

Stereo.HCJDA-38
JUDGMENT SHEET
**IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH RAWALPINDI**
JUDICIAL DEPARTMENT

W.P. No.2632 of 2020

Dua Aneeqa
v.
Adnan Jahangeer, etc.

J U D G M E N T

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| Date of Hearing | 11.2.2021 |
| Petitioner by | Muhammad Shakeel Mughal, Advocate |
| Respondent by | Malik Kamran Hassan, Advocate |

Rasaal Hasan Syed, J. This Constitutional petition assails judgment and order dated 17.10.2020 of the learned Addl. District Judge, Rawalpindi in terms whereof the revision petition filed by the respondent No.1 was accepted and order dated 25.9.2020 of the learned Judge Executing Court was set aside.

2. Petitioner married respondent No.1 on 01.1.2015, who committed to give 05 *tolas* in gold ornaments to the petitioner at the time of *rukhsati* and it was so recorded in column No.17 of the *nikahnama*. Matrimonial ties frayed with time and litigating ensued. The petitioner instituted a suit for recovery of maintenance allowance, gold ornaments and dowry articles which was decreed vide judgment and

decree dated 19.02.2019 by the learned Judge Family Court, Rawalpindi whereby the claim of maintenance allowance was granted to the extent of *Iddat* period only, recovery of dowry articles was ordered as per list Exh.P-3 except gold ornaments and items at serial Nos.20 and 24. The petitioner was also allowed a decree to recover gold ornaments weighing 05 *tolas* or in the alternate its price of Rs.2,50,000/- In execution proceedings, the respondent No.1/judgment-debtor was arrested and produced before the learned Executing Court on 14.9.2020 when he paid Rs.1,00,000/- in cash and furnished surety for 50% of the decree.

3. On 25.9.2020 an issue was raised for determination of the value of 05 *tola* gold ornaments. Respondent No.1 expressed willingness to pay Rs.2,50,000/- instead of giving gold ornaments. Following the dictum of the superior courts, the learned Executing Court observed that there remained no ambiguity that either gold ornaments were to be returned to the petitioner or market-price thereof, prevailing at the time of payment was to be paid, so as to enable the decree-holder to purchase 05 *tola* gold ornaments. With these observations the objection of respondent No.1 was rejected and a notice was issued to the *Saddar Sarafa Market*, Rawalpindi, for providing the correct market rate of gold i.e. on the date of receiving the *robkar* of the court. The order dated 25.9.2020

of the learned Judge Executing Court was challenged in revision which was allowed by the learned Addl. District Judge, Rawalpindi vide judgment and order dated 17.10.2020 taking the view that in terms of the decree, the price of 05 *tola* in gold ornaments was fixed, the judgment-debtor as such could pay Rs.2,50,000/- for the satisfaction of the decree.

4. Learned counsel for the petitioner submitted that the order of the learned Executing Court was in accordance with law and that it was not a decree for the recovery of money which was being executed but was a decree for recovery of 05 *tola* of gold ornaments and that the petitioner was entitled to receive the 05 *tola* gold ornaments or the prevailing market-price thereof, so as to enable her to purchase the gold ornaments from the market. Contrariwise learned counsel for the respondent No.1 submitted that the learned Executing Court could not go beyond the decree and that the option rested with respondent No.1 either to give 05 *tola* gold ornaments or to pay Rs.2,50,000/- as its price and that in directing the respondent to pay the market-value of 05 *tola* gold ornaments, the learned Executing Court had travelled beyond the decree.

5. Perusal of the judgment and decree dated 19.2.2020 passed in Family Suit No.301/2018 reveals that the stance of

the petitioner was that it was settled at the time of marriage that she will be given 05 *tola* of gold ornaments which was not done by the respondent at the time of *nikah* and *rukhsati* on 01.1.2015. As per column No.17 of the *nikahnama* Exh.P-5, it was committed that 05 *tola* of gold ornaments of Rs.2,50,000/- in price would be given to the petitioner. It is manifest that the price mentioned in the *nikahnama* bears the value of the ornaments of gold at the time of *nikah* at the prevailing rate of Rs.50,000/- per *tola*. The stance of the petitioner in the suit was that she had not been given the promised gold ornaments while respondent No.1 averred that he had given the gold ornaments at the time of marriage. Findings of the learned Judge Family Court were that respondent No.1 had not produced any evidence to rebut the entries in column No.17 of the *nikahnama* Exh.P-5 and that it was established principle of law that whatever was given to the bride in *nikahnama* would be deemed to be her ownership which she would be entitled to receive. It was recorded that the petitioner will be entitled to recover 05 *tola* of gold ornaments or its alternate price of Rs.2,50,000/-.

6. It is manifest from the findings in the judgment and decree of the learned Judge Family Court that the respondent No.1 had agreed at the time of marriage that he had given gold ornaments weighing 05 *tolas* to the petitioner at the time

of *rukhsati* while the petitioner denied having received any such gold ornaments as promised; respondent No.1 could not prove the delivery of the gold ornaments to the petitioner. It is manifest from the amount mentioned in column No.17 of the *nikahnama* that the price mentioned therein was the prevailing rate of gold at that time. *Nikah* and *rukhsati* in this case took place on 01.1.2015; petitioner was divorced on 19.3.2016 and the suit was filed on 13.4.2016 which was decreed on 19.2.2019. Execution proceedings were initiated and ultimately the petitioner having failed to satisfy the decree by returning 05 *tola* of gold ornaments, the learned Executing Court vide order dated 25.9.2020 directed issuance of *robkar* to the *Saddar Sarafa Market*, Rawalpindi to report as to the current rate of gold, which order the petitioner challenged in revision although the revision petition was not maintainable. The learned Appellate Court reversed the order of the learned Executing Court on the assumption as if the decree was a money decree and that respondent No.1 could pay Rs.2,50,000/- as price of 05 *tola* in gold ornaments and that the market-value could not be recovered as it would be beyond the terms of the decree.

7. It is observed that learned Addl. District Judge proceeded on incorrect assumption. Bare reading of the judgment and decree shows that the decree was passed on the

basis of column No.17 of the *nikahnama* Exh.P-5 which entry appears to have been reproduced in the decree. In entry No.17 of the *nikahnama* it was recorded that respondent No.1 had promised to give 05 *tola* in gold ornaments to the petitioner of the value of Rs.2,50,000/- that appears to be based on the price of gold prevailing at the time of *nikah*. Respondent No.1 could not prove the delivery of 05 *tola* gold ornaments to the petitioner. As per column No.17 of the *nikahnama* he was under an obligation to deliver the same to the petitioner at the time of *rukhsati* on 01.1.2015 and having failed to do so, he could not, after 6 years claim that he could satisfy the decree by offering Rs.2,50,000/- as price of gold. If such plea is accepted, it will be unfair and unjust to the petitioner when it is common knowledge that the prices of gold had risen extensively and are presently touching the sky.

8. The decree in favour of the petitioner was not a money decree simpliciter. Rather it was a decree for recovery of 05 *tola* gold ornaments and, therefore, the decree-holder had the option to insist on delivery of 05 *tola* of gold ornaments for the satisfaction of the decree. In “Mst. Humaira Majeed v. Habib Ahmad and 2 others” (PLD 2012 Lah. 165) it was observed to the effect that during execution of decree of the learned Family Court, the judgment-debtor if did not return the gold ornaments, could not be allowed to make payment

that is illusory *instead of* paying price equivalent to weight of gold as it would result in gross injustice to the decree-holder and that the judgment-debtor would be liable to return the gold ornaments to the decree-holder, failing which he shall be made to pay the amount required to purchase such gold ornaments from the market. In “Mst. Ayesha Shaheen v. Khalid Mehmood and another” (2013 SCMR 1049) it was observed to the effect that unlike other property, movable or immovable, determination of market-value of gold did not pose any difficulty as the same was fixed by the gold market on daily basis and was readily exchangeable for cash and that the wife was entitled to recover gold ornaments or in the alternate its current market value. The rule in “Mst. Mehbooba v. Abdul Jalal” (1996 SCMR 1063) was distinguished with the observation that in the said case simple money-decree had been granted and relief for recovery of gold ornaments was not given. In “Haji Muhammad Nawaz v. Samina Kanwal and others” (2017 SCMR 321) it was ruled that where the husband had delivered the articles even after a decade, the learned court could grant requisite relief by allowing payment of market-value of the gold ornaments. It was observed as follows:

“3... The judgment of the appellate Court dated 31.1.2004, reveals that the suit for recovery of dowry articles was decreed as per the list Ex.P-1, or in the alternative the costs of dowry articles at Rs.8,31,700/-,

which remained unsatisfied for a period of over one decade. In such circumstances, the executing Court in order to enforce the execution of decree in its letter and spirit, was fully justified in placing its reliance upon the ratio of judgment in the case of Ayesha Shaheen (supra) and some other cases referred to in its order dated 04.12.2013, which has been rightly upheld by the appellate Court and the High Court in their respective orders under challenge. The learned ASC for the petitioner has repeatedly contended that as the executing Court cannot go beyond the decree, therefore, the course for execution of decree followed by the three Courts below is unwarranted by law. We are not convinced with the such submission, as grant of requisite relief regarding payment of price of golden ornaments at the prevalent market rate, in case the golden ornaments are not returned, is fully justified and it cannot be said that it amounts to going beyond the terms of decree by the executing Court. For this purpose, the ratio of judgment in the above cited case of Ayesha Shaheen (supra) is also fully applicable to the facts and circumstances of the present case.”

For additional reasons, the following observations were also recorded:

“The objection that the learned Executing Court cannot go beyond the terms of the decree is derived from the Code of Civil Procedure, 1908 (“C.P.C.”). On the other hand, under the provisions of section 17 of the West Pakistan Family Courts Act, 1964 (“the Act”), the C.P.C. does not apply to the proceedings of the learned Family Court that passed the decree dated 31.1.2004 under execution in the present case. The petitioner’s objection is therefore inapplicable to the present proceedings. The said decree has two alternative parts. Firstly, it gives a direction to the petitioner/judgment debtor to return the dowry articles to the respondent/decreed holder as detailed in Exb.P1 filed with the suit; in the alternative, in case of failure to return the said articles, the decree orders payment of a lump sum amount of Rs.831,700/- to the respondent/decreed holder as value of the said dowry articles. The petitioner has not delivered the decretal dowry articles to the respondent. For the satisfaction of its money terms under section 13(3) of the Act, the decree is liable to be implemented within 30 days. However, even after the lapse of 12

years of its passing, the petitioner/judgment debtor has not deposited a single rupee with the learned Executing Court towards the adjustment of the said decree. Execution of the decree has been delayed by the petitioner solely on the above objection although he cannot have any cavil with the amount fixed therein. Having been expressed in the alternative, the decree does not become a decree for money simpliciter for the amount stated therein. This because the price of dowry articles fixed in the alternative by the decree under execution represents their market value as on the date of decree. Such market value of the decretal dowry articles cannot remain static endlessly, therefore the alternative monetary direction in the decree cannot remain fixed after lapse of reasonable time. In terms of law, the proceedings of the learned Family Court, whether as a trial court or an executing court, are governed by the general principles of equity, justice and fair play. The circumstances of the present case, namely, delay of more than 12 years in the execution of the decree on the basis of an inapplicable objection cannot under the principles of equity, justice and fair play be allowed to defeat the decree under execution by the petitioner's refusal to both deliver the dowry articles and also to pay their corresponding market value as on the date of payment. For the foregoing reasons, the petition is dismissed and leave to appeal is declined."

9. In the instant case the marriage took place on 01.1.2015, petitioner was divorced on 19.3.2016, suit was filed on 13.4.2016 and decree was granted on 19.2.2019. In the execution proceedings respondent No.1 appeared after he was arrested and released on 14.9.2020 subject to deposit of Rs.1,00,000/- and furnishing surety for 50% of the decree and, thereafter, objected to the decree by claiming that he could pay Rs.2,50,000/- to satisfy the decree. It is thus plain that the respondent No.1 who is bound to deliver 05 *tola* in gold ornaments to the petitioner at the time of *rukhsati* on

01.1.2015, firstly, took the false stance in the written statement and after the decree against him, he kept on prolonging the matter for 05 years. Being so, the gold ornaments which the petitioner was entitled to receive in January 2015, the respondent now wants to give by offering the amount which was the price of gold at the time of *nikah* on 01.1.2015. The plea raised by respondent No.1/judgment debtor was highly unfair and if accepted could result in extreme injustice to the petitioner, who was struggling for her rights for the last 05 years.

10. In these circumstances, the learned Judge Executing Court rightly observed that respondent No.1 ought to either give 05 *tola* gold ornaments in execution of the decree or shall be liable to pay the market-value of the same so as to enable the petitioner to purchase the gold ornaments from the market. In seeking information from the *Saddar Sarafa Market*, Rawalpindi about the prevailing rate of gold, the learned Executing Court did not commit any error of law. The option was with the petitioner to enforce the recovery of 05 *tola* of gold ornaments which the respondent No.1 could not avoid. The learned Executing Court, therefore, will execute the decree by ensuring recovery of 05 *tola* gold ornaments from the respondent who could satisfy the decree by providing requisite gold ornaments or make payment of

the market-price thereof. The order of the learned Executing Court did not suffer from any error of law and was in accordance with law.

11. For the reasons above, the instant writ petition is **allowed**. The impugned order dated 17.10.2020 of the learned Addl. District Judge, Rawalpindi is accordingly declared to be illegal and without lawful authority and jurisdiction and is set aside. In result, the order of the learned Executing Court shall stand restored.

(Rasaal Hasan Syed)
Judge

Announced in open Court on 25.2.2021.

Judge

Approved for reporting

Judge

Imran*