

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-253 of 2023

[Ahmed Khanv.....Mst. Zainab Gul & others]

Date of Hearing : 27.02.2024
Petitioner through : Mr. Irshad Ali, Advocate.
Respondents through : N.R.

ORDER

Zulfiqar Ahmad Khan, J:- This petition challenges successive judgments in favour of respondent No.1 rendered by learned Family Judge-X, Karachi Malir in Family Suit No.446 of 2021 and Judgment dated 06.02.2023 passed by learned District Judge Malir, Karachi in Family Appeal No.49/2022.

2. The respondent No.1 filed a family suit bearing No.446/2021 before learned Family Judge Malir Karachi for recovery of dower, dowry articles and maintenance which was decreed by the learned trial Court vide Judgment dated 26.07.2022. The petitioner impugned the said judgment of the learned trial Court before the Appellate Court by filing Family Appeal No.49/2022 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 respondents.

5. 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.

6. 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.

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 regard⁵.

8. The minor/respondent No.2 now approximately 5 years old, must be schooling and attempting to live a reasonably acceptable living standard. UNICEF Report⁶ suggests that a great number of minors in Pakistan are malnutritioned, hardly receiving the minimum threshold of 1,200/- calories per day. In the given circumstances, maintenance of Rs.5,000/- is barely acceptable, that's probably the reason the Appellate Court maintained findings of the Trial Court. Hence no intervention is warranted under constitutional jurisdiction either.

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.

⁶ UNICEF Report Titled "Cost of the Diet Analysis Report in Pakistan-2018.

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

Karachi
Dated: 27.02.2024.

JUDGE

Aadil Arab.