

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-989 of 2022

[Mughirav..... Mst. Hani Shamsi & others]

Date of Hearing : 02.03.2023
Petitioner through : Mr. Abdul Samad Memon, Advocate.
Respondents through : Mr. Rafiq Brohi, Advocate for
respondent No.1.
Mr. Munir Ahmed Gilal, Advocate.

ORDER

Zulfiqar Ahmad Khan, J:- This petition assails the concurrent findings of the learned trial Court dated 15.12.2021 as well as first Appellate Court dated 30.05.2022.

2. The respondent No.1 filed a family suit bearing No.3145/2020 before learned Family Judge East Karachi for recovery of maintenance which was decreed by the learned trial Court. The petitioner impugned the said judgment of the learned trial Court before the Appellate Court by filing Family Appeal No.78/2022 which appeal of the petitioner was dismissed, hence the petitioner is before this Court against the concurrent findings.

3. The crux of arguments of learned counsel for the petitioner is that the petitioner's monthly salary is Rs.40,000/- per month, therefore, he cannot afford the maintenance fixed by the learned trial Court, therefore, the same be reduced.

4. In contrast, learned counsel for the respondent No.1 argued that the appeal of the petitioner was barred by time and the learned appellate Court dismissed the family appeal filed by the petitioner. While concluding his submissions, he submitted that under the law the father is obligated to maintain his children, therefore, the

petitioner be directed to comply with the decree passed by learned Family Court instead of challenging the same.

5. Heard the arguments and perused the available record. It is well settled that it is the sacrosanct duty of the father to provide maintenance to his child and to fulfill this obligation, the father is required to earn money even by physical labour, if he is able-bodied, and could not avoid his obligation. Apart from this, the case at hand has two limbs. First relates to the limitation as held by the learned First Appellate Court and Second relates to the maintenance fixed by the learned Family Court. To answer the First limb, it is expedient to illustrate here that the learned First Appellate Court in the impugned Order held that against the Judgment & Decree of the Family Court, if any person is aggrieved from the said Judgment & Decree has to prefer an appeal within a period of 30 days, however, the petitioner preferred an appeal before the First Appellate Court after the delay of more than three months. Per Rule 22 of the West Pakistan Family Court Rules, 1965, any person aggrieved by the Judgment & Decree of the Family Court shall file an appeal within a period of 30 days but in the case at hand, the petitioner impugned the Judgment & Decree of the learned Family Court before the First Appellate Court after the delay of the 30 days and that the learned First Appellate Court in the impugned Order held that the petitioner failed to satisfy the delay of more than 90 days in filing of the appeal. Furthermore, one of the limb of submissions of learned counsel for the petitioner was that Court is saddled with sacred duty to dispense justice amongst the litigating parties and to let the case proceed on merits by ignoring the technicalities, in this regard, I agree that while there is no cavil to the proposition that a Court is duty bound to administer justice and

has power to condone delay, but not at the cost of adverse party whose rights have matured once limitation has expired. Such view is in consonance with the dictum laid down by the Supreme Court in a plethora of cases. Also of importance is the case of **Lt. Col. Nasir Malik versus Additional District Judge Lahore, reported as 2016 SCMR 1821** where it has been made incumbent on the defaulting party to justify each and every day of delay in an application seeking condonation and in the absence of a plausible explanation, any application for condonation is liable to be dismissed. I have also discussed the niceties as well as nitty-gritties of Law of Limitation in HCA No.62 of 2019 (Abid Raza,v.....Shagufta Yousuf) (as per I.T. Branch of this Court, the said Judgment has not been reported hitherto, however, available at the website of this Court) and held that prescriptions of limitation are not mere technicalities and disregard thereof to render entire law of limitation redundant, therefore, the learned First Appellate Court rightly dismissed the Family Appeal of the Petitioner on the ground of Limitation.

6. Reverting the second limb and that is maintenance. Petitioner is contesting the matter of maintenance rather complying with the Judgment & Decree of the learned Family Court. I have already discussed in the preceding paragraphs that it is the sacrosanct duty of the father to provide maintenance to his child and to fulfill this obligation, the father is required to earn money even by physical labour, if he is able-bodied, and could not avoid his obligation. Chapter XIX of Principles of Mahomedan Law by D.F. Mulla deals with the maintenance of relatives. Para 370 lays down the conditions of maintenance of children and grandchildren. The learned trial Court

having seen the living status of the petitioner fixed the maintenance amount of Rs. 8000/- for the respondents which is not exorbitant in these days of inflation. It is well settled that learned trial Court is the fact finding authority where the learned trial Court having examined the entire record made available before it fixed the amount of maintenance which does not require any interference.

7. It is common knowledge that the object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") is to foster justice, preserve rights and to right the wrong where appraisal of evidence is primarily left as the function of the trial court and, in this case, the learned Family Judge which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken.

8. The minor/respondent No.02 is now approximately of 4 years old, must be schooling and attempting to live a reasonably

acceptable living standard. UNICEF Report¹ suggests that a great number of minors in Pakistan are malnutritioned, hardly receiving the minimum threshold of 1,200/- calories per day. In the given circumstances, maintenance of Rs.8,000/- per month is barely acceptable. Hence no intervention is warranted under constitutional jurisdiction either.

9. In view of the rationale and deliberation delineated above, the petition at hand is dismissed.

Karachi
Dated: 02.03.2023

JUDGE

Aadil Arab.

¹ UNICEF Report Titled "Cost of the Diet Analysis Report in Pakistan-2018.