

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-1337 of 2023

[Syed Abbas Aliv.....XXI Family Judge East Karachi & others]

Date of Hearing : 13.03.2024
Petitioner through : Ms. Rifat Mubeen, Advocate.
Respondents through : *Nemo.*
Mr. Ahmed Khan Khaskheli, AAG.

ORDER

Zulfiqar Ahmad Khan, J:- The Petitioner impugns an order dated 23.11.2023 passed by learned Respondent No.1 in Family Execution No.13/2022 (F.S. No.3553/2021).

2. Family Suit No. 3553 of 2021 was filed for recovery of maintenance by respondent No.2 and same was decreed, thereafter, the respondent No.2 filed an execution application No.13 of 2022 and during pendency of execution proceedings, the petitioner moved an application for the payment of decretal amount on installments which application of the petitioner vide impugned order dated 23.11.2023.

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 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 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*³ 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

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

manifest legislative intent; and the Court may remain concerned primarily with any jurisdictional defect. Similar views were earlier expounded in Arif Fareed⁴.

6. 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 regard⁵.

7. In view of the rationale and deliberation delineated above, the petition at hand is dismissed alongwith pending application.

Karachi
Dated: 13.03.2024

JUDGE

Aadil Arab.

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

⁵ 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.