

Order Sheet
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.S-29 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of M.A. 1947/2023

11.12.2023

Mr. Sajid Ali Soomro advocate for applicant/petitioner.
Mr. Rehana Siddiqui advocate for respondent.

In view of the arguments, restoration application is allowed. Petition is restored. Learned counsel is directed to address the Court on maintainability.

Briefly stated, Family Suit No.1472 of 2020 was partly allowed vide Judgment dated 27.08.2022 by the IVth Civil Judge Hyderabad. The operative finding is reproduced herein below:

“In view of finding on issues No.1 to 5, the suit of the plaintiff stands partly decreed. The plaintiff is entitled for her maintenance at Rs.3000/- per month from 12.03.2020, till the completion of Iddat period viz. till April, 2021. The defendant is bound to deliver dowry articles to the plaintiff as per list, otherwise the defendant shall be liable to pay 3 lac rupees to the plaintiff. Rest claims the plaintiff are denied. Let the decree to follow the Judgment.”

In Family Appeal No.110 of 2022, vide judgment dated 10.12.2022, the IX-Additional District Judge Hyderabad maintained the impugned judgment and decree, however, modified the same with respect to the gold ornaments. The pertinent observations are reproduced herein below:

“11. From perusal of R & Ps and evidence brought on record it is an admitted position that respondent/plaintiff admitted during cross examination that gold ornaments of appellant/defendant which are mentioned in written statement are in her possession. From perusal of evidence of her witness namely Muhammad Shahid (who is father of respondent/plaintiff and Shahbaz Ahmed (who is brother of respondent/plaintiff) also admitted during cross examination that gold ornaments of the appellant/defendant are lying in the custody of respondent/defendant. But the learned trial court did not consider such admission of the respondent/plaintiff and her witnesses. The learned trial court has failed to consider such claim of the appellant in his written statement as well as in evidence and admission of respondent/plaintiff and her witness; therefore, appellant is entitled to have been granted relief by the learned trial court. No doubt the learned trial court has not framed such issue yet it was obligatory to discuss and decide and to give its observations on the admission of respondent/plaintiff was such failure on the part of trial court is perverse and unjustified. In the present case the appellant claimed only his gold ornaments which are in possession of respondent/plaintiff.

12. In the above circumstances, I am of the humble view that not allowing claim of appellant/defendant which were already mentioned in his written statement and same was admitted by the respondent/plaintiff during trial, therefore, impugned judgment and

decree appears to be perverse and unjustified. Hence, the impugned judgment and decree requires interference of this Court. Accordingly, the Impugned judgment and decree is hereby modified entitling the appellant/defendant for gold ornaments which are in possession of respondent/plaintiff. The point No. 01 is answered in affirmative only to the extent of gold ornaments of appellant/defendant.

Point No. 02

13. In view of my findings, on point No. 01 the family appeal in hand stands allowed only to the extent of gold ornament of appellant/defendant with no order as to cost. The remaining part of impugned judgment and decree is stands maintained.“

Learned counsel was confronted with the maintainability hereof in view of Supreme Court's judgments in *Hamad Hasan*¹ and *Arif Fareed*², which disapproved of agitation of family matters in writ petition, however, the counsel remained unable to demonstrate the existence of any jurisdictional defect meriting recourse to writ jurisdiction. The crux of the argument articulated was that the evidence was not appreciated by the respective forums in its proper perspective, hence, the exercise be conducted afresh in writ jurisdiction.

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 provided³, and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law⁴ 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 appear to be well-reasoned and the learned counsel has been unable to demonstrate any manifest infirmity therein or that it could not have been rested upon the rationale relied upon.

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*⁵ 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. Similar views were earlier expounded in *Arif Fareed*⁶.

¹ Per Ayesha A. Malik J in *M. Hamad Hassan v. Mst. Isma Bukhari & Others* reported as 2023 SCMR 1434.

² Per Amin ud Din Ahmed J in *Arif Fareed vs. Bibi Sara & Others* reported as 2023 SCMR 413.

³ Per Ijaz ul Ahsan J in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as PLD 2021 Supreme Court 391.

⁴ 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.

⁵ Per Ayesha A. Malik J in *M. Hamad Hassan v. Mst. Isma Bukhari & Others* reported as 2023 SCMR 1434.

⁶ Per Amin ud Din Ahmed J in *Arif Fareed vs. Bibi Sara & Others* reported as 2023 SCMR 413.

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 regard⁷.

It is the deliberated view of this Court that the present petition does not qualify on the anvil of *Hamad Hasan* and *Arif Fareed* and even otherwise no case is made out to interfere in respect of the findings on merit. 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/s.

Judge

Ali Haider

⁷ 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.