Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.S-591 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

For orders on office objection
For orders on MA-1638/2021
For hearing of main case

02.11.2023

Ms. Urooj Khan advocate for petitioner.

This petition, pending since 2021, challenges concurrent judgments rendered in the family jurisdiction. Family Suit No.790 of 2019 was partly decreed by the XIth Civil & Family Judge, Hyderabad. The petitioner filed Family Appeal No.30 of 2021 there against vide judgment dated 02.10.2021 the same was dismissed. This petition had earlier been dismissed for non-prosecution on 06.03.2023, however, restored subsequently.

At the very outset, learned counsel is queried as to whether there is any jurisdictional defect in the judgments impugned and the answer is in the negative. Instead, it is submitted that the evidence has not been appreciated in its proper prospective by the respective courts and since no further provision of appeal is available, therefore, re-appreciation may be conducted in this writ petition.

Heard and perused. It is settled law 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 provided[1], and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law[2] 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. 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 regard[3].

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

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[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*.

[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 v. Mst. Isma Bukhari & Others* (*Civil Petition No.1418 of 2023*).

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*. 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

Ahmed/Pa,