

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Writ Petition No. 2370 of 2022

Bakhsheesh Elahi

Versus

Mst. Fouzia Yaqoob and another.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(01)	24.06.2022	Mr. Waqar Haider Shah, Advocate for the petitioner.

The petitioner has filed the instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, by assailing the impugned order dated 24.02.2022, passed by learned Senior Civil Judge-III (Guardian Judge), West-Islamabad, whereby right of cross-examination of petitioner was closed at the cost of Rs. 10,000/-.

02. Succinctly stated facts of the case are that the respondent No. 1 filed a suit for recovery of maintenance allowance, dower, gold ornaments and dowry articles, petitioner filed written statement and

issues were framed. The respondent No. 1 appeared along with her witness but no one turned up on behalf of petitioner, so his right of cross-examination was closed by learned Senior Civil Judge-III (Guardian Judge), West-Islamabad, at the cost of Rs. 10,000/- vide impugned order dated 24.02.2022.

03. Learned counsel for the petitioner, *inter alia*, contends that law always favours adjudication on merit rather than technicalities; it is a fundamental and legal right of the petitioner to cross-examine the witness produced by respondent No. 1; valuable rights of the petitioner have been jeopardized, as learned trial Court cannot render just and fair decision without providing opportunity of cross-examination to the petitioner.

04. Arguments heard, record perused.

05. The family suit was filed in the Court of learned Senior Civil Judge / Family Judge, West-Islamabad on 31.10.2020. On 16.12.2020, counsel for the petitioner

appeared and submitted his Vakalatnama and the case was adjourned for submission of written statement on 11.01.2021. Thereafter almost nine (09) opportunities were provided to the petitioner for submission of written statement but the petitioner delayed the matter on one pretext or the other. Costs were imposed, last and final opportunity was provided and finally the petitioner was proceeded against ex-parte on 08.06.2021.

06. Learned Senior Civil Judge-III (Guardian Judge), West-Islamabad recorded ex-parte evidence of respondent No. 1 along with her witness as PW-1 & PW-2 on 29.06.2021.

07. Petitioner moved a petition for setting aside ex-parte order dated 08.06.2021, which was allowed on 26.07.2021, subject to cost of Rs. 1,000/-. Thereafter the case was adjourned for 07.09.2021 for submission of written statement. On 07.09.2021, the case was adjourned for 15.09.2021 for submission of

written statement with last and final opportunity. On 15.09.2021 written statement was not filed and the case was adjourned for 28.09.2021, again on 28.09.2021 written statement was not filed and the case was adjourned for 09.10.2021.

08. On 09.10.2021 written statement was not filed and lastly the petitioner had filed written statement on 12.10.2021 i.e. after more than 10 months of his appearance in the family suit.

09. Issues were framed on 16.11.2021 and the case was adjourned for recording of evidence of respondent No. 1 / wife. On 30.11.2021, learned counsel for the respondent No. 1 gave statement that she will rely on ex-parte evidence already recorded on 29.06.2021 and the case was adjourned for 09.12.2021 for cross-examination on witnesses of respondent No. 1. On 08.01.2022 respondent No. 1 along with her witness was present but associate of learned counsel for the

petitioner was requested for an adjournment. Again on 09.02.2022, respondent No. 1 / wife of the petitioner along with her witness appeared but no one appeared on behalf of petitioner / defendant and the case was adjourned for 24.02.2022 for cross-examination. Learned Senior Civil Judge-III (Guardian Judge), West-Islamabad has mentioned that if the cross examination is not conducted on 24.02.2022, right to cross-examine will be closed.

10. On 24.02.2022, respondent No. 1 / wife of the petitioner along with witness was present, the case was called time and again but no one turned up on behalf of petitioner, hence the right of cross-examination of petitioner / defendant was closed at the cost of Rs. 10,000/- and the case was adjourned for the petitioner / defendant's evidence.

11. The above mentioned facts clearly show that the petitioner / defendant was deliberately delaying the matter on one

pretext or the other, respondent No. 1 / wife appeared in the trial Court on many dates for recording of her evidence as well as for cross-examination but learned counsel for the petitioner neither cross-examined respondent No. 1 nor her witness.

12. This conduct clearly shows that the petitioner is trying to cause inconvenience, insult and embarrassment to respondent No. 1. According to the contents of plaint, respondent No. 1 is still his wife, the petitioner has contracted the second marriage and is delaying the matter just to give her mental torture.

13. In Civil Procedure Code, 1908, prescribed time for filing of written statement is provided as thirty (30) days and the consequences of not filing of written statement within stipulated period of time is provided in Order VIII Rule 10 C.P.C.

14. In the instant case many opportunities were provided to the

petitioner for conducting cross-examination upon the respondent No. 1 and her witness. The August Supreme Court of Pakistan in a case titled as **Moon Enterpriser CNG Station, Rawalpindi Vs. Suit Northern Gas Pipelines Limited, through General Manager, Rawalpindi and another (2020 SCMR 300)**, while dealing with a similar question of law pertaining to application of Order XVII Rule 3 C.P.C has, in unequivocal terms, held that:

"In our view it is important for the purpose of maintaining the confidence of the litigants in the court systems and the presiding officers that where last opportunity to produce evidence is granted and the party has been warned of the consequences, the court must enforce its order unfailingly and unscrupulously without exception. Such order would in our opinion not only put the system back on track and reaffirm the majesty of the law but also put a check on the trend of seeking multiple adjournments on frivolous grounds to prolong and

delay proceedings without any valid or legitimate rhyme or reason. Where the Court has passed an order granting the last opportunity, it has not only passed a judicial order but also made a promise to the parties to the lis that no further adjournments will be granted for any reason. The Court must enforce its order and honour its promise. There is absolutely no room or choice to do anything else. The order to close the right to produce evidence must automatically follow failure to produce evidence despite last opportunity coupled with a warning. The trend of granting (Akhri Mouqa) then (Qatai Akhri Mouqa) and then (Qatai Qatai Akhri Mouqa) make a mockery of the provisions of law and those responsible to interpret and implement it. Such practices must be discontinued, forthwith".
(Emphasis supplied)

Reliance is also placed on a case titled as **Rana Tanveer Khan Vs. Naseer Ud Din and other (2015 SCMR 1401).**

15. It is mentioned in Section 14(3) of the West Pakistan Family Courts Act, 1964 that:

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

16. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as **Syed Saghir Ahmad Naqvi Vs. Province of Sindh (1996 SCMR 1165)**,

that:

The statute excluding a right of appeal from the interim order cannot be passed by bringing under attack such interim orders in Constitutional jurisdiction. The party affected has to wait till it matures into a final order and then to attack it in the proper exclusive forum created for the purpose of examining such orders."

Reliance is also placed on cases reported as **1976 SCMR 450 and 2020 SCMR 260.**

17. 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. Reliance is placed on the following case laws:

*i. **Amjad Khan Vs. Muhammad Irshad (Deceased) through LRs, (2020 SCMR 2155).***

*ii. **President All Pakistan Women Association, Peshawar Cantt Vs. Muhammad Akbar Awan and others (2020 SCMR 260).***

*iii. **Chief Executive MEPCO and others Vs. Muhammad Fazil and others (2019 SCMR 919).***

*iv. **Chairman, NAB Vs. Muhammad Usman and others (PLD 2018 SC 28).***

*v. **Syed Saghir Ahmad Naqvi Vs. Province of Sindh (1996 SCMR 1165).***

*vi. **Mumtaz Hussain alias Butta Vs. Chief Administrator of Augaf, Punjab (1976 SCMR 450).***

18. Learned counsel for the petitioner has failed to point out as to how the impugned order dated 24.02.2022, passed by learned Senior Civil Judge-III (Guardian Judge), West-Islamabad was the consequence of an error of law or without jurisdiction or in excess of jurisdiction.

19. In view of the above prospective, instant writ petition has no merits and the same is **dismissed in limine.**

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal /-