2025 C L C 1315

[Balochistan]

Before Muhammad Kamran Khan Mulakhail and Muhammad Najam ud Din Mengal, JJ

Syed MAQBOOL AHMED ---Petitioner

Versus

BIBI MEMOONA and 2 others ---Respondents

Constitution Petition No. 681 of 2025, decided on 21st May, 2025.

Family Courts Act (XXXV of 1964)---

----Ss. 5, Sched. & 14---Constitution of Pakistan, Art. 199---Constitutional petition, maintainability of---Constitutional jurisdiction of the High Court---Factual controversies---Constitutional petition against decision of the Appellate Court in family cases---Decision of Appellate Court cannot be challenged indirectly by filing of Constitutional petition while the legislature had specifically restricted the remedy against family court decision to only one right of appeal---Facts in brevity were that the respondent (wife) filed a suit for dissolution of marriage (Khula), recovery of dowry articles, gold ornaments, and past maintenance against the petitioner (husband) before the Family Court---Despite summons, the petitioner (husband) did not appear, and the suit was decreed ex-parte---Petitioner (husband) filed Constitutional petition challenging decisions of the Trial Court as well as of the Appellate Court---At the outset the petitioner (husband) was confronted with the question as to the maintainability of the Constitutional petition---Held: Provision of S. 14 of the Family Courts Act, 1964 reflected that judgment and decree of the family court could be challenged only once before the court of District Judge, as the same was the only appellate forum and no further right of appeal had been provided against the verdict of such Appellate Court---In the present case, neither the family court was presided over by a district judge or additional district judge nor any person notified by the Government to be of rank of District Judge or Additional District Judge, therefore, the appeal against a decision or decree of family court was competent before the District Court, which was conclusive and final---Section 14 of the Family Courts Act, 1964 did not in any manner, envisage any right to appeal against the decision of Appellate Court in the High Court indirectly by filing a Constitutional petition---Moreover, contentions pertained to factual controversies, which had already been discussed by the Trial Court as well as Appellate Court, being the fact-finding fora, therefore, High Court in exercise of Constitutional jurisdiction under Article 199 of the Constitution could not look into the factual controversy---Besides, the High Court was not vested with the jurisdiction to act as a court of appeal against the decisions of the Family Court in the absence of any specific statutory provisions conferring such a right of appeal in family cases.

M. Hamad Hassan v. Mst. Isma Bukhari and 2 others 2023 SCMR 1434 rel.

Syed Abdul Salam for Petitioner.

Date of hearing: 15th May, 2025.

ORDER

MUHAMMAD NAJAM-UD-DIN MENGAL, J.---The instant Constitutional Petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 ("the Constitution"), which carries the following prayer:

"It is, therefore, accordingly prayed that this Hon'ble Court may graciously be pleased;

a) To declare that the impugned judgment and decree dated 23.11.2024 passed by Family Judge-IV, Quetta and the judgment and decree dated 18.04.2025 passed by Add. District Judge-IV, Quetta, are contrary to law and facts.

b) To set aside the impugned judgment and decree dated 23.11.2024 passed by

Family Judge-IV, Quetta and the judgment and decree dated 18.04.2025 passed Addl. District Judge-IV, Quetta.

c) To remand the matter to the trial court with directions to afford opportunity of defencse and evidence, and then to dispose of the matter purely on merit and in accordance with law.

d) Any other relief which this Hon'ble Court deems fit and proper may also be awarded, in the interest of equity, fair play and justice."

2. Concise facts of the instant petition are that respondent No.1/plaintiff filed a suit for Dissolution of marriage on the basis of Khula, Recovery of Dowery Articles along with Gold Ornaments, Past maintenance allowance against the petitioner/defendant in the Court of learned Family Judge-IV, Quetta ("trial Court") with the averments that the respondent No.1/plaintiff was married with the petitioner/defendant in the year 2022 at Quetta and Haq-Mahar was fixed as Rs.10,000/- which is still outstanding. After solemnization of marriage the respondent No.1/plaintiff was shifted to the house of petitioner along with certain dowry articles, gold ornaments provided to the respondent No.1/plaintiff. Initially relation between the parties remained cordial, subsequently the petitioner's/defendant's behaviour was changed and he started maltreating the plaintiff on the instigation of his family on petty matters and ultimately the respondent No.1/plaintiff was turned off from the house of petitioner with wearing attire. It is further averred that the petitioner/defendant has failed to maintain plaintiff during the whole span of matrimonial life and not a single penny was paid to her.

3. Despite several notices and summons issued by the learned trial Court through the Risaldar/SHO Levies Station Haramzai, the petitioner/defendant has failed to appear and contest the suit, as such, he was proceeded against ex-parte. Subsequently, the learned trial Court decreed the suit in favour of respondent/plaintiff, vide ex-parte judgment and decree dated 23rd November, 2024.

4. Being aggrieved, the respondent/plaintiff assailed the ex-parte judgment and decree of the learned trial Court by means of filing appeal before the learned Additional District Judge-IV, Quetta ("appellate Court"), whereby the appeal was allowed and the ex-parte judgment and decree of trial Court was modified to such extent, vide impugned judgment and decree dated 18th April, 2025. Whereafter, the petitioner has filed the instant constitution petition.

5. We have learned counsel for the petitioner and perused the available record. Perusal of record reveals that the contentions raised by the learned counsel for the petitioner pertains to the factual controversies, which have already been discussed by the learned trial Court as well as appellate Court, being the fact-finding fora, therefore, this Court in exercise of Constitutional Jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 cannot look into said factual controversy. Besides, this Court is not vested with the jurisdiction to act as a Court of appeal against the decisions of the Family Court in the absence of any specific statutory provisions conferring such a right of appeal in family cases.

6. Admittedly, in the Family Law, the right of appeal has elaborately been provided under the provisions of Section 14 of the Family Courts Act, 1964; for ready reference the same is reproduced as under:

14. 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;

(c) for maintenance of rupees 2 one thousand or less per month.

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

(4) The appellate Court referred to in subsection (1) shall dispose of the appeal within a period of four months."

7. Plain reading of the provisions of Section 14 of the ibid reflects that judgment and decree of the learned Family Court can be challenged only once before the Court of District Judge, as the same is only appellate forum and no further right of appeal has been provided against the verdict of such appellate Court. While, in the petition in hand, neither the Family Court was presided over by a District Judge or Additional District Judge nor any person notified by the Government of Pakistan to be of the rank and status of a District Judge or Additional District Judge, therefore, the appeal against a decision or decree of Family Court was competent before the District Court or District Judge, which was conclusive and final. The bare perusal of Section 14 of the Family Courts Act, 1964 does not in any manner, whatsoever, envisage any right to appeal against the decision of appellate Court in the High Court indirectly by filing a constitutional petition. Reliance in this regard is placed on the case titled as "M. Hamad Hassan v. Mst. Isma Bukhari and 2 others, (2023 SCMR 1434) whereby the Hon'ble Supreme Court of Pakistan has held as under:

> "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.
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> 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 re-evaluating 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." BOLD and UNDERLINING IS ADDED.

8. While confronted with the above proposition of law, the learned counsel for the petitioner has failed to point out any legal justification for maintainability of the instant petition.

For the above reasons the petition being not maintainable, is accordingly dismissed in limine.

UN/63/Bal Petition dismissed.