

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.1675 of 2015

Muhammad Adeel Javaid
Versus
Judge Family Court and another

Petitioner by	:	Mr. Yasir Memhmood, Advocate.
Respondents by	:	Mr. Noman Ameen Farooqi, Advocate
Date of Hearing	:	26.09.2022

ARBAB MUHAMMAD TAHIR,J.:- Through the instant writ petition, petitioner namely Adeel Javed (*defendant in main suit*) impugns orders dated 16.02.2013, 11.09.2014 and 08.05.2015, passed by the learned Judge Family Court, Islamabad (East).

02. Vide 1st order, right of the petitioner to cross-examine the plaintiff/PW was struck-off in following terms:-

“16.02.2013. Case called. Plaintiff is present alongwith her counsel. Today matter was fixed for cross-examination of plaintiff but neither defendant appeared nor did his counsel appear. Therefore, the right of defendant to cross-examine the plaintiff/PW is struck off. Adjourned to 25.03.2013 for documentary evidence as well as evidence of defendant.”

03. For recalling of the order *ibid*, petitioner filed an application which was dismissed due to his non-appearance vide order dated 25.09.2013. However, on the subsequent date of 24.02.2014, it was allowed subject to payment of costs of Rs.500/-. The respondent No.2 namely *Mst. Hina Sadiq (hereinafter to be referred as ‘respondent’)* then filed an application for setting aside order dated 20.02.2014, which was allowed vide order dated 11.09.2014, inter alia, observing that “*due to concealment of learned counsel for defendant, court presumed that learned counsel*

for the applicant/plaintiff gave his no objection after recalling order dated 16.02.2013.” The matter was then set for hearing of application for recalling of order dated 16.02.2013 and vide order dated 08.05.2015, the application for recalling of order dated 16.02.2013 was dismissed, hence instant writ petition.

04. Learned counsel for the petitioner argued that as per the dictums laid down by the superior courts, the cases should be decided on merits instead of technical knockout; that before resorting to penal action, no coercive measures were adopted and the right of the petitioner to cross-examine the plaintiff was straightaway closed; that the impugned action is violative of principle of fair trial envisaged in Article 10-A of the Constitution; that there was no deliberate omission regarding non-appearance on the part of the petitioner; that right of cross-examination being a precious right could not be taken lightly particularly when there is no express provision to close the said right under the West Pakistan Family Court Act, 1964 (**‘Act of 1964’**) and that under the principle of natural justice and fair trial, petitioner should be afforded an opportunity to cross-examine the respondent and her witnesses in order to decide the case on merits. Learned counsel fortified his submissions by placing reliance upon case law reported as 2006 SCMR 789, 2016 SCMR 2082, PLD 1969 SC 270, PLD 1973 SC 222, 1990 CLC 703, 2001 YLR 2415, PLJ 2004 Lahore 1080, 2022 YLR 293 and 2022 CLC 953.

05. On the other hand, learned counsel for the respondent repelled the above submissions by placing on record written synopsis-arguments and also argued the case at length, gist whereof had been that the conduct of the petitioner throughout the proceedings debars him to ask for setting aside of the impugned order; that the proceedings remained at-halt for more than a decade in a suit which otherwise is to be decided within six months; that the application of the petitioner did not contain any plausible

reason; that the petitioner attempted to mislead the court and that the conduct of the petitioner debars him to ask for extra ordinary relief under constitutional jurisdiction. Learned counsel relied upon case law reported as 2014 SCMR 1365, 2014 CLC 715, 2021 CLC 270, 2010 YLR 308, 2013 CLC 32, 2004 CLC 703 and 2010 YLR 336.

06. Hear, record perused.

07. The parties are in contest over claim of the respondent for the *recovery of dower amount besides 10 tola gold ornaments, dowry articles and maintenance allowance*, agitated through suit filed on 15.10.2011. After notice, the petitioner filed written statement on 13.03.2012 and the issues were framed on 20.03.2012.

08. As per the “FACTUAL BACKGROUND” contained in written submissions placed on file by the learned counsel for the respondent after framing of issues on 20.03.2012, the case was adjourned for about 11 times i.e. 14.04.2012, 28.04.2012, 02.06.2012, 16.07.2012, 08.09.2012, 15.09.2012, 02.10.2012, 02.11.2012, 04.01.2013, 15.01.2013 and 26.01.2013 respectively. On three dates, the proceedings could not be conducted either on account of a Conference or due to non-availability of the Presiding Officer while once the case was transferred and entrusted to the Court of Senior Civil Judge (East) while on rest of the dates, notice *pervi* were issued either to the parties or to the petitioner.

09. According to the petitioner, on the date 16.01.2013 (before the crucial date of 16.02.2013), petitioner was cautioned to cross-examine the witnesses on the next date otherwise the right to cross-examination will be closed. In order to appreciate this stance of the petitioner contained in written arguments at page No.5, the proceedings conducted by the learned Trial Court available on record has been perused whereby it reveals that the stance of the respondent that the court had specifically directed the petitioner to

cross-examine the witnesses or else his right of cross-examination will be closed, is misconceived as no such caution is available in order dated 26.01.2013 wherein it was mentioned that “*counsel for the defendant is directed to cross-examine the PW on the next date of hearing of case. Adjourned to 16.02.2013 for evidence of the plaintiff.*”

10. As mentioned above, there was no specific notice to the petitioner that in case of his failure to cross-examine the plaintiff or her witnesses, his right of cross-examination will be struck off. In addition, no coercive measures like imposition of cost and provision of absolute last opportunity were adopted by the learned Trial Court which, if seen in context of nature of the claim set for in plaint and counter response contained in written statement, was essential. The mischief on the part of the petitioner is not of such a caliber that could be made basis to permanently preclude him from contesting the claim of the respondent whereby she sought decree for recovery of Rs.5-Lac as dower amount, Ten Tola Gold Ornaments, Rs.3-Lac in lieu of dowry articles along with interest 12% per annum from the date of marriage till realization of the amount, past maintenance at the rate of Rs. 20, 000/- per month from June, 2011 till filing of suit at the rate of Rs. 20,000/- and present and future maintenance at the same rate with increase at the rate of 15% per annum.

11. The proceedings of the Family Court, whether it be a Trial Court or an Executing Court, are governed by the principles of equity, justice and fair play as laid down by the Hon’ble Apex Court in case of “Haji Muhammad Nawaz v Samina Kanwal”(2017 SCMR 321).

12. A Family Court is a quasi-judicial forum, which could draw and follow its own procedure, provided such procedure is not against the principles of fair hearing and trial. Reliance is placed upon “Muhammad Tabish Naeem Khan v Additional District Judge Lahore & other” (2014 SCMR 1365). The Code of Civil Procedure except Sections 10 & 11 is not applicable but the Judge Family Court is not debarred to follow the principles of the Code 1908 and could also draw and follow its own procedure provided the same is not against the principles of fair hearing and trial. Right to fair trial is a fundamental right envisaged in Article-10-A of the Constitution. In the present case, as observed above, the Family Court should take into consideration the peculiar facts and circumstances of the case besides the claim and counter response and before taking penal action, should have adopted coercive measures and could also burden the petitioner with the costs in order to evaporate apprehension of causing prejudice to the rights of any of the parties, before closing right to cross-examine the respondent and her witnesses which if left unattended would amount to negation of principle of nature justice, equity and fair play, the principles on the basis of which, the proceedings of Family Court rest as laid down in the case of Haji Muhammad Nawaz supra.

13. The impugned orders, in the backdrop of facts and circumstances highlighted above, are not legally sustainable. It is necessary to mention that the parties are in contest in a suit under the Family Court Act, 1964 (W.P. XXXV of 1964) (‘Act of 1964’) which warrants expeditious disposal as for the purpose, provisions of *Quanun-e-Shahadat Order 1984 (P.O. No.10 of 1984)* and the *Code of Civil Procedure* except Sections 10 and 11 have been excluded to achieve the legislative intent. A specific timeframe of six months has been provided for the decision of a case under the Act of 1964 in terms of Section 12(A) of the Act of 1964 while

period of four months is stipulated under Section 14(A) of the Act of 1964 for decision of an appeal.

14. In view of above, instant writ petition is **allowed**, impugned orders dated 16.02.2013, 11.09.2014 and 08.05.2015, are set aside and the petitioner is afforded an opportunity to cross-examine the respondent and her witnesses subject to payment of costs of Rs. 10, 000/- to be paid to the respondent.

15. Before parting with the order, it is deemed necessary to mention that the suit was filed in October, 2011 and is still at the stage of recording evidence of the parties which is to be decided within a period of six months in terms of Section 12(A) of the Act of 1964, therefore, **the learned Trial Court shall make every endeavour to conclude the trial of the subject case expeditiously and decide the same at the earliest.** Copy of this order be sent to the learned Trial Court for compliance.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on ____10.2022.

JUDGE

//Kamran//