

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.S-726 of 2025

[Amir Hussain vs. Mst. Gul Naz Anum Shakeel]

Petitioner	Through M/s. S. Kashif Hussain and Mian Ashfaq Ahmed, Advocate.
Respondent	Through Mr. Talat A. Aslam , Advocate
Date of Hearing:	01.10.2025.
Date of Order:	01.10.2025.

ARSHAD HUSSAIN KHAN, J. Through the present constitutional petition, the petitioner has assailed the order dated **16.08.2025** passed by the learned VIII Additional District Judge, Karachi (East) in Family Appeal No.83 of 2025, whereby the petitioner's appeal was dismissed, upholding the order **06.05.2025** and Ex-Patre Judgment and Decree dated **10.11.2023**, passed by the learned Civil & Family Judge, Karachi (East) in Family Suit No.3137 of 2023, through which the suit filed by respondent No.1 was decreed. For the sake of convenience, both the said decisions shall hereinafter be collectively referred to as the **"impugned order"**.

2. Concisely, respondent No.1/plaintiff instituted Family Suit No.3137 of 2023 seeking recovery of maintenance and medical expenditures against the petitioner/defendant. It was averred that the marriage between the parties was solemnized at Karachi on 18.11.2018, with a deferred dower of Rs.3000/- (Rupees Three Thousand only), which remained unpaid. It was further pleaded that the petitioner/defendant off and on used to maltreat her; also used abusive language; after 5 to 6 months of marriage petitioner/defendant brought the respondent/plaintiff to Karachi at her brother's house. It was further pleaded that the petitioner/defendant neglected his marital obligations for over three years, failing to provide any maintenance to the respondent/plaintiff, who has since been supported by her brother. In the month of June 2019, while recklessly driving a motorbike from Karachi to Sadiqabad, the petitioner/defendant caused a serious accident near Naushehro Feroze, resulting in grave head injuries to the respondent/plaintiff, leaving her partially paralyzed and speech impaired. The petitioner/defendant ignored medical advice, concealed the incident from her family, and withheld her phone for two months.

Eventually, her brother brought her to Karachi for treatment and physiotherapy, which he continues to bear. The defendant, despite earning over one lack rupees per month, has neither visited nor contributed towards her medical expenses or maintenance, leading to the filing of above family suit.

After admission of the suit, summons were issued to the defendant through ordinary as well as substituted modes of service. Despite such service, the defendant failed to appear before the court, whereupon service was declared good, vide order dated 05.09.2023. Thereafter, as the defendant, despite being afforded sufficient opportunities, failed to file his written statement, he was debarred from doing so, vide order dated 12.10.2023, and the suit was directed to proceed ex-parte against him. Subsequently, on the basis of the evidence produced by the plaintiff the suit was decreed ex-parte on 10.11.2023.

Thereafter on 22.01.2025, the petitioner filed three applications: (i) Application under section 9(6) of Family Court, Act. 1964; (ii) Application for suspension of Judgment & Decree dated: 10-11-2023 and (iii) Application for condonation/Limitation under section 05 of Limitation Act, in Family Suit No. 3137 of 2023. Learned family judge after hearing learned counsel for the parties dismissed the said applications, vide order dated 06.05.2025. The said order was challenged in Family Appeal No. 83 of 2025, which too was dismissed on 16.08.2025 by VIIIth Additional District Judge, Karachi [East]. The petitioner has, therefore, invoked the constitutional jurisdiction of this Court by filing the present petition, assailing the **concurrent findings** recorded by the two courts below.

3. Learned counsel for the petitioner contended that the impugned judgments passed by the two courts below are not sustainable in law and are liable to be set aside, as both courts failed to properly consider the relevant facts and the grounds agitated on behalf of the petitioner/defendant. It is argued that the impugned judgments are contrary to the settled principles of law, devoid of legal effect. It is further argued that the impugned judgments and decrees were passed in violation of Sections 8 and 9(7) of the West Pakistan Family Courts Act, 1964, as neither summons nor copy of the plaint was served upon

the petitioner, nor was the ex-parte judgment and decree communicated as required by law. It is urged that the petitioner, who was arrested on 21.10.2024 and sent to civil prison for one year, only thereafter came to know of the decree obtained against him. Learned counsel further submits that the petitioner had himself obtained a decree for restitution of conjugal rights on 13.03.2024, which the respondent has failed to comply with, thereby disentitling her from any claim of maintenance. It is further argued that the trial court erroneously relied upon substituted service, which has been held defective by superior courts, and by doing so deprived the petitioner of his valuable rights guaranteed under Article 10-A of the Constitution. It is further contended that matters involving such valuable rights must be decided on merits after hearing both the parties, and non-compliance with the mandatory provisions of law amounts to a denial of fair trial. On these premises, counsel submits that the judgment and decree dated 10.11.2023, as well as subsequent orders of 06.05.2025 and 16.08.2025, are liable to be set aside. Reliance has been placed on **2019 CLC 643, 2017 CLC Note 69, 2022 CLC 1529, 2007 CLC 2024, and 2023 MLD 1118.**

4. On the other hand, learned counsel for the respondent/ plaintiff, while supporting the impugned judgments, contended that service upon the petitioner/defendant was duly effected through all prescribed modes, including WhatsApp. He has argued that there is nothing on the record to suggest that the petitioner was not residing at the given address, that the WhatsApp number did not belong to him, or that the phone was not in his possession at the relevant time. He has further argued that the petitioner was personally served through courier, but he refused to accept the service and acknowledge the receipt. Thereafter, having become aware of the proceedings, he clandestinely monitored the case without participating in it. Learned counsel maintained that the petitioner intentionally and deliberately avoided appearance before the court and willfully refrained from filing the written statement. As a result, he was rightly debarred from filing the same, and the ex-parte judgment and decree were passed thereafter in accordance with law. Lastly, it was urged that the impugned judgments are just, proper, and passed strictly in accordance with law, and therefore not liable to be

interfered with in the constitutional jurisdiction of this Court. He has prayed for dismissal of the present petition with costs.

5. Heard learned counsel for the parties, perused the record and the relevant law.

Precisely, the case of the petitioner is that he was never served in accordance with law by the Family Court, yet the judgment and decree were nonetheless passed against him. It is urged that the mandatory requirements of service under the Family Courts Act, 1964, were not complied with, thereby depriving him of the opportunity to contest the suit. On this basis, the petitioner maintains that the judgment and decree are vitiated in law and liable to be set aside.

6. The record reveals that the petitioner/defendant was duly served through various modes, including publication, and service was held good by the learned trial court, vide order dated 05-09-2023. Despite such service, the petitioner failed to appear or file a written statement and was consequently debarred through order dated 12-10-2023. The suit thereafter proceeded ex-parte, culminating in a judgment and decree dated 10-11-2023 in favour of the respondent/plaintiff .

It further transpires that, besides ordinary service and publication, the petitioner was also served through WhatsApp, as evident from the screenshots on record bearing blue-tick indicators. Counsel for the petitioner did not dispute the ownership of the said number nor assert that the phone was not in his possession at the relevant time . Service was also effected through express courier at the address consistently disclosed by the petitioner in the plaint, appeal, and petition. The courier report indicates that delivery was refused. Such refusal constitutes valid service, deemed acknowledgment within the meaning of Order V, Rule 10-A(2), CPC. Accordingly, this mode of service was also proper .

7. Learned counsel for the petitioner argued that the trial court did not comply with Section 9(7) of the Family Courts Act, 1965. However, it is settled that where notice is not duly served, limitation commences from the date of knowledge of the decree. The petitioner, in his appeal and petition, himself admitted that he was arrested on 21-10-2024 in connection with the matter and thereafter approached the

respondent's family members in expectation of compromise. Hence, knowledge of the decree accrued to him on 21-10-2024. Nonetheless, the petitioner filed an application under Section 9(6), CPC only on 20-01-2025, nearly three months later. Although accompanied by an application under Section 5 of the Limitation Act, asserting knowledge from 17-01-2025 after obtaining certified copies, such stance is unconvincing in light of his admitted arrest earlier. No satisfactory explanation for the delay has been offered .

8. Another significant aspect is that both applications, under Section 9(6) of the Family Courts Act and under Section 5 of the Limitation Act, were filed without affidavits. Moreover, the signatures purportedly of the petitioner on those applications are glaringly dissimilar to his signatures on the affidavits filed with the appeal and the present petition. The explanation that he was in jail at the time and could not sign the applications is not persuasive, as jail authorities could have facilitated such signing. The apparent use of forged signatures renders the applications legally untenable. In these circumstances, it stands established that (i) The petitioner was duly and personally served; (ii) He acquired knowledge of the decree on 21-10-2024; (iii) His applications were filed with inordinate delay, unsupported by affidavits, and tainted with apparent fabrication; and (iv) They were rightly dismissed by the learned trial court. It is observed that when the applications themselves were meritless, the foundation of the petitioner's challenge to the judgment and decree stands collapsed, rendering the appeal time-barred and devoid of substance.

9. The petitioner failed to satisfy the decree, and the appeal preferred by him against the judgment and decree of the learned trial court also stood dismissed. Yet, by dragging the matter from one forum to another, particularly in a family dispute, the petitioner has indulged in vexatious litigation, thereby causing undue delay in the enforcement of lawful rights and adding to the already heavy burden of the courts. Such practice has been strongly deprecated by the Supreme Court of Pakistan, which has consistently emphasized that the family matters must be decided and concluded with utmost expedition in order to

protect the rights and dignity of the parties, especially women and children¹.

10. It may also be observed that the constitutional petition cannot be considered as second appeal against the order passed by lower appellate court. In the instant case, the two courts below have given concurrent findings against, which the petitioner has not been able to bring on record any concrete material or evidence, whereby, such findings could be termed as perverse or having a jurisdictional defect or based on misreading of fact. It is well settled that if no error of law or defect in the procedure has been committed in coming to a finding of fact, the High Court cannot substitute such findings merely because a different findings could be given. It is also well settled law that concurrent findings of the two courts below are not to be interfered in the constitutional jurisdiction, unless extra ordinary circumstances are demonstrated, which in the present case is lacking.

11. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice². It may also be observed that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided³, and is restricted inter alia to appreciate whether any manifest illegality is apparent from the order impugned. It is also well settled that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law.

12. In view of the foregoing, it is evident that the impugned orders were passed by the courts below strictly in accordance with law and upon due consideration of the material available on record. The

¹ Shahzad Amir Farid v. Mst. Sobia Amir Farid [2024 SCMR 1292]

² Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others [2015 PLC 259]

³ Shajar Islam v. Muhammad Siddique [PLD 2007 SC 45] & Arif Fareed v. Bibi Sara and others [2023 SCMR 413].

petitioner's counsel has not been able to demonstrate any illegality, material irregularity, or jurisdictional defect so as to justify interference by this Court in its constitutional jurisdiction. The case law cited on behalf of the petitioner is distinguishable on facts and renders no assistance. Consequently, the instant constitutional petition, being devoid of merit, is hereby dismissed.

JUDGE

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