

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

Writ Petition No. 1343 of 2021
Muhammad Yasir
Versus
Additional District Judge, Islamabad-West etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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09.04.2021 Bano Jahangir Raja, Advocate.

Through instant writ petition, petitioner impugns judgment and decree dated 21.09.2019 & 20.01.2020, passed by the learned Judge Family Court and the learned Additional District Judge, Islamabad-West, respectively whereby the two suits one for recovery of maintenance allowance, gold ornaments and the other for dowry articles, filed by respondent No.3 were partially decreed while appeal filed by the petitioner was dismissed being time barred.

2. The decree passed and affirmed was to the following effect:-

"Respondent No.3 was held entitled to recovery of maintenance allowance for herself from March 2015 till February 2019 @ Rs.2000/- per month, recovery of nine tola gold ornaments or as alternate its market value and remaining dowry articles including six dresses, a sewing machine, plastic set and water tank or as alternate Rs.35000/-."

3. Record made available by the petitioner, shows that the decree-in-original was passed on

21.09.2019 while petitioner assailed the same in appeal on 08.11.2019, after one month and sixteen days which, under the law, had to be filed within thirty days. The learned Appellate Court dismissed the appeal on the ground of limitation, *inter-alia*, observing that '*though the petitioner had taken the ground of sickness but did not provide any medical certificate, thus failed to explain each and every day's delay, mandatory to ask for condonation.*'

4. It is important to mention that judgment-in-appeal was passed on 20.01.2020 while instant writ petition was filed on 01.04.2021 i.e. after delay of more than one year and two months.

5. Learned counsel argued that the learned Family Court failed to appreciate the evidence in its true perspective; that sufficient cause has been put forth for condonation of delay which was supported by medical certificate but the appellant had been non-suited on technical ground of limitation in derogation to the principle that law favours decision on merits instead of technicalities.

6. Heard, record examined.

7. There is no denial that appeal before the learned Additional District Judge had been filed beyond the prescribed period of thirty days while it is also an admitted fact that instant writ petition, whereby petitioner intends to have

equitable and discretionary relief, has been filed with a delay of more than one year and two months.

8. During the course of arguments, learned counsel tried to justify inordinate delay in terms that petitioner had been incarceration for two months but whether this would be sufficient even to ask for? Answer would be in negative for the reason that there is no explanation of rest of the long standing period of one year, even, if the period of two months is excluded. Like the ground of sickness in appeal, the ground being pressed for condoning the delay/laches in filing of instant writ petition is also without any substance and is accordingly repelled.

9. The petitioner intends to have discretionary and equitable relief without exploring malafide, illegality or material irregularity in the judgment of the learned Family Court. It is cardinal principle that law favours the vigilant and not the indolent. Undoubtedly, law leans adjudication of cases on merits instead of technicalities yet the fact remains that each and every decision on the point of limitation could not be set at naught on any flimsy ground without reasonable, justifiable and convincing cause which can be assessed and termed as "**sufficient**".

10. Another important aspect of the matter is that petitioner had already availed statutory

remedy of appeal. Recourse in terms of Article 199 of the Constitution to question the decisions of the two courts of competent jurisdiction, in absence of any illegality or jurisdictional defect would not be appropriate, particularly when the conduct of the petitioner appears to be lethargic throughout.

11. In the present case, the litigation commenced in January 2016, finally decided by the learned Family Court in September 2019. The petitioner assailed the said decision in November 2019, while his appeal was dismissed in January, 2020. Thus a family dispute consumed more than four years for reaching final conclusion before the two forums which had **to be decided within six months from the date of institution in terms of section 12A of the Family Courts Act, 1964.**

12. It is cardinal principle that '***equity aids the vigilant and not the indolent***'. He, who knocks the door of equity court with inordinate delay, has to justify such delay. There is no cavil with the proposition that there exists no statutory provision prescribing limitation for filing of writ petition but that does not mean to sleep upon a right for unlimited time and to agitate the same when other party resorts his/her right, particularly in family matters where the legislative intent is unambiguous regarding decisions summarily.

13. The delay in approaching the forum provided through enactment is matter of fact and gives/creates valuable rights in favour of the other party but even approaching this Court with inordinate delay of 14/15 months when is examined in juxtaposition, leads to form a view that facts of the case attract the maxim '**delay defeats equity**'.

14. The conduct of the petitioner in approaching this Court asking for relief in terms of Article 199 of the Constitution in the backdrop of the facts of the instant case cannot be termed as aboveboard rather appears to be negligent. In such like situation, equitable relief by this Court in exercise of its extra ordinary jurisdiction cannot be granted. The Hon'ble Apex Court in case of "**Muhammad Arif v. Uzma Afzal and others**" (2011 SCMR 374) has graciously laid down that:-

"There is no cavil to the proposition that the "conduct of petitioner can be taken into consideration in allowing or disallowing equitable relief in constitutional jurisdiction. The principle that the Court should lean in favour of adjudication of causes on merits, appears to be available for invocation only when the person relying on it himself comes to the Court with clean hands and equitable considerations also lie in his favour. High Court in exercise of writ jurisdiction is bound to proceed on maxim "he who seeks equity must do equity". Constitutional jurisdiction is an equitable jurisdiction. Whoever comes to High Court to seek relief has to satisfy the conscience of the Court that he has clean hands. Writ jurisdiction cannot be exercised in aid of injustice. The High Court will not grant

relief under this Article when the petitioner does not come to the Court with clean hands. He may claim relief only when he himself is not violating provisions of law, especially of the law under which he is claiming entitlement"."

15. Having examined the case from every angle, petitioner has not been able to make out a case for exercise of constitutional jurisdiction in terms of Article 199 of the Constitution for reasons *(supra)*. **Dismissed in limine.**

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran

Approved for reporting.