IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS

Constitution Petition No.D-771 of 2024

(Teerath Versus Sht Beena)

DATE ORDER WITH SIGNATURE OF JUDGE

Before;
Adnan-ul-Karim Memon, J
Amjad Ali Bohio, J.

Date of hearing & Order 26.08.2024

Mr. Aftab Ahmed Ghouri, advocate for the petitioner.
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O R D E R

Adnan-ul-Karim Memon, J. The petitioner Teerath, ex-husband of respondent Sht. Beena, through the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has sought the reversal of Judgment and Decree dated 01-11-2023 passed by the learned Family Judge Digri-I, Mirpurkhas, in Family Suit No.48/2023, whereby the suit of respondent Sht. Beena was decreed to the extent of Judicial Separation and return of Dowry articles worth Rs.30, 000/-.

2. We reminded the learned counsel for the petitioner that the parties have irreconcilable differences that cannot be resolved through this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, and continuing the relationship would put sht. Beena is at risk of further abuse or neglect. Besides dissolving the marriage is in the best interests of the family, especially if there are children involved. The counsel was also confronted with the judgment of the Supreme Court in M. Hamad Hassan vs. Mst. Isma Bukhari & 2 others (Civil Petition No.1418 of 2023) dated 17.07.2023, wherein the tendency to assail family court matters in writ jurisdiction, has been deprecated. The counsel remained unable to distinguish the preponderant applicability of the aforesaid edict herein and insisted that the Family Court should have given the parties more time to reconcile before granting judicial separation; that the grounds for Judicial Separation are missing in the present case; that the state has a constitutional responsibility to protect marriage, family, mother, and child; that Article 203 of the Constitution

allows the court to correct the misuse of judicial power and set the record straight; that this court has supervisory jurisdiction over all subordinate courts, including the Family Court; that the Family Court Act prohibits appeals against dissolution of marriage decrees, so the petitioner has directly approached this Court under Article 203 of the constitution.

3. We have heard the learned counsel for the petitioner on the maintainability of this petition and perused the record with his assistance.

4. This court needs to evaluate whether there are grounds to remand the case to the trial court for further proceedings.

5. It appears from the record that Sht. Beena initiated Family Suit No. 48/2023 under the Sindh Hindu Marriage Act, 2018, seeking dissolution of marriage through judicial separation, recovery of dowry articles, and maintenance. The Family Court decreed sht. Beena's Family suit on the grounds of petitioner's cruel conduct, ill behavior, and failure to provide maintenance. The family court also awarded sht. Beena Rs. 30,000/- as the depreciated value of her dowry articles.

6. The learned trial Court was duly empowered to appreciate the evidence and no case has been set forth to apprehend that the same was not done. Just because the view of one party did not prevail does not vitiate the process. The entire matter was open to the appellate Court, but not approached at the first instance for deliberation whether to differ with the judgment rendered by the learned trial Court or otherwise. The counsel remained unable to demonstrate any apparent infirmity about the appreciation of evidence that does not merit any consideration by this Court. Even otherwise such an exercise is not amenable for adjudication in writ jurisdiction. On the aforesaid proposition we are guided by the decisions of the Supreme Court reported as 2011 SCMR 1990; 2001 SCMR 574 and PLD 2001 Supreme Court 415.

7. The Supreme Court in the case of *M. Hamad Hassan* has held as under:-

> "The issue before us pertains to the findings of the High Court in a petition whereby the constitutional jurisdiction of the High Court was invoked. The constitutional jurisdiction of the High Court, as provided in Article 199 of the Constitution, is well-defined and its invocation is

limited in scope against appellate decisions. The extent to which it can be invoked has been assessed by this Court over the course of several decades. In Muhammad Hussain Munir v. Sikandar (PLD 1974 SC 139), this Court held that the High Court in such cases is only concerned with whether or not the courts below acted within its jurisdiction. If such a court has the jurisdiction to decide a matter, it is considered competent to make a decision, regardless of whether the decision is right or wrong, and even if the said decision is considered to be incorrect, it would not automatically render it as being without lawful authority so as to invoke High Court's constitutional jurisdiction. However, in 1987, this Court deviated from its view in the case of Utility Stores Corporation of Pakistan Limited v. Punjab Labour Appellate Tribunal (PLD 1987 SC 447) where it expressed that where the lower fora makes an error of law in deciding a matter, it becomes a jurisdictional issue since the same is only vested with the jurisdiction to decide a particular matter rightly, therefore, such decision can be quashed under constitutional jurisdiction as being in excess of CP.1418 of 2023. law as in terms of Article 4 of the Constitution, it is a right of every individual to be dealt with in accordance with law and when law has not been correctly or properly observed below, it becomes a case proper for interference by a High Court in the exercise of its constitutional jurisdiction. Thereafter, in 2001, in the case of Muhammad Lehrasab Khan v. Mst. Aqeel-Un-Nisa (2001 SCMR 338), this Court further stretched the powers of the high court under Article 199 stating that while, ordinarily, the high court, does not re-examine evidence or disturb findings of fact, it can interfere if the findings are based on non-reading or misreading of evidence, erroneous assumptions, misapplication of law, excess or abuse of jurisdiction, and arbitrary exercise of powers, especially when the district court is the final appellate court which has reversed the findings of the trial court on unsupported grounds, the High Court can correct such errors using a writ of certiorari. It was held that the High Court's constitutional jurisdiction is meant to supervise and serve justice, allowing it to correct any wrongs committed contrary to evidence and the law. Subsequently, in Shajar Islam v. Muhammad Siddique (PLD 2007 SC 45) this Court revisited this issue and clarified that the High Court should not interfere in findings on controversial questions of facts based on evidence, even if those findings were erroneous. It was emphasized that the scope of judicial review under Article 199 of the Constitution in such cases was limited to instances of misreading or no reading of evidence or when the finding was based on no evidence, leading to miscarriage of justice, and that the high court should not disturb findings of fact through a reappraisal of evidence in its constitutional jurisdiction or use this jurisdiction as a substitute for a revision or appeal and that an interference with the lower courts' findings of fact was beyond the scope of the high court's jurisdiction under Article 199 of the Constitution. The recent judgments of this Court further elaborated on this view, in Mst. Tayyeba Ambareen and another v. Shafqat Ali Kiyani and another (2023 SCMR 246) and held:

> "8. 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. The appraisal of evidence is primarily the function of the Trial Court and, in this case, the Family Court which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on misreading 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 CP.1418 of 2023 - 4 - 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."

8. It was also observed by this Court in *Arif Fareed v. Bibi Sara and others* (**2023 SCMR 413**) that:

> "7. … The legislature intended to place a full stop on the family litigation after it was decided by the appellate court. However, we regretfully observe that the High Courts routinely exercise their extraordinary jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as a substitute of appeal or revision, and more often the purpose of the statute i.e., expeditious disposal of the cases is compromised and defied. No doubt, there may be certain cases where the intervention could be justified but a great number falls outside this exception. Therefore, it would be high time that the High Courts prioritise the disposal of family cases by constituting special family benches for this purpose."

4. Upon reviewing the relevant case law, it is evident that the powers of the High Court in its constitutional jurisdiction and appellate jurisdiction are misconstrued despite the judgment of this Court. This Court had, initially, in Muhammad Hussain Munir (supra) held that the High Court, in its constitutional jurisdiction, can only interfere with the findings of the lower courts in cases of a jurisdictional defect. However, a divergence from this view was later seen in the case of Utility Stores Corporation of Pakistan Limited (supra) whereby it was held that when a lower court decides a matter in error of law, it shall be viewed as a jurisdictional defect so as to invoke the constitutional jurisdiction of the High Court. Later on, in Muhammad Lehrasab Khan (supra) High Court's constitutional scope was explained, allowing it to interfere when the factual findings were based on nonreading or misreading of evidence, erroneous assumptions, misapplication of law, excess or abuse of jurisdiction, and arbitrary exercise of powers. However, in Shajar Islam (supra) this view was revised, stating that the high court could not interfere in findings on facts unless there was a misreading or nonreading of evidence, or if the findings were based on no evidence resulting in a miscarriage of justice and that the constitutional jurisdiction of the High Court could not replace a revision or an appeal. This view has been reiterated by this Court in its recent judgments. In Mst. Tayyeba Ambareen and another (supra) it was clarified that while the trial court is primarily responsible for assessing facts, the High Court can intervene as a corrective measure when actual findings are based on misreading or non-reading of evidence, or if the lower court's order is arbitrary, perverse, or in violation of the law or if the error is so obvious that it may not be acceptable, for example, when the finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumptions, clear legal errors, considering inadmissible evidence, exceeding or abusing jurisdiction, and taking an unreasonable view of evidence. Similarly, in the case of Arif Fareed (supra), this Court held that it is while some cases justify interference by the High Court, however, most do not. Thus, the legal position is that the constitutional jurisdiction cannot be invoked as a substitute for a revision or an appeal. This means that the High Court in constitutional jurisdiction cannot

reappraise the evidence and decide the case on its facts. Interference is on limited grounds as an exception and not the rule.

5. In respect to the facts before us, Respondent No.1 and her minor son filed a suit before the family court for recovery of the dower, maintenance allowance and dowry articles, etc. The suit was decreed on 24.11.2018 and later upheld by the appellate court. Subsequently, the Petitioner filed a writ petition before the High Court challenging the factual determinations of the lower courts in respect of the quantum of maintenance allowance, dower amount, and recovery of dowry articles amongst other grounds. Regrettably, the High Court fell in error and adjudicated upon the case on facts which falls outside the mandate of Article 199 of the Constitution. In terms of the aforementioned case law, the High Court could have interfered to prevent a miscarriage of justice, which is not established in the instant case. In fact the High Court substituted and adjudicated on the facts and tendered its opinion, which amounts to having an appeal out of the Appellate Court's judgment.

6. The objective of Article 199 of the Constitution is to foster justice, protect rights, and correct any wrongs, for which, it empowers the High Court to rectify wrongful or excessive exercise of jurisdiction by lower courts and address procedural illegality or irregularity that may have prejudiced a case. However, it is emphasized that the High Court, in its capacity under Article 199, lacks the jurisdiction to re-examine or reconsider the facts of a case already decided by lower courts. Its role is limited to correcting jurisdictional errors and procedural improprieties, ensuring the proper administration of justice. In the present case, the Petitioner pursued his case through the family court and its appeal in the district court and then also invoked the High Court's constitutional jurisdiction to reargue his case amounting to a wrongful exercise of jurisdiction whereby the High Court upheld the factual findings of appellate court after making its own assessments on the same. Allowing a re-argument of the case constituted to arguing a second appeal which should not have been entertained regardless of the outcome of the case.

7. The right to appeal is a statutory creation, either provided or not provided by the legislature; if the law intended to provide for two opportunities of appeal, it would have explicitly done so. In the absence of a second appeal, the decision of the appellate court is considered final on the facts and it is not for High Court to offer another opportunity of hearing, especially in family cases where the legislature's intent to not prolong the dispute is clear. The purpose of this approach is to ensure efficient and expeditious resolution of legal disputes. However, if the High Court continues to entertain constitutional petitions against appellate court orders, under Article 199 of the Constitution, it opens floodgates to appellate litigation. Closure of litigation is essential for a fair and efficient legal system, and the courts should not unwarrantedly make room for litigants to abuse the process of law. Once a matter has been adjudicated upon on fact by the trial and the appellate courts, constitutional courts should not exceed their powers by reevaluating the facts or substituting the appellate court's opinion with their own - the acceptance of finality of the appellate court's findings is essential for achieving closure in legal proceedings conclusively resolving disputes, preventing unnecessary litigation, and upholding the legislature's intent to provide a definitive resolution through existing appeal mechanisms..."

9. The aforesaid judgment of the Supreme Court is squarely applicable to the present facts and circumstances and in view thereof, coupled with

the reasoning and authority cited supra, the present petition is found to be misconceived and even otherwise devoid of merit, hence, hereby dismissed in limine along with the pending application(s).

JUDGE

JUDGE

Ali Sher