

IN THE HIGH COURT OF SINDH AT HYDERABAD

C.P. No.618 of 2021 : Shabnam Bibi Vs. Allah Yar.
For the appellant : Mr. Insaf Ali Jatoi, Advocate.
Date/s of hearing : 01.12.2023.
Date of announcement : 01.12.2023.

ORDER

Agha Faisal, J. Briefly stated, Family Suit 62 of 2020 was determined vide exparte judgment dated 24.12.2020 (“Exparte Judgment”). Vide order dated 15.02.2021, an application under Section 9(6) of Family Court, Act 1964 was allowed and the Exparte Judgment and decree was set-aside. Post adjudication, Family Suit 62 of 2020 was once again determined vide judgment dated 02.08.2021. Family Appeal 08 of 2021 was dismissed there against vide judgment dated 09.10.2021 by the District Judge, Jamshoro. The present petition has been filed seeking the following relief:

- “a) That this Honorable Court may be graciously pleased to Hold and Declare that the Order dated 24-12-2020 passed by learned Trial Court with prayed clause a to e are valid, proper and lawful.
- b) That this Honorable Court may be graciously pleased to direct the respondent No.1 to pay the maintenance in view of Order 24-12-2020...”

Prima facie this petition seeks enforcement of the Exparte Judgment, notwithstanding the fact that it was set aside vide order dated 15.02.2021 and the matter was adjudicated vide judgment dated 02.08.2021 and maintained vide appellate judgment dated 09.10.2021. The three subsequent orders / judgments have not been impugned herein and even otherwise no case is made out for invocation of writ jurisdiction to maintain and enforce an order of a trial court, *admittedly* no longer in the field.

Notwithstanding the foregoing, it is apparent that the entire statutory hierarchy has been exhausted and no jurisdictional defect has been identified to merit invocation of the writ jurisdiction. 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*¹ 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

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

concerned primarily with any jurisdictional defect. Similar views were earlier expounded in *Arif Fareed*².

It is the deliberated view of this Court that the present petition does not qualify on the anvil of *Hamad Hasan* and *Arif Fareed*. 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 along with listed application.

Judge,

Ahmed/Pa,

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