

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No.640-2020

Muhammad Imran

Versus

The Additional District Judge (East), Islamabad and others.

Petitioner by: Mr. Taqweem Ali Janjua, Advocate.

Respondents by: Ms. Saira Khalid Rajpoot, Advocate
for respondent No.3.

Date of Decision: 19.02.2024.

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MOHSIN AKHTAR KAYANI, J. Through the instant writ petition, the petitioner has assailed the judgment and decree dated 07.10.2019, passed by learned Additional District Judge (East), Islamabad, whereby appeal filed by the petitioner against the judgment and decree dated 24.07.2017, passed by learned Judge Family Court, Islamabad has been dismissed.

2. Brief facts referred in the instant writ petition are that petitioner was married to respondent No.3/Saima Akhtar on 01.05.2010 in Islamabad in accordance with Muslim rites in lieu of dower amount of Rs.2,000/-, which was paid at the time of *Nikah* and *Rukhsati*; that petitioner also gifted 10 Tolas gold ornaments to respondent No.3; that respondent No.3 has filed a suit for dissolution of marriage, recovery of monthly maintenance, dowry articles and gold ornament, which was decreed in the previous round vide judgment and decree dated 24.07.2017 in the following manner:-

In light of my issue wise discussion and findings the plaintiff is held entitled to the recovery of maintenance allowance @ Rs.3,000/- per month from the date of institution of suit till dissolution of her marriage and at

the same rate for the iddat period as well. She is also held entitled for recovery of 06 Tolas gold, whereas to the extent of rest of the prayers, her suit is dismissed. No order as to costs. Decree sheet be drawn accordingly. It is hereby made clear that my any arithmetical, clerical or typographical errors may be ignored/avoided in the interest of justice and the same may be corrected, if need be. Filed be consigned to record room after its due completion and compilation.

3. The matter was challenged before the appellate Court by both the sides, which has been decided through consolidated judgment and decree dated 10.02.2018, whereby both the appeals were dismissed, whereafter the matter was assailed before Islamabad High Court through W.P No.3086/2018, which was remanded back to the extent of 06 Tolas of recovery of gold ornaments and same has now been decided vide judgment and decree dated 07.10.2019, passed by learned Additional District Judge (East), Islamabad in the following manner:-

*To resolve the controversy regarding recovery of dowry articles, a local commission was appointed by the learned trial Court, who submitted its report, containing statements of witnesses of rival parties. From the report submitted as well as statement of respective witnesses, it is clear that the dowry articles except gold ornaments were handed over. In this regard, counsel for appellant has placed reliance on Ex-P3, which was list of damages articles as well as remaining dowry articles. It is to be noted that said list was prepared in view of the report of local commission, where gold ornaments were specifically excluded from the list of dowry articles which were handed over by the appellant side. Furthermore, it is also an admitted fact that the respondent/plaintiff suffered from **“night blindness”**; hence, said disability of respondent made her case fall in exception to the general presumption that gold ornaments were always possessed by female.*

4. Learned counsel for the petitioner contends that first appellate Court has not appreciated the legal position in respect of gold ornaments, whereas counsel for petitioner has been confronted as to whether he has raised any objection on the claim of the respondent at the time of cross-examination, whereby it has candidly been conceded that he was not counsel at that time nor any such objection was raised qua the claim of respondent No.3, therefore, non-mentioning of anything in the *lis* will not effect the claim of respondent, especially when it is the primary case of the respondent to the extent of 06 Tola gold ornaments and same was the issue, which required to be adjudicated by the Courts below in specific manner after post remand proceedings.

5. On the other hand, counsel for respondent No.3 has drawn the attention of this Court towards the record, whereby case of gold ornaments has rightly been demonstrated by respondent No.3 before the Courts below and judgment to that extent has clearly been worded in the findings on Issue No.2, where it was held that documentary evidence of the plaintiff could not be rebutted by the present petitioner/defendant, such aspect is conclusive findings of the Courts below and petitioner has failed to point out any element for interference in the concurrent findings by this Court.

6. For what has been discussed above, instant writ petition is misconceived and same is hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE