

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD,
(JUDICIAL DEPARTMENT).

Writ Petition No. 530 of 2015

Mst. Zil-e-Huma

Versus

Additional District & Sessions Judge-V, Islamabad-West and others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(18)	14.02.2023	Mr. Ali Waqas, Advocate for the petitioner / applicant.

C.M. No. 504/2023.

This is an application for placing additional documents on file, which is allowed subject to all just and legal exceptions

Main Case.

Through the instant writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed judgments and decrees dated 17.07.2014 and 09.07.2013, passed by learned Additional District & Sessions Judge-V, West-Islamabad and learned Judge Family Court Islamabad, respectively, whereby the suit filed

by the petitioner was partially decreed to the extent of dowry articles admitted by defendant / respondent No. 3 to be laying in his possession and rest of the claim was dismissed, thereafter, the petitioner filed an appeal, which was also dismissed.

02. Succinctly stated, facts of the case are that the petitioner and respondent No. 3 were married on 15.01.1984, according to Muslim Rites and ceremonies against a prompt dower of an amount of Rs. 100/-, Nikah was registered in Kamalia and Rukhasti took place on 11.04.1987. Thereafter both the parties started living as husband and wife in accordance with the injunctions of Islam. Subsequently, differences cropped up between the parties, resultantly, respondent No. 3 threw her out from his abode. On 02.03.1998, the respondent No. 3 pronounced a divorce to petitioner, whereafter she filed a suit for recovery, which was partially decreed vide judgment and decree dated 09.07.2013, passed by learned Judge Family Court,

Islamabad, being aggrieved the petitioner filed an appeal against the said judgment and decree, which was also dismissed vide judgment and decree dated 17.07.2014, passed by learned Additional District & Sessions Judge-V, West-Islamabad, hence the instant writ petition.

03. Notices were issued to the respondent No. 3 but the same were not served. On 14.11.2022, it was ordered by this Court to serve the notice upon respondent No. 3 through publication in "Daily Jang" Lahore, however on next date of hearing i.e. 11.01.2023, no one was in attendance on behalf of respondent No. 3, therefore, he was proceeded against ex-parte.

04. Learned counsel for the petitioner, *inter alia*, contends that both the impugned judgments and decrees have been passed in violation of law and dictums laid down by the Superior Courts of the country; the petitioner has submitted sufficient evidence in support of her contentions; both the impugned judgments

and decrees have been passed on mis-reading and non-reading of evidence, hence the same are liable to be set-aside.

05. Arguments heard, record perused.

06. Learned counsel for the petitioner has failed to point out any illegality in the impugned judgments and decrees. It is well settled that certiorari is only available to quash a decision for an error of law. It will also be issued for correcting errors of jurisdiction when an inferior Court or a tribunal acts without jurisdiction or in excess of its jurisdiction, or fails to exercise its jurisdiction or where the Court or a tribunal acts illegally in exercise of its undoubted jurisdiction and it decides a matter in violation of the principle of natural justice. The High Court while issuing a writ of certiorari acts in exercise of supervisory and not appellate jurisdiction. The High Court in exercise of its writ jurisdiction will not review the findings of facts reached by the inferior Court or a tribunal.

07. In this regard, reliance is placed upon following dictums / law laid down by the Hon'ble Supreme Court of Pakistan:

- i. **Amjad Khan Vs. Muhammad Irshad (Deceased) through LRs, (2020 SCMR 2155).**
- ii. **President All Pakistan Women Association, Peshawar Cantt Vs. Muhammad Akbar Awan and others (2020 SCMR 260).**
- iii. **Chief Executive MEPCO and others Vs. Muhammad Fazil and others (2019 SCMR 919).**
- iv. **Chairman, NAB Vs. Muhammad Usman and others (PLD 2018 SC 28).**
- v. **Shajar Islam Vs. Muhammad Siddique and 2 others (PLD 2007 SC 45).**

08. Further, there are concurrent findings of both the learned Courts below against the petitioner. In case of concurrent findings of the courts below, scope of the constitutional petition becomes very limited. The petitioner

has failed to point out any misreading or non-reading of the evidence. It has been laid down in a case titled as **Syed Arif Ali Sabri Vs. Abdul Samad through L.Rs. and 2 others (2008 YLR 2309)** that:

"When there are concurrent findings of Courts below, the scope of the constitutional petition for interference is very limited and it can only be interfered when the orders of the Courts below are fanciful or based on misreading or non-reading of the evidence".

Reliance is also placed on the cases titled as **Khuda Bukhsh Vs. Muhammad Sharif and another (1974 SCMR 279)** and **Sadrudin Vs. Aslam Madad Ali and others (PLD 2008 Karachi 2005).**

09. For what has been discussed above, impugned judgments and decrees dated 17.07.2014 and 09.07.2013, passed by learned Additional District & Sessions Judge-V, West-Islamabad and Judge Family Court Islamabad, respectively, are in accordance with law and

facts of the matter, hence do not require any interference by this Court.

10. In view of above prospective, instant writ petition has no merits and the same is **dismissed** with no order as to costs.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal /-