

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-982 of 2020

[Ashraf Aliv.....Mr. Badar Munir & others]

Date of Hearing : 27.03.2024
Petitioner through : Mr. Syed Shahzad Hassan, Advocate.
Respondents through : Mr. Rehman Ghous, Advocate for respondent No.1.
Mr. Zulfiqar Ali, Advocate.

ORDER

Zulfiqar Ahmad Khan, J:- The petitioner impugns the concurrent findings dated 25.09.2020 passed by learned Family Judge Karachi South in Family Suit No.921 of 2019 and order dated 10.11.2020 passed by learned Additional District Judge-VII South, Karachi in Family Appeal No.113/2020 through this petition.

2. The respondent No.1 filed a family suit bearing No.921/2019 before learned Family Judge South Karachi for jactitation of marriage introducing on record that petitioner being tutor of his daughter namely Fatima Munir used to come regularly at the house of respondent No.1. It was alleged by the respondent No.1 petitioner being a teach was responsible to provide good education to his daughter but the petitioner illegally contracted marriage with daughter of the petitioner who was minor. The suit filed by the respondent No.1 was decreed and the marriage between the petitioner and the daughter of the respondent No.1 was declared as null and void vide judgment dated 25.09.2019. The petitioner impugned the said judgment by filing Family Appeal No. 113 of 2020 which appeal was also dismissed vide order dated 10.11.2020, 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. 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. Apart from above, the learned trial Court which is a fact finding body having examining the record reached to the conclusion that the petitioner contracted marriage with daughter of the respondent No.1 who was minor at the time of marriage and the said child marriage is restrained under the Sindh Child Marriage Restraint Act, 2014. It is considered expedient to reproduce the relevant excerpt of the Judgment of the learned trial Court hereunder:-

“18). Therefore, in view of the Sindh Child Marriage Restrain Act, 2014 and also preceding FIR registered u/s 365(b) PPC notwithstanding the age of minor which happens to be bordering around 16 years, we are obligated to allow suit for jactitation of marriage and solemnizing authorities are directed and notified to expunge the record of any such marriage from their registry. In order words, marriage between Fatima Munir d/o Badar Munir and Ashraf Ali s/o M. Hanif is declared to be null and void on account of reasons mentioned above. Nadra authorities are also directed to rescind marriage registration from their database. Suit for jactitation of marriage is allowed with above mentioned observations.”

5. It is gleaned from appraisal of the foregoing that the learned trial Court having observed the pros and cons of the matter declared

the marriage between the petitioner and the daughter of the respondent No.1 as null and void as well as against the prescriptions of Sindh Child Marriage Restraint Act, 2014. The Act, 2014 is an special enactment of the Province of Sindh and the same was enacted to restrain the solemnization of child marriages. The learned trial Court which is a fact finding body having examined the evidence produced by the respondent No.1 who is father of the Fatima Munir reached to the conclusion that the said Fatima Munir is aged about 16 years and per prescription of Section 2(a) of the Act, 2014 a person who has not attained the age of 18 years is a child.

6. It is gleaned from appraisal of the record 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.

7. 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

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*

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.

8. 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 primarily with any jurisdictional defect. Similar views were earlier expounded in *Arif Fareed*⁴.

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

Karachi
Dated: 27.03.2024

JUDGE

Aadil Arab.

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

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