

# IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-1071 of 2022

[Jahangeer Mustafa .....v.....Mst. Swaleha Khalid Petiwala & others]

Date of Hearing : 14.05.2024  
Petitioner through : Mr. Aziz ur Rehman Akhund, Advocate.  
Respondents through : Mr. M. Sakhi, Advocate for the  
respondent No.1  
Mr. Ahmed Khan Khaskheli, AAG.

## ORDER

**Zulfiqar Ahmad Khan, J:-** This petition challenges successive judgments in favour of respondent No.1 rendered by learned Family Judge Karachi South in Family Suit No.1405/2021 and Judgment dated 08.11.2022 passed by learned Additional District Judge-VII South Karachi in Family Appeal No.171/2022.

2. The respondent No.1 filed a family suit bearing No.1405/2021 before learned Family Judge South Karachi for recovery of maintenance which was decreed by the learned trial Court vide Judgment dated 29.08.2022. The petitioner impugned the said judgment of the learned trial Court before the Appellate Court by filing Family Appeal No.171/2022 which appeal of the petitioner was dismissed vide Judgment dated 08.11.2022, hence the petitioner is before this Court against the concurrent findings.

3. Learned counsel was confronted with the maintainability hereof as the Apex Court 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 since no further provision of appeal was provided in the statute.

4. Heard and perused the record. 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<sup>1</sup>, and is restricted inter alia to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law<sup>2</sup> 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 no manifest infirmity is discernable therein or that they could not have been rested upon the rationale relied upon.

5. 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*<sup>3</sup> 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

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

<sup>2</sup> 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

<sup>3</sup> Per *Ayesha A. Malik J in M. Hamad Hassan v. Mst. Isma Bukhari & Others* reported as 2023 SCMR 1434.

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<sup>4</sup>.

6. In view of the rationale and deliberation delineated above, the petition at hand is dismissed alongwith pending application. Learned Executing Court is directed to execute the Decree and act in accordance with law.

Karachi  
Dated: 14.05.2024

JUDGE

Aadil Arab.

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<sup>4</sup> Per Amin ud Din Ahmed J in *Arif Fareed vs. Bibi Sara & Others* reported as 2023 SCMR 413.