

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C. P. No.S-270 of 2023

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| Date | Order with signature of Judge |
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- 1.For orders on CMA No.2148/2023.
 - 2.For orders on CMA No.2149/2023.
 - 3.For hearing of Main Case.

30.05.2023:

Mr. Ali Raza, Advocate for the Petitioner.

1. Granted subject to all just exceptions.

2&3.

1. The Petitioner has preferred this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 against the order dated 24 December 2022 passed by the Xth Additional District Judge Karachi (South) in Family Appeal No. 176 of 2022 emanating from an order passed on 10 September 2022 by the XXth Civil/Family Judge Karachi (South) in Family Suit No. 579 of 2021.

2. Family Suit No. 579 of 2021 has been preferred by one Amna Matloob who is representing her minor daughter the Respondent No. 1 as against the Petitioner seeking payments to be made by the Petitioner for the maintenance of the Respondent No. 1. During the recording of evidence the XXth Civil/Family Judge Karachi (South) had by an order dated 10 September 2022, overruled objections raised by the Petitioner that permitted the production of documents, by an affidavit in evidence by Amna Matloob, which were admittedly not disclosed in the Complaint of Family Suit No. 579 of 2021 and which were purportedly required to be disclosed in the complaint in compliance with the provisions of sub-Section (2) of Section 7 of the Family Courts Act, 1964.

3. Being aggrieved and dissatisfied by the Order dated 10 September 2022 passed by the XXth Family Judge Karachi (South) in Family Suit No.579 of 2021, the Petitioner thereafter preferred an appeal before the Xth Additional District Judge Karachi South bearing Family Appeal No. 176 of 2022. This appeal was dismissed by the Xth Additional District Judge Karachi South on the grounds that as the order dated 10 September 2022 that was passed by the XXth Family Judge Karachi (South) in Family Suit No.579 of 2021 was an interlocutory order, an appeal from such an order was barred under sub-section (3) of Section 14 of the Family Courts Act, 1964.

4. The Petitioner has against the order dated 24 December 2022 passed by the Xth Additional District Judge Karachi (South) in Family Appeal No. 176 of 2022 emanating from an order passed on 10 September 2022 by the XXth Civil/Family Judge Karachi (South) in Family Suit No. 579 of 2021 preferred this petition. He has argued that the XXth Civil/Family Judge Karachi (South) in Family Suit No. 579 of 2021 had wrongly rejected the objection raised by the Petitioner that the additional documents being produced by Miss Amna Matlood should be excluded from the evidence as they were not disclosed in the Plaint of Family Suit No. 579 of 2021 as required to be disclosed by sub-section (2) of Section 7 of the Muslim Family Courts Act, 1964. He further contended that of the production of these documents is permitted the entire complexion of the proceedings has been changed by the Petitioner by enhancing the amount of the claim maintained by her in excess of the prayer clause. He did not rely on any citations during the course of his arguments.

5. I have heard the learned counsel for the Petitioner and perused the record. Sub-section (2) of Section 7 of the Family Courts Act, 1964 stipulates the procedure by which a plaint in a family suit is permitted to adduce evidence and which reads as under:

“ ... (2) The plaint shall contain all material facts relating to the dispute and shall contain a Schedule given the number of witnesses intended to be produced in support of the plaint, the names and address of the witnesses and brief summary of the facts to which they would depose.

Provided that parties may, with the permission of the Court, call any witness at any later stage, if the Court considers such evidence expedient in the interest of justice.

While it is accepted that the documents that Miss Amna Matloob sought to produce were produced in deviation of the literal prescription of sub-section (2) of Section 7 of the Muslim Family Courts Act, 1964 i.e. that they had not been pleaded as material facts, this provision has been interpreted by the Supreme Court of Pakistan in the decision reported as **Talal Ahmed Chaudhry vs. The State**¹ to be directory and not mandatory and wherein it was held:²

“ ... To our mind, the only law which requires mentioning of gist/summary of facts against the name of every witness which he would depose is section 7 (2) of the Family Courts Act, 1964 which provides that the plaint to be accompanied by a Schedule giving the number of witnesses intended to be produced in support of the plaint, the name and addresses of the witnesses and brief summary of the facts to which they would depose. This being a provision of Special Law and of course id applicable to the category of cases provided therein. Even the study of case law on the subject would show that the requirement laid down by section 7 (2) of the Act 1964 is only directory in nature as instead of providing penal consequences for its non-compliance, it specifically through second proviso empowers the Court to permit the parties to call any witness at any later stage if the Court considers that the evidence of such witness is in the interest of justice.”

6. The provisions of Sub-section (2) of Section 7 of the Muslim Family Courts Act, 1964 having been held by the Supreme Court of Pakistan to being directory and mandatory, I am of the opinion that it was within the jurisdiction of the XXth Civil/Family Judge Karachi (South) in Family Suit No. 579 of 2021 to allow for the additional documents that had not been mentioned in the Plaint of Family Suit No. 579 of 2021 to be produced as no prejudice was caused to the Petitioner who would have ample opportunity to cross examine Miss Amna Matloob on the documents. The XXth Civil/Family Judge Karachi (South) has to my mind based its

¹ 2019 SCMR 542

² Ibid at pg.555

reasoning on the principle that the paramount interest in recording evidence in Family Suit No. 579 of 2021 was to ensure that the welfare of the minor in being provided proper maintenance should take precedence over the technical objection raised by the Petitioner. I am therefore clear that the order passed on 10 September 2022 by the XXth Civil/Family Judge Karachi (South) in Family Suit No. 579 of 2021 was in consonance in law and within the jurisdictional competence of that court and no exception can be taken to it.

7. The Petitioner also will not get much joy in challenging the order dated 24 December 2022 passed by the Xth Additional District Judge Karachi (South) in Family Appeal No. 176 of 2022. The Appeal being dismissed on the grounds that the order dated 10 September 2022 passed by the XXth Civil/Family Judge Karachi (South) in Family Suit No. 579 of 2021 was an interlocutory order and hence barred under sub-section (3) of Section 14 of the Family Courts Act, 1964 would necessitate an understanding as to the difference between a final order and an interlocutory order. The expression “Final Decision”, which to my mind is synonymous with the expression “Final Order” has received much attention in the courts of Pakistan³ and in courts of other common law jurisdictions.⁴ The Supreme Court of Pakistan in its decision reported as **Islamic Republic of Pakistan through Secretary Ministry of Interior and Kashmir Affairs Islamabad vs. Abdul Wali Khan MNA Former President of Defunct national Awami Party**⁵ has while interpreting the word final decision clarified that⁶:

³ See **Islamic Republic of Pakistan through Secretary Ministry of Interior and Kashmir Affairs Islamabad vs Abdul Wali Khan MNA Former President of Defunct National Awami Party** PLD 1976 SC 57 and **Muabarik Ali vs. Fazal Muhammad** PLD 1995 SC 564

⁴ See **Jethanand and Sons vs. The State of Uttar Pradesh** AIR 1961 SC 794; **Tarapore & Co. vs V/O Tractors Export, Moscow and others** AIR 1970 SC 1168; **Mammu vs Hari Mohan** AIR 2000 SC 650; **Salaman vs. Warner** 1891 1 QBD 734; **In Re: Herbert Reeves & Co** 1901 Ch D. 29; **Bozson vs. Altringham Urban District Council** 1903 KBD 547

⁵ **Islamic Republic of Pakistan through Secretary Ministry of Interior and Kashmir Affairs Islamabad vs Abdul Wali Khan MNA Former President of Defunct national Awami Party** PLD 1976 SC 57 and **Muabarik Ali vs. Fazal Muhammad** PLD 1995 SC 564

⁶ **Islamic Republic of Pakistan through Secretary Ministry of Interior and Kashmir Affairs Islamabad vs Abdul Wali Khan MNA Former President of Defunct national Awami Party** PLD 1976 SC 57 at pg. 105

“ ... Therefore, a 'final decision' is a decision "which leaves nothing open to further dispute and which sets at rest the causes of action between the parties from which no appeal or writ of error can be taken"

A similar definition was given to the expression by Justice Rustam S. Sidhwa in **Muabarik Ali vs Fazal Muhammad**⁷ wherein it was clarified that:⁸

“ ... The word "final" can mean the last in series of judgments, decrees or orders which may have been passed. It can also mean that which is no longer further alterable and which has acquired finality. It is in the latter sense that the word "final" appears to have been used in section 12(2). A decision can only be treated as final if it is unalterable, except by any of the means provided by the Code of Civil Procedure or by any special procedure applicable to the given case. Thus, a final judgment, decree or order would mean a judgment, decree or order, so far as the Court rendering it is concerned, is unalterable, if it is not sought to be modified, reversed or amended by preferring an appeal, revision or review application.”

Finally, a test to determine finality of a Judgment or Order that found the approval of Lord Alverstone CJ in the Court of Appeal of England in **Bozson vs. Altrincham Urban Council**⁹ can also be considered:¹⁰

“ ... It seems to me that real test for determining this question ought to be this: Does the judgment or order, as made, finally dispose of the rights of the parties? If it does then I think it ought to be treated as a final order; but if it does not, it is then in my opinion an interlocutory order”

13. Applying the test as indicated in the **Bozson vs. Altrincham Urban Council**,¹¹ I am clear that simply admitting certain documents in evidence would not finally dispose of the rights of any of the parties to the *lis*. Those rights would only be determined after the Petitioner has cross examined Miss Amna Matloob and the entire evidence of the Petitioner has also be concluded and after a judgment is thereafter given by the XXth Civil/Family Judge Karachi (South) in Family Suit No. 579 of 2021. The order dated 10 September 2022 passed by the XXth Civil/Family Judge Karachi (South) in Family Suit No. 579 of 2021 is therefore clearly

⁷ PLD 1995 SC 564

⁸ *Ibid* at pg. 567

⁹ 1903 KBD 547

¹⁰ *Ibid* at 548

¹¹ 1903 KBD 547

an interlocutory order and against which an appeal **cannot** be preferred under sub-section (3) of Section 10 of the Muslim Family Court Act, 1964. The same finding has been made by the Xth Additional District Judge Karachi (South) in its order dated 24 December 2022 passed in Family Appeal No.176 of 2022 and to which to my mind is correct.

14. In the facts and circumstances, I am of the opinion that the Petitioner has failed to demonstrate that either the order dated 24 December 2022 passed by the Xth Additional District Judge Karachi (South) in Family Appeal No. 176 of 2022 or the order dated 10 September 2022 passed by the XXth Civil/Family Judge Karachi (South) in Family Suit No. 579 of 2021 suffered from any material irregularity or were passed in excess of the jurisdiction vested in either of the courts; rendering this petition is as such not maintainable. The Petition is, therefore, dismissed along with pending application(s) with no order as to costs.

J U D G E

Nasir P.S.

