

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.1047/2014

DATE

ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before: Mr. Justice Nazar Akbar

Petitioner: Muhammad Ali through
Mr. Zahoor Ahmed Khan, Advocate.

Versus

Respondent No.1: Mst. Shabana

Respondent No.2: Baby Ramiza

Respondent No.3: IVth Addl. District Judge, Karachi
Central.

Respondent No.4: IIIrd Family Judge, Karachi Central.

Date of hearing: **28.02.2020**

Date of Judgment : **28.02.2020**

JUDGMENT

NAZAR AKBAR, J. The petitioner through this constitutional petition has challenged the order dated **22.05.2015** passed by IVth Addl. District Judge, Central Karachi in Family Appeal **No.22/2012** whereby judgment of the trial Court passed in Family Suit **No.147/2012** dated **19.2.2013** by IIIrd Family / Civil Judge Central Karachi, was uphelds.

2. Briefly stated the facts of the case are that Respondent No.1 filed Family Suit **No.147/2012** for dissolution of marriage, maintenance and dowery articles against the petitioner in the Family Court, which was decreed exparte by order dated **30.7.2012**, thereafter, petitioner filed an application under Section **12(2) r/w Section 151 CPC** whereby he prayed for setting aside the ex-parte

judgment and decree dated **30.7.2012** on the ground of fraud and misrepresentation allegedly committed by Respondent No.1. The learned Trial Court by order dated **19.2.2013** dismissed the application Under Section 12(2) CPC r/w Section 151 CPC in the following terms:-

“The burden of the claim of defendant that ex-parte decree has been obtained by plying fraud cannot be discharged by simple statement that defendant was not in knowledge or he was prevented from appearing before this Court. I am therefore, of the considered opinion that defendant has failed to establish that plaintiff has actually played fraud in obtaining the judgment and decree dated **30.7.2012** within the meaning of section 12(2) CPC. Hence, the application stands dismissed with no order as to costs”.

The petitioner/appellant filed appeal which was disposed of by the appellate Court. Learned IVth Additional Sessions Judge, Karachi Central, dismissed the Family Appeal **No.22/2012** filed by the petitioner and upheld the judgment of the trial Court in the following terms:-

“it is evident that the trial Court has served the respondent on the address which he himself mentioned in the title of the appeal therefore, there is no iota of doubt that the appellant deliberately avoided to appear before the trial Court to contest his cause on merits and on this ground his version cannot be accepted in any manner. So considering all above mentioned prospects combined together I am of the view that the instant order dated 19.02.2013 does not require any interference and the same is upheld, resultantly appeal of the appellant has no merits and the same is dismissed. Parties are left to bear their own costs”.

The petitioner has preferred instant petition against the two judgments.

3. I have heard learned counsel for the petitioner and perused the record

4. Learned counsel for the petitioner has assailed both the orders but unfortunately he has not identified any illegality and irregularity in coming to the conclusion by both the Courts below, not a single sentence of either side has been referred to by the learned counsel to assert that the two judgments suffer from any illegality and irregularity. Be that as it may, at least no case is made out for interference in the concurrent findings by this Court in exercise of its constitutional jurisdiction. It is settled law that constitution petition does not lie against concurrent findings of facts.

6. In view of the above discussion, this petition is dismissed alongwith listed applications being not maintainable.

JUDGE

Karachi
Dated:28.02.2020

SM