

**Stereo. H C J D A 38.**  
**JUDGMENT SHEET**  
**LAHORE HIGH COURT, LAHORE**  
**JUDICIAL DEPARTMENT**

**Writ Petition No.22694/2022**

Muhammad Abu Sufyan **Versus** Additional District Judge etc.

**J U D G M E N T**

<b>Date of Hearing:</b>	06.02.2023
<b>Petitioner by:</b>	Mr. Babar Sultan Ahmad, Advocate.
<b>Respondent No.3 by:</b>	Mr. Raheel Jamil, Advocate.

**Anwaar Hussain, J.** The petitioner before this Court is judgment debtor in a suit instituted by respondent No.3 (“**the respondent**”) for recovery of her dowry articles. Through this constitutional petition, order dated 25.02.2022 passed by the learned Additional District Judge, Sahiwal has been assailed by virtue of which appeal preferred by the respondent has been accepted and her execution petition that was consigned to record by the learned Executing Court *vide* order dated 11.01.2022, has been restored with a direction that alternate value of the dowry articles be given to the respondent instead of the dowry articles, list whereof has been prepared by the local commission appointed by the learned Executing Court.

2. By way of factual background, it is noted that the suit of the respondent was decreed on 26.04.2018 and the appeals preferred by both sides against the said judgment and decree were decided by the learned Appellate Court below on 10.10.2018. Appeal of the respondent was partly accepted where after the execution petition was filed by the respondent in which the petitioner was summoned and he was directed to submit surety bond and the needful was done accordingly. Thereafter, on 13.04.2019, the learned Executing Court appointed its Reader as local commission for handing over the dowry articles, who submitted his report on 27.04.2019, which contemplates that the respondent has

received some of the dowry articles and refused to receive the rest of the articles with the objection that the same have been changed and do not belong to her whereafter the learned Executing Court provided an opportunity to the parties to file objections. The respondent took the objection that since the dowry articles have been replaced, she is entitled to recover alternate price thereof but the said objection petition was dismissed by the learned Executing Court on 24.10.2019 and the said order, when assailed by the respondent in appeal, was upheld by the learned Appellate Court below, *vide* order dated 22.01.2020, against which no further proceedings were initiated by the respondent. Thereafter, the execution proceedings remained pending for one year and five months. In the meanwhile, the surety of the petitioner filed an application for his discharge on the ground that the respondent is not interested in getting her dowry articles, which was contested by the respondent and again she moved an application for recovery of alternate price of the dowry articles that was contested by the petitioner on legal as well as factual grounds and the learned Executing Court again dismissed the application of the respondent for recovery of alternate value of the dowry articles on 16.09.2021 and directed the respondent to receive her dowry articles. Order dated 16.09.2021 was not challenged by the respondent and the matter was repeatedly adjourned and ultimately, on 11.01.2022, the learned Executing Court consigned the execution petition to the record, with direction to the respondent to take her dowry articles from the house of the petitioner/judgment debtor within two months and issued *robkar* in the name of Nazir Civil for appointment of bailiff for return of dowry articles to the respondent. The respondent preferred appeal against order dated 11.01.2022, which was accepted and her execution proceedings have been restored, *vide* impugned order dated 25.02.2022.

3. Learned counsel for the petitioner submits that a local commission was appointed by the learned Executing Court, who had submitted his

report with regard to details of dowry articles whereupon twice the learned Executing Court passed detailed orders that the respondent can receive the dowry articles, most of which have been received by her, whereupon the execution petition was disposed of, however, the impugned order has been passed ignoring and/or without setting aside the said orders, which is illegal.

4. Conversely, learned counsel for the respondent submits that the dowry articles were replaced by the petitioner and the evidence in this regard was presented before the learned Appellate Court below, while arguing the appeal against order dated 11.01.2022 that has been correctly appreciated by learned Appellate Court below, therefore, the impugned order does not suffer from any infirmity.

5. Arguments heard. Record perused.

6. Factual matrix of the case is not denied by the respondent side. Admittedly, the executing proceedings remained pending since 21.12.2018 and once the decree was passed and the execution proceedings were initiated, a list of dowry articles was prepared by the local commission appointed by the learned Executing Court. After receiving some of the articles, the respondent refused to accept the remaining articles on the ground that the same were changed, however, her objection was dismissed *vide* order dated 24.10.2019, operative para whereof is reproduced below:

“08. It is pertinent to mention here that plaintiff herself opted to recover articles and she recovered the some of dowry articles laying (*sic*) in the house of judgment debtor/petitioner. *It is quite astonishing that judgment debtor/petitioner offered or placed bona-fidely packed articles of the respondent/decreed holder which clearly depicts that he had reightly (*sic*) placed the used articles of the decreed holder for recovery. So, objection of petitioner/judgment debtor is considerable as he has same stance in the original suit that dowry articles of respondent/decreed holder are laying in his house and he is ready to return the same to the then plaintiff/instant decreed*

holder. Objection made by the respondent/decreed holder that her dowry articles were laying in open courtyard when she went to recover the same from the judgment debtor's house and same are not (sic) belong to her cannot be considered because she has not tendered even single proof which could establish that both judgment debtor and she had enjoyed or used the dowry articles according to her tendered pictures during their marital bliss. She has tendered her pictures wherein she can be seen only rather to tender the picture wherein both were present. In the light of above attended circumstances, stance of the judgment debtor is clear and strong, so objection petition is accepted and decreed holder is directed to recover the same articles from the judgment debtor as he has placed or offered for recovery.....”

*(Emphasis supplied)*

Order dated 24.10.2019 was admittedly assailed in appeal and the same was upheld, *vide* order dated 22.01.2020 in the following terms:

“7. I myself have perused the record of the case, i.e. plaint of suit filed by the appellant/decreed holder, receipts of dowry articles tendered in her evidence in the suit, report of local commission and the pictures of the dowry articles lying in possession of the responded/judgment debtor tendered by the local commission with the report, pictures of the articles tendered by the appellant too and list of dowry articles submitted by the respondent/judgment debtor. When visualized in the above referred documents, it is observed that the remaining articles lying in possession of the respondent/judgment debtor are of the same description regarding their colour, brand and size etc. as mentioned in the receipt of dowry articles tendered by the appellant in her evidence in the suit. So far as the objection of the appellant/decreed holder that the rest of the dowry articles lying in possession of the respondent are changed and do not actually belong to her is concerned, the appellant/decreed holder has failed to produce any proof in order to establish her contention. Moreover, five years have been elapsed in marriage of the parties and it is natural that due to passage of time and use of the articles during subsistence of marriage, condition of the articles might have been deteriorated or damaged. Bonafide of the respondent/judgment debtor is also evident from the record that since inception of the litigation he admitted the claim of appellant/decreed holder while stating that the dowry articles are lying are lying (sic) at his home in locked room, so it does

not appeal to a prudent mind that he had replaced some of the articles instead of original belonging to the appellant/decreed holder.”

*(Emphasis supplied)*

Since it is admitted feature of the case that after passing of order dated 22.01.2020, no further proceedings were initiated and the same attained finality, hence, the stance that the dowry articles have been replaced and the respondent is entitled to receive the alternate value thereof cannot be re-agitated. Even, the second application for payment of alternate value of dowry articles was dismissed on 16.09.2021 and the said order was also not assailed. Perusal of the impugned order depicts that the learned Appellate Court below has not addressed the core issue as to how the respondent can be allowed to plead the same ground for the third time that she is entitled to recover alternate value of the dowry articles when her first application on the same subject was earlier dismissed *vide* order dated 24.10.2019 and upheld by the learned Appellate Court below *vide* order dated 22.01.2020 and, *vide* order dated 16.01.2019, the second application met with the same fate but no further proceedings were initiated by the respondent. When confronted with, learned counsel for the respondent could not controvert the said factual position, rather conceded that this aspect has not been dealt with by the learned Appellate Court below.

7. It is settled principle that the Courts must aid the fair administration of justice by ensuring that litigation must come to an end by not allowing a litigant to agitate a particular ground and/or cause of action again and again, by filing successive applications, as the same amounts to abuse of process of law, causes hardship to the other side and runs counter to public policy that issue once decided and attained finality, cannot be reopened. Therefore, once order dated 24.10.2019 of the learned Executing Court was upheld by the learned Appellate Court below, the respondent cannot be allowed to agitate the same ground as

such a leverage to a litigant to file successive applications defeats the principle of public policy discussed hereinabove. On another plain, this Court is cognizant of the fact that in case the judgments of the learned Courts below are at variance, preference should be given to the judgment of the learned Appellate Court below, more particularly, in family matters as held in case reported as “Mst. Farah Naz v. Judge Family Court, Sahiwal and others” (PLD 2006 SC 457). However, in view of the above discussion, this is a fit case for interference in constitutional jurisdiction by this Court as the learned Appellate Court below has acted without appreciating the material available on record. In fact, the learned Appellate Court below acted in excess of jurisdiction inasmuch as by passing the impugned order, the learned Appellate Court below has reviewed its earlier order dated 22.01.2020 whereby the learned Appellate Court below upheld the order of the learned Executing Court dated 24.10.2019 dismissing the claim of the respondent to receive alternate value of dowry articles. Jurisdiction to review its earlier order is not vested with the learned Appellate Court below. Therefore, the impugned order cannot sustain.

8. For what has been discussed above, this writ petition is **allowed**, impugned order of the learned Appellate Court below dated 25.02.2022 is set aside and that of the learned Trial Court dated 11.01.2022 is restored with no order as to costs.

(ANWAAR HUSSAIN)  
Judge

*Approved for reporting.*

*Judge*

*Akram*