

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-544 of 2023

[Zain ul Abdeenv.....Mst. Uroosa Nawaz & others]

C.P. No.S-708 of 2023

[Zain ul Abdeenv.....Mst. Uroosa Nawaz & others]

Date of Hearing : 23.02.2024
Petitioner through : Mr. Ishrat Ghazali, Advocate.
Respondents through : *Nemo.*
Mr. Ahmed Khan Khaskheli, AAG.

ORDER

Zulfiqar Ahmad Khan, J:- The petitioner herein through two connected petitions assails Orders dated 17.03.2023 passed in Family Suit No.2433/2021 (cause of C.P. No.S-544 of 2023) and Order dated 18.04.2023 passed in Family Suit No. 499/2020 (cause of C.P. No.S-708/2023) whereby the learned Family Court dismissed the plea of petitioner filed under Section 12(2) C.P.C. These petitions were heard together hence are being determined through this common Order.

2. The respondent No.1 filed a Family Suit No.2433/2021 before the learned Family Judge South, Karachi for recovery of dower amount and dowry articles which was decreed ex parte vide Judgment dated 03.03.2022, lateron, the petitioner filed an application under Section 12(2) CPC before learned Family Judge which was dismissed vide impugned order dated 17.03.2023 on the ground that the petitioner was duly served through all modes, hence the petitioner impugned the said Order through C.P. No.S-544 of 2023, however, the matter behind C.P. No.708 of 2023 is that the

respondent No.1 filed a Family Suit No.499/2020 before the learned Family Judge, South, Karachi for recovery of maintenance which was decreed ex parte vide Judgment dated 02.11.2020, lateron, the petitioner filed an application under Section 12(2) CPC before learned Family Jude which was dismissed vide impugned order dated 18.04.2023 on the ground that the petitioner was duly served through all modes, hence the petitioner impugned the said Order through C.P. No.S-708 of 2023.

3. The crux of arguments of learned counsel for the petitioner is that the petitioner was never served and that the learned trial Court erred in examining the evidence placed by the petitioner and that the learned trial Court passed an ex parte Judgment & Decree against the petitioner, therefore, the impugned order as well as ex parte Judgment & Decree cannot be sustained.

4. None present for the respondents. I have heard the arguments of learned counsel for the petitioner and examined the available record. The learned trial Court observed in the impugned order that the petitioner has duly be served through all modes. It is considered expedient to reproduce the relevant excerpt of the impugned order passed by the learned trial Court which is reproduced hereunder:-

“First of all the contention of learned counsel for defendant/JD regarding first address House No. C/4, block-3, Metro Vill Site, Orangi Town, Karachi is concerned is of no avail as such address of defendant/JD is mentioned in the Nikahnama and as per section 6 of the West Pakistan Family Court Rules 1965 such rule can be instituted within the territorial jurisdiction of this Court. Further as per record summons were issued on all addresses which were known to the plaintiff/DH even substituted modes of services also adopted. As per record summons were published in daily Express dated

14.02.2022, therefore, instant application having no merits is hereby dismissed ”.

5. It is gleaned from appraisal of the foregoing that the address of the petitioner given by the respondent No.1 in the suit is akin to the address mentioned in the Nikahnama and that the learned trial Court issued several notices to the petitioner on the said address. The substitute mode of service was also adopted and publication was made in daily newspaper “Express” dated 14.02.2022, therefore, the question that the petitioner was not served, does not arise.

6. 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. The impugned judgments appear to be well-reasoned and no manifest infirmity is discernable therein or that they could not have been rested upon the rationale relied upon.

7. The Supreme Court has recently had occasion to revisit the issue of family matters being escalated in writ petitions, post

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

exhaustion of the entire statutory remedial hierarchy, in *Hamad Hasan*³ 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*⁴.

8. In view of the rationale and deliberation delineated above, the petitions at hand are dismissed alongwith pending applications. Office to place copy of this order in petitions listed above.

Karachi
Dated: 23.02.2024

JUDGE

Aadil Arab.

³ Per Ayesha A. Malik J in *M. Hamad Hassan v. 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.