

**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT, LAHORE**  
**JUDICIAL DEPARTMENT**

**Writ Petition No. 29490 of 2022**

*Mst. Nimra Sheikh*

***Versus***

*Muhammad Umair Siddiqui and another*

**JUDGMENT**

<i>Date of hearing</i>	<i>07.05.2024</i>
<i>Petitioner by</i>	<i>Mr. Mehmood A Sheikh, learned Advocate.</i>
<i>Respondent No. 1 by</i>	<i>Sardar Liaqat Ali Dogar, learned Advocate.</i>

**SULTAN TANVIR AHMAD, J:**– Through present petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has challenged order dated 18.02.2022 passed by learned Judge Family Court, Lahore.

2. The necessary facts, required to decide the present petition, are that respondent No. 1 instituted a suit dated 01.04.2021 (the '*suit*') for recovery of certain articles raising allegations that his parents gave gold ornaments, clothes and some other articles at the time of marriage, which were received by the petitioner and the same are in her possession that she shifted to the house of her parents and now the same have been refused to be returned. The petitioner raised preliminary objection regarding maintainability of the *suit* that *barri* or gifts articles given to

the bride at the time of marriage are the property of the bride in addition to dowry articles by virtue of law, therefore, recovery of the same from bride is not permissible. On 18.02.2022, the learned Family Court, Lahore rejected the objection raised by the petitioner and reached to the following conclusion:-

*“...As far as the objection that who is entitled to claim the recovery of bridal gifts is the matter of evidence as both husband and wife in these suits are claimant against each other and without providing opportunity to lead the evidence, the controversy cannot be resolved. So, in view of above discussion, the objections raised by learned counsel for the defendant on the maintainability of instant suit are hereby turned down...”*

Being aggrieved from the same, present petition has been filed.

3. Mr. Mahmood A. Sheikh, learned Senior-ASC has argued that the learned Family Court has ignored that the articles that are being claimed in the *suit*, by operation of law, absolutely vest in the petitioner. He has further argued that the *suit* has been filed merely to add to the agony of petitioner-lady, who has been subjected to torture during her stay at the house of respondent No. 1; that the learned Family Court has not correctly appreciated that continuation of the *suit* is totally fruitless besides being based on frivolous allegations. Learned counsel for the petitioner has added that the petitioner already went through trauma, distress and sufferings; that she was kept in confinement for a long duration by respondent No. 1 with the help of his close friend, who is a police officer and now respondent No. 1 just wants to maintain the *suit* to add in the miseries of the petitioner.

4. Conversely, Sardar Liaqat Ali Dogar, learned counsel for respondent No. 1 has relied upon case titled “Mst. Nomail Zia Versus Adnan Riaz” (2014 CLC 87) and he has opposed this petition. He has argued that since both the parties have filed their respective claims, therefore, the questions raised by the petitioner cannot be decided without framing issues and recording evidence.

5. Heard.

6. Reading of plaint and the record makes it unequivocally clear that the claim of respondent No. 1 is for recovery of articles which were allegedly given by the parents of respondent No. 1 to the petitioner at the time of marriage. In paragraph No. 3 of the *suit* it is averred “... *the parents of the plaintiff made Barri Articles in shape of gold ornaments, precious clothes and other necessary articles.....which were duly received by the defendant and remained in her possession and use...*”. In subsequent paragraph it is categorically stated that “...*the defendant was using the above said gold ornaments as per her wishes and kept the same with her.*” As per the plaint, the grievance arose to respondent No. 1 when allegedly the articles were shifted by the petitioner to her parents. The cause of action, set-up in paragraph No. 12, is dominantly referring to articles received by respondent No. 1 at the time of marriage and then alleged failure to return the same. Examination of plaint, its prayer and the material on record, eliminates any doubt that the articles or ornaments claimed are covered under section 2(a) and 2(e) of the Dowry and Bridal Gifts (Restriction) Act, 1976 (the ‘**Act of 1976**’), which reads as under:-

“2(a) “bridal gift” means any property given as a gift before, at or after the marriage, either

*directly or indirectly, by the bridegroom or his parents to the bride in connection with the marriage but does not include Mehr,”*

2(e) “present” means a gift of any property not being a bridal gift or dowry, given before, at or after the marriage, either directly or indirectly, to either party to a marriage in connection with the marriage or to the relatives of the bride or bridegroom but does not include neundra and salami;

Section 5 of the Act of 1976 provides that dowry, bridal gifts and property given to bride as present vest in the bride absolutely, in the following manners:-

“5. Vesting of dowry etc., in the bride. All property given as **dowry or bridal gifts** and **all property given to the bride as a present shall vest absolutely in the bride** and her interest in property however derived shall hereafter not be restrictive, conditional or limited.”

(Emphasis Supplied)

7. A learned Division Bench of Balochistan High Court in case titled “Tania Naseer vs. Muhammad Zubair and 2 others” (2017 YLR 1481) observed as under:-

“11. The above Act clearly shows that the articles of dowry, bridal gifts, presents or all the other movable property are the belongings of bride. Furthermore, in the case of Ghulam Rasul v. Judge, Family Court 1991 CLC 1696, it is held that bridal gift given by husband is the absolute property of wife and it could not be snatched away from her.”

This Court in case titled “Gul Sher vs. Mst. Maryam Sultana” (2011 YLR 1000) reached to the same conclusion and held:-

“5. Even otherwise section 5 of the Dowry and Bridal Gifts (Restriction) Act, 1976 provides that all property given as dowry or bridal gifts to a bride shall vest absolutely in her and that her interest in the said property,

however derived shall not be restrictive, conditional or limited. In the said section, there is no limitation of Rs.5,000/- either for dowry or for wari. On the other hand, it has been provided therein that such property shall be owned by her absolutely and to the exclusion of the bridegroom without caring for the source through which it has come and without limitation of any amount. Therefore, it is quite clear that in spite of the restriction imposed in section 3, a bride is the owner of the dowry and wari articles irrespective of their value and she is entitled to retain it forever and to claim its return or the value thereof, if the same is kept back by her husband or any other person. In this regard I rely upon 'Masud Sarwar v. Mst. Farah Deeba' 1988 CLC 1546 (Lahore)."

(Underlining is added)

8. The law on the point that the claimed property / articles unconditionally and absolutely vest in the petitioner is unambiguous and settled. The learned Family Court somehow observed that some issue is required to be settled and then resolved by recording evidence. Order XIV of Code of Civil Procedure, 1908 (*CPC*) provides for settlement of issues and determination on issue of law or on issues agreed upon. Rule 1(2) of Order XIV of *CPC* requires material proposition of law or fact(s) to be alleged in the suit in order to show a right to sue. Issues are ought to be framed when a material proposition of fact or law is affirmed by one party and denied by the other. The facts in the *suit* are based on recovery of those articles that as per law cannot be recovered by the claimant and absolutely belongs to the defender of the *suit*. There is no proposition set-up in the *suit* that amounts to material proposition of law and fact, requiring determination or settlement. This Court in case titled "*Gulistan Textile Mills Ltd. Vs. Askari Bank Ltd. and others*" (2013 CLD 2005) emphasized that:-

“7. Court enjoys an independent, suo motu and sua sponte power to examine the plaint at any stage of the suit under Order VII, Rule 11, C.P.C. **The wisdom is that a Court can always, nip a frivolous suit in the bud, by rejecting the plaint in order to retain its docket and time for more serious claims. “In the first place it contemplates that a still-born suit should be properly buried, at its inception, so that no further time is consumed on a fruitless litigation. Secondly, it gives plaintiff a chance to retrace his steps, at the earliest possible moment, so that, if permissible under law, he may found a properly constituted case.” This power is grounded in good public policy.** The Court enjoys an insular power under Order VII, Rule 11 to examine the plaint, primarily on the basis of the contents of the plaint. “The averments in the plaint are germane” and it does not matter to the Court if the defendants have been issued summons or applications for leave to defend or written statements have been filed by the defendants or even if the defendants are in Court to defend their positions. The Court can proceed unilaterally against the plaintiff alone without engaging the other party (defendants) if the Court is of the view that the plaint is liable to be rejected. This is the inherent power of the Court which precedes the statutory obligation of the court under section 10(8) of the Ordinance. This nuance is fundamental to this case.”

(Emphasis Supplied)

The same guidelines were again issued in case titled “Ameer Abbas Sial vs. Province of Punjab” (2020 CLC 792).

9. In case titled “President, Zarai Taraqiati Bank Limited, Head Office, Islamabad vs. Kishwar Khan and others” (2022 SCMR 1598) the Supreme Court of Pakistan made it responsibility of the Courts to give meaningful reading to the plaint and when it is clear that suit is meritless and instead of disclosing a right to sue, as intended by

legislature in the above discussed provisions of law, the suit is manifestly vexatious, the Courts can reject the plaint. The guidelines given in this regard are as follows:-

*“...The court is under obligation to must give a meaningful reading to the plaint and if it is manifestly vexatious or meritless in the sense of not disclosing a clear right to sue, the court may reject the plaint. With the aim of deciding whether the plaint discloses cause of action or not, the court has to perceive and grasp the averments made in the plaint and the accompanying documents. In case of any mix question of law and facts, the right methodology and approach is to let the suit proceed to written statement and discovery and determine the matter either on framing preliminary issues or regular trial. This Rule does not justify the rejection of any particular portion of the plaint or in piecemeal as the concept of partial rejection is seemingly incongruous to the provisions of Order VII, Rule 11 C.P.C. Astute drafting for creating illusions of cause of action are not permitted in law but a clear right to sue ought to be shown in the plaint. It is trite law that a party should not be unnecessarily harassed in a suit and if no cause of action is disclosed, the courts may not unnecessarily protract the hearing of a suit...”*

10. I have heard the two sides and carefully gone through the plaint as well as the relied documents and reached to the conclusion that there is no such cause disclosed in the *suit* that require further adjudication on any disputed proposition of law or fact. The claim in the *suit* is against the settled law. Its existence on the docket is not just fruitless rather wastage of time. The continuation of the same shall operate as oppressive and vexatious to the respondent. It appears that above settled law and criteria settled by the Supreme Court escaped view of learned Family Court. It has been apprised that suit for recovery

filed by respondent No. 1 is already pending and if there is any dispute as to the possession of some of the articles, the relevant issue can be framed in the said suit and then resolved, if so required.

11. For what has been discussed above, the present petition is ***allowed***. The plaint in question is rejected. Respondent No. 1 shall pay Rs.25,000/- as cost. Six percent interest per annum shall be added to cost, if not paid within 30 days from the date of announcement of this judgment.

***(Sultan Tanvir Ahmad)***  
***Judge***

Announced in open Court on 20.05.2024.  
Approved for reporting.

***Judge***