

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 1286 OF 2022

Saqib Aftab

Vs.

Learned Judge Family Court (West) and another

Petitioner by : Mr. Majid Rashid Khan, Advocate.

Respondent No.2 by : Mr. Ansar Mehmood Kiani, Advocate.

Date of Hearing : 30.11.2022.

SAMAN RAFAT IMTIAZ, J.:- Through the instant writ petition, the Petitioner has assailed the Orders dated 30.01.2021 (“**Impugned Order I**”) and 18.11.2021 (“**Impugned Order II**”) passed by the learned Judge Family Court West-Islamabad (“**Family Court**”), whereby right of the Petitioner to cross-examine the Respondents No.2’s witnesses was struck off and his Application for restoration of right of cross-examination upon the Respondent No.2’s witnesses was dismissed being time barred.

2. Brief facts, as per Memo of Petition, are that the Respondent No.2 [Mst. Saleem Akhtar] filed a suit against the Petitioner [Saqib Aftab] for Recovery of Maintenance, Dowry Articles, Vehicle and Recovery of Amounts. The Petitioner filed his written statement, whereafter issues were framed arising out of the pleadings of the parties. On 30.01.2021 the case was fixed for cross-examination of the Respondent No.2’s witnesses by the Petitioner but unfortunately nobody appeared before the Court on behalf of the Petitioner due to lack of knowledge. Resultantly the Family Court passed the Impugned Order I and struck off the Petitioner’s right to cross-examine the Respondent No.2’s witnesses. The Petitioner filed Application for Restoration of his right to cross-examine the Respondent No.2’s witnesses, which was dismissed vide Impugned Order II, hence, the instant writ petition.

3. The learned counsel for the Petitioner submitted that the Impugned Orders are unjust and unwarranted as the Petitioner was absent on only one date prior to

the passing of the Impugned Order I whereas it was the Respondent No.2 who failed to appear on 30.11.2020 He further submitted that no last chance was given to the Petitioner and despite the aforementioned facts the application of the Petitioner for restoration of his right to cross-examine was dismissed as being time barred. He further submitted that striking off the Petitioner's right to conduct cross-examination upon the Respondent No.2's witnesses is in violation of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973.

4. On the other hand, the learned counsel for the Respondent No.2 submitted that the instant writ petition is not maintainable as both the Impugned Orders are interlocutory in nature. He further submitted that it is immaterial that only one adjournment was sought by the Petitioner prior to passing of the Impugned Order I in terms of Section 17-A of West Family Courts Act, 1964, which contemplates that if the defendant fails to pay the maintenance by the 14th day of each month, the defence of the Defendant shall be struck off and the Family Court shall decree the suit for maintenance on the basis of averments made in the plaint and other supporting documents on the record. He further submitted that in this case the defence of the Petitioner has not been struck off despite the fact that in Impugned Order I that maintenance was not paid. Finally he submitted that the instant writ petition suffers from laches as the Impugned Order I was passed on 30.01.2021, whereas the instant writ petition has been filed on 11.04.2022 with delay of more than a year and two months and no explanation for such delay has been given in the memo of the petition.

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

6. In the instant case not only was the Petitioner absent on the previous date but as noted in the Impugned Order I even on such date no plausible reason for further adjournment was given. Moreover, the record before this Court shows that maintenance had not been paid on at least three occasions and in such circumstances the learned Family Court deemed it appropriate to strike off the Petitioner's right to cross-examine the Respondents No.2's witnesses despite the fact that under Section 17-A of West Family Courts Act, 1964 the Family Court is empowered to strike off the defence and to decree the suit.

7. It is also noteworthy that the Petitioner did not challenge the Impugned Order I till 05.10.2021 when he moved an application for restoration of his right to cross-examine which was dismissed vide Impugned Order II. Instead in between, he participated in the proceedings and filed his affidavit in evidence on 14.07.2021, which indicates his acquiescence. Even after dismissal of such application the Petitioner did not approach this Court till 11.04.2022 and in the meantime proceedings before the learned Family Court continued and the Petitioner appeared before it. No reason has been mentioned in memo of the petition for such delay. The learned counsel for the Petitioner submitted in oral arguments that the delay was caused because he was engaged as counsel in the matter in February, 2022 and the instant writ petition was filed on 11.04.2022 on his advice. Firstly that is the learned counsel's statement and finds no mention in memo of the petition signed by the Petitioner and even otherwise lack of legal advice does not constitute a ground to counter laches.

8. The law is clear that equity aids the vigilant and does not favour the indolent. The aforementioned narration abundantly establishes that the Petitioner's conduct does not merit exercise of discretionary jurisdiction of this Court in his favour. Consequently, the instant writ is hereby **dismissed**.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on 7th December, 2022.

JUDGE