

# IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-84 of 2023

[Naveed Akhtar .....v..... XXI Family Judge South Karachi & others]

Date of Hearing : 02.02.2023  
Petitioner through : Mr. Shahbaz Ahmed Khan, Advocate.  
Respondents through : *Nemo.*

## ORDER

**Zulfiqar Ahmad Khan, J:-** The Petitioner impugned the Findings of the learned Family Court as well as First Appellate Court on the ground that the learned Family Court passed an ex parte Judgment and upon his filing an application under Section 12(2) CPC for setting aside the said ex parte judgment dated 16.02.2021, the learned Family Judge dismissed the said application vide order dated 28.10.2021 on the ground that the provisions of CPC and Qanun-e-Shahadat Order, 1984 are not applicable under Section 17 of the West Pakistan Family Court Act, 1964. Petitioner impugned the said findings before the learned First Appellate Court by filing Family Appeal No.201/2021 which met the same fate, hence the petitioner is before this Court.

2. The crux of arguments of learned counsel for the petitioner is that the service of the family suit filed by the respondent No.2 was not effected upon the petitioner to contest the same and the learned Family Judge fixed the amount of Rs.6,000 as maintenance of respondent No.3 being child of the petitioner and Rs.50,000/- past maintenance of the respondent No.2 without hearing petitioner. He lastly contended that the Judgment & Decree was obtained by way of fraud and misrepresentation of facts, therefore, he filed an

application under Section 12(2) CPC which was not considered by the Courts below and passed the concurrent findings.

3. Since this is the fresh petition and fixed before the Court in a category of “Fresh Case”. I have heard learned counsel for the petitioners at length and have also scanned the available record. It is well settled that it is the sacrosanct duty of the father to provide maintenance to his child and to fulfill this obligation, the father is required to earn money even by physical labour, if he is able-bodied, and could not avoid his obligation.

4. Reverting to the another limb of arguments of learned counsel for the petitioner that he filed an application under Section 12(2) CPC for setting aside the ex-parte judgment of the learned Family Judge which was obtained by way of fraud and misrepresentation. Upon perusal of record it unfurls that the learned Family Court as well as First Appellate reached to the right conclusion that the provisions of Code of Civil Procedure, 1908 as well as Qanun-e-Shahadat Order, 1984 are not applicable in family matter. The Apex Court in the case of Syed Muhammad v. Mst. Zeenat and others (PLD 2001 SC 128) and Ahmad Yar v. Additional District Judge, Chiniot, District Jhang and others (2007 SCMR 1768) has dilated upon Section 17 of the Act, 1964 and held that the provisions of CPC as well as Qanun-e-Shahadat Order, 1984 are not applicable in family matters. The rationale embedded in these provisions, besides being expeditious disposal, is to apply an unfettered judicious mind keeping in view the practice and customs prevalent in the society. My lord Mr. Justice Sarmad Jalal Osmani (as his lordship then was) in the case of Abdul Sattar v. Mst. Kalsoom (PLD 2006 Karachi 272) went on to hold

the similar view and it is considered expedient to reproduce the relevant excerpt hereunder: -

“However, where a dispute arises on this issue between the parties as to the payment/receipt/remission of dower then the same would have to be resolved by the Family Court. In this situation if the wife is willing to deposit the dower amount in Court, then too a preliminary decree for dissolution of the marriage should be passed by the Family Court whereafter the disputed issue regarding the dower amount could be resolved. Of course if the wife does not deposit the dower amount in Court; the matter would have to be decided upon taking evidence whereafter the decree should be passed accordingly. In this connection it would be seen that where the husband asserts payment but the same is denied by the wife, he would have to prove the same because the onus of proof is always upon the person who alleges a fact. Reference can also be made to *Mulkhan Bibi v. Muhammad. Wazir Khan* PLD 1959 (W.P.) Lahore 710. As regards section 17 of the Family Court Act, 1964, which provides that the Qanun-e-Shahadat, 1984 and the Code of Civil Procedure, 1908 shall not apply to proceedings before the Family Court, in my opinion the same does not debar such Court from passing a preliminary decree dissolving the marriage on the basis of Khula' or any other ground. The provision of section 17 as to non-applicability of the Qanun-e-Shahadat Order and Civil Procedure Code in my view, is to expedite the proceedings before the Family Court so that the same are not delayed for lack of procedural formalities as contained in the aforementioned laws. The same cannot be construed so as to defeat the purposes of the Family Courts Act, 1964.”

[emphasis supplied]

5. It is gleaned from appraisal of the foregoing that the learned trial Court as well as First Appellate having read the statutory provision reached to the fair and right conclusion of the matter and there is no ambiguity in the concurrent findings of the Courts below.

6. The respondent No.3 is a minor as well as child of the petitioner now approximately 5 years old, must be schooling and

attempting to live a reasonably acceptable living standard. UNICEF Report<sup>1</sup> suggests that a great number of minors in Pakistan are malnutritioned, hardly receiving the minimum threshold of 1,200/- calories per day. Hence no intervention is warranted under constitutional jurisdiction in this factual determination of maintenance.

7. In view of the rationale and deliberation delineated above, the petition at hand is dismissed alongwith pending applications fixed today.

Karachi  
Dated: 02.02.2023.

JUDGE

Aadil Arab.

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<sup>1</sup> UNICEF Report Titled "Cost of the Diet Analysis Report in Pakistan-2018.