

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S – 400 of 2022

Petitioner : Maria Ramesh
through M/s. Muhammad Ali Lakhani, Arsal
Rahat and Eshal Waris, Advocates

Respondent : Ameet Mohan
through M/s. Khalid Hayat, Muhammad
Nadeem Babar and Muhammad Arshad
Mehmood, Advocates

Date of hearing : 17th May, 2022

Date of order : 20th May, 2022

ORDER

1. Omar Sial, J: The petitioner is the wife of the respondent. Both are from the Hindu religion. The respondent filed Family Petition No. 206 of 2020 before the learned 16th Civil/Family Judge, Karachi East seeking termination of his marriage on grounds of cruelty by his wife. Towards the end of the recording of evidence, the petitioner moved an application in the learned trial court under section 9(2) and (3) of the West Pakistan Family Courts Act, 1964 seeking that she be allowed to produce additional evidence in the shape of WhatsApp messages exchanged between the two spouses. It was argued then that the petitioner was not aware of such evidence when she had filed her written statement but that she came in possession of the same subsequently. This application was dismissed by the learned trial court and the learned 10th Additional District Judge, Karachi East on 15.04.2022 upheld the order of the learned trial court and it is this order which has been impugned in these proceedings.

2. Learned counsel for the petitioner herein (the wife) submitted that the said exchange is important to be looked at in order for a just decision in the case. In support of his argument he cited judgments reported as Zar Wali Shah vs Yousaf Ali Shah and 9 others (1992 SCMR 1778); Taimoor Mirza vs Maliha Hussain and others (2020 CLC 1029), Shehryar Gul vs Sadaf Bibi (2016 MLD 200) and Muhammad Abid Akram Cheema vs Aneela Cheema (2016 CLC 1604).

3. Learned counsel for the respondent herein (husband) argued that section 9(2) and (3) of the West Pakistan Family Court Act, 1964 does not envisage the production of additional evidence and if there was any other evidence that the petitioner had wished to rely upon it should have been mentioned in her written statement as required by section 9(2) and (3). This having not been done, she cannot be allowed to do so now. He was of the view that, in any case, the purpose of filing such applications by the petitioner was nothing but an attempt to delay proceedings as the petitioner, for reasons best known to her, did not want the respondent to divorce her.

4. I have heard the learned counsels for the parties who have ably assisted me. It is true that a strict reading of section 9(2) and (3) of the West Pakistan Family Court Act, 1964 does not cover the situation that has arisen in this case. Section 9(2) requires documents which a defendant will rely upon to be mentioned in the written statement whereas section 9(3) requires that if a defendant is not in possession of such documents he or she will disclose such a fact in the written statement. In this particular case however it is claimed that the correspondence in question came in the knowledge and possession of the petitioner (wife) at a belated stage. Family cases, in my opinion, cannot be treated as conventional civil cases as they have the ability to impact drastically the lives of the parties concerned and their families. In any eventuality it is paramount that justice be done and that the same should not be compromised on any technical ground. The case before the learned trial court has been filed by the respondent (husband) on the ground that the petitioner (wife) has been cruel to him and thus he should be allowed to terminate the marriage. According to the learned counsel for the respondent (husband) he will also argue at trial that the husband deserted his wife for a period of five years. Be that as it may, no harm will be caused to either side if the WhatsApp exchange is allowed to be brought on to record by the petitioner (wife) with her affidavit-in-evidence. The learned counsel for the husband will be given a fair opportunity to cross examine the witness on these documents and it is at that time that he will be able to ask the relevant questions to support the stance that he has put forward in these proceedings. The issue will then be decided by the learned trial court as to whether the communication has any bearing on the dispute at hand or not and whether it could be categorized as evidence. I notice from the learned appellate

court order that the learned appellate court has held that the same cannot be categorized as evidence. Perhaps this is an issue that should be decided by the learned trial court in the first instance.

5. It appears from the record that there is a strong possibility that the petitioner (wife) being motivated by her desire that the husband does not divorce her may have resorted to delaying tactics at trial. The fact that maintainability of the family suit has been challenged through 3 (according to the learned appellate court) and 5 (according to the learned counsel for the respondent) appears to support the foregoing. In view of the circumstances of the case, the impugned order is set aside. The petitioner should be given an opportunity to produce the WhatsApp exchange through her affidavit-in-evidence within 7 days of this order. The learned counsel shall examine the witness within a period of 3 weeks thereafter. No adjournment should be granted to either side during this process. It is hoped that the learned trial court will be in a position to announce its judgment within 3 months from the date of this order.

6. Petition stands disposed of in the above terms.

JUDGE