

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

C.P No.S-1926 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on M.A No.308/19.

For hearing of main case.

18.02.2019

Syed Sarfaraz Ali Shah, Advocate for Petitioner.

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Zulfiqar Ahmad Khan, J: This Constitutional Petition challenges the impugned order dated 08.09.2018, passed by learned 2nd Additional District Judge, Tando Muhammad Khan in Family Appeal No.nil of 2018, whereby the learned appellate Court has dismissed the appeal on the ground that the same was time barred.

2. Concisely, facts of the case are that the respondent No.1 / plaintiff had filed a Suit being Family Suit No.03 of 2018 for Dissolution of Marriage by way of Khulla, Recovery of Dowry Articles and Maintenance for herself as well as for minor against the petitioner / defendant and made the following prayers:-

- a) To dissolve the marriage between the plaintiff and defendant on the option of Khula.
- b) The defendant may be directed to pay maintenance to plaintiff since 15.05.2017 till Iddat period at the rate of Rs.15,000/- per month and minor son namely Muhammad Ashar at the rate of Rs.10,000/- per month from 12.07.2017, till the age of puberty.
- c) Defendant may be directed to hand over the dowry articles as per list annexed with the plaint or to pay amount of some dowry articles.
- d) Any other relief deems fit and proper may be awarded to plaintiff.
- e) Cost of suit be burned by defendant.

3. After framing of issues and hearing both the respective parties, learned trial Court decreed the suit of the plaintiff / respondent vide judgment and decree dated 09.04.2018, and being aggrieved by the said judgment and

decree, an appeal was preferred by the defendant / petitioner before the learned District Judge, Tando Muhammad Khan in Family Appeal No.nil of 2018, where, the learned 2nd Additional District Judge, Tando Muhammad Khan dismissed the appeal as the same was time barred.; and against the said order, instant petition has been filed.

5. Learned counsel for the petitioner states that the impugned order is opposed to facts and law involved in the matter and failed to consider the various important points of the case; that delay in filing the appeal is not deliberately nor intentionally by the petitioner as the mother of the petitioner was admitted in hospital and in this regard petitioner has also filed medical certificates of his mother but the appellate Court did not consider the same; that it is well settled law that matter should be decided on merits rather on technicalities, as such, the impugned order may be set-aside.

6. I have heard the arguments of learned counsel for the petitioner and perused the record. Admittedly, this petition has been filed against judgment / order passed in family matter, where disputed questions of facts based on evidence have been assailed as to the enlistment recovery of dowry articles and maintenance, which cannot be entertained in a Constitutional Petition. Furthermore, the trial Court has given due attention to the pleadings of the parties, evidence adduced by them before the Family Court and after proper appreciation of the evidence awarded the decree for maintenance etc. in favour of respondent No.1. Learned counsel for the petitioner has even failed to satisfy this court about the illegality or irregularity in the impugned order where clearly the appeal was time barred by 28 days and the appellate Court was not satisfied with the evidence produced in satisfaction of the requisites of justifying each day's delay.

7. In these circumstances, where Courts below while delivering their judgment / order have given cogent and sound reasons and there appears no

error, illegality or irregularity on the surface to call for any interference and no misreading and non-reading of evidence is apparent, I see no merits in the instant petition, accordingly, relying on the dictum laid down by the Apex Court in the case of Abdul Razzak v. Shabnam Noonari and others (2012 SCMR 976), this petition is dismissed alongwith pending applications.

JUDGE

