

JUDGMENT SHEET

IN THE HIGH COURT OF BALOCHISTAN, QUETTA

Constitution Petition No.644 of 2023
(CC# 100107601887)

Naseebullah Kasi
Vs.
Saima Naseeb & others

Date of hearing: 19.11.2025 Announced on: 29-11-2025
Petitioner by: Mr. Khushal Khan Kasi, Advocate.
Respondents 1 to 3 by: Mr. Kashif Khan Panezai, Advocate.

JUDGMENT

Sardar Ahmad Haleemi, J. The petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("the Constitution") with the following relief:

"It is, therefore, respectfully prayed that the impugned judgment & decree dated 10.10.2022 passed by learned Family Judge-VI, Quetta, and the order & decree dated 13.04.2023 passed by learned Addl. District Judge-VI, Quetta be declared as improper, illegal & unlawful, hence set them aside accordingly and in consequences thereof the family suit so filed by respondents No. 01 to 03 be dismissed or in the alternate the matter be remanded to the court below with directions to afford opportunity of hearing to the petitioner and then to dispose of the petition on merit & in accordance with law; any other relief which this Hon'ble Court deems fit & proper may

also be awarded in favor of petitioner, in the interest of justice, equity and fair play."

2. Succinct facts of the case are that the plaintiff (**respondent No.1**) filed a Family Suit No.85/2021 against the defendant (**petitioner**) before the learned Family Judge-I, Quetta (hereinafter referred "**the Family Court**"), with the averments that petitioner and respondent No.1 entered into marriage tie in the year 2014; out of the wedlock two children, i-e respondents No.2 and 3, were born. The marital relationship between the parties became strained, and on the third day of Eid-ul-Azha she was subjected to physical violence. She was forcibly turned out of the matrimonial home, compelling her to seek legal recourse, hence the suit.

3. The petitioner filed a contesting written statement and raised certain legal and factual grounds.

4. Out of the divergent pleadings, the Family Court framed the following issues:

- i) *Whether the plaintiff is entitled for recovery of her maintenance, if so, at what rate and with what effect? (OPP)*
- ii) *Whether the plaintiff is entitled for recovery of maintenance for minors, if so, at what rate and with what effect? (OPP)*
- iii) *Whether the plaintiff is entitled to the relief claimed for?*
- iv) *Relief?*

5. After framing of issues, respondent No.1 produced PW-1 Rukhsana Khan, PW-2 Saifullah and respondent No.1 recorded her statement. The Family Court provided several opportunities to the

petitioner to produce evidence and record his statement, but the petitioner did not comply with the court's order; as such, his right of evidence was struck off vide order dated 04.10.2022.

6. The Family Court heard the arguments of learned counsel for the parties and decreed the suit vide judgment and decree dated 10.10.2022 (hereinafter referred to as "**impugned judgment and decree**").

7. The petitioner, feeling aggrieved, filed Family Appeal No.19/2022 before the learned Additional District Judge-VI, Quetta (hereinafter referred to as "**the appellate court**"), accompanied by an application seeking condonation of delay. The appellate court, vide order and decree dated 13.04.2023 (hereinafter referred to as "**impugned order and decree**"), dismissed the application for condonation of delay; consequently, the appeal was dismissed on account of limitation without entering into the merits of the case.

8. Learned counsel for the petitioner contended that the Family Court's impugned judgment and decree dated 10.10.2022 and the Appellate Court's order and decree dated 13.04.2023 are non-speaking, based on conjectures, and devoid of proper reasoning; that neither court examined the legal and factual aspects raised in the petitioner's written statement; that the petitioner fully discharged his marital and parental obligations, providing all necessities and emotional support to respondent No.01 and the minors. The allegations of torture and expulsion are described as false and unsubstantiated. The Family court has failed to consider the

petitioner's detailed version on record; the appellate court erred in dismissing the condonation application without proper appreciation of the reasons for the delay. The court, instead of deciding the matter on the merits, shut the door of justice by adopting a hyper-technical view; the cumulative effect of the procedural irregularities amounts to a grave miscarriage of justice.

9. Conversely, the learned counsel for the respondents contended that the petitioner was duly served, appeared before the Family court, and filed his written statement. The failure to cross-examine PW-1 was solely due to his own negligence; therefore, the court rightly proceeded further after striking off his right; that the respondent No. 01's testimony, having remained unchallenged due to the absence of cross-examination, stood corroborated. The Family court, therefore, was justified in decreeing the suit; the appeal was admittedly filed beyond the prescribed period, and the petitioner failed to furnish sufficient cause to explain the delay. The appellate court, therefore, committed no illegality in dismissing the condonation application; the constitutional jurisdiction cannot be invoked to re-appraise factual controversies or substitute concurrent findings of the courts below. Both courts acted within their jurisdiction, and the petitioner has failed to point out any violation of law or mala fide; the Family Courts Act promotes the expeditious disposal of matrimonial disputes. The petitioner's repeated delays and non-cooperation frustrated the purpose of the law, and he cannot now claim equitable relief from this Court. The instant constitutional

petition is devoid of merit and intended only to delay compliance with the decree already passed in favour of Respondents No. 1 to 3.

10. We have heard the learned counsel for the parties and perused the available record, which indicates that the petitioner was duly served and actively participated in the proceedings before the Family Court by filing his written statement. However, despite being afforded several opportunities, including imposition of costs, he consistently failed to cross-examine PW-1 and PW-2. The petitioner did not cooperate with the Family Court's proceedings and delayed them without any cogent reason. His conduct reflects persistent reluctance and negligence. Consequently, the Family Court was fully justified in striking off his right of cross-examination and proceeding further in accordance with law. Similarly, the memo of appeal filed before the appellate court explicitly demonstrates that the petitioner was fully aware of the proceedings and the passing of the impugned judgment and decree. Nonetheless, the appeal was filed with a delay of one month and twenty-seven days, for which no plausible or convincing justification was furnished. The reasons advanced in the condonation application were vague, unsupported by any material, and insufficient to constitute "sufficient cause" within the meaning of law, particularly when the petitioner was represented by counsel throughout. The appellate court, therefore, committed no illegality in dismissing the application for condonation of delay and, as a necessary corollary, the appeal. The petitioner has been unable to identify any jurisdictional defect, legal infirmity, or violation of law

committed by either of the courts below. The findings of both courts are based on the material on record and do not suffer from perversity or misreading/non-reading of evidence.

11. It is a settled law that the constitutional jurisdiction of this Court under Article 199 cannot be invoked to re-appraise evidence, disturb concurrent findings of fact, or provide a substitute for statutory remedies. The Hon'ble Supreme Court in the case titled M. Hamad Hassan v. Mst. Isma Bukhari & 2 Others (2023 SCMR 1434) has reaffirmed that where a litigant remains negligent, fails to avail opportunities before the Family Court, or approaches appellate forums belatedly without sufficient cause, such a party cannot seek equitable relief through constitutional jurisdiction. The Apex Court has further held that constitutional petitions cannot be used to circumvent statutory limitations or revive time-barred proceedings.

12. In the present case, the petitioner's conduct throughout the proceedings has been marked by indifference, delay, and lack of diligence. Having failed to avail his lawful opportunities at the proper forum and having approached the appellate court belatedly without a satisfactory explanation, the petitioner cannot now seek refuge under the constitutional jurisdiction of this Court. The petition is, therefore, not maintainable.

For the above reasons, C.P. No. 644 of 2023, being bereft of merit, is dismissed.

Announced in open Court:
Quetta, on 29th November, 2025

Judge

Judge.

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