

JUDGMENT

MOHSIN AKHTAR KAYANI, J.--Through the instant writ petition, the petitioner seeks setting aside of the order dated 06-01-2016, passed by learned Judge Family Court (West) Islamabad and also prays for dismissal of suit filed by respondent No.1.

2. Succinctly, the petitioner has mentioned in his petition, that respondent No.1 was married with Bilal Fazil who is the real son of the present petitioner. However, the relation between the parties became strained and respondent No.1 was divorced vide certificate of divorce dated 11-03-2013. Respondent No.1 filed a suit for recovery of maintenance allowance, dower and dowry articles against Bilal Fazil and Mst. Shahida Fazil (the present petitioner). The said suit was contested by the present petitioner/defendant. While filing the written statement, Bilal Fazil/defendant No.1 raised the preliminary objection that the plaintiff (respondent No.1) has not filed these proceedings rather the same have been initiated by the mother of Mst. Hina Tahir (respondent No.1). On 29-10-2014, Mst. Farhat Nigar real mother of respondent No.1 appeared as witness of the plaintiff and filed her affidavit in evidence claiming to be the special attorney of respondent No.1/plaintiff executed on 26-09-2012. However, on 23-04-2015 respondent No.1 filed the application for amendments in the plaint wherein, it was also mentioned that inadvertently while drafting the plaint in the title the words "through Ms. Farhat Nigar the General Attorney and biological mother of the Plaintiff" are missing. The said application was contested by the present petitioner however, vide impugned order dated 06-01-2016 the learned Judge Family Court (West) Islamabad accepted the said application, hence, the instant writ petition.

3. Learned counsel for the petitioner has argued that the impugned order is completely against the settled principles of law; that precise objection was taken by the petitioner in respect of maintainability of the suit; that special power of attorney for filing the suit was produced at the time of evidence; that Mst. Farhat Nigar admitted in her cross-examination admitted that no specific permission was granted to her for filing of the suit by the plaintiff. Learned counsel for the petitioner has relied upon PLD 2012 (Lahore) 420, 2014 CLC 11 (Lahore), 2015 YLR 2364 (Sindh) and 2003 YLR 3309 (Karachi).

4. Conversely, learned counsel for respondent No.1 has argued that the order dated 06-01-2016 does not suffer from any legal infirmity and it is well within four corners of law. Learned counsel has further argued that instant writ petition is not maintainable against the interim order passed by the learned Judge Family Court (West) Islamabad. Learned counsel has relied upon PLD 1973 Supreme Court 236, PLD 1974 Supreme Court 139, 2011 CLC 417, PLD 1973 Supreme Court 49, 2011 CLC 1836 (Lahore) and 2012 CLC 679 (Lahore).

5. I have heard learned counsel for the parties and perused the record.

6. From the perusal of record it reflects that respondent No.1 through an application had sought for insertion of following of words in the plaint:--

"(i) In the title of the plaint the words "through Ms. Farhat Nigar the General Attorney and real biological mother of the plaintiff".

(ii) To replace the amount Rs.4100,000/- by Rs.3,80,000/- in para 2 of the plaint and

(iii) In para No.14 the word "Kingston" to be replaced by word "King Hospital."

Learned Judge Family Court (West), Islamabad accepted the said application vide order dated 06-01-2016.

7. From the perusal of record and impugned order it is very much evident that Special Power of Attorney in favour of Mst. Nighar dated 26-09-2012 is available on record which has been considered by the learned Family Judge in order dated 06-01-2016, the second Special Power of Attorney dated 25-06-2015 which was also referred in the said order, executed at Islamabad for the present Family Suit confirms the availability of two Special Power of Attorneys before the

Family Court and it is also admitted proposition of law that application of C.P.C. and Qanun-e-Shahadat are excluded, hence, Family Court has power to regulate its own proceedings depending upon circumstances of each suit. However, basic procedure for filing of suit, written statement, Pre-trial proceedings, recording of evidence and conclusion of trial were defined but certain eventualities were not defined in the special law, hence, Family Court can regulate its proceeding on the general principle of law. As such, the impugned order passed by learned Judge Family Court (West) Islamabad does not suffer from any legal infirmity. Even otherwise, the evidence of respondent No.1 has yet not been completed which is evident from the order Sheet dated 07-04-2015. In such eventuality the contents, validity and effect of the Attorney on the Proceedings of the suit as well as on the fate of the suit shall ultimately be decided by the court at the time of final decision of the suit. Moreover, it is settled principle of law that interlocutory order is an order in which no final verdict is pronounced, but an ancillary order is passed with the intention to keep the same operative till final order/decision is passed in the pending matter. It is also observed that under the relevant laws legislature has not provided remedy of appeal, revision or review against an interim order. In this regard I am fortified by the dictum laid down by the Hon'ble Supreme Court of Pakistan in judgment reported as (1996 SCMR 1165) "Syed Saghir Ahmed Naqvi v. Province of Sindh through Chief Secretary S&GAD, Karachi and others" wherein it was held that:-

"Constitutional jurisdiction, exercise of statute excluding a right of appeal from the interim order could not be bypassed by bringing under attack such interim orders in constitutional jurisdiction. 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 order."

In this regard I am also fortified by the view taken by the Hon'ble Lahore High Court, Lahore in case reported as "Syed Qadas Abbas v. Mst. Samina Shahbaz" (2010 CLC 32) [Lahore]. Similar view has also been taken by the Sindh High Court in judgment reported as (2015 MLD 840) [Sindh]). Moreover, the Hon'ble Division Bench of Islamabad High Court vide judgment reported as, 2014 CLC 330 [Islamabad] has already held that no writ petition lies against interim order passed by a Judge Family Court. Hence, the order dated 06-01-2016 passed by the learned Judge Family Court does not suffer from any legal infirmity and is well within four corners of law.

8. Before parting with this order, it is observed with great concern that suit which is subject matter of the instant writ petition was filed on 08-4-2013. According to section 12-A of the West Pakistan Family Courts Act, 1964, Family Court is under legislative direction to decide the case within six months. However, no material efforts have been made by the court concerned for early disposal of the said suit. Therefore, Family Court seized with the matter is directed to decide the suit within one month of the receipt of the instant order.

9. For what has been discussed above, the instant writ petition is without any merits. Resultantly, the same stands dismissed.

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