

IN THE HIGH COURT OF SINDH AT HYDERABAD

CP S 22 of 2019 : Rehmat Ali vs. Mst. Shahida & Others.
For the Petitioner/s : Syed Bilal Ali Shah Advocate
For the Respondent/s : Nemo.
Date/s of hearing : 23.10.2023
Date of announcement : 23.10.2023

ORDER

Agha Faisal, J. The petitioner was a defendant in Family Suit 108 of 2016 wherein the following order was passed on 06.09.2018:

“Heard the arguments and perused the material available on file. The instant application has been moved by learned counsel for the judgment debtor under section 9(6) of West Pakistan Family Court Act, 1964 for setting aside Ex parte decree. The learned counsel for J.D. relied on case laws in support of his arguments as cited 2001 CLC 707, 2001 PLD 131, 2014 PLD-131, 2009 PLD 760 and 2006 PLJ-54.

The record reveals that the Suit was decree under Section 17-A of Family Courts Act, 1964 and the proper remedy has not been availed by J.D in accordance with law.

Hence, the instant application bear no merits for consideration. Same is hereby dismissed.”

2. Against the aforementioned order, the petitioner preferred Family Appeal 25 of 2018 before the Additional District Judge-I, Tando Adam, which was dismissed vide judgment dated 08.12.2018.

“The appellant was put on notice to satisfy the court about the maintainability of the appeal. The learned Counsel for the appellant submitted the written arguments which are taken on record. Meanwhile, the respondent through her advocate appeared and submitted vakalatnama.

The learned trial court in its impugned order has observed that the appellant has not availed the remedy provided under the law hence application under S.9 (6) of the West Pakistan Family Court Act was not maintainable.

I have perused the R & Ps of the main suit and of the Execution application. The plaintiffs/ respondents filed a Family Suit NO.108 of 2016 against the appellant/ defendant for recovery of maintenance of respondent NO.2 and recovery of dowry articles. The appellant as defendant appeared and filed the written statement. Issues were also framed and when the plaintiff side led the evidence the Counsel for appellant/ defendant filed statement that the defendant was not in his contact therefore he is unable to proceed the case further therefore no cross examination of the plaintiff and his witnesses was conducted. The evidence of the plaintiff / respondent side had gone unchallenged. On 7.12.2017 the learned trial court in non compliance of the interim order for maintenance of minor decreed the whole suit of the plaintiff as prayed which included the prayer of dowry articles. Thereafter, the execution application NO.9 of 2018 was filed on 22.3.2018.

The R & Ps of the execution application shows that notice for date 2.4.2018 issued to the appellant as JD and the bailiff served him for that notice on 29.3.2018. The appellant as Judgment debtor appeared through his Counsel

and sought time to file objections over the execution application but failed to file appeal against the decision of the main suit.

When the appellant as defendant in the suit was served and contested the suit by engaging a lawyer he could not be said to be proceeded ex parte. The suit was decided on 7.12.2017 therefore it was for the appellant to have file appeal in terms of S.14 of the West Pakistan Family Court Act before the appellate forum but he preferred to file application before the learned trial court under S. 9 (6) of the Act ibid. The very filing of application before the learned trial court under S.9 (6) of the Act ibid was not maintainable because it was an ex parte decision. Appeal for the reasons is therefore dismissed in limine.”

3. Admittedly, no appeal was filed by the petitioner with respect to the original order / decree; no cavil was ever articulated to him having been in default; and thereafter no case is set out before this Court to entertain this matter, seeking to set the entire process at naught. Even otherwise entertaining such petitions has been disapproved by the Supreme Court in *Hamad Hasan*¹ and earlier similar views were also expounded in *Arif Fareed*². Therefore, in *mutatis mutandis* application of the ratio illumined, this petition is found to be misconceived, hence, dismissed with listed application.

JUDGE

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¹ *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)*.

² *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)*.