

ORDER SHEET
IN THE LAHORE HIGH COURT,
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

Writ Petition No. 5357 of 2018

Muhammad Abid
vs
ADJ, etc

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary
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11.04.2018 Malik Muhammad Safdar Khan, Advocate for petitioner.

Through this constitutional petition, the petitioner has challenged the judgment and decree dated 23.11.2017 passed by Addl: District Judge, Khanewal whereby appeal filed by respondent No.3 was partially allowed alongwith the judgment and decree dated 31.05.2017 passed by learned trial court, whereby suit filed by respondent No.3 was partially decreed.

2. The brief facts of the case are that marriage between the parties was solemnized on 16.02.2012. The relationship between the parties remained cordial but thereafter become strained which resulted into filing a family suit by respondent No.3 against the petitioner. The said suit was contested by the petitioner by filing his written statement. Out of the divergent pleadings of the

parties, issues were framed. Both the parties adduced their evidence in support of respective contentions. The trial court vide judgment and decree dated 31.05.2017 decreed the said suit and the minor was held entitled to recover maintenance allowance at the rate of Rs.4,000/- per month from the date of institution of the suit till he attains the age of majority with 15% annual increase. The respondent No.3 was held entitled to recover dowry articles mentioned at Serial No.3, 4 and 14 or in alternate its price of Rs.20,000/-. Her claim for recovery of past maintenance allowance of the minor, maintenance allowance for iddat period and delivery expenses was declined. Feeling aggrieved of the said judgment and decree, respondent No.3 preferred an appeal which was partially allowed by the appellate court vide its judgment and decree dated 23.11.2017 by modifying earlier judgment to the extent that maintenance allowance of respondent No.3 was fixed as Rs.20,000/- for her whole iddat period whereas the delivery expenses were fixed as Rs.10,000/-

Through instant constitutional petition, the petitioner has challenged both the afore referred judgments and decrees.

3. Learned counsel for the petitioner has argued that both the impugned judgments and decrees are result of misreading and non-reading of the evidence which resulted into grave miscarriage of justice; that both the judgments are at variance which have been passed by ignoring the real facts and contents of the Nikahnama Exh-D15; that there are material contradictions in the statements of the PWs and the respondent No.3 has failed to prove her case. Prays for setting-aside of both the judgments and decrees.

4. The afore referred suit was instituted on 22.07.2016. After failure of the pre-trial reconciliation proceedings between the parties, issues were framed and both the parties were invited to produce evidence in order to substantiate their respective claims. Respondent No.3 appeared as PW-1 and produced list of dowry articles as Exh.PA, photocopy of divorce certificate as Mark-A, birth certificate of minor as Mark-B and photocopy of Nikahnama as Mark-C and closed her evidence. Conversely, the petitioner himself appeared as DW-1 and submitted his affidavit as Exh.D1 and produced Dost Muhammad as DW-2 who submitted his affidavit as Exh.D2. The petitioner had also produced documentary

evidence as Exh.D3 to Exh.D17 and closed his evidence.

So far as the maintenance allowance of the minor is concerned, suffice it to say that he is a legitimate child of the petitioner who being father is legally bound to maintain his child. Even otherwise, keeping in view the high rate of inflation an amount of Rs.4,000/- per month is not excessive. Therefore the findings of the trial court to this extent are upheld.

5. As far as the alternate price of the dowry articles i.e. Rs.20,000/- is concerned, respondent No.3 in the suit claimed that dowry articles of Rs.2,13,000/- were given to her by her parents at the time of marriage whereas the stance taken by the petitioner is that few dowry articles were brought by her. Learned counsel for the petitioner contends that respondent No.3 in her cross examination candidly conceded that at the time of marriage, the amount to purchase the dowry articles was paid by parents of the petitioner. Be that as it may, the dowry articles are always property of the wife irrespective of the fact that who had purchased the said articles. Therefore, the trial court keeping in view the list of dowry articles, evidence available on record and principle of wear and tear and depreciation has rightly fixed the amount of

Rs.20,000/- as alternate price of the dowry articles. Even otherwise, as per Section 14(2)(b)(c) of the Family Court Act, 1964, no appeal lies against decree for maintenance allowance of Rs.5,000/- or less per month and also against recovery of dowry articles not exceeding Rs.1,00,000/-.

6. As far as the delivery expenses are concerned, the respondent No.3 claimed Rs.30,000/- in this regard by stating that minor was born in hospital. Since the minor was born as such some expenses will definitely be incurred on his delivery, therefore, an amount of Rs.10,000/- has rightly been fixed by the appellate court in lieu of delivery expenses. Besides keeping in view the status of the parties, the appellate court has rightly held respondent No.3 entitled to receive Rs.20,000/- as maintenance allowance for her Iddat period. So far as the argument of the learned counsel for the petitioner that financial status of the petitioner has not been considered, is concerned, it is pertinent to mention here that it was the duty of the petitioner to prove through cogent evidence his financial status which has not been done, therefore, the findings of the appellate court to that extent are upheld.

7. Even otherwise, this Court in its constitutional jurisdiction can neither reappraise the evidence and substitute findings of facts recorded by the trial court nor can give its opinion regarding quality or adequacy of the evidence. The assessment and appraisal of evidence is the function of the family court which is vested with exclusive jurisdiction in this regard and finding of fact determined by a court of fact cannot be lightly set-aside by this Court in its constitutional jurisdiction. Reliance in this regard is placed on the judgment reported as **Abdul Rehman Bajwa vs. Sultan and 9 others** (PLD 1981 SC 522). The petitioner was required to show some illegality or jurisdictional defect committed by the courts below in order to make its case entertainable by this Court which has not been done.

8. For what has been discussed above, this petition being devoid of any merit stands **dismissed**.

(MUZAMIL AKHTAR SHABIR)
JUDGE

Naveed *