

ORDER SHEET

HIGH COURT OF SINDH AT KARACHI

C.P No.S-1908 of 2015

Date	Order with signature of Judge
1.	For order on CMA No.7807/2015 (Urgent)
2.	For order on CMA No.7808/2015 (Exemption)
3.	For hearing of Main Case
4.	For orders on CMA No.7809/2015 (Stay)

20.11.2015.

Mr. Mr. M. Yasin Zuberi, advocate for the petitioner.

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1. Urgency granted.
2. Exemption is granted subject to all just exceptions.
- 3-4. The instant constitutional petition has been filed with the following prayers:

- “a) To set aside the impugned judgment dated 13.10.2015 passed by the VIIth Addl. District Judge, Karachi East on Family Appeal No.70/2015 of respondents No.2 &3 and fix the same on its original position as per order passed by the learned XVIIIth Family /Civil Judge, Karachi East in Family Suit No.669/2012 on application U/S 12(2) CPC R/W section 9(6) Family Court Act after calling the R&P of the same from above said learned Trial Courts, and decide the above matter on merits.
- b) To suspend the proceedings of Execution Application No.11/2014 in F.S. No.669/2012 pending before XVIIIth Family /Civil Judge, Karachi East till the pendency of the above said Const. petition in the larger interest of justice.
- c) Any other relief(s) which this Honourable Court may deem fit and proper under the circumstances of the case”.

2. Briefly stated the facts of the case are that the petitioner was married to respondent No.2 on 1.5.1997 and thereafter a Baby girl respondent No.3 namely Ayesha Zahid was born on 9.2.1998. However,

the relationships between the parties strained therefore sometime in March 2009 the respondent No.2 left the house of the petitioner. The respondent No.2 then filed a family Suit bearing No.669/2012 against the present petitioner with the prayer to direct the petitioner to pay dower amount, maintenance and dowry articles to her and also to pay maintenance of the child. Matter proceeded before the XVIIIth Family /Civil Judge East Karachi, who vide order dated 14.4.2014 directed the petitioner to pay the dower amount of Rs.51000/- to the respondent No.2 and also directed to pay her maintenance amount at Rs.3,000/- p.m. from March 2009 till expiry of the iddat period and also fixed an amount of Rs.6,000/- per month being the maintenance of the respondent No.3 from date of filing of the suit till decree and also fixed future maintenance at Rs.10,000/- p.m. with 5% per annum increase till legal entitlement of the said respondent. Learned Judge also directed the petitioner to pay a sum of Rs.200,000/- for the dowry articles. Thereafter the decree on the same date was prepared by the learned Judge. However, when the decretal amount was not paid by the petitioner to the respondent No. 2 she moved an application before the learned Judge, who was pleased to attach the salary of the petitioner. It is noted that when the salary of the petitioner was attached he moved an application under Section 12(2) CPC before the Executing Court which was allowed and the learned Judge set aside the decree dated 14.4.2014 only to the extent of the maintenance of the respondent No.2 vide order dated 16.5.2015. Being aggrieved with the said order an appeal was filed before the VIIth Additional District Judge Karachi East, who vide order dated 13.10,2015 allowed the Family Appeal No.70/2015 by observing that the order dated 16.5.2015 is not sustainable in law. It is against this order that the present petition has been filed.

3. Mr. Muhammad Yamin Zuberi Advocate has appeared on behalf of the petitioner and submitted that the appellate Court has not considered the various facts going to the roots of the case. He further submitted that the petitioner is promptly paying the decretal amount hence learned Judge was not justified dismissing the application under Section 12(2) filed

by the petitioner. He submitted that the Family Court after considering the merits was quite justified in allowing the application under Section 12(2) CPC filed by the petitioner as the petitioner was not properly heard by the family judge while passing the order dated 14.4.2014. Hence according to him, the order of the Appellate Court in Family Appeal No.70/2015 is liable to be set aside and the execution proceedings initiated against the petitioner may be suspended.

4. I have heard the learned counsel at considerable length and have perused the record. It is evident from the averments made in the petition that the petitioner has thrown the entire burden upon his counsel for not making a proper appearance in the matter as he has categorical mentioned in paragraph 'd' of the petition as under:-

“That the petitioner appeared in the above said Family Suit after held-good service upon him through his Counsel M. Yameen Zubairi who filed his Vakatnama, but he failed to file written statement, later on, he debarred from filing of W.S. and Ex-parte proceeding were initiated against him vide order dated 25.05.2012.”

From the above paragraph it is clear that the petitioner has miserably failed to comply with the order passed by the Family Judge on 14.4.2014 and it is only thereafter that the execution proceedings were initiated and salary of the petitioner was attached. It is also seen from the record that the petitioner has miserably failed to point out as to what was the defect in the order dated 14.4.2014 and as to how the said order could be termed to have been obtained by the respondent No.2 by way of fraud or misrepresentation. No plausible explanation is available with the learned counsel. It is an admitted position that in spite of giving several chances the petitioner had remained indolent in pursuing the matter and thereafter has shifted the entire burden on the shoulders of his counsel by mentioning that it is his counsel who had misguided him and due to which the matter before the Trial Court was decided against him. It is seen from the record that in the application under Section 12(2) CPC filed by the petitioner, after execution proceedings, it is nowhere mentioned that after

passing the order 14.4.2014 by the Trial Court the petitioner ever tried to comply with the said order and to satisfy the decretal amount as he only started making payment of the decretal amount from 8.4.2015 onwards. It is seen that nothing has been brought on record as to what as the position from 14.4.2014 to 8.4.2015, when admittedly the petitioner did not pay a single penny to comply with the order dated 14.4.2014. Hence it is evident from the record that after passing of the decree, the petitioner made no attempt to satisfy the decree and it is only when his salary was attached he filed application under Section 12(2) CPC in April 2015, which proves mala fide on his part. Moreover if the petitioner is aggrieved from the act of his counsel, as specifically mentioned in the facts of the petition, he has the remedy to proceed against his counsel for redressal of his grievance. Reference in this regard may be made to the decisions given in the cases of Muhammad Ali Vs. Umar Din (1989 MLD 1886) and Raja Karim Elahi Vs. Muhammad Arif and others (2010 MLD 58). This petition thus is found to be without any substance and is accordingly dismissed in limine, along with the listed application.

JUDGE