ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI

C. P. No.S-479 of 2023

Dated:	Order with signature of Judge(s)

1.For order son CMA No.3748/2023.
2.For orders on office objections No.12 & 19 a/w. reply as at 'A'.
3.For orders on CMA No.3749/2023.
4.For orders on CMA No.3750/2023.
5.For hearing of Main Case.

Date of Hearing	:	22 May 2023
Petitioner	:	Syed Mustafa Ali through Ms. Erum, Advocate.
Respondents	:	Mst. Afsheen Fatima & Others.

O R D E R

Mohammad Abdur Rahman, J. This petition has been preferred under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, against the order dated 14 April 203 passed by the XIV Additional District Jude Karachi (East) in Family Appeal No. 90 of 2023 emanating from a judgment and decree dated 26 January 2023 passed by the XVIth Civil and Family Judge Karachi (East) in Family Suit No. 547 of 2022.

2. The Petitioner was married to the Respondent No.1 on 13 November 2019 against a Haq Mehr of Rs.51,000. It is contended by the Respondent No. 1, in her pleadings in Family Suit No. 547 of 2022, that "Dowry Articles" of a value of Rs.700,000 were also presented by the family of the Respondent No. 1 at the time of the marriage all of which at the time of the breakdown of the marriage were lying at the residence of the Defendant. The Respondent No. 1 further alleges that the marriage was not a happy one which culminated in her, on 4 October 2020, being dropped back by the Petitioner to her family home.

3. The Petitioner and the Respondent No. 1 having failed to reconcile over the next year and a half, the Respondent No. 1 instituted Family Suit No. 547 of 2022 before the XVI Family Jude & Judicial Magistrate Karachi (East) with the following prayers:

> " … i) Set aside the impugned order dated 14.04.2023, passed by the learned Appellate Court in Family Appeal No. 90/2023.
>
> ii) Also set aside the impugned judgment and decree of the trial Court dated 26.01.2023 and remand the case back to the trial Court for deciding it a fresh after considering the material available on record and produced by the defendant/petitioner.
>
> iii) Suspend the operation of the impugned order and impugned judgment and decree till pendency and final disposal of the present petition.
>
> iv) Grant any other consequential relief(s), which this Honourable Court may deem fit and proper in favour of the petitioner.
>
> v) Grant cost of the petition."

4. Family Suit No.547 of 2022 was heard and decided by the XVIth Family Judge Karachi (East) who after having attempted a "pre-trial conciliation", dissolved the marriage as between the Petitioner and the Respondent No. 1 by way of Khula against the forfeiture of her "Haq Mehar" amount of Rs.51,000/-.

5. After recording evidence, the XVIth Family Judge Karachi (East) on 26 January 2023 decided the remaining two issues i.e. payment of maintenance during the marriage to the Respondent No. 1 and return of the "Dowry" to the Respondent No. 1 by passing a Judgment and Decree:

(i) Directing the Petitioner to pay to the Respondent No. 1 a sum of Rs.8000/- per month representing a maintenance payment for the period from 9 February 2022 till the end of the period of Iddat.

(ii) The recovery of "Dowry" as per a list produced by the Respondent No. 1.

6. The Petitioner was not willing to accept the Judgment and Decree dated 26 January 2023 passed by the XVI Civil and Family Judge Karachi (East) and preferred Family Appeal No. 90 of 2023 before the XIVth Additional District Judge Karachi (East). Regrettably for him, the matter apparently was filed beyond the time period prescribed in Sub-Rule (1) of Rule 22 of the Family Court Rules, 1965 read with Section 14 of the Family Court Act, 1964 of 30 days from the date of judgment.

7. To understand the period of delay it is essential to consider the following facts:

Event	Date
Date of judgment and decree	26 January 2022
Date on which application for a certified copy was made as per certified copy of decree	17 February 2022
Date when copy was received	21 February 2023
Date of presentation of Appeal	29 March 2023

That on the basis of this information as stated above, and if:

(i) the day of pronouncement of the judgment itself is excluded, and

(i) the time taken for obtaining a certified copy of the judgment and decree is excluded

then Family Appeal No. 90 of 2023 was presented 57 days after the date of the judgment and decree passed in Family Suit No. 547 of 2022 i.e. 27 days after the expiry of the period of 30 days prescribed in Sub-Rule (1) of Rule 22 of the Family Court Rules, 1965 read with Section 14 of the Family Court Act, 1964 for filing an appeal.

8. It is apparent that on account of such delay the Petitioner filed an application under Section 5 of the Limitation Act, 1908 taking the ground that he had actually filed the application for a certified copy on 6 February 2023 and which had been incorrectly recorded on the certified copy of the

judgment and decree as 17 February 2023. While, looking at the application I am of the opinion that there is clear overwriting on the dates mentioned thereon, however even assuming the Petitioner's version of the facts to be correct the completion of the time for the presentation of the appeal would only be reduced by 11 days rendering the appeal having been presented 16 days after the expiry of the 30 days' time period prescribed in Sub-Rule (1) of Rule 22 of the Family Court Rules, 1965 read with Section 14 of the Family Court Act, 1964.

9. To overcome this admitted delay, an Application for condonation of delay was filed under Section 5 of the Limitation Act, 1908, which found no favour with the XIV Additional District & Sessions Judge Karachi (East) and who on 14 April 2023 dismissed the Appeal as being barred as having being filed after the 30 day period as prescribed in Sub-Rule (1) of Rule 22 of the Family Court Rules, 1965 read with Section 14 of the Family Court Act, 1964 for filing an Appeal had lapsed without sufficient cause. It was clarified by the XIVth Additional District Judge Karachi (East) that the condonation application under Section 5 of the Limitation Act, 1908 was not maintainable as the explanation that had been given in the Application for condonation of delay i.e. that the application for the certified copy was filed on 6 February 2023 and which had been incorrectly recorded on the certified copy of the judgment and decree as 17 February 2023, even if accepted did not explain the period of delay of 16 days after the expiry of the period in Sub-Rule (1) of Rule 22 of the Family Court Rules.

10. Counsel for the Petitioner had entered appearance and has contended that the XIVth Additional District Judge Karachi (South) has failed to exercise his jurisdiction in condoning the delay that had occurred in the presentation of the appeal as sufficient grounds had been shown in

the application for condoning the delay. She at the time of the hearing of the Petition did not rely on any citation in support of her contentions.

11. The Family Courts Act, 1964 was promulgated, as stated in its preamble, with the intent of providing for "the expeditious settlement and disposal of disputes relating to marriage and family affairs." Uniquely, Section 17 of the Family Courts Act, 1964 provides that:

> " … 17. (1) Save as otherwise expressly provided by or under this Act, the provisions of the Qanun e Shahdat Order, 1984, and the Code of Civil Procedure, 1908, except section 10 and 11 shall not apply to proceeding before any Family Court in respect of part I of Schedule
>
> (2) Sections 8 to 11 of the Oaths Act, 1892 shall apply to all proceedings before the Family Courts. "

It is clear that the Family Courts Act, 1964, by excluding the provisions of the Qnaun e Shahdat Order, 1984 and the entire provisions of the Code of Civil Procedure, 1908 except Section 10 (Res Sub-Judice) and Section 11 (Res Judicata) enjoys a distinctive position in the Pakistani Legal System. It is however to be noted that the provisions of the Limitation Act, 1908 have not been excluded by any provision of Family Courts Act, 1964. As is now well settled, in respect of the application of the Limitation Act, 1908 to "special" and "local" laws Sub-section (2) of Section 29 of the Limitation Act, 1908 prescribes that:

> " (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law:
>
> (a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and
>
> (b) the remaining provisions of this Act shall not apply."

It is beyond doubt that the Family Courts Act, 1964 is a "special" law dealing with matters specified in the Schedule of that Act. In this regard the time period and the criteria against which such time periods are to calculated as provided in the Schedule to the Limitation Act, 1908 have been held to be applicable to the institution of a suits[1] under part I of the Schedule to the Family Courts Act, 1964.

12. However, the Supreme Court of Pakistan while interpreting the applications of the provisions of Sub-Section (2) of Section 29 have held that in respect of a "special" or "local" law the provisions of Section 5 of the Limitation Act, 1908 on account of clauses (a) and (b) of Sub-Section (2) of Section 29 of the Limitation Act, 1908 would stand excluded. While interpreting the application of these provisions to the West Pakistan Urban Rent Restriction Ordinance, 1959 in ***Ali Muhammad and another vs. Fazal Hussain and others***[2] it was held that:[3]

> " … Section 5 stands excluded by virtue of section 29(2) of the Limitation Act, which permits the application of only, sections 4, 9 to 18 and 22 in such situations. The same view has also been taken by us in Abdul Ghaffar and others v. Mst. Mumtaz (PLD1982 SC 88). The High Court, therefore, rightly dismissed the applications for condonation of delay invoking the provisions of section 5 of the Limitation Act."

It would logically follow while applying clause (a) & (b) of Sub-Section (2) of Section 29 of the Limitation Act, 1908 to matters listed in the Schedule to the Family Courts Act, 1964 that the provisions of Section 5 of the Limitation Act, 1908 would be excluded all together and an application for condonation of delay under that section would not be maintainable at all to any matter filed thereunder.[4]

---

[1] See ***Muhammad Aslam vs. Zainab Bibi*** 1990 CLC 934; ***Jameela Begum vs. Additional District Judge*** 2005 MLD 376; ***Anar Mamana vs. Misal Gul*** PLD 2005 Pesh 194; ***Rasheed Ahmed vs. Shamshad Begum*** 2007 CLC 656;

[2] 1983 SCMR 1239

[3] *Ibid* at pg. 1240

[4] See ***Masserat Bibi vs. Muhammad Bashir*** 1996 MLD 692; ***Muhammad Maqsood vs. Kousar Nisar*** 2000 YLR 2698; ***Muhamamd Arshad Khan vs. Muhammad Kaleem Khan*** PLD 2007 SC AJK 14.

13. It would seem that with this in mind as in respect of Appeals some relief has been granted for the indolent inasmuch as the proviso to the Sub-Rule (1) of Rule 22 of the Family Courts Rules, 1985 permits the Appellate Court to extend the time period provided in Sub-Rule (1) of Rule 22 of the Family Court Rules 1965 for "sufficient cause". When compared, there is a clear similarity in the criteria for condoning delay in the filing of an appeal under Sub-Rule (1) of Rule 22 of the Family Court Rules, 1965 as compared to Section 5 of the Limitation Act, 1908:

The Limitation Act, 1908	The Family Court Rules 1965
5. Extension of period in certain cases. Any appeal or application for a revision or a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had ***sufficient cause*** for not preferring the appeal or making the application within such period. *Explanation.*— The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.	22. (1) An appeal under section 14 shall be preferred within thirty days of the passing of the decree or decision, excluding the time requisite for obtaining copies thereof; Provided that the appellate Court may, ***for sufficient cause***, extend the said period.

An analysis of these sections was made and explained by the Supreme Court of Pakistan in ***Mst. Nadira Shahzad vs. Mubashir Ahmad***[5] wherein it was held that:[6]

> " … 5. A comparison of the above two provisions indicates that in pith and substance, the effect is the same. In both the cases an appellant or an applicant has to show sufficient cause. The term sufficient cause has received judicial interpretation from the superior Courts. It is to be presumed that the draftsman while framing Rule 22 was

[5] 1995 SCMR 1419
[6] *Ibid* at pg. 1424

> aware of the meaning of the above term "sufficient cause" assigned by the Superior Courts while interpreting the same with reference to the various provisions of statutes/ rules, wherein the same has been employed. The employment of the words "when the appellant or applicant satisfies the court" and non-user of the same in above Rule 22 of the Rules does not, in any way, make any distinction as to the interpretation of the above term "sufficient cause." The different phraseology used in the above two provisions cannot be a ground for placing different construction to the above term "sufficient cause", which has received judicial interpretation for over a century from the superior judiciary. We are, therefore of the view that the case-law as to the interpretation of the above term with reference to section 5 of the Act shall be equally application to the construction of Rule 22 of the Rules.

14. To conclude although an application under Section 5 of the Limitation Act, 1908 would "***technically"*** not be applicable to an appeal maintained under Sub-Rule (1) of Rule 22 of the Family Court Rules 1965 read with Sub-Section (1) of Section 14 of the Family Court Act, 1964; when such an application is placed before an appellate court it ***should not*** be dismissed on this ground of having been filed under the incorrect provision of law and for all intents and purposes ***must*** be treated as an application filed under the proviso to Sub-Rule (1) of Rule 22 of the Family Court Rules, 1985 and adjudicated as against the same criteria as would be applied to an application under Section 5 of the Limitation Act, 1908 as held by the Supreme Court of Pakistan i.e. "Sufficient Cause".

15. It is clear that neither the Petitioner, nor for that matter the XIV Additional District Jude Karachi (East) in Family Appeal No. 90 of 2023, had considered as to whether or not the provisions Section 5 of the Limitation Act, 1908 would be applicable to condone the delay in the filing of an appeal under Sub-Rule (1) of Rule 22 of the Family Court Rules 1965 read with Sub-Section (1) of Section 14 of the Family Court Act, 1964. However as, the criteria for determining a condonation application either under Section 5 of the Limitation Act, 1908 or under the proviso to Sub-Rule (1) of Rule 22 of the Family Court Rules, 1965 has been held by

the Supreme Court of Pakistan to be assessed against the threshold of "sufficient cause" and as I have held that even where such application is filed under Section 5 of the Limitation Act, 1908 the same must be treated as an application under the proviso to Sub-Rule (1) of Rule 22 of the Family Court Rules, 1965 the issue of their oversight is now purely academic.

16. The term "Sufficient Cause" in respect of condonation of delay in filing of an appeal has been considered by the Supreme Court of Pakistan in ***Muhammad Anwar (decd) through L.R. and others vs. Essa and others*** [7] wherein it was held that:

> " … 10. It appears that the High Court failed to consider and appreciate the parameters of discretion in condoning the delay in dealing an application, appeal, review or revision etc. are totally different than the powers vested in Court to condone the delay occasioned in filing the suit. To cases falling in the first category, Section 5 of the Limitation Act, 1908 (hereinafter referred to as the "Act") is applicable which vests the Court with vast discretion of condoning delay in cases where the Court is satisfied that the application seeking condition of delay discloses "sufficient cause" by accounting for each day of delay occasions in filing the application, appeal, review or revision."

Applying the criteria as clarified by the Supreme Court of Pakistan, it is clear that no justification having been given in the application filed by the Petitioner for the delay of 16 days in the presentation of Family Appeal No. 90 of 2023. I am therefore clear that the Application and the Appeal was correctly decided by the XIV Additional District Jude Karachi (East) in Family Appeal No. 90 of 2023 as "sufficient cause" had not been demonstrated by the Petitioner for justifying the extension of the time for presenting the appeal.

17. The Impugned Order does not in my opinion suffer from any material irregularity nor is in excess of the jurisdiction of the XIV Additional

[7] PLD 2022 SC 716

District Judge Karachi (East) who has correctly dismissed Family Appeal No. 90 of 2023 and which had caused me to dismiss this Petition on 22 May 2023 through a short order and the foregoing are the reasons for the dismissal.

JUDGE

Karachi;
Dated; 6 June 2023.

Nasir P.S.