

Form No.HCJD/C-121
ORDER SHEET
LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

Case No. Writ Petition No.2591/2016

Sarfraz Versus Additional District Judge etc.

S.No. of order/Proceeding	Date of order/Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary.
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19.10.2016 Sh. Kamran Shahzad, Advocate for the petitioner.

Brief facts of the case are that the respondent No.3 filed a suit for recovery of dowry articles and maintenance allowance for herself and for minor children arrayed as respondents No.4 to 6 in this writ petition against the petitioner with the averments that she contracted marriage with petitioner on 13.03.2004 in accordance with Muslim rites; that the plaintiff lady after the marriage settled in the house of the petitioner and started to perform her marital obligations; that out of this wedlock, respondents No.4 to 6 were born who are alive and living with respondent No.3; that on 09.06.2013, the petitioner expelled the plaintiff from his house in three wearing apparels whereafter she took refuge in the house of her parents; that the petitioner has neither paid any maintenance allowance to the plaintiffs nor returned the dowry articles valuing Rs.165,500/- to the plaintiff lady which was given to her at the time of marriage despite repeated demands.

2. The petitioner-defendant contested the suit by filing written statement. Out of divergent pleadings of the parties, learned Judge Family Court, Fateh Jang, District Attock framed issues, recorded evidence and then after hearing the parties, proceeded to decree the suit of the plaintiffs in the terms that respondent No.3 is entitled to recover maintenance allowance @ Rs.3,000/-

per month for Iddat period only, respondent No.4 to 6 @ Rs.4,500/- per month each till their legal entitlement with 10% annual increase and respondent No.3 is entitled to recover dowry articles according to Exh.P-2 excluding item No.18 or in alternate 60% of its amount after depreciation vide judgment and decree dated 02.05.2016. The petitioner feeling dissatisfied preferred appeal which was dismissed by learned Additional District Judge, Fateh Jang, District Attock vide judgment and decree dated 29.08.2016. Hence this writ petition has been filed by the petitioner-defendant.

3. Learned counsel for the petitioner *inter alia* contends that the judgments and decrees of learned courts below are against law and fact; that learned courts below have not taken into consideration the evidence adduced by the parties in its true perspective; that the petitioner is unable to pay the maintenance allowance as awarded by learned courts below; that the evidence produced by the parties has not been appreciated by learned courts below in its true perspective; that the impugned judgments and decrees are based on surmises and conjectures; that the learned courts below have committed material irregularities while passing the impugned judgments and decrees, therefore, this writ petition be allowed, the impugned judgments and decrees be set aside and the suit of the plaintiffs be dismissed.

4. Arguments heard. Record perused.

5. Perusal of record reveals that the plaintiff lady has only been allowed maintenance allowance at Rs.3,000/- per month for only Iddat period whereas the minors have been given maintenance allowance @ Rs.4,500/- per month each.

6. Regarding dowry articles, the plaintiff lady has been held entitled by learned courts below to get dowry articles given to her at the time of marriage excluding item No.18 or in alternate, 60% of its amount after depreciation. The plaintiff lady had claimed dowry articles valuing Rs.165,500/- including gold ornaments of Rs.80,000/-. Learned courts below did not accede to claim of the plaintiff to the extent of gold ornaments and dismissed her suit to that extent. Thereafter, claim of the plaintiff left for Rs.85,500/- only upon which 40% reduction as depreciation was imposed. In this way, the plaintiff was allowed just Rs.51,300/- as alternate price of dowry articles. Under Section 14 (2) (b) of the Family Courts Act, 1964 (hereinafter called “the Act”), no appeal is entertainable against decree of dowry articles upto Rs.100,000/-. Since appeal was not provided by the statute, the writ in hand is not competent as there is no misreading or non-reading of evidence, floating on the surface of the record.

7. So far as maintenance allowance awarded to the plaintiffs is concerned, Section 14(2)(c) of the Act reads as under:

“14 (2). No appeal shall lie from a decree passed by Family Court—
(a) ...
(b) ...
(c) for maintenance of rupees five thousand or less per month.”

Bare reading of above provision of law makes it clear that no appeal will lie against a decree for maintenance if such maintenance is Rs.5,000/- or less per month. Learned lower appellate court while relying upon judgment of this Court reported as Muhammad Nadeem Vs. Aneesa Bibi and others (2016 CLC 81 Lahore) has noted that the right of appeal to the extent

of maintenance allowance of the minors was available to the petitioner as in the referred judgment it has been held while interpreting Section 14(2) (c) of the Act that *“it would be the maintenance as a whole which would determine the pecuniary jurisdiction of the appellate court”*. With utmost respect to the Hon’ble Judge, I feel that the Hon’ble Judge was not properly assisted on the subject. In my considered view, it is not a matter of pecuniary jurisdiction of the court rather it is a matter of right of minors and wives who are constrained to live a deserted life and Section 14(2)(c) of the Act mentions the amount of maintenance allowance for a single person and not the accumulative one for all the children and wife. If it is accepted as held by the Hon’ble Judge, what would happen if such number is five or more as in such a situation, the protection provided by Section 14(2)(c) of the Act would go down even below the level of Rs.1,000/- which was the limit provided before the recent amendment made in 2015 and would be highly insufficient for survival of any individual. In my view, the legislature vide said amendment has desired to increase the earlier limit of Rs.1,000/- to Rs.5,000/- per head and has not fixed it as a whole for all those who have such right against one person. As such, I am of the considered view that since the amount of maintenance allowance granted to each of the plaintiffs was less than Rs.5,000/-, the appeal keeping in view Section 14(2)(c) of the Act was not maintainable.

8. Even otherwise, the minors are admittedly children of the petitioner and it is his responsibility to maintain them for which meager amounts of Rs.4,500/- for each of the minor have been awarded which are hardly sufficient to meet with the requirements of the minors keeping in view their day-to-day needs of food, abode,

clothing, schooling etc. The petitioner being father of the minors cannot be allowed to escape from his responsibilities of maintaining their children under any law of the land.

9. Furthermore, there are concurrent findings of law and fact against the petitioner which are based upon due appraisal of evidence. Under the law, such findings are not to be interfered with until and unless there is some gross illegality, misreading or non-reading of evidence or some jurisdictional defect which could not be pointed out by learned counsel for the petitioner. In the circumstances, no interference is called for.

10. For the aforementioned reasons, the writ petition being not maintainable is hereby **dismissed** *in limine*.

(ATIR MAHMOOD)
Judge

Akram