

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-1090 of 2023

[Muhammad Rizwanv..... The learned District Judge (Malir)
Karachi & others]

Date of Hearing : 18.03.2023
Petitioner through : Mr. Syed Yousuf, Advocate.
Respondents through : N.R.
Mr. Ahmed Khan Khaskheli, AAG.

ORDER

Zulfiqar Ahmad Khan, J:- This petition assails the concurrent findings of the learned trial Court dated 29.05.2023 as well as first Appellate Court dated 31.07.2023.

2. The petitioner filed a G&W case No. 05/2022 before learned Family Judge Malir Karachi for custody of the minor which was dismissed by the learned trial Court. The petitioner impugned the said judgment of the learned trial Court before the Appellate Court by filing G&W Appeal No.15/2023 which appeal of the petitioner was dismissed, hence the petitioner is before this Court against the concurrent findings.

3. The crux of arguments of learned counsel for the petitioner is that the petitioner are the grandparents of the minor and that the mother of the minor has been expired, therefore, the custody of the minor be handed out to them. Learned AAG supported the impugned order.

4. Heard the arguments and perused the available record. It is expedient to illustrate here that the learned First Appellate Court in the impugned Order held that against the Judgment & Decree of the Family Court, if any person is aggrieved from the said Judgment &

Decree has to prefer an appeal within a period of 30 days, however, the petitioner preferred an appeal before the First Appellate Court after the delay of limitation period. Per Rule 22 of the West Pakistan Family Court Rules, 1965, any person aggrieved by the Judgment & Decree of the Family Court shall file an appeal within a period of 30 days but in the case at hand, the petitioner impugned the Judgment & Decree of the learned Family Court before the First Appellate Court after the delay of the 30 days and that the learned First Appellate Court in the impugned Order held that the petitioner failed to satisfy the delay of more than 90 days in filing of the appeal. Furthermore, one of the limb of submissions of learned counsel for the petitioner was that Court is saddled with sacred duty to dispense justice amongst the litigating parties and to let the case proceed on merits by ignoring the technicalities, in this regard, I agree that while there is no cavil to the proposition that a Court is duty bound to administer justice and has power to condone delay, but not at the cost of adverse party whose rights have matured once limitation has expired. Such view is in consonance with the dictum laid down by the Supreme Court in a plethora of cases. Also of importance is the case of **Lt. Col. Nasir Malik versus Additional District Judge Lahore, reported as 2016 SCMR 1821** where it has been made incumbent on the defaulting party to justify each and every day of delay in an application seeking condonation and in the absence of a plausible explanation, any application for condonation is liable to be dismissed. I have also discussed the niceties as well as nitty-gritties of Law of Limitation in HCA No.62 of 2019 (Abid Raza,v.....Shagufta Yousuf) (as per I.T. Branch of this Court, the said Judgment has not been reported hitherto, however, available at the website of this Court) and held

that prescriptions of limitation are not mere technicalities and disregard thereof to render entire law of limitation redundant, therefore, the learned First Appellate Court rightly dismissed the Family Appeal of the Petitioner on the ground of Limitation.

5. It is common knowledge that the object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") is to foster justice, preserve rights and to right the wrong where appraisal of evidence is primarily left as the function of the trial court and, in this case, the learned Family Judge which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken.

6. In view of the rationale and deliberation delineated above, the petition at hand is dismissed.

Karachi
Dated: 18.03.2023

JUDGE

Aadil Arab.