

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

C.P. No.S-189 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGE

For orders on office objection
For orders on C.M.A. 830/2023
For hearing of main case

30.10.2023

Ms. Shamim Akhtar Advocate for Petitioner.
Mr. Noman Saleem Memon Advocate for Respondents.

Family Suit No.643/2022 was filed for maintenance against the present petitioner before the Court of Family Judge-VIII Hyderabad and the same was decreed on 13.02.2023. The Petitioner filed Family Appeal No.36/2023 before the Court of District Judge Hyderabad, however, the same was dismissed vide Judgment dated 11.05.2023.

The entire case of the learned counsel for the petitioner is assailing the quantum of decree and submits that the evidence has not been properly appreciated by the courts below in arriving the said conclusion. It is prayed that this Court may re-evaluate the evidence and remedy the grievance with regard to the quantification. Learned counsel for respondents controverts the arguments and submits that the impugned judgments merit no interference in the writ jurisdiction.

Heard and perused. The concurrent judgments have been rendered in *prima facie* appreciation of the evidence and no patent infirmity qualifying as defect in jurisdiction has been identified therein. It is settled that that writ jurisdiction is not amenable for resolution of factual controversies. The present jurisdiction is constitutional and not appellate, however, notwithstanding the same the learned counsel remained unable to substantiate the averments from the record. It could not be demonstrated that the respective judgments could not have been rested on the rationale cited.

The matter has been conclusively determined and per statute, finality is attached to the appellate order referred to supra. This petition *prima facie* unjustifiably assails the concurrent findings of the statutory hierarchy in the writ jurisdiction of this Court; however, the same has been disapproved by the Supreme Court in *Hamad Hasan*¹ and earlier similar views were also expounded in *Arif Fareed*². Therefore, in *mutatis mutandis* application of the reasoning and ratio illumined, this petition is found to be misconceived, hence, dismissed with listed application.

Judge

Ali Haider

¹Per Ayesha A. Malik J in *M. Hamad Hassan vs. Mst. Isma Bukhari & Others* reported as 2023 SCMR 1434.

²Per Amin ud Din Ahmed J in *Arif Fareed vs. Bibi Sara & Others* reported as 2023 SCMR 413.