

IN THE HIGH COURT OF SINDH AT HYDERABAD

CP No.S-354 of 2021 : Mst. Anam d/o Muhamamd Yaseen
For the Petitioner/s : Mr. Farhad Ali Abro, Advocate.
Date/s of hearing : 23.10.2023.
Date of announcement : 23.10.2023.

ORDER

Agha Faisal, J. Family Suit No.394 of 2020 was filed before the 6th Civil Family Judge, Hyderabad for dissolution of marriage etc. and the same was decreed vide judgment dated 05.10.2010. The petitioner filed Family Appeal No.74 of 2020 and the same was dismissed by the 9th Additional District Judge, Hyderabad vide judgment dated 29.05.2021. This petition assails the aforesaid concurrent findings, rendered in the family jurisdiction, on the premise that the petitioner's evidence was not appreciated in its proper perspective, hence, the same be considered afresh.

It hardly merits reiteration that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided¹, and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law² that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. The impugned judgments are well reasoned and the learned counsel has been unable to demonstrate any manifest infirmity therein or that they could not have been rested upon the rationale relied upon.

¹ Per *Ijaz ul Ahsan J* in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.

² Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.

In so far as the plea for *de novo* appreciation of evidence is concerned, it would suffice to observe that writ jurisdiction is not an amenable forum in such regard³.

The Supreme Court has recently had occasion to revisit the issue of family matters being escalated in writ petitions, post exhaustion of the entire statutory remedial hierarchy, in *Hamad Hasan*⁴ and has deprecated such a tendency in no uncertain words. It has *inter alia* been illumined that in such matters the High Court does not ordinarily appraise, re-examine evidence or disturb findings of fact; cannot permit constitutional jurisdiction to be substituted for appellate / revisionary jurisdiction; ought not to lightly interfere with the conclusiveness ascribed to the final stage of proceedings in the statutory hierarchy as the same could be construed as defeating manifest legislative intent; and the Court may remain concerned primarily with any jurisdictional defect. It is the deliberated view of this Court that the present petition does not qualify on the anvil of *Hamad Hasan*. Similar view was also expounded earlier by the Supreme Court in *Arif Fareed*⁵. Therefore, in *mutatis mutandis* application of the ratio illumined, coupled with the rationale delineated supra, this petition is found to be misconceived, hence, hereby dismissed along with listed application.

Judge

³ 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.

⁴ Per Ayesha A. Malik J in yet to be reported judgment dated 17.07.2023 delivered in *M. Hamad Hassan vs. Mst. Isma Bukhari & Others* (Civil Petition No.1418 of 2023).

⁵ Per Amin ud Din Ahmed J in yet to be reported judgment dated 06.12.2022 delivered in *Arif Fareed vs. Bibi Sara & Others* (Civil Petition No.5601 of 2021).