

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P. No.124/2021
Muhammad Hassan Naseem
vs.
Mrs. Neelam Shahzadi & 03 others

Petitioner by: Mr. Mehran Habib, Advocate along with petitioner.

Respondents by: Syed Khawar Ameer Bukhari, Advocate for respondents No.1 & 2.

Date of Decision: 07.12.2021.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner has called in question judgment of the learned Additional District Judge-V (West), Islamabad, dated 24.11.2020, whereby appeal filed by the petitioner against order dated 09.09.2020, passed by learned Family Judge (West), Islamabad, has been dismissed.

2. Succinctly, Muhammad Hassan Naseem (petitioner) and Mst. Neelam Shahzadi (respondent No.1) tied the knot on 02.12.2016 and were blessed with a son (respondent No.2) on 19.09.2017. Later on, respondent No.1 filed a suit for recovery of maintenance allowance against the petitioner, which was ex-parte decreed vide ex-parte judgment and decree dated 06.02.2019. Feeling aggrieved thereof, the petitioner moved an application under Section 9(6) of the West Pakistan Family Courts Act, 1964, which was dismissed by the learned Judge Family Court vide order dated 09.09.2020, which compelled the petitioner to file an appeal before the learned Additional District Judge, which was also dismissed vide impugned judgment dated 24.11.2020. Hence, instant writ petition.

3. Learned counsel for petitioner contends that despite respondent No.1 knowing the address of petitioner deliberately mentioned wrong address of the petitioner in order to get ex-parte judgment, regarding which no affidavit of

confirmation of address was submitted by respondent No.1 in the learned trial Court; that the petitioner has good prima facie case in his favour, but the both the Courts have condemned unheard the petitioner while passing the impugned judgments, which manifestly causes miscarriage of justice.

4. Conversely, learned counsel for respondents No.1 and 2 opposed the filing of instant writ petition on the grounds that the summons issued were received by the petitioner's brother at his residence in Faisalabad, whereafter the learned Family Court also opted to get the summons served upon the petitioner through substituted mode of service i.e. publication of proclamation in newspaper, as such, the learned Family Judge pursuant to exhausting all the modes, rightly proceeded against the petitioner and decreed the suit in favour of respondents No.1 & 2 on 06.02.2019, whereafter the petitioner remained mum for almost 14 months and thereafter moved an application for setting aside the *ex parte* judgment and decree, as such, the petitioner willfully abstained himself from contesting the family suit, rather he has been playing hide and seek with the Court, per se, both the Courts below have rightly appreciated the facts and circumstances of the case and decreed the suit.

5. Arguments heard, record perused.

6. Perusal of record reveals that petitioner is aggrieved with the concurrent orders by learned Judge, Family Court, whereby application for setting aside *ex parte* judgment & decree was dismissed and the said order was maintained by learned Additional District Judge-X (West), Islamabad. Learned counsel for the petitioner contends that petitioner has not been served while passing the *ex parte* judgment & decree dated 06.02.2019 in any manner and law requires that every defendant has to be served in proper manner so as to extend him right of hearing under the law with fair opportunity which is missing in this case.

7. The minute scanning of record reveals that respondent Neelam Shahzadi has filed a suit for recovery of maintenance of Rs.40,000/- per month w.e.f. 05.03.2017 onwards for herself and Rs.15,000/- per month w.e.f. 19.09.2017 onwards for minor son Muhammad Ali against the petitioner on 01.06.2018, whereby address of petitioner referred in the said plaint has been mentioned as "Resident of 115 J-B, Village Chak No.115 J-B Dialghar, Tehsil & District, Faisalabad" and learned Judge Family Court has issued notice on the said address through registered post and same was received on the given address by the real brother Fahad on 28.06.2018 through TCS and receipt of delivery has also been appended on record but despite receiving the notice no one has turned up, where-after, trial court adopted the substituted mode of service through publication in "Daily Khabrain" and notice was published on similar address. In result of the substituted mode of service, *ex-parte* proceedings were initiated and evidence was recorded by Judge Family Court and there-after *ex-parte* judgment & decree has been passed against the petitioner, whereby he was directed to pay Rs.30,000/- per month till subsistence of marriage with 10% annual increase to respondent No.1 and Rs.8,000/- per month from September, 2017 till age of legal entitlement with 15% annual increment, even delivery expenses were also awarded.

8. The petitioner filed application for setting aside *ex-parte* judgment & decree on 27.04.2020 with different address referred in his application and denied the service of notice with the following claim:-

That few days ago the close relative of applicant informed him that a bailiff of civil court has visited the village having ex parte decree with him which is passed against the applicant, so applicant immediately approached the court despite of Lock Down due to COVID-19 and from there it transpired that respondent No.1 obtained the decree from the learned court of Islamabad, where her brother is residing and doing the job in district

courts Islamabad, so the applicant rushed to get the attested copies of same.

9. While going through the said reasons mentioned in the application, learned Judge Family Court has given considerable thought and quoted different instances where notice of court at Faisalabad was duly served upon the real paternal uncle (ٹاٹا) of the petitioner and as such no justiciable reasons have been placed upon record as to why petitioner for 15 months kept silent after passing of the impugned judgment and decree. Even otherwise, petitioner has admitted this fact that his permanent address is of District Faisalabad as referred by respondent in the suit for recovery of maintenance, which has been confirmed from his CNIC appended with this petition. The petitioner has also been confronted qua his permanent address whereby he candidly conceded that the address mentioned in the main suit i.e. "Resident of 115 J-B, Village Chak No.115 J-B Dialghar, Tehsil & District, Faisalabad", is a permanent address, hence, no justiciable reason has been brought on record by the petitioner for non-service or any illegality committed by the courts below.

10. This Court has also confronted the petitioner qua the payment of any amount to his ex-wife or minor, whereby he candidly conceded that no payment was ever been paid to the respondent as he was jobless person, has no sources to pay. In such scenario, the conduct demonstrated by the petitioner is not above board, who is not entitled for any relief.

11. In view of above, instant petition is misconceived and the same is hereby dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid.