

IN THE HIGH COURT OF SINDH

CIRCUIT COURT HYDERABAD

C.P. No. S- 309 of 2020

Muhammad Aslam.....Petitioner

Versus

II-Civil & Family Judge,
Tando Adam, District
Sanghar and another.....Respondents

Date of hearing
and decision : 18.09.2020

Petitioner present in person

ORDER

ADNAN-UL-KARIM MEMON, J. Through instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, the petitioner has impugned the order dated 04.07.2020 passed by learned Civil & Family Judge-II, Tando Adam in Family Suit No.28/2020, whereby the suit filed by Respondent No.2, for dissolution of her marriage by way of Khula was decreed.

2. Precise narration of the case as per memo of petition is that the parties to suit married to each other on 03.07.2017, but unfortunately, their relationship could not remain cordial which respondent-wife compelled to file Suit No.28/2020 before Family Judge, Tando Adam for dissolution of her marriage, which was decreed in her favor vide order dated 04.07.2020 on the premise that the parties failed to reconcile each other during pre-trial stage.

3. The Petitioner who is present in person has submitted that learned Family Judge dissolved his marriage, without providing him an opportunity of hearing as on the very date of pre-trial stage / hearing, he could not put his appearance before learned Family Court due to pandemic situation of corona virus and lockdown restrictions, hence the order is not sustainable under the law and is liable to be set aside. He further submits that the impugned judgment and decree passed by learned Family Court is a result of misreading and non-reading of oral as well as documentary evidence available on the record. In support of his submissions, he relied upon Section 10 of Family Courts Act, 1964.

4. I have heard the petitioner who is present in person on the point of maintainability of instant petition and perused the material available on record.

5. The pivotal question involved in the present proceedings is whether the Petitioner was given an opportunity of hearing under Section 10(2) of Family Courts Act, 1964, on the allegations leveled against him in the memo of plaint?

6. To appreciate the aforesaid proposition, it is expedient to have glance over Section 10 of the Family Courts Act, 1964. For convenience sake, the aforesaid provision is reproduced as under:-

Pre-trial proceedings: -

1) When the written statement is filed, the Court shall fix an early date for a pre-trial hearing of the case.

(2) On the date so fixed, the Court shall examine the plaint, the written statement (if any) and the précis of evidence and documents filed by the parties and shall also, if it so deems fit, hear the parties and their counsel.

(3) The Family Court may, at the pre-trial stage, ascertain the precise points of controversy between the parties and attempt to effect compromise between the parties.

(4) Subject to subsection (5), if compromise is not possible between the parties, the Family Court may, if necessary, frame precise points of controversy and record evidence of the parties.

(5) In a suit for dissolution of marriage, if reconciliation fails, the Family Court shall immediately pass a decree for dissolution of marriage and, in case of dissolution of marriage through khula, may direct the wife to surrender up to fifty percent of her deferred dower or up to twenty-five percent of her admitted prompt dower to the husband.

(6) Subject to subsection (5), in the decree for dissolution of marriage, the Family Court shall direct the husband to pay whole or part of the outstanding deferred dower to the wife.

7. To elaborate further on the issue, I have noticed that on 04.07.2020 learned Family Judge passed the following order:-

“Suit called. The learned counsel for plaintiff along with plaintiff is present while defendant and his counsel repeatedly called but found absent without any intimation. Heard the plaintiff and her counsel in person and examined the pleadings of the parties. The plaintiff through her counsel filed statement along with affidavit where she prayed for grant of Khulla and seeks permission to treat her suit as an urgent matter. The plaintiff has stated that due to facts/reasons disclosed in detail in plaint she has devolved extreme hatred and abhorrence in her heart against the defendant. Plaintiff submitted that whole family of defendant criticizing on her. Plaintiff submitted that defendant maltreats and misbehave with her on petty household matters. She further stated that she has now realized that she cannot live with defendant as a wife any longer and she would rather die than live with the defendant. On other hand the defendant and his counsel remained absent without any intimation to this Court due to which Pre-Trial talks proceeding declared as failed. After perusing the Suit record, hearing Plaintiff and her counsel in person, I am of the opinion that in present situation there is no possibility of reconciliation

between parties as due to extreme hatred, the plaintiff does not want to live with the defendant at any cost and for this reason, the parties cant not live, thus, any further efforts for reconciliation proceeding would be futile exercise. The plaintiff is ready to forgo the dower amount if Khulla is granted. I therefore, declare the pre-trial as failed. The marriage between the parties stands dissolved by way of Khulla. A preliminary decree shall be drawn up accordingly. Reader is directed send a copy of such preliminary decree to the concerned authority for information and compliance. Let the issues between parties on remaining controversies be framed and decided after recording the evidence.”

8. I am cognizant of the fact that the law requires hearing and adjudication of cases upon merits and parties should be granted reasonable opportunity of hearing and to produce their evidence. However, if the case is adjourned for pre-trial proceedings on several occasions without any sufficient cause, the aims and objects in promulgating the West Pakistan Family Courts Act, 1964, will be rendered futile. It is also a settled principle of law that learned Family Court has to regulate its proceedings under the provisions of that Act and in doing so it has to proceed on the premise that every procedure is permissible unless a clear prohibition is found in the law. I am of the view, that the family matters requires swift disposal, more particularly, relating to marriage and other connected issues therewith under the West Pakistan Family Courts Act, 1964.

9. From bare perusal of aforesaid order, it is manifestly clear that the Petitioner has deliberately and intentionally failed to appear and defend his case before learned Family Court just to prolong the proceedings; however, the case was adjourned at his request for 04.07.2020 and on the very date again he failed to put his appearance, compelling the Family court to pass the impugned order.

10. In view of above, the submissions of petitioner cannot be considered on the ground that the matter of dissolution of marriage between the spouses, attained finality and the same cannot be reopened under section 14(2) of the Family Courts Act, except in the case of dissolution for reasons specified in clause (a) of the item (viii) of Section 2 of the Dissolution of Muslim Marriages Act, 1939; or under Article 199 of the Constitution, in the manner as the Petitioner has asked for which attained finality cannot be interfered within the given circumstances, while exercising constitutional jurisdiction as a Court of Appeal.

11. In this view of the matter, this writ petition being meritless is hereby dismissed as no illegality or jurisdictional defect in the peculiar circumstances of the case was established.

JUDGE