

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. S – 233 of 2024

(*Chanesar Khoso v. Mst. Zareena Khoso & others*)

Date of hearing : 06.03.2025

Date of decision : 06.03.2025

Mr. Mansoor Hussain Maitlo, Advocate for petitioner.

Mr. Muhammad Waqas Ansari, Advocate for respondent No.1.

Mr. Agha Athar Hussain Pathan, Assistant Advocate General Sindh.

## ORDER

**Zulfiqar Ahmad Khan, J.** – Through this petition, the petitioner has challenged the concurrent findings of the Courts below, including the judgment and decree dated 19.12.2023, passed by the learned Second Civil / Family Judge, Moro in Family Suit No.105 of 2023, and the judgment dated 11.10.2024, passed by the learned Additional District Judge, Moro in Family Appeal No.42 of 2024.

2. Facts of the case are that respondent No.1 (plaintiff) filed the aforesaid Family Suit seeking dissolution of marriage and maintenance. In the suit, summons was issued through bailiff and registered post, as well as a public notice was published in a newspaper. Despite service being deemed sufficient, the petitioner (defendant) failed to appear in the proceedings. He was given ample time to file a written statement and participate in the case, but chose to remain absent. Thus, the matter was proceeded with *ex parte*, and the suit was decreed in favour of the respondent, where the learned Family Judge, Moro, by judgment and decree dated 19.12.2023, dissolved the marriage of the petitioner and respondent No.1 by way of *khula*, in lieu of the unpaid dower amount. Additionally, the petitioner, as the natural guardian of the minors, was directed to pay maintenance of Rs.6,000/- per month for each minor child, namely Muhammad Awais, Anees, Baby Suhana, Baby Aleena and Baby Aliya, starting from the filing of the suit with annual enhancement of 5% till their legal entitlement. However, the claim of respondent No.1 regarding her own maintenance was declined.

3. Being aggrieved, the petitioner filed an appeal before the learned Additional District Judge, Moro, bearing Family Appeal No.42 of 2024. The petitioner also filed an application under Section 5 of the Limitation Act, 1908, seeking condonation of the delay in filing the appeal. The appellate Court, after hearing the parties, dismissed the application under Section 5 of the Limitation Act, stating that the appeal was filed beyond the prescribed period of thirty (30) days as per Section 14 of the Family Courts Act, 1964, and no plausible explanation for the delay of 09 months and 15 days was provided.

4. Learned Counsel for the petitioner argued that the impugned judgment and order were passed hastily and without giving due consideration. It is contended that the petitioner was not given a fair opportunity to present his defense, and the decisions were based on technicalities rather than substantive legal reasoning. Learned Counsel further argued that the petitioner's inability to appear before the Courts below was due to lack of knowledge of the proceedings, and as such, the decisions amounted to a miscarriage of justice. Therefore, he prayed that the petition may be allowed, and the impugned judgment and order be set aside.

5. On the other hand, learned Counsel for respondent No.1, by filing para wise comments, vehemently opposed the petitioner's claims. It is contended that the petitioner deliberately ignored multiple Court notices and failed to participate in the proceedings, which led to the *ex parte* proceedings. Learned Counsel further asserted that the petitioner had been given several opportunities to file his written statement but chose not to do so, demonstrating negligence and a lack of diligence. He further added that the petitioner's delay in filing the appeal by 09 months after the order was announced by the learned Family Court was unjustified and should not be condoned. He lastly prayed for dismissal of the petition.

6. Upon hearing the arguments of both the parties and reviewing the available records, it is apparent that the petitioner failed to exercise due diligence in the proceedings before the learned Family Court. Record reflects that the learned Family Judge had issued multiple notices, and the petitioner had been given sufficient time to file his written statement and to

participate in the proceedings. However, the petitioner's absence and failure to respond to the Court's summons and notices led to the *ex parte* decision. The claim of the petitioner that he did not have knowledge of the proceedings is not substantiated by any convincing evidence.

7. As to the appeal, it is important to note that the Family Courts Act, 1964, mandates that an appeal against the judgment and decree of the Family Court be filed within thirty (30) days, but in the case at hand, the appeal was filed after a delay of 09 months and 15 days, with no reasonable explanation for such a delay. The application under Section 5 of the Limitation Act for condonation of the delay was rightly dismissed by the appellate Court, as the petitioner failed to provide a plausible reason for the excessive delay.

8. Furthermore, the trial Court's judgment, which dissolved the marriage by way of *khula* and directed the petitioner to pay maintenance to the minor children, was in accordance with established legal principles. The learned Family Court considered all relevant factors, including the welfare of the minor children and the petitioner's responsibilities under Islamic family law. It is also important to note that the learned Family Court has already declined the claim of maintenance for respondent No.1, which is a favour for the petitioner and reflects a lenient view of the learned Family Court. The decision of the learned Family Court was neither arbitrary nor unjust, and the appellate Court correctly upheld the trial Court's findings.

9. In light of the foregoing, the petitioner's failure to appear before the learned Family Court and the unjustified delay in filing the appeal lead this Court to conclude that the impugned judgment and order of the Courts below are well-reasoned and legally sound. There is no merit in the petitioner's claims of miscarriage of justice or unfair treatment. Consequently, the petition is **dismissed** along with pending application(s), if any, and the judgment and order passed by the Courts below are upheld.

J U D G E