

JUDGEMENT SHEET

IN THE LAHORE HIGH COURT, BAHAWALPUR BENCH, BAHAWALPUR
(JUDICIAL DEPARTMENT)

Writ Petition No. 2921 of 2010. /BWP.

JUDGEMENT

DATE OF HEARING 22-07-2013

APPELLANT BY Mr. Muhammad Tayyab Zamzama Khan, Adv.

RESPONDENT BY Mr. Mohammad Asim Khan, Advocate.

ALI BAQAR NAJAFI, J.- The petitioner seeks setting aside of consolidated judgment dated 12.4.2010 passed by the Additional District Judge, Khanpur/respondent No.1 whereby he granted maintenance of Rs.1,000/- per month along with dowry articles valuing Rs.3,04,875/- to respondent No.3 and dismissed the appeal of the petitioner filed against the judgment and decree dated 5.1.2010 passed by learned Judge Family Court, Khanpur/respondent No.2 whereby he decreed the suit of respondent No.3 to the extent of dowry articles amounting to Rs.1,20,000/- while refusing her maintenance allowance. Aggrieved against the above two judgments, the petitioner filed writ petition which was dismissed in limine on 9.6.2010 by this Court.

2. The petitioner being aggrieved of the decision of this Court passed in the instant writ petition approached the Hon'ble Supreme Court of Pakistan, through C.P No.1451-L of 2010 in which on 24.12.2010 with the consent of the learned counsel for the parties, order dated 09.06.2010 passed by this Court was set aside and the case was remanded for its decision afresh.

3. The brief facts giving rise to the filing of this petition are that respondent No.3 contracted marriage with the petitioner on 22.02.2008 who after four months of marriage expelled her by giving her beating. It was further asserted in the plaint that attitude of the petitioner always remained cruel and even she was not granted her maintenance. She prays maintenance of Rs.5,000/- per month in future along with dowry articles as per list mark-A or in alternate value of

the dowry articles amounting to Rs.3,44,875/- besides previous maintenance at the rate of Rs.5,000/- for the period of last 10 months.

The suit was resisted by the petitioner by filing written statement narrating therein that respondent No.3 left his house in his absence with her maternal uncle and two real brothers namely Mohammad Athar and Mohammad Asghar and took her dowry articles along with gold ornaments and other articles of his first deceased wife which matter was compromised at the Dera of Sardar Rabnawaz Khan and it was promised that respondent No.3 will re-join the petitioner with all her as well as the dowry articles of his first deceased wife. He further averred in his written statement that respondent No.3 was previously married to one Abdul Hameed thereafter with Irshad Ahmed and lastly with him and she is in the habit of telling lie as she got written in the Nika Nama "Kanwari" having age of 18 years and receipts of dowry articles produced in the court are also forged and self made. He prays for dismissal of the suit.

4. The learned counsel for the petitioner submits that under Section 7 of the West Pakistan Family Court's Act, 1964, no claim for maintenance can be granted in a suit for recovery of dowry articles in the absence of suit for dissolution of marriage. Places reliance upon CHAN ZEB vs Mst. KHALIDA SHAHEEN and another (2006 MLD 1495); that respondent No.3 while leaving the house of the petitioner has already taken away the entire dowry articles alongwith the gold ornaments. Places reliance upon FAZAL SONS VS SHABBIR and others (1999 SCMR 2612), MADERSSA DARUL FAZAL HALANI VS MUHAMMAD RAMZAN KASHMIRI (PLJ 2005 Karachi 60) and SAKHA ULLAH VS Mst. TAHIRA ALMAS and another (PLJ 2001 Lahore 981); that DW-2 Farman Ali from whom allegedly gold ornaments were purchased has stated that he had stopped working as goldsmith about eight years ago; that 'Mamoo'/maternal- uncle of the respondent No.3, while appearing as PW-2, has not admitted the factum of giving of gold ornaments. Lastly submits that petitioner will not agitate the decree to the extent of Rs.1,20,000/- and

maintenance till the date of desertion but will insist upon the value of the gold ornaments which the respondent No.3 had already possessed.

5. Conversely, the learned counsel for the respondent No.3 submits that no objection of consolidated prayer was ever raised in the written statement, therefore, cannot be raised at this stage; that under the law claim of dowry articles can be made jointly in a suit for recovery of maintenance; that petitioner while appearing as DW-1 admitted that the dowry articles were brought by respondent No.3 but were taken away in the presence of the mother of the petitioner, who admittedly, was never produced as a witness; that DW-2 was a witness of respondent No.3, who was won over by the petitioner and the proof of the fact is that affidavits of all the witnesses i.e. PW-1 & 2 and DW-2 were purchased on one date through the entries in the register of stamp vendor made adjacent to each other; that no suit for restitution of conjugal rights was ever filed by the petitioner and the respondent No.3 has no knowledge of the divorce ever pronounced by the petitioner; that no misreading or non-reading of evidence was pointed out by learned counsel for the petitioner; that judgment of the appellate court cannot be interfered with while exercising writ jurisdiction as there is no jurisdictional error, hence prays for dismissal of the petition.

6. I have heard the learned counsel for the parties and perused the available record.

7. At the very outset the learned counsel for the petitioner has stated that he would not press the petition to the extent of Rs.1,20,000/-, the amount fixed in lieu of dowry articles which has already been deposited by in this court but he contests for the grant of amount of gold ornaments as well as cash amount of Rs.40,000/-. The case of the petitioner is that respondent No.3, while living with the petitioner had brought dowry articles with gold ornaments, but taken her back in the absence of the petitioner but in presence of mother of the petitioner, who never appeared before the Civil Court to prove that respondent No.3 took the dowry articles along with gold ornaments with her. This stand is either to be accepted as a whole or rejected as

a whole. This statement has to be read as a whole. In my humble opinion, the respondent No.3/plaintiff was required to prove not only the bringing of gold ornaments to the house of the petitioner but also leaving it at the time of her desertion, particularly when the date of desertion is not given in the plaint, which onus she had failed to discharge. Even otherwise respondent No.3 has to prove her case rather to take the benefit of defendant's omission/admission. Additionally, on the question of gold ornaments amounting to Rs.1,67,275/-, no receipt of the goldsmith was produced in evidence to prove its purchase. PW-2 maternal-uncle of the petitioner has stated that he prepared the list of dowry articles and has also mentioned the gold ornaments in his list. Admittedly, this is third Nikah of respondent No.3 and it would have been important for her to retain the gold which she did. There is a common practice in our society that women keep gold ornaments with them, particularly when the dispute arising between the spouses. DW-2 has stated that he has stopped his business of goldsmith about eight years ago before the marriage. The perusal of the list of dowry articles manifests that about seven tolas of gold ornaments along with 25 tolas of silver were written without any receipt from the shop. The appellate court had not found convincing reasons while setting aside the judgment of the Family Court as focus of discussion remained only as DW-2. Under Section 7 of the West Pakistan Family Court's Act, 1962, the respondent No.3 was required to raise this objection immediately which she failed to do.

8. In this view of the matter, I accept this petition partly and set aside the judgment of the appellate court dated 12.4.2010 as well as the judgment and decree of the Trial Court resultantly respondent No.3 is entitled to recover the value of dowry articles to the extent of Rs.1,20,000/-, which amount has already been deposited by the petitioner in the court along with maintenance of Rs.1000/- per month till the subsistence of marriage. No order as to costs.

(ALI BAQAR NAJAFI)
JUDGE

Approved

Approved for Reporting