

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

Writ Petition No. 3676 of 2021

Ejaz Hussain Ghumman

Versus

Mst. Noureen Tabassum and others.

| S.No. of order/ proceeding | Date of order/ proceeding | Order with signature of Judge and that of parties or counsel where necessary. |
|-----------------------------------|----------------------------------|--|
| (01) | 15.10.2021 | Mr. Muhammad Asghar Gondal, 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 impugned Judgment dated 11.09.2021, passed by learned Additional District Judge, Islamabad and order dated 11.06.2021, passed by learned Judge Family Court / Guardian Judge-West, Islamabad, whereby the application for setting aside ex parte judgment and decree dated 07.02.2019, filed by the petitioner was dismissed.

2. Succinctly, stated facts of the case are that the respondent No.1 filed suit

No.411/2018 for recovery of maintenance allowance and medical expenses etc. and suit No.502/2018 for recovery of dower amount and dowry articles or it's alternate amount, against the petitioner/defendant in the Court of learned Family / Guardian Judge, Islamabad.

3. In both the suits ex-parte orders were passed and after recording the ex-parte evidence of respondent No.1 / plaintiff, both the suits were decreed vide order/decreed dated 07.02.2019 by learned Family / Guardian Judge, Islamabad.

4. Petitioner / defendant filed applications for setting aside of the ex-parte orders and decrees in both the suits, which were dismissed vide orders dated 11.06.2021.

5. Petitioner filed appeals against orders dated 11.06.2021, which were also dismissed vide impugned judgments / decrees dated 11.09.2021, by the learned Additional District Judge (West), Islamabad.

6. Being aggrieved of the impugned judgments / decrees dated 11.09.2021, and orders / decrees dated 07.02.2019 passed in both the above mentioned suits, the instant writ petition has been filed.

7. Learned counsel for the petitioner, *inter alia*, contends that the impugned judgments, orders and decrees are against the law and facts of the case.

8. That the petitioner had no knowledge of filing of the above mentioned suits by the respondent No.1, hence, ex-parte orders were wrongly passed against the petitioner.

9. That the impugned judgments and decrees are not speaking and also not passed on reasoning rather based upon assumptions and presumptions; the impugned judgments and decrees are result of illegalities and irregularities which resulted into grave miscarriage of justice.

10. That the impugned judgments and decrees have been passed in a post haste and arbitrary manner, hence are not

sustainable in the eyes of law and are liable to be set aside.

11. Arguments heard, record perused.

12. Marriage of the petitioner was solemnized with respondent No.1/Mst. Noreen Tabassum, according to Muslim Rights and Ceremonies on 15.11.2014. At the time of marriage deferred dower amounting to Rs. 5,00,000/- was fixed.

13. From wedlock of the parties, one minor son was born on 04.11.2016. Thereafter, relations between the parties became strain and respondent No.1 & 2/ wife and son were thrown out of the house by the petitioner and also pronounced divorce upon respondent No.1 through SMS.

14. Respondent No.1 filed a civil suit No.411/2018 for recovery of maintenance allowance and medical expenses etc. and suit No.502/2018 for recovery of dower amount and dowry articles or alternate amount of dowry articles.

15. After filing of the suits, learned Judge Family Court issued notices to the petitioner/defendant through courier i.e. TCS which were duly served upon the petitioner on 01.10.2018 at 05:54 p.m.. The notices were received by the petitioner personally and courier tracking report is also available on record but the petitioner did not opt to join the proceedings, hence the ex-parte orders were passed; ex-parte evidence of respondent No.1/plaintiff was recorded and both the suits were decreed in favor of respondent No.1 on 07.02.2019, and the following reliefs were granted to her:

"(i) Respondent No.1/plaintiff was entitled to receive an amount of Rs. 10,000/-per month for her Iddat period.

(ii) Respondent No.2 / minor was entitled to receive an amount of Rs. 8,000/- per month w.e.f January, 2018 till

his legal entitlement with 10% annual increase.

(iii) Respondent No.1/plaintiff was entitled to receive an amount of Rs. 5,00,000/- in lieu of her deferred dower.

(iv) Respondent No.1/plaintiff was entitled to receive back the dowry articles except the car in lieu of the dowry articles an amount of Rs. 1,50,000/- against the market value of dowry articles."

16. Petitioner filed applications for setting aside the impugned ex-parte orders and decrees in both the suits on 26.07.2019 which were dismissed for non-prosecution and were restored on 22.10.2020.

17. Reasons mentioned in the applications for setting aside ex-parte orders and decrees in para-3 were that notices or summons were not properly served upon the petitioner but he came to

know about the pendency of suits through his relative whose case was also pending in the same learned Court. In para-5 of the same application, the petitioner has mentioned that on 20.06.2019, respondent No.1/plaintiff called the sister of the petitioner and informed her regarding the pendency of suits.

18. Both the applications were dismissed vide order dated 11.06.2021, by learned Judge Family Court and appeals were also dismissed by the Court of learned Additional District Judge, Islamabad.

19. Condition of deferred dower of Rs. 5,00,000/- is mentioned in the *Nikkahnama* and the amount of Rs. 8,000/- as maintenance of minor is also justified and not an exorbitant amount. The dowry articles are also liable to be returned by the petitioner to respondent No.1, and the maintenance of Iddat period is also liable to be paid by the petitioner to respondent No.1 in accordance with law,

hence no prejudice has caused to the petitioner from the passing of impugned judgments / decrees.

20. Suits were filed on 25.09.2018, and decided on 07.02.2019. The conduct of the petitioner shows that he remained silent till final decision of suits and deliberately opted not to join the proceedings and after passing of the impugned judgments/decrees, he filed the applications for setting aside the ex-parte judgment / order / decrees. After filing of applications he also did not pursue the same which were dismissed for non-prosecution and again were restored after a period of more than one year of filing of the applications.

21. Conduct of the petitioner clearly shows that he wants to drag respondent No.1 / his ex-wife in the Courts / litigation unnecessarily.

22. When confronted, learned counsel for the petitioner has failed to point out any illegality or prejudice caused to the

petitioner due to the passing of impugned judgments / decrees.

23. It is trite that in order to get discretionary and equitable relief, the parties should approach 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])**.

24. 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 **“Sadrudin Vs. Aslam Madad Ali and others” (PLD 2008 Karachi 2005).**

25. 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”.***

26. For what has been discussed above, the orders and decrees dated 07.02.2019, orders dated 11.06.2021, passed by the learned Family/Guardian Judge, Islamabad as well as Judgments dated 11.09.2021, 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**