

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.4059-2022

Asjad Mehmood

Versus

Learned Addl. District Judge Islamabad & 2 others

Petitioner by : Mr Muhammad Mansoor Abbasi, Advocate.

Respondents by : Mr Jameel Hussain Qureshi, Advocate.
Mr Nawazish Gondal, Advocate.

Date of Hearing : **15.03.2023.**

Arbab Muhammad Tahir, J.- The petitioner, through this constitutional petition, has assailed judgments and decrees, dated 22.12.2021 and 25.05.2022, passed by the learned Judge Family Court and the learned Additional District Judge, Islamabad (West), Islamabad.

2. Succinctly, the facts are that the petitioner and respondent No.3 (Ghazala Asjad) got married on 23.09.1992. They lived happily until 2012, when the petitioner, being civil servant, was transferred from Islamabad to Karachi. On 30.07.2019, respondent No.3 instituted a suit seeking dissolution of marriage and recovery of past and future maintenance till iddat period. The plaintiff sought the decree of dissolution of marriage on two grounds, i) failure on part of the petitioner to pay maintenance since 2014 and, ii) second marriage of the petitioner without her consent in contravention of the Muslim Family Laws Ordinance, 1961. The petitioner joined the proceedings before the learned Family Court and contested the suit by way of filing of written statement. The learned trial court after framing of issues and recording of evidence of the plaintiff and the defendant, decreed

the suit vide judgment and decree, dated 22.12.2021. The petitioner preferred an appeal, which was dismissed by the learned Additional District Judge vide judgment and decree, dated 28.05.2022, hence this petition.

3. The learned counsel for the petitioner has argued that; the impugned judgments and decrees have been passed by misreading and non-reading the evidence available on record; the petitioner had divorced respondent No.3 in 2012; the evidence with regard to divorce has been misread; the maintenance fixed by the learned Family Court after the divorce has been pronounced is illegal; the dower was paid to respondent No.3; the maintenance fixed by the learned courts below is exorbitant; the petitioner is no more in service and has retired.

4. On the other hand, the learned counsel for respondent No.3 has argued that; although the learned Family Court has partially decreed the amount of maintenance, however, the judgments and decrees are well reasoned; the petitioner failed to prove the stances taken by him during trial; the defense of the petitioner that he had divorced respondent No.3 could not be proved; the petitioner could not show on the basis of record that he maintained the defendant during the period of desertion; the petitioner had contracted a second marriage without consent of respondent No.3; the petitioner could not prove that he had paid the amount of dower to respondent No.3.

5. Heard. Record perused.

6. The petitioner has challenged concurrent judgments and decrees through the instant constitutional petition. The suit was filed in the year 2019 by the first wife of the petitioner for dissolution of marriage on the grounds of failure to pay maintenance since 2014 and that the petitioner had contracted second marriage without her consent in contravention of the Muslim Family Laws Ordinance, 1961. Respondent No.3 had also sought past maintenance till the period of

iddat as well as payment of dower. In order to refute the grounds for dissolution of marriage, the petitioner attempted to make out a case that he had divorced respondent No.3 in the year 2012. However, neither such disclosure was made in his written statement nor any document to establish such fact was annexed therewith. He tried to improve his case by placing on record the divorce deed while adducing documentary evidence and filed an application for producing two marginal witnesses in support of this claim, out of which only one i.e. DW-2 recorded his statement. The marginal witness i.e. DW-2, also did not endorse the stance taken by the petitioner. The question whether respondent No.3 was entitled to claim past maintenance was linked to the determination of the fact of divorce in 2012 as claimed by the petitioner. The evidence brought on record by respondent No.3 is consistent with regard to the fact that the marriage remained intact and the petitioner never pronounced divorce till filing of the suit. The second marriage contracted by the petitioner is admitted and his failure to maintain the plaintiff/respondent No.3 stood proved through cogent evidence. The petitioner could not prove on the basis of record that he had maintained respondent No.3 during the period of desertion i.e. from 2014. He also failed to bring on record any evidence that he had paid the amount of dower to respondent No.3 during subsistence of the marriage. The reasoning of the learned trial court and upheld by the learned court of appeal in respect of dissolution of marriage, determination of maintenance and dower are in accordance with law.

7. The power of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to interfere with concurrent findings of the learned courts below is, therefore, limited to the inquiry whether the learned courts below have acted or undertaken the proceedings in accordance with law. It is, therefore, settled law that a writ of certiorari cannot be used as a substitute of appeal or revision as its scope is limited. Reliance is placed on the cases titled "*Rahim Shah v. The Chief Election Commissioner of Pakistan and another*" [PLD 1973

Supreme Court 24] and "*Muhammad Azim Khan Afridi v. The President of Pakistan through Principal Secretary and others*" [2023 SCMR 68].

8. For what has been discussed above, no legal infirmity could be pointed out so as to interfere with the concurrent findings of the courts below. The instant petition is without merit and is, therefore, accordingly dismissed.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in the open Court on _____

JUDGE