

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-1368 of 2017

Syed Niaz Hussain ShahPETITIONER

Versus

Mst. Samina Iqbal and another.....RESPONDENTS

Date of hearing: 06.07.2017

Mr. Atiq Ahmed Siddiqui, Advocate for the Petitioner.

O R D E R

ADNAN-UL-KARIM MEMON, J:- In the captioned Petition, the Petitioner seeks dismissal of Family Suit 1161 of 2016, filed by Mst. Samina Iqbal/Respondent No.1 for dissolution of marriage by way of Khullah and recovery of maintenance amount.

2. Brief facts of the case are that petitioner married with Respondent No.1 on 20.6.2005 and out of that wedlock two children were born namely Zymal and Meerub Fatima. It is claimed by the petitioner that both the children are in his custody, however, it is asserted by the petitioner that Respondent No.1 left the house of petitioner without any intimation. Petitioner further claims to have requested her so many times to reconcile the matter but she blatantly refused to exceed the request of the petitioner. Per petitioner Respondent No.1 was pressurized to file Suit No. 2392/2015, for dissolution of her marriage, before the Family Judge Karachi East, the same was objected by the petitioner with respect to the territorial jurisdiction of the family court due to the address of the plaintiff mentioned in the plaint, however, subsequently the same suit was withdrawn by the respondent No.1 vide order dated 28.11.2015. It is further added by the petitioner that Respondent No.1 again filed another Family Suit No. 1161 of 2016 for dissolution of her marriage by way of Khullah and recovery of maintenance amount against the petitioner by changing her address, before the Family Judge south at Karachi. Per petitioner the address given by the respondent No. 1 in the plaint is fake address as House No. 673 Mehmoodabad No.4 Karachi, for which Petitioner objected to that address and territorial jurisdiction of the family court that she is not residing at the same address therefore family suit is not maintainable at South. Having seen circumstances and objection raised by the petitioner, the learned family Court called the

verification report from concerned Police Station and the report was subsequently submitted by the concerned Station House Officer. Petitioner further added that the Respondent No. 1 is presently living at Rawalpindi and not at the address given in the plaint. It is further added by him that he has lost faith upon the Learned Family Judge. Per petitioner learned Family Judge is supporting the Respondent No. 1 and not ready to hear the petitioner. Petitioner claims that he filed an application for dismissal of Suit No.1161/2016 before the learned Family Judge at Karachi South and the learned Family Judge vide order dated 18.5.2017 dismissed the application of the petitioner. Petitioner feels aggrieved by and dissatisfied with the impugned order dated 18.5.2017 has approached this Court for dismissal of the suit of the Respondent No.1 pending before the learned Family Judge Karachi south.

3. Mr. Atiq Ahmed Siddiqui, learned counsel for the Petitioner has contended that Family Suit filed by the Respondent No.1 is not maintainable under the law as the learned Family Court South has no territorial jurisdiction to entertain the suit. He next contended that earlier the Respondent No.1 filed Suit No. 2392 of 2015 before Family Judge Karachi East and the same was dismissed as withdrawn vide order dated 28.11.2015 and on the same cause of action by changing the address in the plaint she has again filed another Family Suit No. 1161 of 2016 before the Family Judge south, therefore, the suit is not maintainable. He next contended that the learned Family Court has supported the Respondent No.1 by dismissing the application of the petitioner for rejection of plaint. He next contended that the Respondent No.1 is residing within the territorial limits of Police Station Malir City, therefore only Family Court Malir has jurisdiction to entertain the Family Suit of Respondent No.1. He lastly prayed for dismissal of Family Suit No. 116 of 2016, pending before the Family Judge at Karachi South.

4. I have heard the learned counsel for the petitioner and perused the material available on record.

5. Upon perusal of impugned order dated 18.5.2017 which plainly shows that the learned Family Judge at Karachi South has territorial jurisdiction to entertain family suit for dissolution of marriage, the learned family court in order to ascertain the address of the plaintiff directed concerned SHO of Police Station Baloch Colony to ascertain regarding actual residential address of the Respondent No.1. Concerned Police Officer, in compliance of the order, submitted his report on 4.5.2017 to the effect that the Respondent No.1 is residing at the

address given in the plaint, which prima facie shows that the petitioner is causing unnecessary harassment to the respondent no 1. By objecting to the jurisdiction of the Family Court to gain time. Record further reflects that Petitioner filed written statement in the Suit and the matter is pending under adjudication before the learned Family Judge South at Karachi, which is required to be decided within stipulated time. The record further reflects that Respondent No.1 has alleged many allegations against petitioner including maltreatment to the Respondent No.1; therefore, she was compelled to file Suit for dissolution of her marriage.

6. I am of the considered view the Respondent No.1 has right under the law to seek dissolution of marriage by way of Khullah and ancillary relief (s) from the competent Court of law and the learned Family Court has verified the residential address of the Respondent No.1 from the concerned Station House Officer, who reported that the Respondent No.1 is residing at the address as given in her plaint, therefore the learned family court has jurisdiction to entertain the plaint of the respondent No. 1, which is to be decided on its merits.

7. In view of above fact and circumstances of the case no case for indulgence of this Court is made out therefore, the instant petition is dismissed alongwith pending application(s).

8. Foregoing are the reasons short order dated 06.07.2017, whereby the instant petition was dismissed in limine.

JUDGE