

IN THE HIGH COURT OF SINDH AT HYDERABAD

CP No.S-111 of 2023 : Ali Nawaz Shah
CP No.S-112 of 2023 : vs. Mst. Kanwal & Others

For the Petitioner/s : Mr. Muhammad Asadullah Khan,
Advocate

Date/s of hearing : 20.12.2023

Date of announcement : 20.12.2023

ORDER

Agha Faisal, J. The respective restoration applications are allowed and the learned counsel is directed to address the Court on the maintainability of the respective petitions in view of Supreme Court's judgments in *Hamad Hasan*¹ and *Arif Fareed*².

2. Briefly stated, Guardian Application 241 of 2021 was filed before the Family Judge-II, Hyderabad and vide order dated 30.07.2022 the same was disposed of while awarding custody of the minor to the real mother and providing for visitation rights for the father. Guardian Appeal 26 of 2022 was then filed before the VIth Additional District Judge, Hyderabad and the same was dismissed vide judgment dated 23.02.2023. C.P.S-111 of 2023 assails these concurrent findings.

Independently thereof, Family Suit 1294 of 2021 was filed for recovery of dowry amount, dowry articles and maintenance of plaintiff and minor and medical expenses before the Court of Civil/Family Judge-II, Hyderabad and the same was partly allowed vide judgment dated 30.07.2022. Family Appeal 93 of 2022 was filed, however, the same was dismissed vide judgment dated 23.02.2023. C.P.S-112 of 2023 assails these concurrent findings.

Since, the parties are common to both matters and the subject is interconnected, therefore, these petitions were listed, heard conjointly and shall be determined by this common order.

3. At the very outset, learned counsel was confronted with respect to the maintainability hereof in view of the judgments of the Supreme Court in the cases of *Hamad Hassan* and *Arif Fareed* and asked to point out any jurisdictional defect in the respective proceedings/judgments.

Learned counsel submitted that there was no jurisdictional defect, however, the evidence was not appreciated in its proper prospective by the respective forums. Learned counsel insisted that the financial position of the petitioner was not appreciated properly, hence, the same may be evaluated afresh by this Court in its writ jurisdiction; since no further provision of appeal is provided in the statute.

¹ Per Ayesha A. Malik J in *M. Hamad Hassan v. 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.

4. Heard and perused. It is apparent that no argument whatsoever was articulated in respect of the award of guardianship and the challenge was confined to the quantum of maintenance etc awarded. More importantly, it is admitted that there is no jurisdictional defect in the respective proceedings / judgments.

5. 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 judgments appear to be well-reasoned and the learned counsel has been unable to demonstrate any manifest infirmity therein or that they could not have been rested upon the rationale relied upon.

6. 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.

7. In so far as the plea for *de novo* appreciation of evidence is concerned, it would suffice to observe that writ jurisdiction is not an amenable forum in such regard⁷.

8. It is the deliberated view of this Court that the present petitions do not qualify on the anvil of *Hamad Hasan* and *Arif Fareed* and even otherwise no case is made out to interfere in respect of the findings on merit. Therefore, in *mutatis mutandis* application of the ratio illumined, coupled with the rationale delineated supra, these petition are found to be misconceived, hence, hereby dismissed along with listed application/s.

Judge

Ahmed/Pa,

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*.

⁷ *2016 CLC 1*; *2015 PLC 45*; *2015 CLD 257*; *2011 SCMR 1990*; *2001 SCMR 574*; *PLD 2001 Supreme Court 415*.