

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P No.S-512 of 2021

Date

Order with signature of Judge

1. *For hearing of CMA No.3154/2021.*
2. *For hearing of Main Case.*

29.09.2021

Ms. Uzma, Advocate for the Petitioner.
Mr. Imran Ahmed Khan Abro, Assistant Advocate General, Sindh.
Mr. Hidayat Ali Laghari, Advocate for Respondent No.1.

ORDER

Learned counsel for the petitioner submits that petitioner is working as police constable in Punjab Police Department, at Mianwali. Next submits that respondent No.1 filed Family Suit No.2586/2019 before the Court of 10th Family Judge, Karachi (West), which stood decreed ex-parte thereby the trial Court directed petitioner to pay Rs.4000/- per month to Plaintiff from the institution of Suit till marital tie exists with 5 percent increment per annum, with further directions to pay Rs.3000/- per month for each minor to the Plaintiff/respondent. She next submits that amount imposed by the trial Court was beyond the sources of petitioner; however, petitioner did not challenge the said order because he was not in knowledge. On the other hand, respondent No.1 filed Family Appeal No.16/2020 before District Judge, Karachi (West), which subsequently was assigned to 4th Additional District Judge, Karachi (West), seeking enhancement of the amount awarded to the petitioner by trial Court. She next submits that appellate Court without hearing the petitioner has allowed appeal filed by the respondent, therefore, she submits that petitioner was condemned unheard and the impugned judgments passed by the Courts below are in ex-parte, therefore, by granting petition, case may be remanded to the trial Court so that petitioner may be able to contest afresh.

As far as, Execution Application filed by the respondent before trial Court, is concerned, petitioner has deposited Rs.140,000/- through receipts viz. receipt No.13995 amounting to Rs.125,000/- & receipt

No.15580 amounting to Rs.15,000/-, before the trial Court vide Execution Application No.44/2021. She further submits that respondent has also filed Khula before the Court concerned, which is still pending adjudication; besides, petitioner has also filed Guardian and Wards Application before the same trial Court; hence, respondent being disobedient wife, is not entitle for the relief sought for. She, therefore, submits that case may be remanded to the trial Court to decide it afresh along with Guardian & Wards Application.

Learned counsel for the respondent submits that petitioner has failed to contest the case before Courts below, therefore, is not entitle for relief sought for; hence, prays for dismissal of the petition. He; however, admits that no summon or process was served upon him.

Learned Assistant Advocate General, Sindh submits that it will be appropriate to remand the case to trial Court so that petitioner may be given opportunity of hearing and then the trial Court may decide the case afresh after hearing parties properly.

Heard arguments and perused record. Admittedly, petitioner resides at Mianwali (Punjab) and no proof regarding service of the process upon him has been brought on record by the respondent and the Courts below decided cases ex-parte, thereby he (the petitioner) was deprived of the opportunity of being heard. It is settled law that no one should be condemned unheard and equal opportunity of hearing is right of every individual. Accordingly, this petition is hereby disposed of. Consequently, impugned judgments viz. judgment dated 23.12.2019 passed by 10th Family Judge, Karachi (West) (trial Court) vide Family Suit No.2586/2019 as well as judgment dated 22.04.2021 passed by IVth Additional District Judge, Karachi (West) (appellate Court) vide Family Appeal No.16/2020, are hereby set-aside. The case is remanded to trial Court, with directions to decide the same afresh after hearing petitioner by providing him full opportunity, within three (3) months' time.

JUDGE