

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

**CP No. 5- 655 of 2022**

Petitioner : Muhammad Sulleman through  
Mr. Muhammad Qasim Pahore, Advocate

Respondent : Mst. Sidra present in person

Date of hearing  
and Order : 23.09.2022

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** Through instant constitutional petition, the petitioner has called in question the judgment dated 22.8.2022 passed by learned 2<sup>nd</sup> Additional District Judge / MCAC, Mirpurkhas in Family Appeal No. 40 of 2022, whereby the learned Judge dismissed the appeal and maintained the order dated 25.4.2022 passed by learned Civil / Family Judge-II, Mirpurkhas on an application for rejection of plaint moved in Family Suit No. 25 of 2022.

2. Brief facts of the case are that initially respondent No.1 Mst. Sidra Butt filed Family Suit No. 67 of 2020 for recovery of dower, dowry articles, and maintenance of the plaintiff and minors. During pendency of said suit, parties settled their dispute outside the court and started living together as husband and wife hence the suit was compromised vide order dated 25.11.2020, and a compromise Decree was prepared. Subsequently again respondent Mst. Sidra filed Family Suit No. 25 of 2022 for recovery of dower amount, dowry articles, and maintenance. During pendency of said suit, petitioner applied for rejection of plaint on the ground of res-judicata. The said application was dismissed vide order dated 25.4.2022. The petitioner preferred Family Appeal No. 40 of 2022 which was also dismissed. The petitioner being aggrieved by and dissatisfied with the aforesaid decisions has approached this court.

3. Learned counsel for the petitioner argued that the decisions of both the courts below are opposed to facts, law, and material available on record; that the subsequent suit filed by respondent No.1 comes within the bar of res-judicata but learned trial court committed illegality in dismissing his application without considering the provisions of Section 11 C.P.C and learned appellate court also failed to consider the same hence both the decisions are liable to be set aside; that several case laws were cited in support of the case of petitioner before the courts below but the same were not considered. He lastly prayed for allowing the instant petition.

4. Respondent-Mst. Sidra, who is present in person has supported the impugned decisions of both the courts below and submitted that the suit does not come within the ambit of Res-judicata under section 11 C.P.C because the earlier suit was compromised whereby petitioner agreed to maintain the respondent and her son Ayan regularly, therefore she started living with him but after 02 months he kicked out both of them, therefore present suit was filed on fresh cause of action for recovery of dower, maintainance and dowry articles; that the order dated 25.04.2022 passed in Family Suit No. 25 of 2022 by respondent No.2 and order dated 22.08.2022 passed by learned Additional District Judge/MCAC Mirpurkhas are well reasoned legal and speaking one; that the decision of previous suit was not finally decided by leading evidence on issues on merits but was either simply withdrawn and another was compromised but present suit was on fresh cause of action wherein application under section 17-A of Family Courts Act was moved and same was rightly decreed vide order dated 05.08.2022 whereby the petitioner was directed to pay maintenance upto 10<sup>th</sup> of each calendar month w.e.f 01.08.2022 but the petitioner failed to deposit the amount before the trial court; that the present petition has been filed to prolong the matter on flimsy manner just to avoid from paying maintenance. She prayed for dismissal of instant petition.

5. I have heard the parties at considerable length and have also gone through the documents annexed with this petition as well as the case law cited at the bar.

6. The question involved in the present proceedings, is whether Family Suit No. 25 of 2022 was filed by the respondent- Mst. Sidra before the learned Family Judge falls within the ambit of provision of Section 11 C.P.C.

7. To appreciate the aforesaid proposition, it is expedient to have a glance at the compromise Decree passed by the learned Family Judge in Family Suit No. 67 of 2020, vide order dated 25.11.2020, an excerpt whereof is reproduced as under:-

“Both parties jointly submitted a compromise application. Both parties have appeared before this Court, admitted the terms and conditions mentioned in the compromise application, and endorsed their signatures respectively.

Since both parties are agreed as per terms and conditions and the object of Family Courts is that the disputes relating to family affairs are settled and disposed of expeditiously, therefore, the compromise application is allowed as prayed in view of the terms and conditions mentioned in application to save the parties from unnecessary hardship and expenditure involved in the litigation process. In this regard, the reliance is placed in case law 2011 SCMR 1361 SUPREME COURT where it was held that:

**“Option to enter into a compromise at any stage of trial vested with parties before pronouncement of judgment”.**

Therefore, in the light of the above citations, the compromise application is allowed on the terms and conditions agreed between the parties. The parties are directed to abide by the terms and conditions of their compromise. Let a decree be prepared accordingly.”

8. Learned counsel for the petitioner submits that as the earlier suit filed by the respondent for recovery of dowry articles was decided by the court of competent jurisdiction, the subsequent suits were not maintainable in terms of Order II Rule 2, read with Section 11 C.P.C, and respondent was bound to lay her claim before the court in entirety, but having not done so the subsequent suits were hit by the principle of constructive res judicata. There is no cavil with the proposition put forward, however, a wife can file claims before the Family Court, subject to all just exceptions as provided under the law, once she has filed suit regarding specific subject matter she cannot be allowed to file a subsequent suit for the same relief.

9. To appreciate the above version of the parties further, it is well settled that a decision by a competent court, which is final, should be binding and the same questions are sought to be controverted in the subsequent litigation. Section 11 of the C.P.C. concerning the cause of action of suit codifies the doctrine of res-judicata which operates when there is a judgment between the same parties and it prevents a fresh suit between them regarding the same matter. In a suit for maintenance of a minor child, the growth of child, the cost of living, changes in the status of parties, and changes in the expenditures incurred based on the needs of children are some of the factors which either bring about a change of cause of action or may make out even a fresh cause of action for the child to demand maintenance allowance. In principle, a second suit will only be barred in case the matter has been directly or substantially in issue in a former suit between the parties has been set at rest on merits. Thus fresh proceedings for maintenance allowance are maintainable before the Family Court, hence, the principle of res judicata will not apply, for the reason that parties simply compromised the matter as no final adjudication was made on merits thus Order II Rule 2 read with Section 11 C.P.C hardly has its applicability.

10. Decree for maintenance allowance was based on recurring cause of action, the right of minor was/is involved. Appellate Court had reappraised the legal position of the case. The object of constitutional jurisdiction is to foster justice and not to perpetuate illegality. No illegality, or infirmity having been noticed in the impugned decisions passed by the trial and Appellate Court, therefore, the constitutional petition is dismissed accordingly.

**JUDGE**