IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-100 of 2024

[Khalid Fareed Abbasi ……v…..Mst. Alia Bibi]

Date of Hearing	:	25.01.2024
Petitioner through	:	Syed Khurram Kamal Advocate.
Respondents through	:	N.R.

O R D E R

Zulfiqar Ahmad Khan, J:- This petition challenges successive judgments in favour of respondent No.1 rendered by learned Family Judge-XX, Karachi South in Family Suit No.1147 of 2020 and Judgment dated 07.12.2023 passed by learned Additional District Judge-7 South Karachi n Family Appeal No.17/2022.

2. The respondent filed a family suit bearing No.1147/2020 before learned Family Judge South Karachi for recovery of dower which was decreed by the learned trial Court vide Judgment dated 23.12.2021. The petitioner impugned the said judgment of the learned trial Court before the Appellate Court by filing Family Appeal No.17/2022 which appeal of the petitioner was dismissed, hence the petitioner is before this Court against the concurrent findings.

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.

4. None present for the respondent. I have heard the arguments of learned counsel for the petitioner and examined the available record. Learned counsel for the petitioner had challenged the concurrent findings on the plea that no condition of dower in respect of flat mentioned in the Nikahnama was never meant as dower and no such promise was made by the petitioner. On evaluation of record it unfurls that the learned trial Court as well as learned Appellate Court concur that the condition of handing over of Flats mentioned in the Nikahnama is a dower which is to be paid by the petitioner to the respondent and that the petitioner admitted before the learned trial Court that he did not pay Haq Mahar to the respondent. The delivery of Mahr is one such right, the duty of which is bestowed upon the husband for the financial support and stability of his wife. Such entitlement to dower has the origin in the Holy Quran, and the inspiration of the same entitlement has been made part of the statutory law. The Holy Quran presses upon the presentation of dower to wife by commmrding: “present them 'their Mahr’” (the Quran IV:4). The inspiration of the guiding principles of the Holy Quran is made part of Section 5 of the Dissolution of Muslim Marriages Act, 1939 (the “Act”), which reads as under:

> *“5. Right to dower not be affected. Nothing contained in this Act shall affect any right which a married woman may have under Muslim tutu to her dower or any part thereof on the dissoLution of her marriage” .*

5. Dower, therefore, is a right rendered by Islam and has a footing in statutes. It is a well-known fact that no estoppal lies against a statute and it has been held by Hon'ble Supreme Court in the case of Bahadur Khan and others v. Federation of Pakistan [2017 SCMR 2066], that there could be no estoppel against the statute or the rules having statutory force. Since right to dower has its footing in Section 5 of the Act, therefore, a wife cannot be estopped from such right.

6. 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 provided[1], and is restricted inter alia to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law[2] 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 exhaustion of the entire statutory remedial hierarchy, in *Hamad Hasan*[3] and has deprecated such a tendency in no uncertain words. It

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[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*

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

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 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 regard[5].

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

Karachi
Dated: 25.01.2024.

JUDGE

Aadil Arab.

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[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.