

2023 C L C 1489
[Balochistan (Turbat Bench)]
Before Muhammad Ejaz Swati and Gul Hassan Tareen, JJ
NAVEED AHMED---- Petitioner
Versus
FAMILY JUDGE, PANJGUR and another ----Respondents
Constitution Petition No.(T) 17 of 2023, decided on 2nd March, 2023.

ORDER

GUL HASSAN TAREEN, J. ----Through this Constitution petition, filed under Article 199, Constitution of the Islamic Republic of Pakistan, 1973 ("the Constitution"), the petitioner seeks setting aside of an order dated 22 December, 2022 ("impugned order") passed by the Court of learned Family Judge, Panjgoor ("Executing Court"), whereby an execution application made by the respondent No. 2 was allowed and the petitioner was directed to pay the market value of gold and past and future maintenance in monthly installments along with share of fruit of trees as dower.

2. Brief facts of the case are that the respondent No. 2 instituted a family suit against the petitioner for recovery of dower and maintenance allowance which was concurrently decreed. The concurrent decrees were upheld on Constitution Petition No. (T) 29 of 2019 by this Court vide order dated 17 September 2020. The respondent No. 2 filed execution application for execution of the decree. The Executing Court after entertaining the objections filed by the petitioner allowed the execution application in the aforementioned terms.

3. We have heard Mr. Sohail Abid, Advocate, counsel for the petitioner, who states that the petitioner is a person of less means and has a second wife and children, therefore, the amount of installments fixed by the Executing Court are exorbitant and beyond the income of the petitioner.

4. Arguments heard. Record perused.

5. Vide impugned order, the Executing Court has allowed the execution application made by the respondent No. 2. The order passed by the respondent No. 1 is appealable before the District Court, Panjgoor under section 14 (1) (b), the Family Courts Act, 1964 ("Act, 1964"), which is a special law. Section 14(1) (b) reads:

S. 14. Appeal.---(1) Notwithstanding anything provided in any other law for the time being in force, a decision given or a decree passed by a Family Court shall be appealable-

(a)

(b) to the District Court, in any other case."

The petitioner, instead of preferring an appeal against the impugned order before the District Court, Panjgoor has directly filed constitution petition in this Court.

6. This Court may, on the application of any aggrieved party, exercise its' constitutional jurisdiction under Article 199, the Constitution; however, such exercise is subject to the Constitution and if the Court is satisfied that no other adequate remedy is provided by law. The impugned order is not an interim order rather is an order which falls within the definition of word "decision" as prescribed by the section 14(1), the Act, 1964. Vide impugned order, the Executing Court has over ruled the objections of the petitioner and allowed the execution application made by the respondent No. 2. The Executing Court has finally decided the execution application and objections of the petitioner; therefore, the petitioner was required to avail his remedy of appeal under section 14, the Act, 1964. The impugned order of the Executing Court which is also free from any jurisdictional and material legal error, is not open to any interference by this Court in the exercise of extra ordinary constitutional jurisdiction. The Hon'ble Supreme Court in the case of Indus Trading and Constructing Company v. Collector of Customs (Preventive) Karachi and others, 2016 SCMR 842, has held as under:

"....Ordinarily, the jurisdiction of the High Courts under Article 199 of the Constitution should not be invoked where alternative forum under a special law, duly empowered to decide the controversy is available and functioning. Where a special law provides legal remedy for the resolution of a dispute, the intention of the legislature in creating such remedy is that the disputes falling within the ambit of such forum be taken only before it for resolution. The very purpose of creating a special forum is that disputes should reach expeditious resolution headed by quasi judicial or judicial officers who with their specific knowledge, expertise and experience are well equipped to decide controversies relating to a particular subject in a shortest possible time. Therefore, in spite of such remedy being made available under the law, resorting to the provisions of Article 199(1) of the Constitution, as a matter of course, would not only demonstrate mistrust on the functioning of the special forum but it is painful to know that High Courts have been over-burdened with a very large number of such cases. This in turn results in delays in the resolution of the dispute as a large number of cases get decided after several years. These cases ought to be taken to forum provided under the

Special law instead of the High Courts. Such bypass of the proper forum is contrary to the intention of the provisions of Article 199(1) of the Constitution which confers jurisdiction on the High Court only and only when there is no adequate remedy is available under any law. Where adequate forum is fully functional, the High Courts must deprecate such tendency at the very initial stage and relegate the parties to seek remedy before the special forum created under the special law to which the controversy relates. We could have relegated the appellant to seek remedy before the appropriate forum...."

7. In this case, the law of section 14, the Act, 1964 prescribes an alternate, effective and exhaustive remedy in the form of a substantive right of appeal to a party who feels itself aggrieved from the decision or a decree passed by a Family Court. The remedy of appeal and the forum therefor debar the petitioner from directly approaching this Court in Constitutional jurisdiction. Section 14, the Act, 1964, apart from prescribing a statutory right of appeal, also provides a forum in the form of, District Court. Such right of appeal of the petitioner is not without an adequate remedy. Jurisdiction, under section 14, the Act, 1964 and under Article 199, the Constitution are not concurrent; therefore, the petitioner should have availed the prescribed remedy of appeal before approaching this Court under Article 199, the Constitution. Recently, the Hon'ble apex Court, in the case of Sana Jamali v. Mujeeb Qamar and another, published in 2023 SCMR 316 has laid down as under:

"12. The maxim Ubi jus ubi remedium (wherever there is a right, there is a remedy), is an elementary principle of law and any person having a right has a corresponding remedy to institute suits in a Court unless the jurisdiction of the Court is barred. The aforesaid principle acknowledges the subsistence of a legal right and can also be invoked when the law seemingly does not provide a remedy for the enforcement of such right. In order to challenge the ex- parte judgment and decree, a right of appeal was provided to the respondent No. 1 under section 14 of the 1964 Act, but instead of filing an appeal as an equally efficacious and adequate remedy provided under the law, the respondent No. 1 opted to invoke the Constitutional jurisdiction of the High Court which was not permissible. So far as the question of converting one proceedings into another is concerned, meaning thereby the writ petition into an appeal under the 1964 Act, both forums in jurisdiction are altogether different. In this case the appeal lies to the District Court against the Family Court judgment and not to the High Court; hence the High Court could not convert the proceedings into appeal. Had the statutory right of appeal been provided in the High Court, and due to wrong conception or some misunderstanding

the Constitution Petition was filed, then obviously, subject to all just exceptions including the question of limitation, the Constitution Petition could be converted into appeal, but in this case the High Court could not assume the role of appellate Court, and if any attempt was made for conversion then that would also be without jurisdiction though the learned High Court had not converted the nature of proceedings but took the cognizance and allowed the constitution petition without taking into consideration section 14 of the 1964 Act

which deals with the right of appeal. In the case of Government of the Punjab through Secretary, Schools Education Department, Lahore and others v. Abdur Rehman and others (2022 SCMR 25), it was held by this Court that the renowned Latin maxim *ubi jus ibi remedium articulares* in well-defined terms that where there is a right, there is

a remedy. In the command of jurisdictional prudence, the courts generally show restraint with the direction to the parties to first take recourse of an alternate and or equally efficacious mechanism and framework of remedy provided, rather than to take departure in order to surpass or circumvent such remedy.

13. The 1964 Act is a special law which provides various legal remedies and the intention of the legislature for creating such remedies is that disputes falling within the ambit of such forum be taken only before it for resolution and bypass or circumvention of the forums is not permissible under the command of Article 199 (1) of the Constitution which confers jurisdiction on the High Court only when there is no adequate remedy available under any law. Where an adequate forum is fully functional, the High Court must not interfere and must relegate the parties to seek

remedy before the special forum created under the special law. In the case of Deputy Commissioner of Income Tax/Wealth Tax, Faisalabad and others v. Messrs Punjab Beverage Company (Pvt.) Ltd. (2007 PTD 1347 = 2008 SCMR 308), the tendency of by-passing the remedy provided under law, and resort to Constitutional jurisdiction of

the High Court was deprecated by this Court, while in the case of Messrs Amin

Textile Mills (Pvt.) Ltd. v. Commissioner of Income Tax and 2 others (2000 SCMR

201), also this Court referred to the case of Al -Ahram Builders (Pvt.) Ltd. v. Income

Tax Appellate Tribunal (1993 SCMR 29) and discouraged the tendency to bypass the remedy provided under the relevant statute to press into service the Constitutional jurisdiction of the High Court."

8. For the reasons discussed above, this constitution petition being without force and substance is dismissed in limine.

SA/72/Bal. Petition dismissed.