

Family: Dowry : No apped in C.P and  
time bar.

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CERTIFICATE OF THE HIGH COURT OF SINDH, KARACHI

C.P No.S-1084 of 2023

Mariam Butt

Vs.

Asad & ors

HIGH COURT OF SINDH

Composition of Bench. Single.

Mr. Justice Mohammad Karim Khan Agha

Dates of hearing : 15-08-2024

Decided on : 15-08-2024

(a) Judgment approved for Reporting

Yes



CERTIFICATE.

Certified that the judgment \*/Order is based upon or enunciates a principle of law  
\*/decides a question of law which is of first impression/distinguishes/. Over-rules/  
reverses/explains a previous decision.

\* Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first  
page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the  
Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

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## IN THE HIGH COURT OF SINDH AT KARACHI

Const. Petition No. <sup>S-</sup> 1084 / 2023

17-10-2023

Mst. Mariam Butt  
D/o. Shuja Uddin,  
Muslim, adult, resident of  
House No.283, Street No.12,  
Kashmir Hill Town,  
Manzoor Colony, Karachi. ....

*[Signature]*  
Additional Registrar (Writ)

Petitioner

## Versus

1. Asad S/o. Muhammad Shareef  
Muslim, adult, R/o. House No.1416,  
Street No.08, Shumaila Garden,  
Near Masjid Khuwaja Gharif Nawaz,  
Manzoor Colony, Karachi.
2. VIIth Addl. District & Sessions Judge,  
Karachi-South.
3. XVII Civil & Family Judge,  
Karachi-South. ....

Respondents

**CONSTITUTION PETITION UNDER ARTICLE 199  
OF THE ISLAMIC REPUBLIC OF PAKISTAN 1973**

Being aggrieved and dissatisfied with the impugned Order dated 09.08.2023 passed by the respondent No.2 in Family Appeal No.124/2023 filed by appellant and Judgment & Decree dated 30.05.2023 in Family Suit No.1589/2023 passed by the learned respondent No.3, hence the petitioner begs to prefer this petition on amongst others, the following inter-alia Facts & Grounds:-

*Certified copies Order dated 09.08.2023 and parte Judgment & Decree dated 30.05.2023 are annexed herewith and marked as annexure A & A/1.*

**FACTS**

That the brief facts of case are that the petitioner filed Family Suit No.1589/2022 before the learned respondent No.3 and stated therein that the petitioner was married with the respondent No.1 on 17.03.2022 against the dower amount of Rs.160,000/=, out of which Rs.10,000/= was paid and remaining amount is still unpaid. At the time of Rukhsati parents and other relatives of petitioner gave her

tam

ORDER SHEET  
IN THE HIGH COURT OF SINDH KARACHI

C.P. No.S-1084 of 2023

Date	Order with signature(s) of Judge(s)
FRESH CASE.	

1. For orders on office objections.
2. For hearing of main case.

**15.08.2024.**

Mr. Adnan Iqbal, Advocate for the Petitioner.

Mr. Farmanullah, Advocate for Respondent.

M/s. Sheheryar Qazi and S. Arshad Hussain Naqvi, Addl. Advocates General, Sindh.

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**Muhammad Karim Khan Agha, J.** Petitioner Mst. Mariam Butt had filed a suit for Dissolution of Marriage, Recovery of Dowry Articles and Maintenance as recovery of Rs.95000/- being Family Suit No.1589 of 2022 which proceeded in the Court of XVIIth Civil Judge & Judicial Magistrate (South) Karachi. After full dressed trial wherein the evidence was recorded learned trial Court passed order dated 30.05.2023 where the following orders in terms of Dowry Articles which the petitioner should receive, were passed which is reproduced hereunder:-

“The whys and wherefores lead this court to order that plaintiff is entitled to maintenance at rate of Rs.15,000/- for Iddat period. Defendant is entitled for dower amount of Rs.10,000/- from plaintiff. Plaintiff is entitled to recovery of articles i.e. Bed, dressing table, Cupboard, showcase, Fridge, Microwave Oven, Washing Machine, Juicer Machine, Iron, Pedestal Fan, LED, Sewing Machine, Wall Clock, Stabilizer, Marble dinner set, plastic dinner set, Water set, hot pot set, Water Cooler set, Non-stick set, cutlery set, Cooking spoons set, Pressure cooker, two blankets, one A/C blanket, five bed sheets, Pizza plates set, bridal set, prayer met in case of missing any article defendant is directed to pay the amount of such missing article. The Costs shall follow the event. Office to prepare the decree accordingly.”

2. Petitioner Mst. Mariam Butt being dissatisfied with aforesaid order as she wanted more dowry articles returned filed Family Appeal No.124/2023 which was dismissed vide order dated 09.08.2023 largely that it was time barred in the following terms:



"Having regard, the arguments, it is observed that Judgment and decree is dated 30-05-2023 whereas application for certified copy was filed on 31-05-2023 and cost was paid on 08-06-2023 while copy was delivered on 10-06-2023. So even if we exclude the time requisite for obtaining certified copies, it is observed that certified copy was made available on 10-06-2023, thus even if consider that limitation starts thereof then from 10-06-2023, the appeal was to be preferred in period of 30 days as provided under the Family Law/Rules, thus the appeal was to be manifested by 10-07-2023, however; it only been presented 26-07-2023. The appellant side in due course of hearing, having obtained time for rendering arguments on 07-08-2023 filed a separate application under section 05 of the Limitation Act, 1908. The reason thus through application in support of plausibility rendered for delay submission of appeal, it is contended that due to ailment the appellant was not in position to appear before Court. There is medical appended which at very outset is not endorsed as valid for Court. Perusal of the same shows that it does not depict such a medical ailment which would enable Court to understand that physical restraint was placed upon the appellant virtue such ailment. The medical documents show certain medication pertaining to gastric elements and fewer blood reports but no specification is available which would show that ailment was of such degree that movement of the appellant got restricted. The appeal is to be manifested within 30 days of the Judgment & Decree in terms of Rule 22 of the West Pakistan Family Court Rules, 1965 and if filed with delay then under the law each and every day has to be explained. If is observed that no specification otherwise is provided by the appellant qua for ailment or even about its nature and diagnosis. The limitation is a living law and the question of limitation being not a mere technicality could not be taken lightly and rights accrued to other party due to limitation could not be snatched away without sufficient cause and lawful jurisdiction, It has been held in 2023 SCMR 291 wherein August Supreme Court of Pakistan has held that "law of limitation reduces an effect of extinguishment of a right of a party when significant lapses occur. When no sufficient cause for such laps, delay or time barred action is shown by the defaulting party, the opposite party is entitled to a right accrued by such lapses-- Omission and negligence of not filing the proceedings within the prescribe limitation period creates a right in favour of the opposite party." In the application under section 05 of the Limitation Act, 1908 has been filed by the appellant and no explanation has been to justify the delay in filing of appeal. The ground of medical ailment is very generalized ground without specification thereto. Rather when the Judgment was passed, both sides were available and in their presence Judgment was pronounced and no reasonable or sufficient cause is shown which would move Court to condone the delay in preferring the appeal whether be it for a day or weeks."

3. Hence the petitioner Mariam Butt has filed the instant petition against the aforesaid order and order in appeal.

4. I have heard the learned counsel for the parties as well as Addl. Advocate General Sindh and considered the record.

5. It is well settled principle of law that this Court cannot go into the issue of maintenance and recovery of dowry articles as this is a factual issue which is decided by the trial Court after leading evidence which was done in the case and then makes a determination based on that evidence. I do not find any non-reading or misreading of the evidence in order dated 30.05.2023. In family matters under the West Pakistan Family Court Act, 1964 only one right of appeal is provided and it has been held that no further proceedings in the Constitutional Jurisdiction could take place unless exceptional circumstances exist. In this case no exceptions circumstances exist. As mentioned above this Court cannot go into the factual determination which should or should not have been given which was the obligation of concerned trial Court. In this respect reliance is placed in the cases of **Arif Fareed v Bibi Sara** (2023 SCMR 413), **M. Hamad Hassan v Mst. Isma Bukhari** (2023 SCMR 1434) and the judgment passed in Civil Petition No.473-K of 2024 re: **Syed Raheel Ahmed v Mst. Syeda Zona Naqvi** by the Supreme Court of Pakistan (Approved for reporting) dated 26.07.2024.

6. Even otherwise it is noted that the order in appeal dated 09.08.2023 was dismissed on account of the appeal being time barred by 16 days. The learned Appellant Court has considered the explanation given by the Appellant for filing an appeal after such a delay and after a careful analysis which has been reproduced earlier in this order has come to the conclusion that despite medical evidence being provided there was no adequate reason why the appeal was not filed within time but with a delay of 16 days.

7. Keeping in view the above, the instant petition is hereby dismissed.