

# IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-306 of 2024

[Ahad Ahmed Shah .....v..... Family Judge No. XIII Karachi (Central) & others]

Date of Hearing : 27.03.2024  
Petitioner through : Mr. Fazl-e-Rabi, Advocate.  
Respondents through : N.R.  
Mr. Ahmed Khan Khaskheli, AAG.

## ORDER

**Zulfiqar Ahmad Khan, J:-** This petition assails the concurrent findings of the learned trial Court dated 20.08.2020 as well as first Appellate Court dated 09.01.2021.

2. Precise facts of the case are that the respondent No.2 filed suit No.262/2016 for recovery of dowry articles and maintenance which was decreed by the learned trial Court vide Judgment dated 20.08.2020 and petitioner was directed to return dowry articles to the respondent No.2 as well as petitioner was also directed to pay maintenance at the rate of Rs.10,000 per month as maintenance of Respondent No.3 being son of the petitioner. The petitioner impugned the said findings of the learned trial Court by filing Family Appeal No.92/2020 which appeal of the petitioner was dismissed on the ground of limitation vide order dated 09.01.2021, 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 learned trial Court failed to consider the evidence as the petitioner has already paid the dower amount as well as dowry articles have been returned to the respondent No.2, therefore, no claim of respondent No.2 exists against the petitioner, hence the

concurrent findings be set aside. Learned AAG supported the impugned order.

4. Heard the arguments and perused the available record. It is expedient to illustrate here that the learned First Appellate Court in the impugned Order held that against the Judgment & Decree of the Family Court, if any person is aggrieved from the said Judgment & Decree has to prefer an appeal within a period of 30 days, however, the petitioner preferred an appeal before the First Appellate Court after the delay of limitation period. Per Rule 22 of the West Pakistan Family Court Rules, 1965, any person aggrieved by the Judgment & Decree of the Family Court shall file an appeal within a period of 30 days but in the case at hand, the petitioner impugned the Judgment & Decree of the learned Family Court before the First Appellate Court after the delay of the 30 days and that the learned First Appellate Court in the impugned Order held that the petitioner failed to satisfy the delay of more than 63 days in filing of the appeal. Furthermore, one of the limb of submissions of learned counsel for the petitioner was that Court is saddled with sacred duty to dispense justice amongst the litigating parties and to let the case proceed on merits by ignoring the technicalities, in this regard, I agree that while there is no cavil to the proposition that a Court is duty bound to administer justice and has power to condone delay, but not at the cost of adverse party whose rights have matured once limitation has expired. Such view is in consonance with the dictum laid down by the Supreme Court in a plethora of cases. Also of importance is the case of **Lt. Col. Nasir Malik versus Additional District Judge Lahore, reported as 2016 SCMR 1821** where it has been made incumbent on the defaulting party to justify each and every day of delay in an application seeking

condonation and in the absence of a plausible explanation, any application for condonation is liable to be dismissed. I have also discussed the niceties as well as nitty-gritties of Law of Limitation in HCA No.62 of 2019 (Abid Raza, .....v.....Shagufta Yousuf) (as per I.T. Branch of this Court, the said Judgment has not been reported hitherto, however, available at the website of this Court) and held that prescriptions of limitation are not mere technicalities and disregard thereof to render entire law of limitation redundant, therefore, the learned First Appellate Court rightly dismissed the Family Appeal of the Petitioner on the ground of Limitation.

5. It is common knowledge that the object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”) is to foster justice, preserve rights and to right the wrong where appraisal of evidence is primarily left as the function of the trial court and, in this case, the learned Family Judge which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary

exercise of power and where an unreasonable view on evidence has been taken.

6. In view of the rationale and deliberation delineated above, the petition at hand is dismissed.

Karachi  
Dated: 27.03.2023

JUDGE

Aadil Arab.