

Form No.HCJD/C-121

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

W.P. No.65227 of 2023

Muhammad Nawaz.

Versus

Additional District Judge, etc.

S.No.of order/ Proceeding	Date of Order/ Proceeding	Order with signature of Judge, and that of parties' counsel, where necessary.
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05.10.2023

Rai Sarfraz Ahmad Kharal, Advocate for the petitioner.

The petitioner has assailed the order dated 13.05.2023 passed by the learned Senior Civil Judge (Family Division), Hafizabad whereby application of the petitioner seeking permission to produce additional evidence was dismissed as well as the judgment dated 12.09.2023 passed by the learned Additional District Judge, Hafizabad whereby appeal there-against was also dismissed.

2. Learned counsel for the petitioner contends that the impugned decisions are against the law and facts and result of misapplication of law inasmuch the document sought to be produced is relevant and admissible in evidence. He maintains that the petitioner intends to adduce receipt of return of dowry articles but the same was not available to him at the time of recording of evidence.

3. Heard. Available record perused.

4. Section 9(2) of the Family Courts Act, 1964 ('Act') clearly provides that where a defendant relies upon a document in his possession or power, he shall produce it or copy thereof in the Court along with the written statement. Sub-section (4) of Section 9 *ibid* requires copies of the documents referred to in sub-section (2) to be given to the plaintiff along with the written statement on the date fixed for that purpose.

Although the word “shall” has been used in sub-sections (2) & (4) of Section 9 of the Act, however, that does not make these provisions mandatory thereby rendering non-compliance thereof absolutely fatal so as to prevent a defendant from belatedly filing and producing in evidence any document that was not filed along with the written statement. This is primarily for the reason that no such penal consequences have been specified by the legislature in Section 9 of the Act. It thus remains discretionary for the Family Court to permit a defendant to file any document, deliver a copy thereof to the plaintiff that was not filed along with the written statement and produce the same in evidence in a suit. The question then arises what are the principles governing the exercise of such discretion by the Family Court?

5. It is well settled that a purposive rather than literal approach to the interpretation is to be adopted while interpreting provisions of the Family Courts Act, 1964, therefore, an interpretation which advances purpose of the Act is to be preferred over an interpretation which defeats its object.¹ It cannot be lost sight of that a special forum of the Family Court has been created by the legislature for expeditious settlement and disposal of disputes relating to marriage and family affairs, as manifest from preamble of the Act. Section 12A of the Act has specified a period within which such cases have to be disposed of by a Family Court. It is a quasi-judicial forum which can draw and follow its own procedure provided such procedure is not against the principles of fair hearing

¹ *Saif Ur Rehman vs. Additional District Judge, Toba Tek Singh (2018 SCMR 1885)*.

and trial.²

6. Keeping in view the principle of purposive interpretation as also the aforementioned object of the Act, it is held that permission for belated filing and production of a document in evidence cannot be granted as a matter of routine. The discretion should be exercised by the Family Court through a speaking order keeping in view the facts and circumstances in each case. The relevant considerations for the Family Court in this regard include the stage of proceedings at which the permission is sought, reason furnished by a defendant that prevented him from filing and producing the document at the relevant time, nature of the document sought to be filed and produced (such as admissible *per se* or otherwise required to be proved), delay in conclusion of the proceedings likely to be occasioned by the permission and likelihood of any other prejudice to the plaintiff if the permission sought is granted.

7. While declining request of the petitioner, the learned Appellate Court furnished the following reasons:-

“.....Perusal of record reveals that appellant has mentioned in his written statement that a copy of receipt of return of dowry articles is annexed with his written statement but no such receipt was annexed with his written statement and in this respect he himself has admitted during his cross examination that no such receipt was annexed by him with his written statement. In such state of affairs, it is clearly evident that respondent/plaintiff was totally unaware regarding this receipt till the time of filing of application for production of additional evidence by the appellant and by filing this petition, the appellant has surprisingly introduced a new fact after recording of complete evidence of the respondent/plaintiff and his oral evidence. Moreover, he has also not placed reliance upon such receipt in his list of reliance. Now at this belated stage when suit is going to be finally concluded appellant filed application for additional evidence while introducing a new story regarding receipt of dowry articles as such the same cannot be allowed. Furthermore, perusal of said receipt prima-facie shows that neither the appellant/defendant nor the respondent/plaintiff are

² *Muhammd Tabish Naeem Khan vs. Additional District Judge, Lahore and others (2014 SCMR 1365); Muhammad Asim and others v. Mst. Samro Begum and others (PLD 2018 SC 819) and Abid Hussain v. Additional District Judge Alipur, District Muzaffargarh and another (2006 SCMR 100)*

the signatories of that receipt, therefore, being a private document, appellant/defendant cannot be allowed legally to tender this document in his evidence. under the circumstances, it seems that appellant has filed this application to fulfil the lacuna as was left by him. This act of appellant to fulfil the lacuna cannot be appreciated and allowed at this belated stage being prejudiced to the interest of opposite party/respondent. This court is afraid that contention of the appellant is based upon some conjectural hypothesis and is farfetched cry.....”

8. It is abundantly clear that permission to produce additional evidence in this case has been denied to the petitioner for having been made at the fag end of proceedings in the suit after recording of evidence by the parties and that too to adduce a private document which is not admissible *per se*. No valid reason preventing the petitioner from filing and producing the document sought to be tendered in evidence at the relevant time has been advanced and it has been rightly found to be an attempt to fill in lacuna after evidence of the parties has been recorded. The permission sought, if granted, would not only cause serious prejudice to the case of the respondent-plaintiff but also defeat the object of the Act i.e. expeditious disposal of the dispute. Therefore, the exercise of discretion on part of the Courts below in this case is clearly not arbitrary, capricious or whimsical but manifestly based on valid reasons which do not warrant interference by this Court.

9. Learned counsel for the petitioner could not point out any illegality or jurisdictional error in the orders impugned.

10. For the foregoing reasons, this writ petition, being devoid of any merit, is **dismissed** in limine.

(RAHEEL KAMRAN)
JUDGE

APPROVED FOR REPORTING

JUDGE