

IN THE HIGH COURT OF SINDH AT HYDERABAD

CP S 487 of 2023 : Muhammad Sajid Vs. Mst. Lubna
Shaikh

For the petitioner : Mr. Ghulam Hyder Chandio, Advocate

Date/s of hearing : 29.11.2023.

Date of announcement : 29.11.2023.

ORDER

Agha Faisal, J. An application was made before the Family Judge Hyderabad in Execution Application No.168 of 2018 and the same was dismissed vide order dated 29.03.2023. Operative part is reproduced herein below:

"I have heard the arguments of learned counsel for defendant/J.D and gone through the material available on the record. Perusal of record, it appears that prior to this application, the defendant/J.D had already filed application for installment and on 29th March, 2019 while deciding the said application this court has passed the order with direction to the defendant/J.D. to pay monthly installment of Rs.15,000/- per month, but he has failed to comply with the said order of this court. It is pertinent to mention here that as per report dated 29th November, 2022 received from Nazir, 1st Senior Civil Judge, Hyderabad defendant/J.D is a defaulter of an amount of Rs (*illegible*), whereas monthly maintenance of minor was fixed as Rs. 4000/- with 10 % annual increment vide order dated from 15th May, 2018, further (*illegible*) monthly maintenance of minor to be paid by the defendant is Rs. 8572/- and the default amount as of in the month of March 2023 is Rs. (*illegible*) such default reflect negligence and disobedience on the part of defendant. The defendant/J.D is willful defaulter in respect of payment of monthly installment and deserves no leniency, nevertheless, in the interest of justice, last opportunity is being provided to the defendant/J.D with direction to deposit half of the default amount that is Rs.1,86,222/- at once and thereafter comply with order dated 29th March 2019 in case of failure regarding single installment, strict act on against the defendant/J.D shall be taken accordance with law. The instant application is disposed off accordingly."

Family Appeal No.51 of 2023 was then preferred and the same was dismissed vide Judgment dated 22.08.2023. Operative part is reproduced herein below:

"7. Indeed, present family appeal is directed against an interim order dismissing an application by which payment of maintenance was sought to be paid in installments in execution application. Needless to observe that previously appellant/defendant had filed an application for grant of installments which was allowed on 29.03.2019 allowing him to pay monthly installments of Rs.15000/- per month, however, instead to comply with said order, the appellant/defendant once again filed application of same nature for grant of installments hence the impugned order is interim in nature and cannot be challenged U/S 14 of Family Court Act, 1964. To support such view, I have gone through Section 14(3) of the West Pakistan Family Court Act, 1964 which provides that "No appeal or revision shall lie against an interim order passed by the family court". It is settled principle of law that family court while passing an interim order declining the grant of installments of decretal amount has not delivered any final decision and such order being interim in nature is subject to final decision of execution application in the suit yet to be delivered and cannot be challenged before the appellate court by virtue of Section 14(3) of the West Pakistan Family Court, Act 1964. Therefore, point No.1 is answered in negative."

The present petition assails the respective orders. At the very outset, learned counsel is confronted as to the maintainability hereof in view of the judgments of the Supreme Court in *Hamad Hasan*¹ and *Arif Fareed*² and queried as to the existence of any jurisdictional defect in the judgments.

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

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

The counsel remained unable to demonstrate the existence of any jurisdictional defect meriting recourse to writ jurisdiction.

Even otherwise, the impugned appellate order speaks for itself and the counsel remained unable to dispel the preponderance of law relied upon therein. 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 provided³, and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law⁴ 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. The impugned order appears to be well-reasoned and the learned counsel has been unable to demonstrate any manifest infirmity therein or that it could not have been rested upon the rationale relied upon.

The Supreme Court has recently had occasion to revisit the issue of family matters being escalated in writ petitions, post exhaustion of the entire statutory remedial hierarchy, in *Hamad Hasan*⁵ and has deprecated such a tendency in no uncertain words. It has *inter alia* been illumined that in such matters the High Court does not ordinarily appraise, re-examine evidence or disturb findings of fact; cannot permit constitutional jurisdiction to be substituted for appellate / revisionary jurisdiction; ought not to lightly interfere with the conclusiveness ascribed to the final stage of proceedings in the statutory hierarchy as the same could be construed as defeating manifest legislative intent; and the Court may remain concerned primarily with any jurisdictional defect. Similar views were earlier expounded in *Arif Fareed*⁶.

Therefore, in *mutatis mutandis* application of the ratio illumined, coupled with the rationale delineated supra, this petition is found to be misconceived, hence, hereby dismissed *in limine* along with listed application.

Judge

³ Per *Ijaz ul Ahsan J* in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.

⁴ 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*.

⁵ Per *Ayesha A. Malik J* in *M. Hamad Hassan v. Mst. Isma Bukhari & Others* reported as *2023 SCMR 1434*.

⁶ Per *Amin ud Din Ahmed J* in *Arif Fareed vs. Bibi Sara & Others* reported as *2023 SCMR 413*.