

Form No: HCJD/C-121
ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

Writ Petition No.4338 of 2019

Syed Hasnain Hussain Shah

Vs

Mst. Kiran Bibi and another.

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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01.	12.12.2019.	Mr. Rais Mumtaz Hussain, Advocate for the petitioner.
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Through the instant petition, the petitioner has assailed order dated 27.03.2019, whereby the suit filed by respondent No.1 was decreed.

2. The facts, in brief, are that respondent No.1 filed a suit for recovery of maintenance with other relief against the petitioner, which was decreed against the petitioner, vide judgment and decree dated 27.03.2019. No appeal was preferred and the instant petition has been filed challenging the said judgment and decree.

3. Learned counsel for the petitioner, *inter-alia*, contended that the judgment and decree is not maintainable in the facts and circumstances. He was confronted with the maintainability of the instant petition

inasmuch as the remedy of appeal provided under the Family Courts Act, 1964 was not availed. Learned counsel in response submitted that since the remedy is barred by limitation, hence the instant petition is being filed.

4. Arguments advanced by learned counsel for the petitioner have been heard and the documents placed on record examined with his able assistance.

5. The petitioner is aggrieved of judgment and decree dated 27.03.2019 passed by respondent No.2. The referred judgment and decree was passed under the Family Courts Act, 1964, which provides remedy of appeal against the judgment and decree passed by a Family Court; the referred remedy was not availed by the petitioner and instead after a lapse of almost nine (09) months, the instant petition has been filed. It is trite law that a petition under Article 199 of the Constitution is not maintainable, where an alternate and efficacious remedy is available; the petitioner despite availability of the remedy did not avail the same. Moreover, the instant petition has been filed after a lapse of almost nine (09) months with no justification for delay in approaching the Court; hence suffers from *laches*.

6. For what has been stated above, the instant petition is not maintainable and is accordingly **dismissed** in *limine*.

(AAMER FAROOQ)
JUDGE

*M. Zaheer Janjua**