

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**(JUDICIAL DEPARTMENT)**

**Writ Petition No. 206 of 2021**

Akbar Din

Versus

Additional District Judge (West), GBV Court Islamabad and others.

<b>S.No. of order/ proceeding</b>	<b>Date of order/ proceeding</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
(07)	26.08.2021	Syed Amir Kazmi, Advocate for the petitioner. Malik Mazhar Javeed, Advocate for the respondents No. 3 and 4 / applicant.

**C.M. No. 3216 of 2021.**

This is an application seeking recalling of order dated 06.04.2021 passed by this Court, whereby applicants / respondents No. 3 and 4 were ordered to be proceeded as ex-parte.

02. Learned counsel for the petitioner present before the Court has made statement that he has no objection if the application is allowed.

03. In view of above statement, instant C.M. is allowed and the order dated 06.04.2021 passed by this Court is recalled.

**Main Case.**

Through the instant writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the legality and validity of order and decree dated 02.11.2019 passed by the learned Judge Family Court, West-Islamabad as well as judgment and decree dated 23.12.2020 passed by the learned Additional District Judge, West-Islamabad.

02. Succinctly, stated the facts mentioned in the writ petition are that the respondents No. 3 and 4 filed a suit for 'Recovery of Maintenance, Dower and Dowry Articles' before learned Judge Family Court, West-Islamabad in which a preliminary decree to the extent of dowry articles was passed on 27.03.2018 upon the voluntary statement of the petitioner / defendant. Thereafter, the remaining suit was contested by the petitioner by filing written statement on 28.05.2018. The pre-trial reconciliation proceedings were failed

on 29.10.2018 and learned Judge Family Court fixed the interim maintenance of the minor / respondent No. 4 @ Rs. 10,000/- per month, which the petitioner is regularly paying till date.

03. After framing of issues on 10.12.2018 matter was fixed for evidence of the respondent No. 3 / plaintiff on 12.01.2019 but adjournment was sought on behalf of respondent No. 3 / plaintiff. Affidavit in evidence was filed by the respondent No. 3 on 25.09.2019 and the matter was fixed for cross-examination upon her but she failed to appear in the witness box for cross examination, despite several opportunities. Resultantly, on 19.10.2019 last opportunity was granted to respondent No. 3 for completing the evidence and in case of failure, closure of right on 02.11.2019.

04. On 02.11.2019, respondent No. 2 without recording the 'consenting statement' of the petitioner and without any 'written settlement' between the

parties or 'any application' in lieu of request, recorded the so called settlement, passed the impugned order and decree on the basis of so called settlement which is illegal, arbitrary, without due process of law and while prejudicing the fundamental rights of the petitioner, guaranteed by the Constitution of Pakistan, 1973. Thereafter, petitioner preferred an appeal against the impugned order and decree dated 02.11.2019 passed by respondent No. 2. The same was dismissed vide judgment and decree dated 23.12.2020 passed by respondent No. 1. Being aggrieved of the order and decree dated 02.11.2019 along with the judgment and decree dated 23.12.2020, the petitioner has filed the instant writ petition.

05. Learned counsel for the petitioner *inter alia* contends that the impugned order dated 02.11.2019 passed by the learned Judge Family Court, West-Islamabad / respondent No. 2, is against the law and facts, illegal, perverse, void

ab-initio and is result of exercise of power not so vested; the same is based on material irregularity and illegality floating on the surface of record, both the impugned judgment and order have been passed against the dictums laid down by superior Courts of the country. Learned counsel has further contended that the impugned order and decree dated 02.11.2019 has imposed those liabilities upon the petitioner which he is incapable to discharge, hence the same has prejudiced the right to life and liberty of the petitioner as enshrined under Article 9 of the Constitution of Pakistan, 1973; the procedure adopted by respondent No. 2 while affecting the so called settlement was arbitrary, illegal and not in accordance with law on the subject; the right of fair trial and due process has been violated by the learned Judge Family Court; no consent of the petitioner was secured by respondent No. 2 to affect the so called settlement rather signatures on

the margins of the blank order sheet were affixed upon the directions of the Judge Family Court / respondent No. 2, the said fact can be proved by the CCTV footage of the concerned Court; the Judge Family Court has acted arbitrarily, illegally and in a hasty manner while exercising the powers not vested in it and dictated the so called settlement at its own which was not in the domain of learned Family Court; the impugned judgment and order are discriminatory against the petitioner while over-burdening him, without considering the capacity and without any material / evidence available on record and has prayed that both the judgment and order dated 23.12.2020 and 02.11.2019 passed by learned Additional District Judge / respondent No. 1 and learned Judge Family Court / respondent No. 2, respectively are liable to be set-aside.

06. Conversely, learned counsel for the respondents No. 3 & 4 has controverted the arguments made by learned counsel

for the petitioner and has stated that on 02.11.2019, matter was settled between the parties; both the parties affixed their signatures and thumb impressions on the order sheet; learned counsel for both the parties have also affixed their signatures and the order dated 02.11.2019 was passed with consent of both the parties present before the learned Judge Family Court and has prayed for dismissal of instant writ petition

07. Arguments advanced by learned counsel for the petitioner and learned counsel for the respondents No. 3 & 4 have been heard and the documents, placed on record have been examined with their able assistance.

08. Order sheet dated 02.11.2019 categorically shows that the petitioner and respondent No. 3 / ex-wife of the petitioner affixed their signatures and thumb impressions on the order sheet. Learned counsel for both the parties have also affixed their signatures and it was

mentioned in the order that the matter has been settled between the parties, wherein the terms are mentioned in detail regarding the payment of maintenance, dower amount, visitation schedule etc.. On the basis of settlement between the parties, order and decree dated 02.11.2019 was passed by the learned Judge Family Court, Islamabad and on the basis of the consenting impugned order and decree passed by the Judge Family Court, the appeal of the petitioner was dismissed by the Court of learned Additional District Judge-West, Islamabad vide Judgment and decree dated 23.12.2020.

09. As far as the arguments of learned counsel for the petitioner that the learned Judge Family Court obtained the signatures of the parties on the blank order sheet and subsequently passed the order without their consent, the alleged act of the Judge Family Court amounts to mis-conduct. When the learned counsel



for the petitioner was confronted, whether the petitioner has filed any complaint against the Judge Family Court before the Hon'ble Chief Justice of this Court, learned Member Inspection Team or District and Sessions Judge that order dated 02.11.2019 was not passed with the mutual consent of the parties and signatures / thumb impressions were obtained on a blank paper, learned counsel for the petitioner denied and stated that no such complaint was ever filed against the Judge Family Court, Islamabad, West-Islamabad by the petitioner.

10. Presumption of truth is attached to the judicial proceeding and according to record of the learned Trial Court impugned order and decree was passed with the consent of the parties.

11. As this Court is the Court of equity and Petitioner for equitable relief was supposed to put-forth some convincing

materials which would have justified filing of the instant writ petition.

12. Inference can be drawn from Section 96(3) of the C.P.C. For ease of reference it is produced below:

**“96. Appeal from original decree.---**

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**(3) No appeal shall lie from a decree passed by the Court with the consent of parties.”**

A perusal of this provision reveals that consent decrees are not appealable.

13. It is trite that in order to get discretionary and equitable relief, the parties should approach to the Courts with clean hands. Reference in this regard may be made to the following case laws:-

(i) In a case titled as **“Shafgatullah and others Vs. District and Sessions Judge, Nowshera, N.W.F.P and 4 others” (2001 SCMR 274),** it has

been held as follows:-

***"It would also appear from the record that the petitioners did not approach the High Court with clean hands entitling them to the discretionary, equitable relief under the Constitutional jurisdiction".***

(ii) In a case titled as "**Manzoor Hussain and 3 others Vs. Muhammad Siddique**" (2000 **CLC 623 [Lahore]**), it has been held as follows:-

***"The grant or refusal of declaration is essentially discretionary and in this case, to my mind, the plaintiff had forfeited his right to an equitable relief by putting up a false case".***

The same principle has been laid down in cases titled as "**Shahnaz Parveen and another Vs. Javed Yaqoob and other**" (2020 **MLD 638 [Islamabad]**) and "**University of the Punjab and another Vs. Malik Jehangir Khan**" (1994 **PLC(CS) 314 [Lahore]**).

14. Further, there are concurrent findings of both the learned Courts below against the petitioner. In case of concurrent findings of the courts below, scope of the constitutional petition becomes very limited. The petitioner has failed to point out any misreading or non-reading of the evidence. It has been laid down in a case titled as **"Syed Arif Ali Sabri Vs. Abdul Samad through L.Rs. and 2 others" (2008 YLR 2309)** that:

***"When there are concurrent findings of Courts below, the scope of the constitutional petition for interference is very limited and it can only be interfered when the orders of the Courts below are fanciful or based on misreading or non-reading of the evidence".*** The same view has also been taken in a case titled as **"Sadruddin Vs. Aslam Madad Ali and others" (PLD 2008 Karachi 2005).**

15. It is well settled that certiorari is only available to quash a decision for an error of law. It will also be issued for correcting errors of jurisdiction when an

inferior Court or a tribunal acts without jurisdiction or in excess of its jurisdiction, or fails to exercise its jurisdiction or where the Court or a tribunal acts illegally in exercise of its undoubted jurisdiction and it decides a matter in violation of the principle of natural justice. The High Court while issuing a writ of certiorari acts in exercise of supervisory and not appellate jurisdiction. The High Court in exercise of its writ jurisdiction will not review the findings of facts reached by the inferior Court or a tribunal. Reliance may be made to the following case laws:

(i) In a case titled as **"Amjad Khan Vs. Muhammad Irshad (Deceased) through LRs, (2020 SCMR 2155)"**, it is held by the Hon'ble Supreme Court that:

***"It is by now a settled principle of law that the High Courts must not exercise their constitutional jurisdiction***

*in order to interfere with the discretion exercised by lower courts unless the same suffers from jurisdictional, factual or legal errors. In other words, such interference would be justified in cases where the impugned order has been passed without jurisdiction or is based on misreading or non-reading of evidence, or is not in accordance with the law. If none of these errors is present, the High Courts must not exercise their constitutional jurisdiction to interfere with the findings of lower courts merely because it reached a different conclusion as to the controversy than the latter. In this regard, reference can be made to a collective reading of Mst. Mobin Fatima v. Muhammad Yamin (PLD 2006 SC 214) and Nadira Shahzad v. Mubashir Ahmad (1995 SCMR 1419)."*

(ii) In a case titled as "President

All Pakistan Women

**Association, Peshawar Cantt**  
**Vs. Muhammad Akbar Awan**  
**and others” (2020 SCMR 260),**

it is held by the Hon'ble Supreme Court that:

***"It is settled law that when the Statute does not provide the right of appeal against certain orders, the same cannot be challenged by invoking the constitutional jurisdiction of the High Court in order to gain a similar objective. Where a Statute has expressly barred a remedy which is not available to a party under the Statute, it cannot be sought indirectly by resort to the constitutional jurisdiction of the High Court. The High Courts exercising constitutional jurisdiction must be fully cognizant and conscious of this Rule and strictly adhere to the same in the interest of advancing the policy of law and delivering expeditious justice in accordance with the law and the Constitution. Even***

***otherwise, constitutional jurisdiction is equitable and discretionary in nature and should not be exercised to defeat or bypass the purpose of a validly enacted statutory provision."***

(iii) In a case titled as **"Chief Executive MEPCO and others Vs. Muhammad Fazil and others" (2019 SCMR 919)**, it is held by the Hon'ble Supreme Court that:

***"Where the Court or the Tribunal has jurisdiction and it determines specific question of fact or even of law, unless patent legal defect or material irregularity is pointed out, such determination cannot ordinarily be interfered with by the High Court while exercising jurisdiction under Article 199 of the Constitution."***

(iv) In a case titled as **"Chairman, NAB Vs. Muhammad Usman and others" (PLD 2018 SC 28)**, it is



held by the Hon'ble Supreme Court  
that:

***"The powers of judicial review vested in High Court under Article 199 of the Constitution is no doubt a great weapon in the Judge's hands however, the same shall not be exercised in a case where discretion is exercised by the subordinate court/Tribunal in a fair and just manner without violating or disregarding statutory provision of law, likely to occasion the failure of justice. Ordinarily such extraordinary jurisdiction shall not be exercised at random and in routine manner". The following case law is reproduced for the guidance of the learned Judges of the High Court for future course of action: (i) Brig. (Rtd.) Imtiaz Ahmed v. Government of Pakistan, through Secretary, Interior Division, Islamabad (1994 SCMR 2142), (ii) Shahnaz Begum v. The Hon'ble***

***Judges of the High Court of Sindh and Balochistan (PLD 1971 SC 677), (iii) Malik Shaukat Ali Dogar v. Ghulam Qasim Khan Khakwani (PLD 1994 SC 281).***

(v) In a case titled as **"Shajar Islam Vs. Muhammad Siddique and 2 others"** (PLD 2007 SC **45**), it is held by the Hon'ble Supreme Court that:

***"The High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the findings on the controversial question of facts based on evidence even if such finding is erroneous. The scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of misreading or non-reading of evidence or if the finding is based on no evidence which may cause miscarriage of justice but it is not proper for the High Court to disturb the finding of fact***

***through reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as a substitute of revision or appeal”.***

16. Status of impugned order and decree was that of consent decree, which was not appealable, no illegality as well as jurisdictional error was pointed out in the impugned order and judgment warranting interference by the High Court in exercise of extra ordinary constitutional jurisdiction. Reliance is place upon the cases reported as **2021 SCMR 431, PLD 2007 SC 343, 1989 SCMR 1826, 2017 CLC Note 55 and 2002 CLD 1761.**

17. For what has been discussed above, the order and decree dated 02.11.2019 passed by the learned Judge Family Court, West-Islamabad as well as judgment and decree dated 23.12.2020 passed by the learned Additional District Judge, West-Islamabad are in accordance with law and facts of the matter and do not require any interference by this Court. The writ petition is not maintainable, hence

**dismissed** being meritless with no order  
as to costs.

**(TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE**

Bilal /-