

[Lahore]

Before Malik Shahzad Ahmad Khan, J

SHAKIL MEHMOOD through Special Attorney---Petitioner

Versus

DISTRICT JUDGE, SIALKOT and 3 others---Respondents

Writ Petition No.22339 of 2010, heard on 15th December, 2011.

West Pakistan Family Courts Act (XXXV of 1964)---

----S.5 & Sched.---Constitution of Pakistan, Art.199---Constitutional petition---
Recovery of dower, dowry articles, maintenance allowance and delivery expenses---
Concurrent findings of Trial Court and Appellate Court by which decree for maintenance
for son, recovery of dower amount and dowry articles was passed in favour of the wife
(respondent)---Husband (petitioner) in his petition did not challenge the quantum of
maintenance allowance as fixed by courts below but objected to the 20% annual increase
in the said allowance---Husband also contented that dowry list was not signed by him or
his representative and list of dowry articles exhibited in the court did not mention their
prices---Validity---Petitioner had failed to produce his salary slips to establish his
contention that 20% annual increase in maintenance allowance was beyond his means--
-Minor son was a 'special child' because of which wife had to incur a lot of expense on
his medical treatment---Such fact was also admitted by one of petitioner's witnesses, in
view of which 20% annual increase in maintenance allowance was rightly fixed by courts
below---Wife had proved the list of dowry articles, as the same was signed by her and
she had also produced different receipts regarding the purchase of said dowry articles---
Husband having failed to point out any illegality or irregularity in concurrent findings of
Trial Court and Appellate Court below, his petition was dismissed.

Tauqeer Ahmad Qureshi v. Additional District Judge, Lahore and 2 others PLD
2009 SC 760 distinguished.

Ch. Muhammad Aslam for Petitioner.

Shahbaz Ali Khan for Respondents Nos.3 and 4.

Date of hearing: 15th December, 2011.

JUDGMENT

MALIK SHAHZAD AHMAD KHAN, J.--This petition has been filed to challenge the impugned judgment and decree dated 15-4-2010 passed by the learned Judge Family Court, Sialkot, as well as, against the impugned judgment and decree dated 8-6-2010 passed by the learned District Judge, Sialkot.

2. As per brief facts of the present case, respondents Nos. 3 and 4 filed a suit for recovery of maintenance allowance at the rate of Rs.25,000 per month, per head, dower amount of Rs.60,000, delivery charges of Rs.51,000 and for recovery of dowry articles or in the alternative for recovery of Rs.6,95,920. The said suit was filed in the court of learned Judge Family Court, Sialkot. The suit of dowry articles was decreed to the extent of Rs.3,00,000 whereas the suit for recovery of maintenance allowance of minor was decreed at the rate of Rs.5,000 per month with 20% annual enhancement and delivery charges of Rs.51,000 were also decreed vide judgment and decree dated 15-4-2010.

The petitioner challenged the said judgment and decree through filing an appeal but the same was also dismissed vide impugned judgment and decree dated 8-6-2010 passed by the learned District Judge, Sialkot. The petitioner has challenged the above mentioned judgments and decrees through instant writ petition.

3. It is submitted by the learned counsel for the petitioner that he does not challenge the quantum of maintenance allowance as fixed by the courts below but he has objection on the 20% annual increase in the said maintenance allowance. It is contended that in view of the law laid down in the case of "Tauqeer Ahmad Qureshi v. Additional District Judge, Lahore and 2 others" (PLD 2009 Supreme Court 760), 20% increase in the maintenance allowance is not sustainable in the eyes of law. It is further contended that the findings of the courts below on issue No. 4 are not sustainable in the eyes of law; that no price was mentioned in the dowry list Exh.P-21, therefore, the decretal amount of Rs.3,00,000 as awarded by the courts below is result of misreading and non-reading of evidence; that the above mentioned dowry list was not signed by the petitioner or his representative, therefore, the suit has wrongly been decreed, thus, this petition may be accepted and the impugned judgments and decrees may be set aside.

4. On the other hand, this petition has been opposed by the learned counsel appearing on behalf respondents Nos. 3 and 4 on the grounds that DW-2 Muhammad Saleem has admitted while appearing in the witness box that respondent No.4 is an abnormal child and respondent No.3 had to incur a lot of expenses on the mental treatment of said minor, therefore, 20% increase in the maintenance allowance has rightly been fixed by the courts below; that facts in the case of Tauqeer Ahmad Qureshi are distinguishable from the facts of the present case; that there are concurrent findings of facts in favour of respondents Nos.3 and 4, therefore, the impugned judgments and decrees may not be set aside; that dowry articles were fully proved through oral as well as documentary evidence produced by the petitioner; that the petitioner has also placed on record different receipts of said articles; that non-signing of the dowry list by the petitioner is insignificant because said list was fully proved by respondent No. 3 as the said list contains her signature and the same was exhibited in her evidence; that there is no illegality in the impugned judgments and decrees, therefore, this petition may be dismissed.

5. Arguments heard. Record perused.

6. It is an admitted fact that respondent No.3 is ex-wife of the petitioner and respondent No.4 is his son. It is duty of the petitioner to provide maintenance allowance to his minor son. The petitioner has claimed that he is getting salary of Rs.15,000 per month, therefore, 20% increase in the maintenance allowance is beyond his means. The petitioner is admittedly employed in "Kuwait". He has not produced his salary slip to establish his above mentioned contention that he is getting Rs.15,000 per month. The minor respondent No.4 is admittedly a "special child". It was admitted by Muhammad Saleem DW-2 who was a witness of the present petitioner that minor respondent No. 4 is an abnormal child and her mother (respondent No.3) had to incur a lot of expenses on his medical treatment. In view of the above 20% annual increase in the maintenance allowance was rightly fixed by the courts below. The facts of the case of "Tauqeer Ahmad Qureshi" supra are distinguishable from the facts of the present case. So far as suit for recovery of dowry articles is concerned, it is not believable that respondent No.3 was not given any dowry articles at the time of her marriage. She claimed dowry articles of Rs.6,95,920 but the courts below have decreed the suit to the extent of Rs.3,00,000. The petitioner has proved the dowry list as the same is signed by her and contains her signature. The said list was exhibited in evidence as Exh.P-21. The petitioner also produced different receipts regarding the purchase of above mentioned dowry articles. The same are available on record. In view of the above, both the courts below have rightly decreed the suit of respondent No.3 to the extent of recovery of

dowry articles of worth Rs.3,00,000. There are concurrent findings of facts of two courts below. The learned counsel for the petitioner could not point out any illegality or material irregularity in the impugned judgments and decrees passed by the courts below.

7. In light of the above discussion, the instant petition is without any substance; hence, the same is, hereby, dismissed.

MWA/S-8/L

Petition dismissed.