

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. S – 155 of 2024

(Zafar Ali Mahar v. Mst. Shameen Mahar)

Date of hearing : **04.10.2024**

Date of decision : **04.10.2024**

Mr. Anwar Ali Lohar, Advocate for petitioner.

ORDER

Zulfiqar Ahmad Khan, J. – This petition is filed challenging the dismissal of the petitioner’s application under Order XIV Rule 5 read with Section 151 CPC vide order dated 27.02.2024 passed by learned Civil Judge / Family Judge (F.C), Ghotki in a Miscellaneous Application No. Nil of 2024 in Family Suit No. 154 of 2021 and the petitioner’s appeal along with an application under Section 5 of the Limitation Act, 1908 vide order dated 10.08.2024 passed by learned Additional District Judge-III, Ghotki in Family Appeal No.10 of 2024.

2. As per pleadings, case of the petitioner / defendant is that a Family Suit for dissolution of marriage, maintenance and recovery of dowry articles was filed by the respondent / plaintiff, wherein she, on the basis of several grounds, claimed for dissolution of marriage by way of *Khula*, maintenance of Rs.15,000/- per month from last one and a half years till the period of *Iddat* in case of dissolution of marriage, returning the dowry articles as per list attached or payment in case of missing of any article. After filing the written statement by the petitioner and failing of pre-trial, the learned Family Judge dissolve the marriage by way of *khula* and framed the five issues for leading evidence. The respondent filed her affidavit-in-evidence, and the petitioner filed the subject Miscellaneous Application, whereby he sought framing of an additional issue that “Whether the defendant gave 50 tola silver and 1½ tola gold to the plaintiff?” Learned

Family Court dismissed the application and the appeal filed against that order has also been dismissed by learned Appellate Court; hence, this petition.

3. A perusal of the Family Court's order dated 27.02.2024 reflects that the application in question was submitted on 21.12.2023, over two years after the pre-trial proceedings concluded on 17.11.2021 when the issues had already been framed. The lengthy gap between the conclusion of the initial proceedings and the filing of this application raises serious concerns about the intent behind this request, suggesting it may have been filed to prolong the litigation unnecessarily. After submission of affidavit-in-evidence by the plaintiff, the defendant did not cross examine her and the plaintiff's side was closed vide an order dated 21.11.2022. Following this, the defendant moved an application for re-opening the plaintiff's side, which was allowed vide order dated 17.08.2023, but despite being granted another opportunity, the defendant did not conduct the cross-examination of the plaintiff till 13.10.2023 when the learned Family Judge imposing cost of Rs.2,000/- again gave a chance for cross-examining the plaintiff. He, instead of concluding the matter by cross-examining, filed the subject Miscellaneous Application. This pattern indicates a deliberate attempt to delay proceedings rather than a genuine pursuit of justice. Therefore, the application was dismissed by the Family Court.

4. The Appellate Court went through the appeal along with an application under Section 5 of the Limitation Act, 1908 and ultimately dismissed both. The reason given for the delay, specifically citing the holidays of Eid-ul-Fitr and the petitioner's subsequent illness, was found insufficient. It was held by the Appellate Court that the appeal was filed after the delay of about two months though the period of Eid vacations has been excluded. The petitioner failed to provide compelling evidence to substantiate this explanation or to demonstrate the need for an extension.

5. It is an admitted position that the pre-trial between the parties failed on 17.11.2021, and the issues were framed. Despite this, the petitioner waited for more than two years to file the application for framing an additional issue. This delay is prima facie evidence of the petitioner's intention to prolong the proceedings. Moreover, the petitioner has failed to provide sufficient reasons for the delay in filing the appeal, and the Appellate Court correctly found that the delay was not justified.

6. After careful consideration, this Court finds no irregularities in the decisions made by either the Family Court or the Appellate Court. The delays and insufficient justifications put forth by the petitioner do not merit any intervention by this Court. Therefore, this Constitutional Petition is **dismissed in *limine*** along with pending application.

J U D G E

Abdul Basit