IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD

C.P. No.S-272 of 2022

Petitioner:	Mir Muhammad Raza, through Mr. Ravi Kumar, Advocate
Respondent:	Syeda Sehar Jafferi
Date of hearing:	21.03.2025
Date of Decision:	07.05.2025

J U D G M E N T

MUHAMMAD HASAN (AKBER), J.- Through the instant petition, the Judgment dated 22.12.2021 passed by the learned Additional District Judge-VI Hyderabad in Family Appeal No.90 of 2021, and the Order dated 30.08.2021 passed by the learned Family Judge-III Hyderabad in Family Suit No.1477 of 2020 have been assailed, whereby the suit for Jactitation of Marriage filed by the petitioner was rejected.

2. Succinctly, relevant facts of the case are that on 23.10.2020, petitioner filed a Family Suit No.1477 of 2020 for Jactitation of Marriage against the Respondent/ defendant before the learned Family Judge-XII Hyderabad, claiming therein that no marriage ever took place between the parties, but the Respondent is claiming marriage between the parties and the birth of a son; that the *nikahnama* and marriage certificate being relied by the Respondent are managed; that there was no question of dissolution of marriage between the parties, when there was no marriage. In her written statement, the Respondent pleaded that, the suit for Jactitation of marriage was not maintainable and was barred under the Muhammadan Law; that the Birth Certificate, *nikahnama* and NADRA certificate are available on record which are being denied by the Plaintiff; and that the subject suit filed after more than 6 years, was also barred by limitation. The Respondent also filed an application for rejection of plaint, which was allowed by the learned trial Judge after hearing the parties vide impugned Order dated 30.08.2021. The said Order was assailed by the Petitioner in Family Appeal No.90 of 2021 before learned Additional District Judge-VI Hyderabad, which concurred with the learned trial Court, hence the present petition.

3. Learned counsel for petitioner argued that impugned Judgment is against the law, the learned trial court did not discuss the material documents

annexed with the suit, that applicability of CPC. and Limitation Act are barred in suit of a family nature; that learned trial court illegally discussed the filing of family suit regarding dissolution of marriage, therefore, the impugned order being illegal may be set aside; that in any event, the time for filing suit for Jactitation would start from the date of knowledge of the Plaintiff regarding the false marriage; and finally, that the plaint in the instant suit was wrongly rejected and Petitioner be allowed to lead his case. The Respondent's case is that in the presence of documents and decree for khula, the suit was nothing but a *mala fide* attempt to delay and defeat the legitimate rights of the minor; the suit was filed in 2020 much after six years of the alleged knowledge of the plaintiff; that family court is competent to adopt its own procedure in order to meet situation not provided under West Pakistan Family Court Act 1964 (**Act-1964**); that incompetent and frivolous suits shall be buried at its very inception; that there is no bar on applicability of limitation on family laws; that the suit was not maintainable and the Order was rightly passed.

4. Heard the parties and perused the record, which reflects chequered history of this case, starting with the birth of Mir Wali Muhammad Talpur ("**the minor**") on 04.11.2012, whose Birth Certificate was issued by NADRA on 31.12.2012, with the father's name as Mir Muhammad Raza Talpur/ petitioner. The Marriage Registration Certificate was issued showing Respondent's marriage with the petitioner whereas the concerned Union Council issued Certificate of marriage and birth. On 23.10.2013 Respondent applied to NADRA for issuance of her CNIC showing her marital status as 'married' with the Petitioner. Against this, the petitioner moved applications to the Union Council, WASA and nikah registrar and an application dated 27.01.2014 to the Incharge NADRA Office, Hyderabad, followed by a legal notice dated 05.02.2014, which was replied by NADRA vide letter dated 14.02.2014. On 06.03.2014, the petitioner filed a Constitution Petition No.S-431 of 2014 before this Court, praying for directions to NADRA to block CNIC of Respondent and restoring her original status as 'unmarried', while erasing name of the petitioner as her husband and to permanently reject the 'B' Form applied by her. It was also claimed that UC and nikah registrar have repudiated their stance, (which though was without even notice and hearing to the Respondent). Initially, the Respondent was also not made party to the said petition and there were only 6 official respondents (including NADRA and Federation of Pakistan). However, the Order dated 11.05.2016 reflects that after more than two years and two months, petitioner sought permission to file amended title for impleading the Respondent in the petition. Accordingly, on 16.05.2016, Respondent was arrayed and on 24.05.2016, notice was ordered to be issued

to her for 30.8.2016, which as per the Court record, was not served upon her. That, immediately on the next date i.e. 30.08.2016 and without service upon the Respondent and without any representation on her behalf, and based upon a consenting statement extended by the advocate for NADRA, the petition was disposed in the following terms:

> *"Learned Counsel for petitioner submits that petitioner will be satisfied if official respondents may be directed to decide his application along with relevant documents in view of Section 18 of NADRA Ordinance, 2000, to which learned Counsel for respondents undertakes to decide same, if petitioner moves such application within two weeks' time.*
> *Considering the above circumstances, instant petition stands disposed of. However, petitioner may approach to respondents within two weeks and respondents will decide his application along with relevant documents strictly within four weeks."*

5. On the other hand, a Family Suit No.908 of 2018 for dissolution of marriage by way of Khula and for recovery of dower and maintenance was filed by the Respondent against the petitioner before the learned Civil & Family Court-XII Hyderabad.

6. The Respondent came to know about CP No.S-431/2014 when her CNIC of Respondent was blocked by NADRA. Consequently, on 25.10.2018 she filed an application under Section 12(2) CPC. for setting aside the said Order dated 30.08.2016, and after detailed hearing of the matter, such application under section 12(2) CPC. was allowed by this Court vide Order dated 19.05.2019, with the following observations, which are also relevant for the purposes of the present proceedings, therefore the same is reproduced below:

> **"9. In deciding the instant application, the conduct of the petitioner right from the beginning is to be minutely examined. From the perusal of the record it transpires that this petition was filed by the petitioner on 06.3.2016, and in the petition main grievance of the petitioner was against respondent No.7, Mst. Sehar Jafferi, to the effect that by playing fraud and manipulating fake and bogus documents, she had obtained her CNIC showing her marital status as 'married' with petitioner vide ID No.103611035382 Token No.66 and that she had also applied for issuance of 'B' Form of the minor showing the petitioner as minor's father which is factually false and incorrect as she is, at all, not his wife. Despite this fact, very strangely the petitioner did not implead respondent No.7 as a party in the instant petition although in case ultimately his petition would have been allowed, the only party / person who would have been adversely affected, was respondent No.7 and none else.**

However, when the petitioner realized the fact that even in case his petition might be allowed, this legal defect of non-impleading mainly adversary/affectee i.e. respondent No.7, might create problems for him in future and the order of granting his petition might be set aside on this ground, on 11.05.2016 petitioner's counsel sought permission of the Court to implead Mst. Sehar Jafferi as a respondent in this petition and on 16.05.2016 he filed amended title impleading her as respondent No.7.1 However, instead of getting respondent No.7 served with the notice during the long interning period of more than three months between 24.5.2916 to 30.8.2016, on the very next date i.e. 30.8.2016, all of a sudden his counsel made statement that the petitioner will be satisfied if official respondents are directed to decide his application, although no such application was pending at that juncture as the said order dated 30.8.2016 shows, "learned Counsel for respondents undertakes to decide same, if petitioner moves such application within two weeks' time. "(emphasis is supplied for sake of convenience). This all shows something fishy on the part of the petitioner. It is not understandable when on the last date of hearing i.e. 11.5.2016 the petitioner himself sought permission of the Court to implead Mst. Sehar Jafferi as a respondent in the petition and on 16.5.2016 he had also filed amended title impleading her as respondent No.7, then as to why he did not make efforts to get the notice served upon her and instead all of a sudden showed his willingness and satisfaction upon disposal of petition in case direction is issued to NADRA Authorities to dispose of his application which was not pending at that time and was filed subsequently after passing of the order.

10. The malafide on the part of the petitioner is also strengthened from other factors. For instance, after filing of amended title, the notice was ordered to be issued to respondent No.7 on 24th May, 2016, however, the said notice was got issued on 18th July, 2016 i.e. after about two months and then despite lapse of about one and a half month till 30th August, 2016 neither the said notice was got served upon respondent No.7, nor even any intimation was given by the concerned bailiff which is evident from the endorsement of the office, "Notice issued to newly added respondent No.7 through bailiff not returned as yet."

11. It is also worthwhile to point out at this juncture that, the petitioner in his counter affidavit filed by him against the instant application under Section 12(2) CPC, has not specifically denied the fact of filing suit for dissolution of marriage by respondent No.7, nor has taken a plea that the said document is a forged one. Even while in paras 28 to 36 of his written statement filed in the said family suit he had stated that the plaintiff in the said suit i.e. respondent No.7 herein by practicing fraud and forgery had obtained her CNIC showing her marital status as 'married' with the petitioner, yet in para 37 he categorically stated "The address mentioned by the plaintiff is incorrect and liable to be verified by the concerned SHO." This supports the plea of respondent No.7 that in the amended title the petitioner had shown her incorrect address.

12. Even otherwise, by virtue of principles of natural justice and rule of audi altrem partem coupled with the provisions of Section 24-A of the General Clauses Act, it was the vested right of respondent No.7 to be provided ample opportunity to place her case and view point before the Court as it was only she, who was to be adversely affected by the order dated 30.8.2016 which has been called in question through instant application under Section 12(2) CPC.

13. In view of the above, listed application under Section 12(2) CPC filed by respondent No.7 is allowed as prayed. Consequently, the order dated 30.08.2016 is set aside and the petition is restored to its original position as it was before the passing of order dated 30.8.2016. Respondent No.7 may file her reply/objections to the memo of petition within four weeks of the passing of this order and thereafter the office may fix this petition in Court for further process. Meanwhile, NADRA authorities are directed to immediately restore the position in respect of data of respondent No.7 in their record as it was immediately before passing of the order dated 30.8.2016 and place such report on record within one week of the passing of this order."

"14. <u>MA No.16188/16:</u> This is an application moved by the petitioner for initiating contempt proceedings against alleged contemnor namely, Raja Farukh, Deputy Director Operation NADRA for alleged non-compliance of order dated 30.8.2016. As the order dated 30.8.2016 which is the subject matter of instant application for initiating contempt proceedings against the alleged contemnor, has already been set aside having been obtained by fraud and misrepresentation, instant Misc. Application has become infructuous and is dismissed accordingly."

7. As informed by the learned counsel for the petitioner, the above Order was not assailed by the petitioner, which has attained finality. Moreover, as per NADRA record, marriage and birth certificates security paper bar-code No:K04279071 and K04595822 were issued to UC No:2 Qasimabad, Hyderabad as original seen by the dealing officer. Respondent's Form having tracking ID#10361103582, Token. No:66, dated 23-10-2013 was duly attested by one Muhammad Aqeel, AFN WASA, Hyderabad, and was processed for the updating of her marital status, i.e. Spouse CNIC and Marriage Certificate (Union Council Registered), as per Standard Operating Procedure (SOP). The internal fact-finding inquiry observed that the CNIC and CRC of the said lady was processed as per SOP/Policy in accordance with law, hence there was no irregularity on part of the NADRA authorities.

8. On the other hand, in the Family Suit No.908 of 2018 filed by the Respondent for khula and for maintenance of the minor, written statement was also filed by the Petitioner, along with an application for rejection of plaint. Such application was dismissed vide Order dated 17.12.2018. Later, the prayer for

dissolution of marriage by khula was decreed vide preliminary decree dated 26.10.2020. Here, it is also pertinent to note, that such decree was also not challenged by the petitioner, and which has also attained finality, as confirmed by the learned counsel.

9. The next interesting aspect to be noted in the matter is, the admitted position as reflected from the record that the first letter written by the petitioner to NADRA was dated 27.01.2014 and the legal notice by petitioner was dated 05.02.2014. Hence hypothetically speaking, even if the claim of petitioner's lack of knowledge of the marriage and the minor's birth, is presumed to be correct, even then the date of knowledge of the petitioner as per the record, would start from January 2014 (whereafter he also filed Constitution Petition S-431/2014) and whereafter he also contested the Family Suit No.908 of 2018 for dissolution of marriage and maintenance of the minor. Despite the above, the petitioner chose not to file suit for Jactitation of marriage in 2014 upon his knowledge, which otherwise ought to have been raised at the earliest opportunity.

10. Turning to the legal aspects of the matter, the dictionary meanings of the word 'Jactitation', and the term "Jactitation of marriage', have been recorded in *'Mst. Sakina and 2 others v. Nasir Ali'* [1] and *'Arshad Ahmad v. Muhammad Sharif'* [2] in the following manner:

i. Black's Law Dictionary defines the ordinary meaning of the term 'Jactitation' as: boasting of something which is challenged by another".

ii. 'Mozley and Whitley's Law Dictionary' defines it as: "boasting of something which is challenged by another specially with reference to suit of jactitation of marriage where one of the two parties had falsely boasted or given out that he or she was married to the other, whereby a common reputation of their matrimony might ensue and the other sues for an order enjoining perpetual silence on that head".

iii. 'Twentieth Century Dictionary', defines the word "Jactitation" and the term "Jactitation of marriage" as: "**Jactitation**; n. restless tossing in lines; twitching or convulsion, tossing or bandying about; bragging; public assertion, esp. ostentatious and false." '**Jactitation of marriage**; pretence of being married to another."

iv. Volume 12, page 223, paragraph 418 of the 'Halsbury's Laws of England' (Third Edition), deals with the Form of Suit of Jactitation, in the following manner:

"FALSE BOAST OF MARRIAGE.

If anyone persistently and falsely alleges marriage with another, the latter may obtain in a suit for jactitation of marriage a decree of perpetual silence. Only the person complaining that he has so been misrepresented can present such a petition. It is now a rare procedure.

A suit for jactitation is the only case in which a matrimonial suit can, as of right, be proceeded with, without prima facie proof of a marriage de facto."

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1. PLD 1976 Quetta 97
2. 2006 Y L R 2623

11. From the context of Islamic principles on the subject, Muhammadan Law defines and discusses in detail the following subjects which are relevant for the purposes of the present discussion being, "Paternity and Maternity"[3], "Paternity how established"[4]; "Legitimacy presumed from presumptive marriage"[5]; and "Presumption of marriage"[6]. Side by side, the legal jurisprudence as developed by superior Courts in our country on the issue, have consistently leaned in favour of protecting the legitimacy of the child and have generally been reluctant to stigmatize a child as illegitimate and therefore, as far as possible, every presumption is made in favour of its legitimacy. Starting with the leading Judgment by a Four-Member Bench of the Honourable Supreme Court *'Mst. Hamida Begum v. Mst. Murad Begum and others'* [7] and '*Shah Nawaz and another v. Nawab Khan*'[8]. The same principles were further enunciated by a Five-Member Shariat Bench of the Supreme Court in the '*Muhammad Azam v. Muhammad Iqbal and others*'[9], and thereafter by '*Abdul Majid Khan and another v. Mst. Anwar Begum*'[10], '*Manzoor Hussain v. Zahoor Ahmed and 4 others*'[11], and '*Manzoor-ul-Haq v. Kaneez Begum'*[12]. In the case of *'Nasrullah v. District Judge, Khushab and another'*[13], it was held that every presumption, as far as possible, is to be made in favour of legitimacy of the child and therefore, Courts have been reluctant to declare a child as illegitimate and have refused to admit illegitimacy, when legitimacy can be inferred from the surrounding circumstances. Lastly, in the case of '*Aftab Ahmad v. Judge Family Court and 3 others'* [14], it was held that even non-registration of a marriage under Muslim Family Laws Ordinance, 1961, would not render such marriage as invalid. It was the same case wherein conduct of the father (petitioner) was noted with great concern by the High Court as contumacious and shameful for maliciously dragging Respondents in litigation and humiliating them in society and disowning paternity of his legitimate offsprings, just to avoid payment of maintenance, which though was his mandatory legal and moral obligation. While on one hand, *'Rehmat Khan and 3 others v. Rehmat Khan and another'*[15] holds that legitimacy is to be determined in line with the Islamic ethos and principles

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3. (Sir) Dinshah Fardunji Mulla's Principles of Muhammadan Law, by M. Mahmood, Fourth Edition-2012, Para 337 at page 831
4. Para 339 at page 835
5. para 341 at page 840
6. Para 268 at page 656
7. PLD 1975 SC 624
8. PLD 1976 SC 767
9. PLD 1984 SC 95
10. PLD 1989 SC 362
11. 1992 S C M R 1191
12. 1991 CLC 109
13. 2000 Y L R 703

14. 2009 MLD 962
15. PLD 1991 SC 275

and all possible doubts to be resolved in favour of legitimacy and even principles of *res judicata* were applied; and the case of *'Muhammad Hussain alias Muhammad Yar v. Sardar Khan and 11 others'*[16] declared that Islam leans in favour of legitimacy and abhors the contention of illegitimacy and the onus to prove is on the party which challenges the legitimacy of the child; whereas '*Abdul Rasheed vs. Hamida Begum'*[17] declares that a challenge to legitimacy of child, must be raised at the earlier opportunity.

12. Besides, the Courts in Pakistan have also consistently highlighted that the purpose and intent of the special enactment of the West Pakistan Family Courts Act 1964, was summary and speedy disposal of family disputes, which was one of the many reasons for expressly protecting such proceedings from the technicalities and complications of Civil Procedure Code 1908 and Qanun-e-Shahadat Order 1984. The Family Courts have also been fully empowered with exclusive jurisdiction, to devise and adopt its own procedures. In the present case, such exercise of jurisdiction and formulation of such devise appears to have been rightly adopted by the learned Family Judge. Learned counsel was also unable to assist on inapplicability of the law of limitation on family laws. In this regard, I am fully conscious of the observations made by His Lordship, Mr. Aminuddin Khan J. of the Honourable Supreme Court in '*Arif Fareed v. Bibi Sara and others*'[18] that the exercise of extraordinary jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 by the High Courts in a routine manner, as a substitute for appeal or revision, amounts to defeating and defying the very purpose and intent of expeditious disposal of family cases:

> **"7. 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 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 statute i.e., expeditious disposal of the cases is compromised and defied. No doubt, there may be certain cases where the**

16. PLD 1993 Lahore 575
17. PLD 1975 SC 624

> **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…"**

13. Considering all the above discussed facts and circumstances, the Islamic principles and the legal position on the issue, the following situation emerges. Firstly, that even from petitioner's pleadings, the date of his knowledge would start from January 2014 (as discussed at para 9 *ibid*); Secondly, the grant of Respondent's application under section 12(2) CPC by this Court vide Order dated 29.05.2019 in CP 431/2014, and the observations on petitioner's conduct and maneuvering therein; Thirdly, the petitioner's decision of not challenging such Order dated 29.05.2019 on the 12(2) application; Fourthly, the petitioner's decision of not challenging the decree for khula dated 26.10.2020 passed in Family Suit No.908 of 2018 in favour of respondent, wherein the petitioner was the contesting party and which was admittedly within his knowledge; and Fifthly, not filing suit for Jactitation of marriage immediately upon his knowledge in the year 2014 (as claimed by him) but waiting for much more than six years to pass, are some of the factors which point towards petitioner's conduct to delay the proceedings in order to avoid his obligations, in this case of a highly sensitive nature, as compared to a normal civil litigation, for (i) it involves possibility of disgracing and labelling of the lady as having committed *zina or* fornication; and (b) it involves every possibility of stigmatizing the minor as an illegitimate child, by the society for the rest of his life. Such a serious issue ought to have been challenged by the petitioner at the first opportunity by filing of suit for jactitation, as settled in *Abdul Rasheed*[17] *supra,* whereas the primary onus to prove the same was on him, as declared in *Muhammad's case*[16] *ibid*. on the contrary, this was not done for a very long time. In the present case, the minor Mir Wali Muhammad was born 04.11.2012 and he would now be around 13 years of age. The denial of his rights and the devastating and embarrassing psychological impact on the personality of the minor (and the mother), and the expenses involved in this multi-pronged lengthy litigation lingering since past more than 11 years, so also the lethal social stigmas attached therewith, are the additional factors, which should also be kept in view by Court, while considering timely decision in this dispute under the family laws. Eleven long years have already passed in this family litigation, which needs to be concluded, so as to bring some sense of peace, stability, legitimacy and continuity in the life of the minor, with whose

birth these proceedings started. Delaying it further for few more years would amount to defeating the directions of the Honourbale Supreme Court in *Bibi Sara*[18] *supra.* In view of the foregoing detailed discussion on the legal and Islamic position principles and the factual aspects of the case, I am therefore convinced, that both the learned courts below have properly dealt with the issues involved in the matter and have carefully and judiciously applied their minds to the present case and have rightly noted the delaying tactics and conduct of the petitioner for avoiding his legal and moral obligations. The learned trial Judge rightly devised its procedure, considered all relevant facts, applied the law and his judicial mind, so also considered substantial delay already caused in this matter. With respect to exercise of extraordinary jurisdiction in this writ petition under Article 199 of the Constitution in this family case, learned counsel for the petitioner was unable to point out any illegality in the Orders impugned warranting interference by the High Court under the Constitutional jurisdiction, for which, parameters have already been defined in *Bibi Sara*[18] *ibid*. Even no material irregularity could be pointed out by the petitioner side in the impugned Orders, except raising technical objections, which could not be allowed to prevail over the issues of substantial and serious nature involved in this writ petition discussed *ibid*. Upshot of the above discussion is, that the impugned Orders passed by both the Courts below are upheld, and the instant Petition is dismissed, along with all pending applications.

14. Before parting with this Judgment, the diligent, disciplined and professional conduct of the young counsel Mr. Ravi Kumar, while proceeding with all his cases before this Bench, are highly appreciated.

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