

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

W.P. No.114 of 2022

Syed Muhammad Farrukh Abbas

Versus

Additional District Judge & 3 others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	01.03.2022	Malik Talat Hussain Advocate for petitioner Mr.M. Akram Shaheen, Advocate for respondents 3 & 4.

The instant writ petition is arising out of ex-parte judgment and decree dated 03.05.2019, and judgment dated 28.10.2021 passed by the Judge Family Court and the Additional District Judge, Islamabad (West) respectively, whereby suit of respondents 3 & 4 for dissolution of marriage, maintenance allowance and dowry articles was decreed ex-parte while appeal was also dismissed against ex-parte decree.

2. Relevant facts are that on 22.04.2017, respondents 3 and 4 filed suit for dissolution of marriage, maintenance allowance and recovery of dowry articles against the petitioner, whereof, notices were issued to the petitioner who appeared before the Court of First Instance on 27.05.2017, by placing power on behalf of his attorney and the matter was adjourned for filing of written statement by the petitioner for 05.07.2017. On 05.07.2017, neither the petitioner appeared nor filed written statement therefore, the court of first instance initiated ex-parte proceedings against him, the case was fixed for ex-parte evidence, the petitioner again after lapse of two months filed an application for setting aside ex-parte proceedings on 14.09.2017. The trial Court set aside the ex-parte proceedings on the statement of the petitioner with a cost of Rs. 2000/-, on 05.03.2018, and directed the petitioner to file written statement on 28.03.2018, the petitioner again failed to comply with the directions of the Court of First Instance and was again proceeded ex-parte, case was fixed for the evidence of the respondent. The defendant than filed an application for

setting aside the ex-parte orders on the same day, which was allowed vide orders dated 07.05.2018, with cost of Rs. 1000/-, the defendant again failed to appear on 02.10.2018, and was proceeded ex-parte. The Court of First Instance recorded ex-parte evidence on 05.11.2018. The petitioner again filed an application on 29.05.2018, but once again he failed to appear on 11.02.2019, the Court of First Instance after hearing ex-parte evidence decreed the suit on 03.05.2019. It was also observed by the First Appellate Court that sufficient opportunities were provided to the appellant to argue the appeal but due to the non-serious attitude of the petitioner the matter was decided on the available record.

3. The suit was partially decreed in terms that marriage inter-se the parties stood dissolved on the basis of '*Khula*' subject to return of Rs. 5000/- and relinquishment of deferred dower, recovery of dowry article as per list Exh. P/5 or in alternate Rs. 150000/-, respondent No. 3 (Mst. Sarwat Zahra) held entitled to recover maintenance at the rate of 15,000/- per month from May 2015 till expiry of '*Iddat*' period, while respondent No.4 held entitled to the maintenance at the same rate per month from November 2016 till her legal entitlement with 10% annual increase.

4. Against the judgment and decree *ibid*, petitioner filed appeal in terms of section 14(1) of the Family Court Act, 1964 which was dismissed by the Additional District Judge, Islamabad (West), vide judgment dated 28.10.2021, hence instant writ petition.

5. Learned counsel for the petitioner argued that law favours adjudication of the matters on merits instead of technical knockout; that non-appearance of the petitioner before the Court of first instance was neither deliberate nor intentional; that the respondent No. 3 is a disgruntled wife, cannot be held entitled to any maintenance while the awarded amount also does not commensurate with the financial capability of the petitioner who should be given a chance to adduce his case, and to counter the claim of the respondents 3 & 4.

Learned counsel placed reliance upon case law reported as 1988 SCMR 747.

5. On the other hand, learned counsel for respondents 3 & 4 watching brief, waives notice on behalf of said respondents and with permission argued that petitioner intends to frustrate the entire proceedings, which had taken several years to reach its final conclusion in a nuptial dispute which, otherwise, is to be decided within short span of time.

6. According to the learned counsel, the conduct of the petitioner highlighted by the two learned courts, ex-facie, would be sufficient to gauge his ill intention, whereby he, once again attempted to evade responsibility under the decree.

Heard record examined.

7. The scan of record reveals that family suit filed in April, 2017, reached to its conclusion at the first tier within a period about two years on 03.05.2017, which, under the law had to be decided within a period of four months as contemplated in section 12(a) of the Family Court Act, 1964.

8. In addition, the conduct demonstrated by the petitioner throughout the proceedings, has been highlighted by the learned trial Court in paragraph No. 2, 3 & 4. For instance, at the preliminary stage, he was proceeded ex-parte on 05.07.2017, which was subsequently set aside, again burdened with same penalty on 28.03.2018, which was subsequently set aside on the application of the petitioner. After pre-trial reconciliation proceedings he again disjoined the proceedings and was proceeded ex-parte on 02.04.2018 and to counter the said mischief, again adopted the same course and joined the proceedings, vide order dated 29.11.2019. The petitioner instead to mend his ways, followed the same course and ultimately proceeded ex-parte on 11.02.2019. It is thus obvious that, since the filing of the suit, petitioner was proceeded against ex-

parte for four consecutive times, two at pre-trial stage and rest thereafter.

9. The learned Appellate Court had also given due consideration to the attending circumstances of the case. It is significant to note that even during the hearing of the appeal the petitioner despite availing sufficient opportunities failed to argue the appeal, and even to put up his appearance which compelled the court to decide the appeal, on the basis of material available on record. The appeal was filed on 30.08.2021 and was decided on 28.10.2021. The instant writ petitioner was preferred after about two months of the judgment in appeal.

10. The petitioner is asking for relief in terms of article 199 of the constitution against the concurrent observations, which if put in juxtaposition with the conduct of the petitioner, appears to be just, proper and in accordance with material available on record and there exists no justification to upset the same in absence of any illegality or material irregularity. Consequently instant writ petition fails and is accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

****//Kamran//****

Announced in open Court .03.2022

JUDGE