

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

**Writ Petition No. 2958 of 2021**

Mst. Naila Hameed

Versus

Ejaz Mahmood and others.

<b>S.No. of order/ proceeding</b>	<b>Date of order/ proceeding</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
(01)	23.08.2021	Chaudhary Amjad Ali, Advocate for the petitioner.

Through the instant writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the legality and validity of judgment and decree dated 15.02.2018 passed by the learned Senior Civil Judge-III (Guardian Judge), West-Islamabad as well as Order dated 03.07.2021 passed by the learned Additional District Judge, West-Islamabad.

02. Succinctly, stated the facts mentioned in the writ petition are that the petitioner and respondent No. 1 were married on 05.10.2008 under the Muslim

Rites and *Rukhsati* took place on 15.11.2008. Out of said wedlock, the spouses were blessed with two daughters i.e. (1) Sadia Mahmood, D.O.B 16.06.2010 and (2) Amna Mahmood, D.O.B 03.01.2012, who are residing with the petitioner / real mother being natural guardian. During the *abadi* period, the petitioner always performed her matrimonial obligations as an obedient and faithful wife but on the other hand respondent No. 1 always ignored the petitioner as well as minor daughters and failed to perform his responsibilities as responsible husband and father. The petitioner always requested the respondent No. 1 to mend his behavior but all in vain, thereafter, on 02.10.2012, respondent No. 1 expelled the petitioner along with minor daughters from his house. The petitioner tried her level best for reconciliation but respondent No. 1 was not interested to continue the matrimonial life, therefore, the petitioner

had no other option except to file the suit for dissolution of marriage, recovery of maintenance and dowry articles. During the proceedings, pre-trial reconciliation proceedings were conducted by the learned Family Court, which ended in failure, therefore, the suit of the petitioner to the extent of dissolution of marriage was decreed u/s 10(4) of Family Courts Act, 1964 vide order dated 17.04.2014. The Trial Court partially decreed the suit of the petitioner vide judgment / decree dated 15.02.2018. The petitioner as well as respondent No. 1 separately filed appeals against the judgment / decree dated 15.02.2018 before the learned District Judge, Islamabad, both the appeals were dismissed through consolidated judgment dated 17.11.2018.

03. That since 02.10.2012, petitioner being the real mother and natural guardian is looking after the minor daughters in better sense and is providing all the amenities of life to the minors at

her own source of income, both the minor daughters are studying in schools of repute. In the meanwhile, respondent No. 1 filed the petition u/s 25 of Guardian & Wards Act, 1890 at Islamabad, which was allowed vide Judgment dated 15.02.2018. Being aggrieved the petitioner filed an appeal which was dismissed vide order dated 03.07.2021 by the Court of Additional District Judge, West-Islamabad.

04. Learned counsel for the petitioner *inter alia* contends that the impugned order dated 03.07.2021 as well as the judgment and decree passed by the Senior Civil Judge-III, (Guardian Judge), West-Islamabad are against the law and facts of the case thus not sustainable in the eyes of law; minors are being brought-up by the petitioner since their birth and respondent No. 1 has not shown any sense of responsibility or interest towards the minors; the learned Trial and appellate Courts / respondents No. 2 & 3 passed the impugned orders without applying their

judicial minds in total disregard of the material available on record. He has further contended that both the Courts / respondent No. 2 & 3 didn't appreciate the important fact that respondent No. 1 is himself dependent upon his brothers as per his own statement made before the Court. The learned appellate Court / respondent No. 2 has decided the matter on mere technicalities and not on merits rather has misinterpreted the case law cited in its order and has prayed for setting aside of both the impugned orders.

05. Arguments heard, record perused.

06. The impugned Judgment and Decree dated 15.02.2018 have been passed mainly on the ground that the petitioner has contracted a second marriage and also gave birth of a son from her second marriage. The petitioner has denied the fact of contracting the second marriage, in her cross-examination recorded on oath on 20.01.2018, in the Court of learned Senior Civil Judge-III,

(Guardian Judge), West-Islamabad, she has stated that;

"کھ غلط ہے کہ مری نے دوسری شادی کر لی ہے۔ کھ غلط ہے کہ مری نے بلال نامی شخص سے دوسری شادی کر لی ہے۔ کھ بھی غلط ہے کہ اس سے مریا ایک بھٹا بھی ہے۔"

Whereas, the real mother of the petitioner has stated on oath in her cross-examination in the same Court that;

"کھ درست ہے کہ مسئلہ علیہ نائلہ کے دوسرے خاوند کا نام بلال ہے۔ کھ بھی درست ہے کہ مری سے نواسے کا نام شاوہی ہے۔"

07. Above mentioned two contradictory statements clearly prove that the petitioner has given a false statement on oath in the Court of Senior Civil Judge, (Guardian Judge), West-Islamabad. That giving of false statement / evidence before the Court is punishable under Section 193 P.P.C, which is reproduced hereunder for ready reference;

***"Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of***

***being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term, which may extend to seven years, and shall also be liable to fine; and whoever, intentionally gives or fabricates false evidence in any other case, shall, be punished with imprisonment of either description" for a term which may extend to three years, and shall also be liable to fine".***

08. Petitioner has neither denied the fact of contracting second marriage and giving birth to a son from her second husband, in the pleadings of her appeal nor in the instant writ petition, the counsel of petitioner has also not denied the said fact during his arguments.

09. As the petitioner is a lady and mother of the minor children, hence this Court while showing restraint is not passing any order for initiating criminal proceeding against her for giving false statement / evidence in the judicial proceedings / Court of law.

10. It is admitted during the evidence that respondent No. 1 / father of the minors has not contracted the second marriage. As far as the impugned order dated 03.07.2021 of the learned Additional District Judge, West-Islamabad is concerned, the impugned Judgment and Decree was passed on 15.02.2018 by the Senior Civil Judge-III (Guardian Judge), West-Islamabad and appeal was filed in the Court of learned District Judge, West-Islamabad on 31.03.2021 i.e. with the delay of more than 3 years, without any plausible justification.

11. That concurrent findings of both the Courts below are against the petitioner, as this Court is the Court of equity and Petitioner for equitable relief was supposed to put-forth some convincing materials which would have justified the filing of her appeal after considerable delay. As it is well settled principle of equity that only vigilant not the indolent is to get the relief from Court of equity or



law respecting her right which has been violated or infringed. Petitioner could not satisfy this Court as to why she remained in deep slumber for such a long period for realization of her legal rights before this Court which she alleges to have been violated by the respondent / plaintiff.

12. It has been laid down by the Hon'ble Supreme Court of Pakistan in a case titled as "**Water and Power Development Authority" (1988 SCMR 1354)**, that:

***"It is well settled that after the prescribed period of limitation has elapsed, the door of justice is closed and no plea of injustice, hardship or ignorance can be of any avail unless the delay is properly explained and accounted for".***

13. That in the recent authoritative judgment of larger bench of the Hon'ble Supreme Court of Pakistan titled as "**Khushi Muhammad and others Vs. Mst. Fazal Bibi and other" (PLD 2016 SC 872)**, it has been laid down that:

***"Before considering the propositions above, it is expedient to mention certain salient features which have been settled over a period of time by the superior Courts for the purposes of interpretation of the law of limitation. These are:-***

***i. The law of limitation is a statute of repose, designed to quieten title and to bar stale and water-logged disputes and is to be strictly complied with. Statutes of limitation by their very nature are strict and inflexible. The Act does not confer a right; it only regulates the rights of the parties. Such a regulatory enactment cannot be allowed to extinguish vested rights or curtail remedies, unless all the conditions for extinguishment of rights and curtailment of remedies are fully complied with in letter and spirit. There is no scope in limitation law for any equitable or ethical construction to get over them. Justice, equity and good conscience do not***

***override the law of limitation. Their object is to prevent stale demands and so they ought to be construed strictly;***

***ii. The hurdles of limitation cannot be crossed under the guise of any hardships or imagined inherent discretionary jurisdiction of the court. Ignorance, negligence, mistake or hardship does not save limitation, nor does poverty of the parties;***

***iii. It is salutary to construe exceptions or exemptions to a provision in a statute of limitation rather liberally while a strict construction is enjoined as regards the main provision. For when such a provision is set up as a defence to an action, it has to be clearly seen if the case comes strictly within the ambit of the provision;***

***iv. There is absolutely no room for the exercise of any imagined judicial discretion vis-à-vis interpretation of a***

***provision, whatever hardship may result from following strictly the statutory provision. There is no scope for any equity. The court cannot claim any special inherent equity jurisdiction;***

***v. A statute of limitation instead of being viewed in an unfavorable light, as an unjust and discreditable defence, should have received such support from courts of justice as would have made it what it was intended emphatically to be, a statute of repose. It can be rightly stated that the plea of limitation cannot be deemed as an unjust or discreditable defence. There is nothing morally wrong and there is no disparagement to the party pleading it. It is not a mere technical plea as it is based on sound public policy and no one should be deprived of the right he has gained by the law. It is indeed often a righteous defence. The court has to only see if the***

***defence is good in law and not if it is moral or conscientious;***

***vi. The intention of the Law of Limitation is not to give a right where there is not one, but to interpose a bar after a certain period to a suit to enforce an existing right;***

***vii. The Law of Limitation is an artificial mode conceived to terminate justiciable disputes. It has therefore to be construed strictly with a leaning to benefit the suit or;***

***viii. Construing the Preamble and Section 5 of the Act it will be seen that the fundamental principle is to induce the claimants to be prompt in claiming rights. Unexplained delay or laches on the part of those who are expected to be aware and conscious of the legal position and who have facilities for proper legal assistance can hardly be encouraged or countenanced".***

14. It is trite that in order to get discretionary and equitable relief, the parties should approach to the Courts with clean hands. Reference in this regard may be made to the following case laws:-

(i) In a case titled as **"Shafqatullah and others Vs. District and Sessions Judge, Nowshera, N.W.F.P and 4 others" (2001 SCMR 274)**, it has been held as follows:-

***"It would also appear from the record that the petitioners did not approach the High Court with clean hands entitling them to the discretionary, equitable relief under the Constitutional jurisdiction".***

(ii) In a case titled as **"Manzoor Hussain and 3 others Vs. Muhammad Siddique" (2000 CLC 623 [Lahore])**, it has been held as follows:-

***"The grant or refusal of declaration is essentially discretionary and in this case, to my mind, the plaintiff had forfeited his right to an equitable relief by putting up a false case".***

The same principle has been laid down in cases titled as "**Shahnaz Parveen and another Vs. Javed Yaqoob and other**" **(2020 MLD 638 [Islamabad])** and "**University of the Punjab and another Vs. Malik Jehangir Khan**" **(1994 PLC(CS) 314 [Lahore])**.

15. Further, there are concurrent findings of both the learned Courts below against the petitioner. In case of concurrent findings of the courts below, scope of the constitutional petition becomes very limited. The petitioner has failed to point out any misreading or non-reading of the evidence. It has been laid down in a case titled as "**Syed Arif Ali Sabri Vs. Abdul Samad through L.Rs. and 2 others**" **(2008 YLR 2309)**" that:

***"When there are concurrent findings of Courts below, the scope of the constitutional petition for interference is very limited and it can only be interfered when the orders of the Courts below are fanciful or based on misreading or non-reading of the evidence".*** The same view has also been taken in a case titled as ***"Sadruddin Vs. Aslam Madad Ali and others" (PLD 2008 Karachi 2005).***

16. It is well settled that certiorari is only available to quash a decision for an error of law. It will also be issued for correcting errors of jurisdiction when an inferior Court or a tribunal acts without jurisdiction or in excess of its jurisdiction, or fails to exercise its jurisdiction or where the Court or a tribunal acts illegally in exercise of its undoubted jurisdiction and it decides a matter in violation of the principle of natural justice. The High Court while issuing a writ of certiorari acts in exercise of supervisory and not appellate



jurisdiction. The High Court in exercise of its writ jurisdiction will not review the findings of facts reached by the inferior Court or a tribunal. Reliance may be made to the following case laws:

(i) In a case titled as **"Amjad Khan Vs. Muhammad Irshad (Deceased) through LRs, (2020 SCMR 2155)"**, it is held by the Hon'ble Supreme Court that:

***"It is by now a settled principle of law that the High Courts must not exercise their constitutional jurisdiction in order to interfere with the discretion exercised by lower courts unless the same suffers from jurisdictional, factual or legal errors. In other words, such interference would be justified in cases where the impugned order has been passed without jurisdiction or is based on misreading or non-reading of evidence, or is not in***

*accordance with the law. If none of these errors is present, the High Courts must not exercise their constitutional jurisdiction to interfere with the findings of lower courts merely because it reached a different conclusion as to the controversy than the latter. In this regard, reference can be made to a collective reading of Mst. Mobin Fatima v. Muhammad Yamin (PLD 2006 SC 214) and Nadira Shahzad v. Mubashir Ahmad (1995 SCMR 1419)."*

(ii) In a case titled as "President

All Pakistan Women

Association, Peshawar Cantt

Vs. Muhammad Akbar Awan

and others" (2020 SCMR 260),

it is held by the Hon'ble Supreme

Court that:

*"It is settled law that when the Statute does not provide the right of appeal against certain orders, the same cannot be challenged*

*by invoking the constitutional jurisdiction of the High Court in order to gain a similar objective. Where a Statute has expressly barred a remedy which is not available to a party under the Statute, it cannot be sought indirectly by resort to the constitutional jurisdiction of the High Court. The High Courts exercising constitutional jurisdiction must be fully cognizant and conscious of this Rule and strictly adhere to the same in the interest of advancing the policy of law and delivering expeditious justice in accordance with the law and the Constitution. Even otherwise, constitutional jurisdiction is equitable and discretionary in nature and should not be exercised to defeat or bypass the purpose of a validly enacted statutory provision."*

(iii) In a case titled as "Chief Executive MEPCO and others

**Vs. Muhammad Fazil and others" (2019 SCMR 919),** it is held by the Hon'ble Supreme Court that:

***"Where the Court or the Tribunal has jurisdiction and it determines specific question of fact or even of law, unless patent legal defect or material irregularity is pointed out, such determination cannot ordinarily be interfered with by the High Court while exercising jurisdiction under Article 199 of the Constitution."***

(iv) In a case titled as

**"Chairman, NAB Vs. Muhammad Usman and others" (PLD 2018 SC 28),** it is

held by the Hon'ble Supreme Court that:

***"The powers of judicial review vested in High Court under Article 199 of the Constitution is no doubt a great weapon in the Judge's hands"***

***however, the same shall not be exercised in a case where discretion is exercised by the subordinate court/Tribunal in a fair and just manner without violating or disregarding statutory provision of law, likely to occasion the failure of justice. Ordinarily such extraordinary jurisdiction shall not be exercised at random and in routine manner". The following case law is reproduced for the guidance of the learned Judges of the High Court for future course of action: (i) Brig. (Rtd.) Imtiaz Ahmed v. Government of Pakistan, through Secretary, Interior Division, Islamabad (1994 SCMR 2142), (ii) Shahnaz Begum v. The Hon'ble Judges of the High Court of Sindh and Balochistan (PLD 1971 SC 677), (iii) Malik Shaukat Ali Dogar v. Ghulam Qasim Khan Khakwani (PLD 1994 SC 281).***

(v) In a case titled as **"Shajar Islam Vs. Muhammad Siddique and 2 others" (PLD 2007 SC 45)**, it is held by the Hon'ble Supreme Court that:

***"The High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the findings on the controversial question of facts based on evidence even if such finding is erroneous. The scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of misreading or non-reading of evidence or if the finding is based on no evidence which may cause miscarriage of justice but it is not proper for the High Court to disturb the finding of fact through reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as a substitute of revision or appeal".***

17. For what has been discussed above, the judgment and decree dated 15.02.2018 passed by the learned Senior Civil Judge-III (Guardian Judge), West-Islamabad as well as Order dated 03.07.2021 passed by the learned Additional District Judge, West-Islamabad are in accordance with law and facts of the matter and do not require interference by this Court. The writ petition is not maintainable, hence **dismissed in limine** being meritless with no order as to costs.

**(TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE**

*Approved for reporting*

Bilal /-