

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 3936 OF 2020

Shahzad Liaqat

Vs.

Mst. Asfa Batool, etc

Petitioner by : Raja Muhammad Khan, ASC.

Respondent by : Ch. Mohammad Javed Gujjar, AHC.

Date of hearing : 18.02.2021.

LUBNA SALEEM PERVEZ, J. Through instant petition, the petitioner Shahzad Liaqat has assailed Ex-parte judgment and decree dated 26.10.2019, passed by learned Judge, Family Court-West, Islamabad in Family Suit No. 136/2016, which was upheld by the learned Additional District Judge, MCAC, West-Islamabad, vide judgment and decree dated 07.11.2020, passed in Family Appeal No. 40/2020. Hence, through present petition, the petitioner prayed for following relief:-

“In the light of foregoing legal and factual positions, it is most respectfully prayed that this Honourable Court may graciously be pleased to accept the instant writ petition, set-aside the impugned judgment / decree dated 07.11.2020, Ex-parte judgment/decreed dated 26.10.2019, Ex-parte order dated 24.07.2019 and order provision of one single Opportunity of hearing on a fixed date to the petitioner for fair administration of law and justice.”.

2. Brief facts are that the respondent filed a suit for dissolution of marriage on the basis of Khula, past maintenance *w.e.f.* July, 2015 till Iddat period at the rate of 100,000/- per month and recovery of dowry articles according to list or Rs. 1,380,500/- as an alternate. The suit was ex-parte decreed, vide judgment dated 26.10.2019, whereby the maintenance allowance at the rate of Rs. 25,000/- per month *w.e.f.* 20.07.2015, till expiry of Iddat period i.e. 28.12.2016 and the recovery of Rs. 367,500/- in lieu of remaining dowry articles and recovery of gold ornaments worth

Rs.261,000/- or its value as an alternate was ordered to be paid to Respondent No.1/Plaintiff. The judgment and decree dated 26.10.2019 was assailed in appeal before the Additional District Judge, MCAC, West-Islamabad, u/s 14 of the Family Courts, Act who, vide judgment and decree dated 07.11.2020, passed in Family Appeal No. 40 of 2020, dismissed the appeal filed by the petitioner on the ground of limitation as it was filed beyond the period of 30 days prescribed under the law. Hence, present Writ Petition assailing judgments and decree dated 26.10.2019 & 07.11.2020, respectively.

3. Learned counsel for the petitioner submitted that the delay on the part of petitioner in filing appeal was unintentional. He submitted that during the proceedings the case was transferred to another Judge and, therefore, before passing any adverse order against the petitioner, the learned Judge was required to issue notice to the petitioner, however, no such notice was issued before commencing the trial proceedings by the learned Judge, who has passed the impugned order; that it has been well settled that decision should be based on merits and not on technicalities. He further submitted that the right to defend the case has been seriously prejudiced before the learned Trial Court, therefore, he requested to grant a single opportunity to plead his case before the learned Trial Court.

4. On the other hand, learned counsel for Respondent No. 1 strongly controverted the contentions of the petitioner and submitted that appeal before the learned Appellate Court was filed beyond the limitation of 30 days provided in the Family Court Act, 1964/Rules 1965. He submitted that Order by the learned Trial Court was passed on 26.10.2019, whereas, the appeal before the learned Appellate Court was instituted on 17.02.2020, therefore, the learned Appellate Court has rightly dismissed the appeal of the petitioner on the point of limitation as it is well settled that delay of each and

every day is to be explained. He, therefore, prayed for dismissal of instant petition.

5. Arguments of learned counsel for the parties have been heard and relevant record including the impugned judgments and decree have also been perused.

6. Admittedly, the impugned judgment dated 26.10.2019, has been passed against the petitioner (defendant in the suit) ex-parte. The learned Trial Court, in para 5 of the impugned judgment has held that:-

“5. The defendant Shahzad Liaqat submitted his duly sworn affidavit for evidence, but thereafter neither he reaffirmed the contents of his affidavit nor appeared before the Court for cross-examination rather disappeared from the proceedings, hence he was proceeded ex-parte vide order dated 24.07.2019.”.

7. Record shows that the order dated 24.07.2019 was not challenged by the petitioner and it is after a period of about three months from the date of passing of the said judgment by the learned Trial Court i.e. on 26.10.2019, that the petitioner filed appeal. It transpired from the stamp of the Copying Branch that the certified copy of the judgment dated 26.10.2019 was applied on 01.12.2019, whereas, the certified copies of the same was delivered to the petitioner on 03.12.2019, however, and the appeal against the said judgment of the learned Trial Court, was filed before the learned Appellate Court on 17.02.2020. When argument of the learned counsel for petitioner that the petitioner had no knowledge of passing the ex-parte judgment is considered with the date of applying and obtaining certified copies of the judgment, I find no force in his argument as first of all the order dated 24.07.2019, whereby he was proceeded against ex-parte was not challenged, secondly, the final judgment was passed on 26.10.2019, and bears the attendance of the learned counsel for the petitioner and thirdly, even if the time period is counted after obtaining certified copies of the impugned judgment till the filing of appeal on 17.02.2020, the appeal u/s 14 of the Family Act, 1964/Rules 1965, have been after about 75 days, whereas, in terms of Rule

22 of the West Pakistan Family Court Rules, 1965, the prescribed time period for filing appeal is 30 days from the date of passing the decree or decision excluding the time required for obtaining copies thereof.

8. It has been noticed that the learned counsel along with instant petition has also filed application for condonation of delay for filing appeal before the learned Appellate Court, bearing C.M. No. 02 of 2020. I am of the view that the application/petition for condonation of delay was to be filed before the learned Appellate Court as the delay has been occurred in filing appeal, whereas, the petitioner's stance was that the appeal was in time. No purpose would be served by any application of condonation of delay filed before this Court as the competent court to decide the issue of limitation/condoning the delay has been vested with the learned Appellate Court before which forum the delay has been caused. Thus, **C.M. No. 02/2020**, is held to be misconceived and is hereby **dismissed**.

9. In view of the above, after taking into consideration all the facts and circumstances and law on the subject, I am of the firm view that the appeal before the learned Appellate Court was hopelessly time barred which was rightly dismissed by the learned Appellate Court, vide its judgment and decree dated 17.11.2020, which does not call for any interference by this Court. Thus, the present Petition, being devoid of any merit is hereby **dismissed**.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in open Court on _____.

JUDGE