

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
C.P. No.S-923 of 2023

---

Date	Order with signature of Judge
------	-------------------------------

---

For hearing of main case

01.02.2024

Mr. Kazim Hussain, Advocate for petitioner.

Mr. Hisham Mahar, AAG.

-----

1. This petition challenges successive Judgments in family matter rendered by the learned Family Court-XXI South, Karachi in Family Suit No.Nil of 2023 on 20.02.2023 and order dated 15.08.2023 rendered by learned Appellate Court in Family Appeal No.53 of 2023.
2. The concise facts are that the petitioner filed suit for recovery of dower amount before the learned trial Court on the ground that since the respondent No.3 opted Khula in lieu of dower amount, therefore, the dower amount be handed out to him. The said plea of the petitioner was turned down and the suit was dismissed vide order dated 20.02.2023. The petitioner impugned the said order by filing Family Appeal No. 53 of 2023 which appeal of the petitioner met the same fate, hence the petitioner challenges the concurrent findings in family matter through this petition.
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 respondent No.3 obtained the Khula and deferred the dower amount but the dower was already paid to the respondent No.3, therefore, the dower amount be returned to the petitioner.

4. None present for the respondents. I have heard the arguments of learned counsel for the petitioner and examined the available 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

---

<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. The learned First Appellate Court in the impugned Judgment went on to hold that the petitioner had an opportunity to challenge the decree of Khula penned down on 25.02.2020 which he completely failed to do so more particularly the khula was granted having met the requirements of pre-trial proceedings in which the reconciliation was not reached between the petitioner and the respondent No.3 and after the delay of more than three years, the petitioner filed suit for recovery against the respondent No.3.

7. In view of the rationale and deliberation delineated above the instant move seemingly is aimed to frustrate the process of law, the petition at hand is dismissed alongwith pending application.

JUDGE

Aadil Arab

---

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