

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

**Constitutional Petition No. S – 219 of 2022**

Date	Order with signature of Judge
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For orders on CMA No.1446/2021 (Urgency) :  
For order on office objection No.21 as at 'A' :  
For orders on CMA No.1447/2022 (Exemption) :  
For orders on CMA No.1448/2022 (Stay) :  
For hearing of main case :

**15.03.2022 :**

Syed Naimatullah Shah, advocate for the petitioner.

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**NADEEM AKHTAR, J.** – Family Suit No.675/2020 filed by respondent No.1 against the petitioner for dissolution of their marriage by way of khula and recovery of her dowry articles was decreed by the Family Court ex-parte against the petitioner vide judgment and decree dated 17.02.2021 by granting khula to respondent No.1 and by directing the petitioner to return the dowry articles to her as per the list attached with the plaint or to pay to her a sum of Rs.850,000.00 in lieu thereof. Through the impugned order dated 02.02.2022, Family Appeal No.298/2021 filed by the petitioner against the aforesaid decree was dismissed in limine by the appellate Court as being not maintainable. The petitioner has impugned the concurrent findings of the learned Courts below through this constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

2. The record shows that the service upon the petitioner was held good by the Family Court after exhausting all modes of service i.e. through bailiff, courier service, registered post A.D. and publication in newspaper, and thereafter several opportunities were granted to him to file his written statement. As he did not appear before the Family Court nor did he file his written statement, the Suit was proceeded ex-parte against him and was eventually decreed. The petitioner appeared for the first time in the execution proceedings and filed objections, and he also filed an application under Section 9(6) of The Family Courts Act, 1964, for setting aside the ex-parte decree which application was dismissed on 15.11.2021 for non-prosecution as he had remained absent on eight (08) dates of hearing. Thereafter, Execution Application No.07/2021 filed by respondent No.1 for execution of the aforesaid decree was allowed by the Family Court vide order dated 22.11.2021.

3. By noticing and recording the facts mentioned above showing the conduct of the petitioner before the Family Court, it was held by the appellate Court that the petitioner had remained negligent and had failed to defend the Suit despite several opportunities granted by the Family Court. It is contended on behalf of the petitioner that proper opportunity of hearing was not granted to him and he was condemned unheard by the Family Court. This contention does not appear to be correct as it is a matter of record that the service upon the petitioner was held good by the Family Court only after exhausting all the prescribed modes of service, and instead of passing the ex-parte order and then the decree against him straight away, several opportunities were granted to him to file his written statement. This clearly shows that ample opportunity of hearing was granted to the petitioner and it was he who had chosen to remain absent and to not contest the Suit. Thus, it cannot be said that he was condemned unheard. A litigant who chooses to remain absent despite proper service and ample opportunity is not entitled to complain that proper opportunity of hearing was not granted to him.

4. It may be observed that every Court has the jurisdiction and power to proceed against the party who does not appear in Court despite proper service and adequate opportunity. In such circumstances, the impugned order appears to be fully justified. Learned counsel has not been able to point out any illegality or infirmity in the impugned order that may require interference by this Court. Accordingly, the petition and listed applications are dismissed in limine with no order as to costs.

J U D G E

\*15.03.2022/Short Orders Single/Court Work/Ndm\*