disregard of the provisions of law or accepted principles concerning appreciation of evidence. In the cases reported as “Waqar Haider Butt Vs. Judge, Family Court” (2009 SCMR 1243) “Muhammad Farique Vs. Kaneez Bibi” (2018 MLD 1988), “Parveen Umar and 3 others Vs. Sardar Hussain and 5 others” (2003 YLR 3097 Peshawar), “Aqal Zaman Vs. Mst. Azad Bibi and others” (2003 CLC 702) it was held that the

High Court, in its writ jurisdiction, can neither reappraise the evidence and substitute findings of facts recorded by Family Court, nor can give opinion regarding quality or adequacy of the evidence. The assessment and appraisal of evidence is the function of the lower Court, which is vested with its exclusive jurisdiction, in this regard.

12. In view of the above, finding no jurisdictional error or perversity in the concurrent findings of the learned Courts below, the instant petition is *dismissed in limine.*

(MIANGUL HASSAN AURANGZEB)
JUDGE