

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
C.P. No.S-448 of 2022

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Date	Order with signature of Judge
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- 1.For order on office objection
- 2.For hearing of main case.

28.02.2024

Ms. Amna Usman, Advocate for the petitioner.

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None present for the respondent today. In fact except for 27.09.2022 when the respondent was present in Court, thereafter, has never chosen to appear before this Court. Accordingly the service is held good upon him.

By way of background, learned counsel for the petitioner submits that the petitioner alongwith her three children filed suit for dissolution of marriage by way of Khula which was granted by the Family Judge-X, Karachi South in Family Suit No. 280/2014 through order dated 01.03.2014 where the defendant (husband/father) was directed to pay maintenance of all three minor daughters at the rate of Rs.50,000/- from September, 2015 till their marriage with 5% increase annually. Learned counsel further adds that having beneficial decree in their favour, the petitioner filed execution application No.24/2015 where the executing Court was pleased to pass an order dated 27.04.2017 directing the decree holder to submit schedule of property of the J.D. as the J.D. had chosen not to comply with the order/decreed passed in the above mentioned

family suit. Learned counsel further submits that having provided the details that the respondent is working in PIA bearing P-41576 the executing Court vide order dated 10.02.2018 was pleased to direct the attachment of 50% salary of the said J.D. which was directed to be deposited by PIA with the Nazir of executing Court on or before ever 14<sup>th</sup> day of month. Learned counsel admits that the instant order was complied with up to April 2020 as evident from para-3 of the memo of petition. It appears that J.D did not chose to further comply with the decree of the Court and having a huge sum accumulated, the decree holder approached the executing Court with the fear that the J.D. was likely to retire, the executing Court which vide its order dated 29.11.2018 was pleased to attach the terminal benefits i.e. gratuity, employee contribution of provident fund accruable to his employer PIA. Report seemingly came from PIA in compliance of the order of the Court, however, strangely per learned counsel through order dated 29.09.2020 while interpreting section 60(g) of CPC the Executing Court suo moto held that stipends and gratuity allowed to the pensioners are not liable to be attached in execution proceedings. Hence in fact, per learned counsel, the execution proceedings were yielded to a nullity. Being aggrieved, the petitioner sought a review of the said order, which review was dismissed vide order dated 09.05.2022 holding that no illegality was found in the order. Still aggrieved, the petitioner filed an appeal against the order of the Executing Court through Family Appeal No. 55/2022 where the impugned order dated 11.04.2022 was passed wherein the Court was of the opinion that since the order under review i.e. 25.09.2020 in nature was an interim order, therefore no appeal could be filed and the Appellate Court chose to dismiss the

said appeal under Section 14(3) of the Pakistan Family Court Act, 1964. Learned counsel further submits that any order passed by the Executing Courts specifically in the family matter in terms of which the benefit accruing out of the decree/judgment are halted become final orders and in the instant proceedings through misinterpretation of section 60 CPC, the benefit accrued to the petitioner was withheld. Learned counsel draws Court's attention to Section 17 of the Family Court Act, 1964 to point out that the impugned orders (i.e. order under review as well as Appellate Court's order) are faulty on the legal grounds as the Act, 1964 inter alia clearly bars application of Code of Civil Procedure, and the Family Law being expeditious in nature required matters falling under family jurisdiction to be decided without loss of time and interruption caused through CPC's misinterpretation are not to hinder such a swift process.

In the circumstances at hand, after hearing counsel and having reviewed various orders and the legal position, I agree with the contention that except Section 10 and 11 of CPC, no further sections of the said Code are applicable to the Family Courts in respect of any dispute listed in Part 1 of the Schedule where "maintenance" is one of the item. I therefore, set aside the impugned orders i.e. order dated 11.04.2022 and order passed prior thereto where decree awarded to the decree holder/petitioner was restrained by misinterpretation of section 60(g) CPC. The petition is hereby allowed. The executing Court is directed to proceed with the matter expeditiously and file a report through MIT-II of this Court.

Assistance provided by the learned counsel who was appearing pro bono in the case has compliments of the Court.

JUDGE

Aadil Arab