

Form No: HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT
BAHAWALPUR BENCH BAHAWALPUR
JUDICIAL DEPARTMENT

Case No: Writ Petition No.3197 of 2016

Muhammad Ashraf

Versus

ADJ etc.

S. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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19.12.2016

Mr. Muhammad Imran Pasha, Advocate for the petitioner.
Mr. Qadeer Shah, Advocate for respondent No.3.

Through this writ petition, the petitioner has assailed the validity of the judgments and decrees dated 18.3.2013 and 07.3.2016 passed by the learned Judge Family Court, Rahimyarkhan and Additional District Judge, Rahimyarkhan, respectively whereby decree was passed against the petitioner and an appeal preferred by him under Section 14 of the W.P. Family Courts Act, 1964 was dismissed.

2. The facts necessary for the disposal of this petition are that Mst. Gulshan Batool Zahra, respondent No.3 herein instituted a suit for recovery of maintenance allowance with effect from 01.6.2010 till 17.8.2010 at the rate of Rs.4000/- per month and onward, maintenance allowance for **Iddat** period at the rate of Rs.10,000/- per month, recovery of dowry articles valuing Rs.1,37,450/- and gold ornaments weighing five tolas as dower, with the contention that she was married to Muhammad Ashraf, petitioner on 28.8.2009 according to Muslims Rites, whereafter she resided in his house and later on it transpired that he was previously married which fact was concealed and due to this reason, Muhammad Ashraf

physically tortured her and ultimately made her to leave his house. He also usurped the gold ornaments weighing five tolas, dowry articles and she was also neglected in the payment of maintenance allowance and ultimately on 6.7.2010 divorce notice was received by her.

3. The petitioner entered appearance and filed written statement, denying all the averments made in the plaint. It was specifically maintained by him that Mst. Gulshan Batool Zahra, the plaintiff left his house of her own accord, and since she failed to perform her marital obligations, she was not entitled to any maintenance.

3. It goes without saying that the learned Judge Family Court framed the necessary issues arising from the pleadings of the parties, calling upon them to produce evidence in support of their respective pleas. Both the parties produced oral evidence and tendered documents to prove their respective stands. Be that as it may, the learned Judge Family Court proceeded to decree the suit of the plaintiffs partially vide judgment and decree dated 18.3.2013 in the following manner:

. “Nutshell of above discussed issues is that suit of the plaintiff for dowry articles worth Rs.50,000/-, dower five tolas gold ornaments, Rs.4000/- per month maintenance allowance since 01.5.2010 till payment of dower and after that subject to obedience of the plaintiff till debarred legally.

4. The petitioner felt aggrieved by the aforementioned judgment and decree passed by the learned Judge Family Court, Rahimyarkhan and filed an appeal under Section 14 of the W.P. Family Courts Act, 1964. As it is, the learned appellate Court dismissed the appeal vide judgment and decree dated 07.3.2016, holding as under:

“In view of above discussion, the present appeal is dismissed by maintaining the judgment and decree passed by the learned trial Court with no order as to costs.”

5. Learned counsel for the petitioner submits that both the impugned judgments and decrees passed by learned Courts below suffer from misreading and non-reading of evidence produced by the parties. Both the Courts misapprehended the facts, misconstrued the documents and misapplied the law. It has been urged by him that a disobedient wife is not entitled to any maintenance at all. It has also been stressed by him that the petitioner is an indigent and he is not in a position to satisfy the decrees passed against him, particularly it would be impossible for him to pay the arrears of maintenance to the decree-holder. He has questioned the approach of the learned Courts below towards the issue of dowry. According to him, the items of dowry mentioned in the list were not proved nor were any receipts produced to substantiate the claim made by respondent No.3.

6. On the other hand, learned counsel for respondent No.3 controverted the arguments addressed by learned counsel for petitioner, vehemently supported the impugned judgments and decrees and prayed for dismissal of the instant writ petition.

7. I have heard the learned counsel for the parties at length and perused the file.

8. As far as marriage between the spouses is concerned, the same has not been controverted by any party. The Nikahnama Exh.P.1 has been produced by the plaintiff in evidence, wherein a condition has been imposed on petitioner that he shall pay Rs.4000/- per month to the bride as maintenance allowance. Plaintiff/respondent No.3 as PW.1 has categorically deposed that she remained in the house of petitioner for 11 months and that on 06.7.2010 she has been divorced. On the other hand, Muhammad Ashraf, defendant/petitioner though has averred in suit that respondent No.3 had never been deprived of maintenance allowance but nothing has been produced on the record to establish that plaintiff was ever provided maintenance and the learned Judge Family Court has lawfully held the plaintiff entitled to receive maintenance allowance at the rate of Rs.4000/- per month from 01.5.2010 till debarred legally.

9. The plaintiff/respondent No.3 has also averred in suit that five tolas gold was fixed as dower and the said gold ornaments are still in possession of petitioner/defendant and this claim of the plaintiff/respondent No.3 is also supported by the plaintiff herself and her witnesses. On the other hand, petitioner/defendant though has claimed that no dower is outstanding against him, however the document i.e. Nikahnama (Exh.P.1) is again referred. It is specifically provided in the Nikahnama that the petitioner/defendant had to pay five tolas of gold ornaments within two years as **Ghair**

Moajjal dower. Moreover, petitioner/defendant himself appeared as D.W.1 and conceded that he has not paid any dower to the plaintiff nor any maintenance allowance was paid by him to the plaintiff. Learned Judge Family Court has rightly observed that in addition to maintenance allowance respondent No.3/plaintiff is also entitled five tolas gold ornaments. Plaintiff/respondent No.3 though has claimed that she was given dowry articles according to the list annexed to the suit in shape of chairs, Sofas and iron table etc. However, she has only produced receipts of purchase of gold ornaments, furniture including electronic appliances. However, learned Judge Family Court has given his finding by taking into consideration also that it is a custom in our society that parents use to give dowry articles to their daughters and has rightly fixed alternate price, i.e. Rs.50,000/- to be paid by the defendant to the plaintiff. The finding of learned Judge Family Court in his judgment and decree dated 18.3.2013 to this effect is also according to law and no illegality has been pointed out in the impugned judgments and decrees.

10. It is well- settled that disputed questions of facts cannot be gone into in writ jurisdiction. Even otherwise, writ jurisdiction is discretionary in nature. Since no question of law has been raised in the instant writ petition, I find no justification to disturb the findings recorded by the learned Courts below in their well-reasoned judgments. In passing, it may be observed that when the law does not provide for a second appeal or revision for that matter and seeks to terminate the family disputes within the shortest possible time,

it is undesirable and inappropriate to allow the filing of writ petitions simply for the sake of prolonging the agony of women and minors. It is well-settled law that what cannot be achieved directly is not to be allowed to be achieved indirectly.

11. For the foregoing reasons, I find no force in this petition, which is **dismissed**. No order as to costs.

(HABIB ULLAH AMIR)
JUDGE

Approved for reporting

JUDGE

Rana Zahid Bashir

