

W.P. No. 11470/2013

Mst. Samreen Bibi

Judge Family Court etc.

04.03.2015      Mr. Muhammad Qadeer Khan, Advocate for  
the petitioner.  
Rai Muhammad Tufail Khan Kharal, Advocate  
for respondent No.3.

Through this constitutional petition, petitioner challenges the judgments and decrees dated 19.09.2011 and 24.05.2012 passed by learned Judge Family Court as well as Addl. District Judge, Tandlianwala respectively whereby Rs. 70,000/- in lieu of dowry articles was concurrently decreed.

2.      Brief facts giving rise to the filing of this petition are that at the time of marriage between petitioner and respondent No.3, she allegedly brought dowry articles worth Rs. 2,64,800/- mentioned in the list (Mark-A) which included gold ornaments worth Rs. 25000/- and boxes worth Rs. 18000/- alongwith other useable items. According to the plaint, the marriage was contracted 4 months before filing of suit for recovery of dowry articles on 23.09.2010. The suit was resisted by filing written statement

whereafter the issues were framed and the evidence was recorded. Vide judgment and decree dated 19.09.2011, Rs. 70,000/- as alternate price of dowry articles was awarded on the ground that petitioner's parents must have granted the dowry articles as per custom in our society and that its value was ascertained in view of wear and tear and financial status of her parents. The learned appellate court has also concurred with the findings of learned Judge Family Court on additional ground that father of the petitioner being a retired army official and also an agriculturist had given the dowry to the petitioner being the elder daughter and the value of which was rightly ascertained by the learned Judge Family Court, hence this writ petition.

3. Learned counsel for the petitioner submits that while granting the dowry articles by the courts below its value was to be calculated keeping in view the wear and tear as its price could not be as low as Rs. 70,000/- just after 3 months of marriage whereas learned counsel for respondent No.3 submits that on the other hand a buffalo was given to the parents of the petitioner who never gave any dowry articles to the petitioner.

4. Arguments heard. File perused.

5. Both the courts below have taken into account the wear and tear of the dowry articles as their delivery was admitted with reference to their numbers and the nature, therefore, the sole question before this Court would be as to how wear and tear of said dowry articles can be ascertained when the marriage remained intact only for 3 months.

6. There can be no generalized formula under which the wear and tear of dowry articles can be exactly determined as it depends upon multiple factors, like nature and quality of the dowry articles, its use by the woman, the relationship level between the spouses during the marriage, the retaliatory attitude after separation, the period during which they remained under use of the woman, the period after which the claim for dowry articles was made, etc.

7. Obviously, the wear and tear for electronic items are different than furniture, the life span of kitchen utensils are greater than decoration pieces of dining room, seasoned wearing clothes of daily use have less value than those used

on special occasions. Therefore, they all have different rate of depreciation.

8. A tentative assessment should not be presumptive but has to be based on subjective analysis of dowry articles on physical verification based on visuals which can be procured through different modes like on-line video calling, video footages, still photographs, clippings, factual report by a local commission or employing modern Information Technology. Moreover, the present market value of such articles can be ascertained through traders/shop keepers dealing with second-hand dowry articles.

9. One of the safe modes is that at the time of filing the suit for recovery of dowry articles, a local commission can be appointed to conduct a physical verification of the dowry articles which may help the court arrive at just conclusion.

10. However, in addition to the above, the learned Judge Family Court can employ any other mode for assessment but it cannot be based on its sole discretion unsupported by facts on grounds.

11. Since none of the above said modes was adopted, therefore, this writ petition is allowed, and the judgments and decrees of the two court below are set aside to the extent of tentative assessment of Rs. 70,000/-, as a result of which the learned Judge Family Court is directed to assess the tentative value by adopting any of the above means.

**(ALI BAQAR NAJAFI)**  
**JUDGE**  
***Special Bench Family-I***

**Approved for reporting.**

**JUDGE**

*\*Shahzad\**