

**Form No. HCJD/C-121  
ORDER SHEET  
IN THE LAHORE HIGH COURT, LAHORE  
JUDICIAL DEPARTMENT**

**Case No. Writ Petition No.19392 of 2016**

Mst. Razia Sultana **Versus** Judge Family Court etc

Sr. No. of Orders/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary.
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27.01.2022 Mr. Muhammad Shahzad Ch. Advocate for petitioner.

Mr. Zeeshan-ur-Rehman Advocate for respondent No.2

Through this constitutional petition, the petitioner has challenged the validity of order dated 16.04.2016, whereby learned Judge Family Court Sialkot/Executing Court directed the petitioner to receive the dowry articles as per list annexed with the file and declined the claim of the petitioner to hand over its alternate price with the observation that “ *marriage was solemnized 25-years ago and no dowry articles of even high quality can remain in a good condition after such a long period. In this backdrop, alternate price could not be paid to the petitioner rather she was entitled only to receive all dowry articles as per list annexed with the instant file*”.

2. The brief facts of the family litigation are that Mst. Razia Sultana petitioner and Zafar Iqbal respondent No.2 were married on 20.11.1992. Out of this wedlock minor Muhammad Anique was born. Differences between the parties arose and ultimately the petitioner filed the suit for recovery of dowry articles which was decreed in favour of the petitioner according to list Exh.P-2 or its alternate price i.e Rs.1,70,000/-; Being aggrieved by the said judgment and decree, the petitioner filed an appeal which was dismissed by learned appellate court vide judgment and decree dated 19.02.2009 and maintained the judgment and decree passed by learned trial court. Thereafter the petitioner challenged the judgments and decrees passed by both the courts below through writ petition No.1865 of 2010

before this Court, whereby the claim of the petitioner to the extent of recovery of dowry articles or its alternate price i.e. Rs.1,70,000/- was upheld by this Court. The petitioner filed an execution petition before the learned trial court in the light of judgment and decree which was transferred from District Lahore to District Sialkot for its execution in accordance with law as the respondent No.2 was the resident of District Sialkot and the dowry articles were lying in the house of respondent No.2 at Sialkot. During the proceedings of execution, the petitioner took stance that she was not ready to receive the dowry articles, rather she was willing to receive the alternate price of said dowry articles but the learned Executing Court directed the petitioner to receive the dowry articles as per list annexed with the instant file through the impugned order dated 16.04.2016 which has been challenged by the petitioner through this constitutional petition.

3. Arguments heard. Record perused.

4. The version of the petitioner is that marriage between the parties was solemnized 30-years ago and thereafter the petitioner left the house of respondent No.2 in the year 2001 and never joined the respondent No.2 again, and since then the petitioner had not used the said dowry articles, rather, respondent No.2 had been using the dowry articles. The learned Judge Family Court Sialkot while passing the impugned order did not consider the worst condition of the dowry articles, therefore, during the proceedings of execution, the petitioner was not ready to receive the dowry articles. She also took stance that dowry articles were replaced by the respondent No.2 with the original one. In such circumstances the petitioner/decreed holder is entitled to the value of dowry articles as claimed in the plaint and as decreed. On the other hand, learned counsel for respondent No.2 contended that during the proceedings of the execution petition a Bailiff was appointed for handing over the dowry articles but the decree holder/petitioner refused to receive the dowry articles on the

pretext that said dowry articles have been replaced with the original one and she claimed to pay the price of the said dowry articles as alternative; that mere giving of an alternate remedy did not give the decree-holder an option of reusing to take the delivery of the property and of insisting upon the payment of money. Learned counsel for respondent No.2/judgment debtor also relied upon order XX Rule 10 C.P.C with the claim that since the judgment debtor has offered to return the dowry articles, the alternate prayer could not be allowed. The precise version of the judgment debtor/respondent No.2 was that when a decree is passed in terms of Order XX, Rule 10, C.P.C for restitution of moveable property, the option is with the respondent/judgment debtor as to whether he would deliver the moveable property concerned or pay the assessed value on the same; that Here I would like to reproduce Rule 10 (supra) as under:-

***“Decree for delivery of moveable property.---***  
*Where the suit is for movable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had.”*

There was no force in the submission advanced by learned counsel for the respondent No.2 that it is only the dowry articles which can be recovered by a decree holder and not its value as decreed. Record reveals that during the proceedings of the execution petition the decree holder refused to receive the gold ornaments on the ground that same was not pure. The judgment debtor gave an undertaking before the learned Executing Court to pay alternate price of the gold ornaments to the extent of 7-tolas and lateron he had paid the price of the said gold ornaments to the decree holder which is clear indicative of the fact that judgment debtor has accepted the claim of the decree holder to that extent. Perusal of impugned order dated 16.04.2016 reveals that learned Executing Court directed the judgment debtor/respondent No.2 to pay the alternate price of the said gold ornaments but surprisingly the learned Executing Court turned down the request of the petitioner to pay the alternate price of the dowry

articles, rather, it was ordered to receive all the dowry articles as per list annexed with the instant file. During the proceedings of the execution petition, the petitioner took a specific stance that her dowry articles were replaced with the original one and she claimed to pay the price of the said dowry articles as alternative. In the case reported as *Muhammad Akram vs Mst. Shahida Parveen and others* (PLD 2004 Lahore 249) it has categorically been held by this Court that the decree holder can insist upon the value of the dowry articles and a certain amount of money should be allowed as an alternative if delivery of the chattel in dispute cannot be had; if the goods are capable of delivery, they must be delivered, if they are not capable of delivery then assessed damages should be paid. Keeping in view the facts and circumstances of the case, this judgment prima facie supports the version of the petitioner that question of the enforcement and payment of the money as part of the decree in the instant case has arisen since the movable concerned/dowry articles have been found to be not capable of delivery. While seeking guidance from the case law reported as *Mst. Humaira Majeed vs Habib Ahmad & 2-others* (PLD 2012 Lahore 165) I am of the view that the provisions of Order XX, Rule 10, are not *stricto sensu* applicable to a decree obtained in a family suit in view of section 17 of the West Pakistan Family Courts Act, 1964. There is also no provision in the West Pakistan Family Courts Act, 1964, similar or corresponding to Order XX, Rule 10, C.P.C. Thus, a decree passed under the West Pakistan Family Courts Act, 1964, for recovery of dowry articles including gold ornaments or other movable property would be lawful and executable even if does not state the monetary value payable in case the movable property is not delivered. In the case law reported as **MUHAMMAD AKRAM through Special Attorney vs Mst. BUSHRA BEGUM and 2 others (2005 C L C 890 Lahore)** wherein it has been observed as under:-

*“In the present case it is admitted on the record that the original dowry articles were not in possession of the judgment-debtor and that his attempt to replace the same would amount to re-opening the case as the question regarding the quality and condition of the replaced*

*dowry articles would always be open to question. It is in these circumstances, that where the petitioner had himself denied to be in possession of the dowry articles in his written statement, it was incumbent upon the Executing Court to straightaway execute the decree for money as alternatively decreed by the Judge Family Court”.*

I am also fortified in my view by the law by the *Honourable* Supreme Court of Pakistan in case titled “**Muhammad Akram vs Mst. Shahida Parveen and others ( PLD 2004 Lahore 249)** has settled this matter as follows:-

- *“The contention of learned counsel for the petitioner that the Local commission who had been appointed was the counsel for the respondent appears to be an afterthought because no such objection was taken at the time when the appointment was made. Even at the time of inspection of the dowry articles, the petitioner did not take any such objection. He is a signatory to the three lists of dowry articles attached with the report of Local Commission. The exercise undertaken by the learned Executing Court appears to be for the satisfaction of the petitioner otherwise once the petitioner denied being in possession of any dowry articles of respondent No.1, there was no need for appointment of any Commission. The learned Executing Court should have straightaway executed the decree for money”.*

Since the petitioner left the house of respondent No.2 in the year 2001 and never joined the respondent No.2 again, and since then the petitioner had not used the said dowry articles, rather, respondent No.2 had been using the dowry articles. The learned Judge Family Court Sialkot while passing the impugned order did not consider the worst condition of the dowry articles, rather, directed the petitioner to receive all the dowry articles as per list annexed with the instant file. It has further been noticed that petitioner filed writ petition No.1865 of 2010 before this Court wherein she challenged the judgments and decrees dated 28.07.2008 & 19.02.2009 passed by both the courts below respectively whereby her claim of gold ornaments or value thereof was declined. Vide judgment dated 28.05.2014 passed by this Court in the aforesaid writ petition, the petitioner was held entitled to recover the gold ornaments as detailed in the list of dowry articles from the respondent No.2 or in alternate their market price prevalent at the time of execution. In these

circumstances, this Court has reason to believe that observation of learned trial court in the impugned order dated 16.04.2016 that alternate price could not be paid to the petitioner, rather, she was entitled to receive all the dowry articles as per list annexed with the instant file, is not in accordance with law, especially when the petitioner took a specific stance before the learned executing court that her dowry articles were replaced by the respondent No.2 with the original one and that respondent No.2 had also paid the price of the gold ornaments to the decree holder.

5. For what has been discussed above, instant petition is accepted and order dated 16.04.2016 passed by learned trial court is set aside to the extent of observation of learned Executing Court Sialkot, whereby, *the petitioner was directed to receive the dowry articles as per list annexed with the file and declined the claim of the petitioner to hand over its alternate price.*

**(Safdar Saleem Shahid)**  
**Judge**

**Approved for reporting**

**Judge**

*M. Shafique*