

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Chaudhry Imran Ali Vs. Additional District Judge, Islamabad etc.

Respondents 3 to 6 by: Sardar Taimoor Aslam, Advocate.

MOHSIN AKHTAR KAYANI, J:- Through this writ petition, the petitioner challenged the order dated 28.12.2017, passed by learned Additional District Judge-IX Islamabad, whereby appeal filed by the petitioner has been dismissed against the order dated 26.10.2017, passed by learned Judge Family Court (West) Islamabad, and the application for setting aside ex-parte judgment & decree was dismissed.

2. Learned counsel for the petitioner contends that the petitioner filed an application for setting aside ex-parte judgment & decree dated 21.02.2015, passed by learned Judge Family Court mainly on the ground that the petitioner has not been served as he was out of country and respondents No.3 to 4 obtained ex-parte judgment and decree in suit for dissolution of marriage on the basis of cruelty, recovery of gold ornaments, dower, gifts and maintenance; that respondent No.3 after obtaining ex-parte judgment and decree in her favour herself stated in Crl. Misc. No.2450-H/2015 and acknowledged that the petitioner was out of country in Kuwait referred in Para-6 of the petition and on the basis of her Crl. Misc. Petition, Lahore High Court handed over custody of one of the minors in terms of section 491, Cr.P.C vide order dated 30.11.2015 and as such judicial proceedings confirms stance of the petitioner, which was not appreciated by the Courts below; that the petitioner has paid entire due maintenance to respondents and two of the minors are still living with the petitioner but these facts have not been appreciated in proper manner.

3. Conversely, learned counsel for respondents No.3 to 6 contends that respondent No.3 married to the petitioner and she filed suit for dissolution of marriage on the basis of

cruelty, recovery of gold ornaments, dower, gifts and maintenance on 31.05.2014, whereby the said suit was contested by the petitioner, who filed his written statement and thereafter the matter was decided in his presence to the extent of dissolution of marriage as well as maintenance due to non-payment of interim maintenance and as such ex-parte judgment & decree was not passed at the back of the petitioner, who was fully aware of each and every date of the proceedings.

4. I have heard the arguments and perused the record.

5. Perusal of the record reveals that the petitioner is mainly aggrieved with the order dated 26.10.2017, passed by learned Judge Family Court, Islamabad, whereby his application for setting aside ex-parte judgment & decree dated 26.02.2015 was dismissed. As per record the petitioner and respondent No.3 married to each other on 08.04.2000 and three children were borne from the said wedlock, however, respondent No.3 filed suit for dissolution of marriage on the basis of cruelty, recovery of gold ornaments, dower, gifts and maintenance on 31.05.2014. The suit was contested by the petitioner by way of filing written statement on 02.10.2014. Learned Judge Family Court passed the order for interim maintenance in terms of section 17-A of Family Court Act, 1964 vide order dated 22.09.2014 at the rate of Rs.30,000/- per month for each minor. The petitioner approached this Court against the order of interim maintenance, which was reduced to Rs.10,000/- per month per child but despite that the petitioner failed to deposit the said maintenance, therefore, his right was struck off vide order dated 24.02.2015. The petitioner remained on watching brief and intentionally avoided Trial Court and as a result whereof Trial Court proceeded against ex-parte against the petitioner on 21.05.2015 and finally ex-parte judgment & decree was passed to the extent of remaining claims of respondent No.3 on 20.06.2015.

6. Keeping in view above background, I have also gone through the application filed by the petitioner on 02.06.2017 for setting aside ex-parte judgment & decree, which reveals following ground:-

“that the applicant has no knowledge of the captioned judgment and decree due to the fact that the applicant was abroad and summons were not served upon him.”

7. The above mentioned ground has been denied by the respondents side, who contested the application and as such the ground taken by the petitioner is contrary to record, who was fully aware of the proceedings of the learned Family Court, even the decree for dissolution of marriage on the basis of Khula was passed in his presence on 24.01.2015 when his clerk counsel was present. The entire record speaks volume about the conduct of the petitioner, who has not paid a single penny in previous orders as maintenance of the respondents rather frustrated the decree although at this stage he has deposited certain amount and also contends that two of the minors are still living with him.

8. Keeping in view above background, the plea raised by the petitioner in the application is misconceived and is contrary to record, as a result whereof learned Judge Family Court as well as Appellate Court have rightly appreciated the entire record and dismissed the claim of the petitioner without any legal and jurisdictional defect. The entire record reflects the contemptuous conduct of the petitioner, who has not even satisfied the decree at first instance nor complied with the orders passed by learned Family Court in terms of section 17-A of Family Court Act, 1964, his defense was struck off and has been proceeded against ex-parte, when he was on watching brief, therefore, his plea for non-service is not justified.

9. In view of above discussion, the instant writ petition bears no merits, therefore, the same is hereby **dismissed**.

(MOHSIN AKHTAR KAYANI)
JUDGE