

Form No: HCJD/C-121

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Writ Petition No. 550 of 2021

Rehan Khalid

Versus

Mst. Uzma Nawaz and others.

Petitioner by: Mr. Danish Mumtaz,
Advocate.

Respondents No. 1 Sheikh Muhammad Khizar
& 2 by: Ur Rashid, Advocate.

Date of Decision: **26.07.2021.**

TARIQ MEHMOOD JAHANGIRI, J:

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 judgment and decree dated 22.04.2019 passed by the learned Civil Judge / Judge Family Court West-Islamabad as well as judgment and decree dated 04.11.2019 passed by the learned Additional District Judge, West-Islamabad.

02. Brief facts of the case are that the respondents Nos. 1 and 2 filed a suit for

recovery of maintenance, dowry articles and gold ornaments in the Court of learned Judge Family Court, West-Islamabad against the petitioner. The suit was contested / defended by the petitioner, issues were framed, evidence of parties was recorded and the suit filed by the respondents No. 1 and 2 was decreed vide impugned judgment and decree dated 22.04.2019, by the learned Civil Judge / Judge Family Court, West-Islamabad, whereby the respondent No. 2 (Rida Rehan) minor was found entitled for recovery of maintenance allowance @ Rs. 15,000/- per month from June 2014 till October 2018, and was also found entitled for recovery of maintenance allowance @ Rs. 30,000/- per month from November 2018 till her legal entitlement. Maintenance allowance from June 2015, was also subject to 10% annual increase. Being aggrieved by the impugned judgment and decree, the petitioner filed an appeal which was dismissed vide ex-parte judgment and decree dated 04.11.2019 passed by learned Additional District Judge, West-Islamabad, hence the instant writ petition.

03. Learned counsel for the petitioner *inter alia* contends that the impugned judgments and decrees suffer from grave illegality hence not tenable in the eyes of law and are liable to be set aside; the impugned judgments and decrees are perverse, illegal, unlawful and against law and facts of the case; learned lower Courts have failed to appreciate the real facts of the case and passed the impugned judgments and decrees in a hasty manner and has prayed for setting aside of concurrent findings rendered by both the lower Courts.

04. On the other hand, learned counsel for the contesting respondents No. 1 and 2 has controverted the arguments raised by the learned counsel for the petitioner and has stated that both the impugned judgments and decrees have been passed in accordance with law; that impugned judgment and decree dated 04.11.2019 passed by the learned Additional District & Sessions Judge, West-Islamabad and judgment and decree dated 22.04.2019 passed by Civil Judge / Judge Family Court, West-Islamabad have been challenged through the instant writ petition filed on 10.02.2021, which

is badly hit by the principle of latches. He further contends that the maintenance has been awarded to the minor / respondent No. 2, strictly in accordance with law and as well as according to the evidence produced by the parties during the course of trial and has prayed for dismissal of instant writ petition.

05. Arguments advanced by learned Counsel for the parties have been heard and record has been perused with their able assistance.

06. It is admitted that impugned judgment and decree was passed by the appellate Court / Additional District Judge, West-Islamabad on 04.11.2019 whereby instant writ petition has been filed on 10.02.2021 i.e. after the delay of more than 01 year and 3 months which is badly barred by time and hit by principle of latches.

07. 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 the filing of this petition after considerable delay. As it is well settled principle of equity that only vigilant not the indolent is to get the relief from Court of equity or law respecting his right which has been

violated or infringed. Petitioner could not satisfy this Court as to why he remained in deep slumber for such a long period for realization of his legal rights before this Court which he alleges to have been violated by the respondent / plaintiff.

08. In a case titled as **"Ahmed and 25 others Vs. Ghama and 5 others" (2005 SCMR 119)**, it is held by the Hon'ble Supreme Court of Pakistan that:

"There is no cavil with the proposition that existence of laches is sufficient for dismissal in limine of petition". It

is further held that:

"We have absolutely no hesitation in our mind that the petitioners failed to pursue their case vigilantly, vigorously and woke up from the deep slumber after 108 days which cannot be ignored without sufficient justification which is badly lacking in this case".

The same principle is followed in cases reported as **"2016 SCMR 183, PLD 2016 SC 872, 2019 SCMR 1720 and PLD 2016 SC 514"**.

09. Further, there are concurrent findings of both the learned Courts below against the petitioner. In case of concurrent finding of the courts below, the 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 case titled as **"Syed Arif Ali Sabri Vs. Abdul Samad through L.Rs. and 2 others"** **(2008 YLR 2309)** that:

"when there is 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).**

10. 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".

11. For what has been discussed above, the judgments and decrees passed by the learned courts below are in accordance with law and facts of the matter and do not require interference by this Court. The writ petition is **dismissed** with no order as to costs.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Approved for reporting.

Bilal /-