

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-28 of 2024

[Syed Muhammad Aliv.....Mst. Yarisha Zehra & others]

Date of Hearing : 31.01.2024
Petitioner through : Mr. S. Ghulam Hussain, Advocate.
Respondents through : Mr. Raja Ali Asghar, Advocate for Respondent No.1

ORDER

Zulfiqar Ahmad Khan, J:- This petition challenges judgment dated 18.08.2018 in favour of respondent No.1 rendered by learned Family Judge-III, Karachi Central in Family Suit No.914 of 2018.

2. The respondent No.1 filed a family suit bearing No.914/2018 before learned Family Judge Central Karachi for recovery of dowry articles and maintenance which was decreed ex parte by the learned trial Court vide Judgment dated 18.08.2018. Execution in the said Family Court was filed by the respondent No.1 whereby SHO concerned was directed on 20.12.2023 to bring the petitioner before the learned executing Court, hence this petition challenges the said order.

3. Learned counsel was confronted with the maintainability hereof as the Apex Court disapproved of agitation of family matters in writ petition, however, the counsel remained unable to demonstrate the existence of any jurisdictional defect meriting recourse to writ jurisdiction. The crux of the argument articulated was that the evidence was not appreciated by the respective forums in its proper perspective, hence, the exercise be conducted afresh in writ jurisdiction since no further provision of appeal was provided in

the statute. Counsel for the respondent No.1 submits that to provide maintenance to the children is the obligation of the petitioner father and no illegality committed by the learned Family Court.

4. I have heard the arguments of learned counsel for the petitioner and examined the available record. It is well settled that it is the sacrosanct duty of the father to provide maintenance to his child and to fulfill this obligation, the father is required to earn money even by physical labour, if he is able-bodied, and could not avoid his obligation. Apart from this, 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.

5. 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*

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

*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.

6. 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 regard⁵.

7. In view of the rationale and deliberation delineated above, the petition at hand is dismissed alongwith pending application.

Karachi
Dated: 31.01.2024.

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.*

⁵ *2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.*