

Form No: HCJD/C-121
JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P No.1489 of 2019

Intasar Ahmed Khan

Versus

Naila Ruby, etc.

Petitioner by : Mr. Muhammad Adnan, proxy counsel.

Respondents by : Nemo.

Date of Decision : **25-01-2023**

MOHSIN AKHTAR KAYANI, J.- Through this writ petition, the petitioner namely, Intasar Ahmed Khan has assailed the order, dated 13.12.2018, passed by the learned Additional District Judge-West, Islamabad in appeal whereby ex-parte judgment and decree, dated 25.4.2017 as well as the order, dated 09.11.2016, passed by the learned Civil/Family Judge (West), Islamabad were assailed.

2. The learned counsel for the petitioner was not present in the hearing as he has been appointed as Law Officer, however, the proxy counsel has been given two opportunities on 27.10.2022 as well as today but no justified answer has been given for engagement of a new counsel.

3. In such scenarios this Court is bound to decide the matter in accordance with law especially when the matter is still pending with the learned Judge Family Court since 2014.

4. Brief facts referred in the instant petition are that the respondent Naila Ruby has filed a suit for recovery of maintenance on 15.11.2014 against the petitioner on the grounds that she was married to the petitioner on 12.08.2008 and due to acute disparity they were living separately. The petitioner had not paid any maintenance since January 2009. Though column No.19 of the Nikkah Nama contains a maintenance of Rs.30,000/- per month to be given to the respondent/plaintiff.

5. On the other hand, the petitioner has taken the stance that the suit is barred by law and he denied the relationship of husband and wife among the parties on the ground that the Nikkah executed between the parties placed on record is a forged Nikkah Nama. The suit was ex-parte decreed vide judgment and decree, dated 25.04.2017, even right to produce evidence by the petitioner was closed on 05.04.2017 and earlier to that his right to cross examine the plaintiff's witnesses was closed on 09-03-2017. Ex-parte judgment and decree was assailed before the appellate court, which has allowed the appeal and set-aside the judgment and decree vide the impugned order, dated 13.12.2018 in the following manner:-

"Admittedly and by perusal of record it is found that the suit of the plaintiff/respondent was dismissed due to non-prosecution but in the

subsequent date it was restored when the appellant did not appear before the Court. It is the contention of the appellant that respondent is not a wedded wife of him and is a member of land grabbers by using such sort of fake agreements and Nikkah Nama and that after the suit of the plaintiff/respondent was dismissed he proceeded to England on 06.08.2016 for his treatment and since that time he never had come back to Pakistan. Benefit of it was taken by respondent and on a fabricated address his notices were issued then advertisement was made in a newspaper, which was never published at England, nor any email on his ID was sent. By perusal of record the appellant has not moved any application before the learned trial Court to set aside the ex-parte decree passed against him and during arguments no objection was made by the learned counsel of the respondent. It is most preferably to move the application for setting aside ex-parte judgment and decree before the learned trial court and learned trial Court is directed to decide it on merit if filed by the appellant. Meanwhile, the file be consigned to record. A copy of this order alongwith lower court record, be sent to the learned trial court for

information and compliance whereas, the instant file be consigned to record.”

6. While considering the above order it appears that the judgment and decree was not set-aside and the petitioner was given an opportunity to file an application to set-aside the ex-parte judgment and decree before the trial court but the petitioner has challenged the said order before this Court in the constitutional jurisdiction. As such the judgment still hold the field and the petitioner has not paid single penny to the respondent/plaintiff as maintenance, therefore, at this stage this Court is not inclined to interfere in the impugned order and the petitioner is directed to appear before the learned trial court after filing an application for setting aside ex-parte proceedings if he desire and contest his grounds for setting aside of the decree accordingly. However, if he chooses to proceed accordingly it is expected from the trial court to decide the matter within the period of (03) three months under intimation to this Court. No illegality has been observed in the impugned order and the appeal was rightly dismissed. No question of interference is made out in constitutional jurisdiction, therefore, instant writ petition is **dismissed** accordingly.

(MOHSIN AKHTAR KAYANI)
JUDGE