IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA.

Constitution Petition No.S-342 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection "A".
02. For order on maintainability of main case.

Petitioner:	Ghulam Rasool son of Nawab Khan Noonari, Through Mr. Muhammad Ibrahim Lashari, Advocate.
Respondents:	Mst. Jannat Khatoon d/o Muhammad Siddique and Civil/Family Judge, Thull. Nemo for respondents.
Date of hearing:	24.03.2025
Date of Order:	24.03.2025

O R D E R

Abdul Hamid Bhurgri, J,- By means of this Constitutional Petition, the petitioner has impugned the orders dated 04.11.2023 and 01.06.2024, respectively passed by the learned Civil/Family Judge & Judicial Magistrate, Thull, and the learned Additional District Judge, Thull. The petitioner, being aggrieved by the aforementioned decisions, seeks their annulment through the present proceedings.

2. The gravamen of the matter is that respondent No.1 instituted Family Suit No. 02 of 2022 before the learned Family Judge at Thull, seeking recovery of maintenance, medical, and delivery-related expenses. The suit was decreed ex-parte. Thereafter, the petitioner, originally the defendant moved an application seeking the setting aside of the ex-parte decree, which was duly allowed, and a written statement was filed. While the suit remained pending, the petitioner preferred an application under Section 5 of the West Pakistan Family Court Rules, 1965, praying for the return of the plaint. The said application was dismissed by order dated 04.11.2023. An appeal was preferred thereagainst in Family Appeal No. 13 of 2023, which came to be dismissed for non-prosecution on 30.03.2024.

A restoration application was subsequently moved on 17.04.2024, seventeen days post dismissal, however, the learned appellate court, vide order dated 01.06.2024, declined to restore the appeal.

3. Learned counsel for the petitioner argued that the impugned orders passed by both the Courts are patently illegal, asserting that they are contrary to settled legal principles hence liable to be set aside. He argued that the trial court had failed to appreciate the grounds raised in the application under Section 5 of the Rules and had erroneously assumed jurisdiction in a matter barred by limitation. Furthermore, it was contended that the appellate court dismissed the petitioner's appeal without affording a meaningful opportunity of hearing. He prayed that both impugned orders be declared void and of no legal effect.

4. Heard the learned counsel and carefully examined the record.

5. Perusal of the case record reveals that the respondent No.1 filed a suit in 2022 seeking maintenance and reimbursement of medical and childbirth expenses, asserting that she had been married to the petitioner since 2006 and had borne a son, Zakir Hussain, in 2007. She alleged that due to the petitioner's unethical and abusive conduct over domestic issues, she was expelled from the matrimonial home during pregnancy. Consequently, she gave birth to a son Zakir Hussain, through caesarean section, all expenses of which were borne by her parents. Despite repeated efforts by her family to reconcile the marriage, the petitioner refused and eventually issued a written divorce deed. The respondent No.1 accordingly instituted Family Suit No. 02/2022, seeking:

> (i) To direct the defendant to pay the maintenance allowances to the plaintiff No.1 at the rate of Rs.25,000/- per month since when she was drove out from the house of defendant on dated 10.03.2007 till the pronouncement of divorce dated 05.09.2011 and after divorce the expiry of the Iddat period which becomes amount of Rs.1,00,000/- and the previous maintenance of plaintiff No.1 of 54 months is Rs.1,350,000/- hence the defendant is bound to pay the same to the plaintiff No.1 in accordance with law.
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> (ii) To direct the defendant to pay the maintenance allowances of the plaintiff No.2 at the rate of Rs.20,000/- per month since the birth of the minor till the legal entitlement of the plaintiff No.2 with the increment of 20% per annum.

(iii) To direct the defendant to pay the expenses of the plaintiff No.2 which become total Rs.9,65,000/- to the plaintiff No.1.

(iv) To give any other relief which this Honourable Court deems fit and proper under the circumstances of the case.

6. Following admission of the suit, summons were issued via all prescribed modes. When service failed, publication was made in the widely circulated Daily Kawish dated 09.01.2022. Upon deemed service, the suit was decreed ex-parte.

7. The petitioner moved for setting aside the ex-parte decree, which was granted, whereafter he submitted his written defence. However, the impugned order dated 04.11.2023 notes that no plea of limitation was raised in the written statement. Despite this, the petitioner subsequently filed an application under Section 5 of the Family Court Rules in a seemingly contrived effort to delay the proceedings and subject the respondent No.1 to prolonged hardship. His conduct, in the considered view of this Court, appears manifestly calculated to defeat the legitimate claims of the respondent No.1.

8. On thorough scrutiny of the record, this Court is compelled to observe that the petitioner's conduct is replete with mala fides. His application lacks legal merit and seems crafted solely to impede justice and prolong litigation to the detriment of the respondent No.1 and her minor child.

9. The appeal preferred under Section 14 of the West Pakistan Family Courts Act, 1964 is itself misconceived. For the sake of convenience Section 14 is reproduced as under:-

> *"Appeals. (1) Notwithstanding anything provided in any other law for the time being in force, a decision given or a decree passed by a Family Court shall be appealable—*
> *(a) to the High Court, where the Family Court is presided over by a District Judge, an Additional District Judge or a person notified by Government to be of the rank and status of a District Judge or an Additional District Judge; and*
> *(b) to the District Court, in any other case.*
> *(2) No appeal shall lie from a decree passed by Family Court--*
> *(a) for dissolution of marriage, except in the case of dissolution for reasons specified in clause (a) of item (viii) of section 2 of the Dissolution of Muslim Marriages Act, 1939;*

(b) for dower (or dowry) not exceeding rupees (thirty thousand);

(3) No appeal or revision shall lie against an interim order passed by a Family Court.

10. The order challenged by the petitioner is not the final order as such no appeal can be filed against said order in view of Section 14(3) of the West Pakistan Family Courts Act, 1964. In the case of Mushtaq Hussain Bokhari v. the State and 6 others, 1991 SCMR 2136, the Honourable Court has held as under:-

> *"Fragmentary decisions of cases (with regard to application of provisions which were of technical nature) taking decades were most inconvenient tending to delay administration of justice---Course to be followed in such like cases should be that the mater be left for final decision by the trial court and its orders at the interlocutory stages should not be brought to the higher Courts to obtain fragmentary decisions as it tends to harm the advancement of fair play and justice".*

In the case of Maliha Hussain v. Additional District Judge-V and another, reported in 2017 MLD 485 (Sindh), the Honourable Court has observed as under:-

> *"it is an admitted fact that interlocutory/interim order passed under section 12 of G&W Act is an order in which no final verdict is pronounced as an ancillary order has been passed, keeping in view the welfare and betterment of the minors for certain periods with the intention to keep the same operative till final decision is passed in the pending matter, therefore, the relevant legislature has not provided remedy of appeal, revision or review against an interim order. The Honourable Apex Court in the case of Syed Saghir Ahmed v. Province of Sindh through Chief Secretary S&JD Karachi and others (1996 SCMR 1165), held that "the Constitutional jurisdiction, exercise of statute excluding a right of appeal from the interim order could not be bypassed by brining under attack such interim orders in constitutional jurisdiction. Party affected has to wait till it is matures into a final order and then to attack it in the proper exclusive forum created for the purpose of examining such order." In the case of Mohterma Benazir Bhutto, MNA and leader of the opposition, Bilawal House, Karachi v. the State (1991 SCMR 1447), the Honourable Supreme Court held that the orders passed at the interlocutory stages should not be brought to the higher courts to obtain fragmentary decision, as it tends to harm the advancement of fair play and justice, curtailing remedies available under the law, even reducing the right of appeal. In this respect the Honourable Court has referred the case of Mushtaq Hussain Bukhari v. the State (1991 SCMR 2136). In all these citations a principle has been laid down that interference at the*

> *interlocutory stage should be avoided by the High Courts, under its Constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973; more particularly, when the legislature has not provided any appeal against interlocutory orders in the relevant statutes".*

The Honourable Supreme Court in the case of Syed Saghir Ahmed Naqvi v. Province of Sindh through Chief Secretary, S&GAD, Karachi and another, reported in *1996 SCMR 1165,* has held as under:-

> *"As the said ordinance has taken away the right of petitioner to interim relief, learned counsel submitted that this was a ground which entitled the petitioner to prosecute a writ petition despite the pendency of the proceedings on the District Court. The argument is misconceived because the writ jurisdiction of the superior Courts cannot be invoked in aid of injustice and in order to defeat the express provisions of the statutory law".*

In the above case laws, it has been unequivocally observed that resort to constitutional jurisdiction under Article 199 of the Constitution must not serve as a surrogate appellate forum. Only exceptional circumstances warrant such intervention.

11. The trial court has rightly held that the petitioner, having failed to raise the plea of limitation or jurisdiction in the written statement cannot be permitted to circumvent procedural rigour by filing a separate application thereafter. This conduct of the petitioner is also questionable as it was very convenient for him to raise these pleas in the written statement so that issues could have been framed and matter could have been decided but it seems that in order to linger on the matter, he filed the application under Section 5 of West Pakistan Family Court Rules, 1965 just to frustrate the proceedings.

12. The petitioner's argument regarding limitation is untenable. The obligation to provide maintenance is a continuing one, rooted in Islamic Injunctions and transcending the limitations imposed by special statutes. It is the unequivocal responsibility of a father to meet the educational, medical, and subsistence needs of his spouse and children. The petitioner's failure to fulfil these obligations since 2007 is not only reprehensible but amounts to deliberate cruelty, both mental and economic.

13. The Family Courts Act, 1964 is a remedial statute designed to secure expeditious relief in family matters. It precludes the availability of a second appeal, intending to place a definitive end to prolonged family litigation. Repeated guidance has been issued by the Honourable Supreme Court to discourage unnecessary judicial interference in such matters. In Arif Fareed v. Bibi Sara & Others (2023 SCMR 413), the apex Court has held as under:-

> *"Before parting with this judgment, we may reiterate that the right of appeal is the creation of the statute. It is so settled that it hardly needs any authority. The Family Courts Act, 1964 does not provide the right of second appeal to any party to the proceedings. The legislature intended to place a full stop on the family litigation after it was decided by the appellate court. However, we regretful, observe that the High Courts routinely exercise their extraordinary jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, as a substitute of appeal or revision and more often the purpose of the statue 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 Court priorities the disposal of family cases by constituting special family benches for this purpose. Accordingly, leave to appeal is refused and petition stands dismissed."*

In the same case, the Honourable Court has held in para 4 as under:-

> *"The object of the Act is to have expeditious disposal of such matters in shortest possible time. "Farzana Rasool v. Dr. Muhammad Bashir" (2011 SCMR 1361). The technicalities and trappings of normal practice and procedure are not suitable to the cases where very young children are the party."*

In the case of M. Hamad Hassan v. Mst. Isma Bukhari and 2 others, 2023 SCMR 1434, the Honourable Supreme Court has held as under:-

> *"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 Islamic Republic of Pakistan, 1973 as a substitute of appeal or revision and more often the purpose of the statue 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."*

14. The Honourable apex Court in the above authority has underscored that family litigation involving minors requires urgent and sensitive adjudication, unencumbered by procedural formalities. The Court further reiterate that the purpose of the statute is subverted when High Courts exercise extraordinary jurisdiction as a matter of routine.

15. The conduct of the petitioner in the present matter is precisely what the legislature sought to curtail. The minor child has suffered years of neglect and deprivation owing to the petitioner's indifference. The petitioner, through this petition, seeks merely to frustrate the judicial process and prolong the agony of the respondent No.1 and her child.

16. Given the authoritative pronouncements of the Honourable Supreme Court, and in the light of prima facie mala fide conduct apparent from the record, this petition is not maintainable. Both impugned orders are well-reasoned and judiciously rendered, and this Court finds no reason to interfere.

17. Accordingly, the petition stands dismissed in *Limine* along with listed applications (if any) with costs amounting to Rs.10,000, payable to the respondent No.1 through the learned trial court. The trial court is directed to conclude the pending suit within 30 days of receipt of this order, strictly in accordance with law. However, it is clarified that the trial court shall decide the matter independently, uninfluenced by any observation made herein, and applying its own judicial discretion.

18. Let the copy of this order be transmitted to the learned Civil/Family Judge & Judicial Magistrate, Thull for compliance.

The above are the reasons for short order dated 24.03.2025 whereby the Petition was dismissed.

JUDGE

Date of short order 24.03.2025
Date of reasons 27.03.2025.