

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-823 of 2022

[Rana Muhammad Tasleemv.....Mst. Tahira Shoukat & others]

Date of Hearing : 28.02.2024
Petitioner through : Syed Khurram Kamal, Advocate.
Respondents through : Mr. M. Ahsan Rao, Advocate for
respondent No.1.
Mr. Zulfiqar Ali, Advocate.

ORDER

Zulfiqar Ahmad Khan, J:- The petitioner impugns the concurrent findings dated 12.11.2019 passed by learned Family Judge Karachi East in Family Suit No.245 of 2019 and order dated 08.09.2022 passed by learned Additional District Judge-IX East, Karachi in Family Appeal No.08/2022 through this petition.

2. The respondent No.1 filed a family suit bearing No.245/2019 before learned Family Judge South Karachi for recovery of maintenance & dowry articles which was decreed ex parte vide Judgment 12.12.2019, lateron, the petitioner filed an application under Section 12(2) CPC before learned Family Jude which was dismissed vide order dated 17.11.2021 on the ground that the petitioner was duly served through all modes. Petitioner impugned the said order before the learned Additional District Judge-IX East, Karachi by filing Family Appeal No.08/2022 which was also dismissed vide Judgment dated 08.09.2022, hence the petitioner is before this Court against the concurrent findings.

3. The crux of arguments of learned counsel for the petitioner is that the petitioner was never served and that the learned trial Court as well as First Appellate erred in examining the evidence placed by

the petitioner and that the learned trial Court passed an ex parte Judgment & Decree against the petitioner, therefore, the concurrent findings be set aside.

4. None present for the respondents. I have heard the arguments of learned counsel for the petitioner and examined the available record. The learned trial Court as well as learned First Appellate Court are concurrent on the ground that the petitioner has duly be served through all modes. It is considered expedient to reproduce the relevant excerpt of the order passed by the learned Family Court which is reproduced hereunder:-

“From perusal of record, it appears that Judgment and Decree dated 13.12.2019 was passed against the applicant, record shows after adopting all the modes of services, including publication, but the applicant side failed to appear and interest the matter and applicant side also failed to appear in the examination proceedings as all the modes of service was adopted on both the old as well as fresh address of the J/D. No any other found, misrepresentation has come on record to allow instant application and same is dismissed accordingly

5. It is gleaned from appraisal of the foregoing that the learned trial Court issued several notices to the petitioner upon his addresses , thereafter, notice was mobilized in newspaper too but the petitioner adamant not to appear and contest the matter, therefore, the question that the petitioner was not served, does not arise.

6. 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.

7. 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 manifest legislative intent; and the Court may remain concerned

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.

primarily with any jurisdictional defect. Similar views were earlier expounded in Arif Fareed⁴.

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

Karachi
Dated: 28.02.2024

JUDGE

Aadil Arab.

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