

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.P No.S-79 of 2018

Order with signature of Judge(s)

Hearing of case

1. For orders on office objection
2. For orders on CMA No.231/2018
3. For hearing of main case

19.02.2024

Syed Ehsan Raza, Advocate for the petitioner
Mr. Masood Anwar Ausaf, Advocate for Respondent No.1

Zulfiqar Ahmad Khan, J:- After arguing the matter at some length, learned counsel for the petitioner stated that he will not press present petition provided however rectification is made in the order of the trial Court as well as the appellate Court as to the alleged abnormality of the petitioner, which fact was introduced in the judgment of the trial Court through a judicial note discussed in the last paragraph of the judgment, where the Court of VI Family Judge Karachi (South) held *that the person appeared to me is abnormal*, which judicial note was also carried out by the appellate Court.

Learned counsel for the petitioner admitted that the requirement of Section 10 of the Divorce Act, 1869 were not complied with as witnesses stated that the respondent (wife) did not commit adultery, thus the Court rightly dismissed the suit on that ground, however the above unwarranted judicial note has caused serious prejudice to the interest of the petitioner as the said note was incorporated in the judgment without framing an issue and having decided it after allowing the parties to adduce their respective evidence.

Learned counsel for Respondent No.1 stated that admittedly the petitioner failed to prove the requisite of Section 10 of the Divorce Act, 1869 and both the Courts rightly dismissed the *lis* but stated that

appearance of the petitioner rightly showed that he was “abnormal” therefore such a fact was introduced through a judicial note, which should be retained.

Heard the counsel, reviewed the record.

The powers of civil courts to take judicial notice are regulated under Articles 111 and 112 of the Qanun-e-Shahadat Order, 1984, which are reproduced hereunder in toto:-

“111. Fact judicially noticeable need not to be proved.--- No fact of which the Court will take judicial notice need be proved.

112. Facts of which Court must take judicial notice.---(1) The Court shall take judicial notice of the following facts---

- (a) All-Pakistan laws;
- (b) Articles of War for the Armed Forces;
- (c) The course of proceeding of the Central Legislature and any Legislature establishment under any law for the time being in force in Pakistan;
- (d) The seals of all the Courts in Pakistan and of all Courts out of Pakistan established by the authority of the Federal Government or the Government representative, the seals of Courts of Admiralty and Maritime jurisdiction and of Notaries Public and all seals which any person is authorized to use by any Act or Regulation having the force of law in Pakistan;
- (e) The accession to office, names, titles, functions and signatures of the person filing for the time being any public office in Pakistan, if the fact of their appointment to such office is notified in the official Gazette;
- (f) The existence, title and national flag of every State of Sovereign recognized by the Federal Government;
- (g) The divisions of time, the geographical divisions of the world, and public festivals, facts and holidays notified in the official Gazette;
- (h) The territories under the dominion of Pakistan;
- (i) The commencement, continuance and termination of hostilities between Pakistan any other State or body of persons;
- (j) The names of the members and officers of the Court and of their deputies and subordinate officers and assistants and also of all officers acting in execution of its process, and of all Advocates and other persons authorized by law to appear or act before it;
- (k) The rule of the road on land or at sea.

(2) In all cases referred to in clause (1), and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

(3) If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.”

As it could be seen, judicial notice can only be taken on the circumstances stipulated in the law and not left to the whims of a court. Also a note to the concern that the petitioner was having unsound mind was not mandated as no prayer was made by the respondent for such a declaration, therefore I am of the view that such note without having the dispute made as an issue, and thereafter having adduced evidence was unnecessarily embodied in the judgment of the trial Court which was wrongly followed by the appellate Court.

I therefore dispose of this petition by rectifying both the judgments to expunge the paragraphs pertaining to mental state of the petitioner as these judgments being prejudicial to the welfare and wellbeing of the petitioner. If the respondents really intend to seek declaration about the mental health of the petitioner, the provisions embodied under the Mental Health Act, 2013 may be attempted.

This petition is accordingly disposed of in these terms.

JUDGE

B-K Soomro