

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP.No.S-91 of 2022

Date

Order with signature of Judge

- 1- For orders on CMA No. 747/2022 (U/ A)
- 2- For orders on CMA No. 673/2022 (Ex./ A)
- 3- For orders on CMA No. 674/2022 (Stay/ A)
- 4- For hearing of main case

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10.02.2022

Syed Sibtay Hasan, avocate for the pétitionner.

By judgment dated 20.11.2019 passed in Family Suit No.1783/2017, the Family Court decreed the suit in terms that:-

- a) *The plaintiff is not entitled for recovery of the remaining dowry articles and gifts.*
- b) *The Plaintiff is entitled for recovery of dower amount of Rs.25000/-.*
- c) *The plaintiff is entitled for maintenance from September 2016 till Iddat period at the rate of Rs.5000/- per month.*
- d) *Plaintiff No.2 Master Muhammad Zubair Qureshi is entitled 4,000/- per month from September 2016 till Judgment, as past maintenance, and at the rate of Rs.6,000/- as future maintenance with increment 10% per annum, till her legal entitlement, plaintiff No.3 Master Muhammad Taha Qureshi is also entitled 2,000/- per month from September2016 till Judgment, as past maintenance with increment 10% per annum, till his legal entitlement.*
- e) *No order as to cost.*

Amount deposited by defendant as interim maintenance shall stand adjusted towards decretal amount. Let the final decree be prepared accordingly. There is no order as to costs. Let such decree be prepared.”

The petitioner failed to challenge the said judgment and Decree within time and filed Family Appeal No. 17 of 2022 after delay of three years, which was dismissed vide judgment dated 25.01.2022 mainly on the point of limitation. Being relevant para-8 is that:-

"8. It is well settled that limitation is not a mere technicality that can be overlooked, and for an authoritative pronouncement as to the salient features of the law on the subject, one need turn no further than the judgment of the Honourable Supreme Court in the case reported as Khushi Muhammad through L.Rs, and others v Mst. Fazal Bibi and others PLD 2016 SC 872, where the following principles were distilled from an examination of various relevant judgments of the superior Courts:

"(i) The law of limitation is a statute of repose, designed to quieten title and to bar stale and water-logged disputes and is to be strictly complied with. Statutes of limitation by their very nature are strict and inflexible. The Act does not confer a right; it only regulates the rights of the parties. Such a regulatory enactment cannot be allowed to extinguish vested rights or curtail remedies, unless all the conditions for extinguishment of rights and curtailment of remedies are fully complied with in letter and spirit. There is no scope in limitation law for any equitable or ethical construction to get over them. Justice, equity and good conscience do not override the law of limitation. Their object is to prevent stale demands and so they ought to be construed strictly;

(ii) The hurdles of limitation cannot be crossed under the guise of any hardships or imagined inherent discretionary jurisdiction of the court. Ignorance, negligence, mistake or hardship does not save limitation, nor does poverty of the parties;

(iii) It is salutary to construe exceptions or exemptions to a provision in a statute of limitation rather liberally while a strict construction is enjoined as regards the main provision. For when such a provision is set up as a defence to an action, it has to be clearly seen if the case comes strictly within the ambit of the provision;

(iv) There is absolutely no room for the exercise of any imagined judicial discretion vis-à-vis interpretation of a provision, whatever hardship may result from following strictly the statutory provision. There is no scope for any equity. The court cannot claim any special inherent equity jurisdiction;

(v) A statute of limitation instead of being viewed in an unfavorable light, as an unjust and discreditable defence, should have received such support from courts of justice as would have made it what it was intended emphatically to be, a statute of repose. It can

be rightly stated that the plea of limitation cannot be deemed as an unjust or discreditable defence. There is nothing morally wrong and there is no disparagement to the party pleading it. It is not a mere technical plea as it is based on sound public policy and no one should be deprived of the right he has gained by the law. It is indeed often a righteous defence. The court has to only see if the defence is good in law and not if it is moral or conscientious;

- (vi) The intention of the Law of Limitation is not to give a right where there is not one, but to interpose a bar after a certain period to a suit to enforce an existing right.
- (vii) The Law of Limitation is an artificial mode conceived to terminate justiciable disputes. It has therefore to be construed strictly with a leaning to benefit the suitor;
- (viii) Construing the Preamble and Section 5 of the Act it will be seen that the fundamental principle is to induce the claimants to be prompt in claiming rights. Unexplained delay or laches on the part of those who are expected to be aware and conscious of the legal position and who have facilities for proper legal assistance can hardly be encouraged or countenanced."

Since the petitioner is father, as such, he is bound to maintain his minor kids. The appeal filed by the petitioner was barred by limitation, which was rightly dismissed by learned Appellate Court vide impugned judgment dated 25.01.2022, hence the same does not require interference by this Court under Writ of certiorari. Accordingly, instant petition is dismissed alongwith listed applications.

J U D G E

Sajid