

Order Sheet
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
C.P. No.S-957 of 2019

| DATE | ORDER WITH SIGNATURE OF JUDGE(S) |
|------|----------------------------------|
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For orders on office objection
For orders on M.A.111/2020
For hearing of main case

03.11.2023

Mr. Irfan Ahmed Qureshi advocate for Petitioner.

Mr. Wali Muhammad Jamari AAG.

This petition assails successive judgments rendered in the family jurisdiction. Family Suit No.26 of 2018 was filed before the Court of Civil and Family Judge-II Hala for recovery of dower amount and maintenance and the same was partly decreed against the Petitioner vide Judgment dated 30.08.2019. The Petitioner filed Family Appeal No.06 of 2019 before the Additional District Judge Hala and vide judgment dated 05.12.2019 the Trial Court Judgment and Decree was maintained however with modification / lowering of maintenance / decretal amount. Once again, the Petitioner has assailed the judgments in writ jurisdiction.

Per Learned Counsel, the existence of marriage had been denied by the petitioner, hence, there was no question of any maintenance having been awarded in the first place. It was also articulated that the question of limitation was not addressed by the Trial Court. It was argued that since there is no further stage of appeal hence it is just and proper for this Court to appreciate the evidence and render its own findings therein.

Heard and perused. The Trial Court appears to have dealt with the issue of limitation and the same is apparent from the discussion on issue No.1 in the Trial Court Judgment, available at page 55 of the Court file. The respective averments recording subsistence of marriage have also been discussed anvil of the evidence and the Judgment has been rested on the findings, of the Trial Court, in such regard. The same has also been maintained by the Appellate Court.

It is settled law that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided¹, and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law² that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law.

At the very outset, learned counsel is queried as to whether there is any jurisdictional defect in the judgments impugned and the response is articulated

¹ Per *Ijaz ul Ahsan J* in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.

² Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.

in the negative. The judgments appear to have rested the respective conclusions upon appreciation of evidence and no infirmity, meriting interference in writ, in such regard could be demonstrated. Learned counsel also remained unable to show that the conclusions drawn by the respective forums could not be rested on the rationale relied upon. The matter has been conclusively determined and per statute, finality is attached to the appellate order referred to supra.

It is observed that this petition unjustifiably assails the successive findings of the statutory hierarchy in the writ jurisdiction of this Court; the same has been disapproved by the Supreme Court in *Hamad Hasan*³ and earlier similar views were also expounded in *Arif Fareed*⁴. Therefore, in *mutatis mutandis* application of the reasoning and ratio illumined, this petition is found to be misconceived, hence, dismissed with listed application.

Judge

³ Per Ayesha A. Malik J in *M. Hamad Hassan vs. Mst. Isma Bukhari & Others* reported as 2023 SCMR 1434.

⁴ Per Amin ud Din Ahmed J in *Arif Fareed vs. Bibi Sara & Others* reported as 2023 SCMR 413.