

ORDER

SHAKIL-UR-REHMAN KHAN, J.---The necessary facts for the purposes of decision of the instant petition are that the petitioner and respondent No.1 were married on 22.6.2017, but unfortunately the relationship went sour and the respondent No.1 instituted a suit for maintenance allowance and recovery of dowry articles to the tune of Rs.12,48,000/- on 28.02.2018. Subsequently, respondent No.1 gave birth to one Ghulam Ahmad/minor (respondent No.2) on 09.5.2018. Thereafter another suit was instituted by respondents Nos. 1 and 2 for maintenance allowance of the minor and delivery charges on 01.9.2018. The petitioner contested these suits. Both these suits were consolidated and decided vide impugned judgment and decree dated 26.9.2019 in the following terms:-

'....plaintiff's suit is partially decreed and plaintiff No.1 is entitled to recover maintenance allowance at the rate of Rs.6000/- per month only for iddat period and plaintiff No.2 is held entitled to recover Rs.10,000/- per month as maintenance allowance with 10% annual enhancement from his birth till legal limitation. Plaintiff No.1 is also entitled to recover the dowry articles as per list EX.P2 except articles mentioned Nos.1 to 10 and 26 to 30 or Rs.500,000/- (five lac rupees only) as alternate price. To the extent of delivery expenses, the suit of the plaintiff No.1 is dismissed '

2. Both the sides preferred their respective appeals before the learned Appellate Court. Learned Appellate Court vide impugned judgment and decree dated 28.11.2019 dismissed the appeal preferred by the petitioner and partially allowed the appeal preferred by respondents Nos. 1 and 2, whereby the judgment and decree of the learned Family Court was modified in the following terms:-

(i) Appellant No.1 Sajida Manzoor is entitled to receive maintenance allowance since 28.02.2018 till expiry of her period of Iddat at the rate of Rs.6000/- per month along with 10% annual increase.

(ii) Appellant No.2 Ghulam Ahmed (minor) is entitled to receive maintenance at the rate of Rs.10,000/- per month along with 10% annual increase since his date of birth i.e. 09.05.2018 till attaining age of puberty.

(iii) Appellant No.1 is also entitled to receive Rs.30,000/- as delivery expenses from the respondent.

(iv) Appellant No.1 is entitled to recover dowry articles as per list Ex.P.3 except articles mentioned at Sr. Nos.1 to 10, 26 to 30 and seven ladies gold rings mentioned at the end of list or in alternate its price of Rs. 500,000/, '

3. Learned counsel for the petitioner stated that both the impugned judgments and decrees are based upon surmises and conjectures and are result of misreading and non-reading of evidence, as well as, misapplication of law on the subject; that both the Courts have failed to take notice of the fact that the list of dowry articles relied upon had been prepared by learned counsel for respondents Nos.1 & 2, which was not signed by respondent No.1 nor was it prepared under her direction and due to this reason its admissibility in evidence and its evidentiary value is highly doubtful and wrongly relied upon by the learned Courts below for the purposes of deciding the issue of recovery of dowry articles; that the prices mentioned in the said list, as written by respondent No.1 have been wrongly accepted as gospel truth by the learned Courts below; that gold ornaments gifted at the time of marriage are not returnable as dowry articles, yet these have been wrongly decreed by the learned Courts below; that the learned Appellate Court failed to appreciate the conduct of the parties and to discuss the evidence relating to existence, delivery and prices of alleged articles of the dowry; that the learned Trial Court also wrongly assumed the financial status of the parties and prices of the dowry articles, therefore, confirmation, as well as,

enhancement by the learned Appellate Court has been made under a wrong impression due to non-reading and misreading of evidence as well as the record available on the file; that the learned Courts below failed to note that respondent No.1 herself did not appear before the learned Family Court to prove the averments made in her pleadings and her attorney appeared to depose hearsay evidence, which cannot be a proof of any fact under the law and that no proof of income of the petitioner was tendered by respondent No.1 and in its absence fixation of maintenance allowance by the learned Courts below is against the norms of justice.

4. In view of above noted arguments, he stated that the impugned judgments and decrees dated 28.11.2019 and that of 26.9.2019 be declared void and while setting these aside the suits filed by respondents Nos. 1 & 2 be dismissed with costs throughout.

5. Learned counsel for respondents Nos. 1 & 2 stated that the judgment of the learned Courts below have been passed after having gone through the evidence brought on record by the parties.

6. It transpires from the record that respondent No.1 initially instituted a suit for maintenance allowance and for recovery of dowry articles. Her case as set up in the plaint was that she was married to the petitioner on 22.6.2017. Her parents had given her dowry articles valuing Rs.12,48,000/-. She was kicked out of the house, three months prior to the institution of the suit, after beating her and since that day she is living with her parents. It was also her case that the petitioner had not contacted her nor paid any maintenance. It was also stated that the petitioner lives in England and has a business of export and earns about Rs.800,000/- to Rs.10,00,000/- monthly. It was also stated that she is pregnant, accordingly a sum of Rs.100,000/- was claimed as maintenance allowance for last three months and for future maintenance along with recovery of dowry articles. The petitioner, on the other hand, contested the suit through his written statement wherein it was stated that their marriage had taken place on 27th Ramzan and no dowry articles were given to the said respondent No.1 by her parents. It was also stated that two days before the institution of the suit respondent No.1 had happily gone to her parents' house. It was the stance of the petitioner that he returned to Pakistan in the year 2012 and is not doing any work; therefore, he cannot pay any maintenance allowance to her.

7. On 01.9.2018 the respondent No.1 along with her son/respondent No.2 instituted the second suit for maintenance allowance, for Rs.30,000/- per month for the minor along with 20% annual increase and recovery of delivery expenses to the tune of Rs.100,000/-. The petitioner contested the said suit through written statement wherein it was stated that only meager expenses have been incurred on the delivery of the said minor. It was also stated that since he has returned to Pakistan in the year 2012 and has no source of income, therefore, he cannot pay any maintenance allowance for the said child and that he has divorced the respondent No. 1. He also stated that he is not responsible for the maintenance of the child as he has no income.

8. The following witnesses appeared on behalf of respondent No.1:-

- (i) Manzoor Ahmad, Special Attorney (PW-1)
- (ii) Muhammad Farooq (PW-2)

The documentary evidence produced on behalf of respondent No.1 is as follows:-

- (i) Affidavit of PW-1 (Ex.P/1);
- (ii) Special Power of Attorney (Ex.P/2);
- (iii) List of Dowry Articles (Ex.P/3);
- (iv) Affidavit of PW-2 (Ex.P/4);

- (v) Birth Certificate of minor (Ex.P/5);
- (vi) Marriage Certificate (Ex.P/6); and
- (vii) Documents relating to hospital (Mark-A to Mark-B/3).

The following witnesses appeared on behalf of the petitioner:-

- (i) Petitioner (Saif Ullah Bajwa) himself appeared as DW-1;
- (ii) Muhammad Umar Farooq appeared as DW-2;

Documentary evidence produced on behalf of the petitioner is as follows:-

- (i) Affidavit of the petitioner (Ex.D/1);
- (ii) Affidavit of DW-2 (Ex.D/2)
- (iii) Affidavit of DW-3 (Ex.D/3)

It is, however, noted that learned counsel for the petitioner gave up DW-3 (Tahir Mahmood Bajwa) and closed the evidence on behalf of the petitioner.

9. The father of respondent No.1 appeared as PW-1. He duly supported the contents of the plaint and during his cross-examination disclosed that he runs a business of export of gloves. He has four sons, two of whom are married and two are unmarried. The unmarried sons work with him in the factory. His third son works in Italy and fourth son works in Dubai. He admitted that divorce had taken place between the parties. Muhammad Farooq, PW-2 duly supported the contentions of respondent No.1 and during cross-examination stated that he is the neighbor of respondent No. 1 .

10. On the other hand, the petitioner submitted his affidavit, wherein he took a contradictory stand and it was stated therein that he has returned to Pakistan since the year 2012 and has no business, therefore, he cannot pay the maintenance of respondent No. 1. He also stated in his affidavit that he cannot pay more than a sum of Rs.3,000/- to respondent No.2/minor for his maintenance allowance. During his cross-examination he submitted that he passed his Bachelor of Arts from Punjab University. He read the affidavit before submitting, however, the same was got attested by his lawyer and not by him. He admitted that he had three marriages and did not seek permission from his other wives before entering into the third marriage for the reason that they had gone to their parents as they were angry. He stated that they have not returned even after six - seven months. He further admitted that he is not aware as to where his minor son was born. He admitted that at the time of his birth the respondent No.1 had gone to her parents' house. He admitted that he had not paid the expenses of the hospital at the time of birth of respondent No.2. He also admitted that he did not pay any expenses for the treatment and medicines etc. to respondent No.1 . He also admitted that all the expenses had been done by the parents of respondent No.1. He also admitted that for the last two years he has not paid any maintenance allowance to respondent No.1 and that he has not paid the expenses of Rs.100,000/- for the operation and the medicines etc. to respondent No.1 . He stated that he went to England in the year 2011. He admitted that the minor child needs a sum of Rs.30,000/- per month as his maintenance allowance. His other witness Muhammad Farooq, DW-2 submitted an identical affidavit containing the same contradictions as noted above. During cross-examination, he admitted that he is the real brother of the petitioner. He stated that the petitioner had divorced the first wife, who had brought no dowry articles. He stated that his third wife also did not bring any dowry articles. It is important to note here that the petitioner while appearing as DW-1 had stated that his third wife brought dowry articles. He admitted that no delivery expenses have been paid to respondent No.1. He admitted that two brothers of respondent No.1 lived abroad and her two brothers work with their father. He also stated that the house of respondent No.1 is two/three storied

building. He stated that the petitioner is in England since the year 2011.

11. Learned Family Court vide impugned judgment and decree dated 26.9.2019 partially decreed the suits filed by respondents Nos. 1 & 2 and held that since respondent No.1 is living aloof from the petitioner, therefore, she is not entitled to maintenance allowance except for the iddat period. As far as respondent No.2 is concerned it was held that he is entitled to recover maintenance allowance from the date of institution of the suit till legal limitation. On the other hand, as far as quantum of maintenance allowance is concerned, learned Family Court considered the income of the petitioner and the needs of respondent No.2. It was noted by the said learned Court that as no documentary proof regarding the petitioner's income has been brought on record, therefore, keeping in view the financial status of both the sides and the basic needs of respondents Nos. 1 and 2, monthly maintenance allowance for respondent No.1 was fixed as Rs.6000/- only for iddat period and that of respondent No.2 was fixed as Rs.10,000/- per month with 10% annual enhancement. As far as the question of recovery of dowry articles is concerned, after taking into consideration the oral, as well as, documentary evidence of the parties and while applying the concept of wear and tear, learned Family Court held that respondent No.1 is entitled to receive her dowry articles as per list provided as Ex.P2 except articles mentioned at Sr. Nos. 1 to 10 and 26 to 30 and in the alternate the price of the same was fixed as Rs.500,000/-. As far as delivery expenses were concerned, the same were held not to have been proved, therefore, the issue in this regard was decided against respondent No. 1. Now turning to the consolidated judgment of the learned Appellate Court, it transpires from the same that after having considered the evidence on record, it deemed fit to partially accept the appeal filed by respondents Nos. 1 & 2 in the terms noted above.

12. The grounds raised by learned counsel for the petitioner are not substantiated from the record. On the other hand, the evidence of the parties clearly show that the petitioner himself concealed his sources of income. The record shows that the petitioner has now entered into a third marriage. On one hand, it has been his stance from the beginning that he returned from England in the year 2012 whereas his real brother admitted that the petitioner is in England since the year 2011. It is particularly noted that he did not produce his passport before the learned Family Court in order to prove his own stance. On the other hand, his stance in the written statement was that he has no source of income, therefore, he cannot pay maintenance allowance to both the respondents, however, in his affidavit and that of his brother it was stated that he cannot pay more than a sum of Rs.3000/- to the minor/respondent No.2. These contradictions on behalf of the petitioner and his father clearly reflect the fact that the petitioner is hiding his sources of income from the Court. Hon'ble Supreme Court of Pakistan in the case reported as Muhammad Asim v. Mst. Samro Begum and others (PLD 2018 SC 819) has held that if the husband/father fails to disclose his salary or financial earnings, adverse inference would be drawn against him. It would also not be out of place to mention here that as and when the needs of respondent No.2/minor increase the competent Court can again be approached for increasing the maintenance allowance of the said minor, as per law of the land. As far as, contention of learned counsel for the petitioner that respondent No.1 herself did not appear before the Court of law in order to substantiate her contentions as mentioned in the plaint, therefore, the evidence of the Special Attorney/real father is of no value whatsoever, is concerned, the same is of no consequence for the reason that Section 18 of the Family Courts Act, 1964 provides as follows:-

'18. Appearance through agents.- If a person required under this Act to appear before a Family Court, otherwise than as a witness, is a pardah nashin lady, the Family Court may permit her to be

represented by a duly authorized agent.'

Moreover, Ex.P/2 specifically mentions that respondent No.1 is pardah nashin lady, therefore, she authorized her father through the same to pursue the cases pending in the Courts. It is also noted that in the case reported as Qalandri Bibi v. Mst. Irum Bibi and others (2019 YLR 86), it was held that there is no bar for the said lady to be represented before the Court through her authorized agent.

13. In view of the above discussion, learned Appellate Court while dealing with questions of desertion, maintenance allowance for respondents Nos. 1 and 2, financial position of the parties and the question of delivery expenses as well as recovery of dowry articles and its price in the alternate has rightly modified the same vide judgment and decree dated 28-11-2019.

14. Accordingly, the instant writ petition being devoid of any merit, is dismissed.

KMZ/S-14/L Petition dismissee

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