

2017 Y L R 275

[Balochistan]

Before Muhammad Noor Meskanzai, C.J. and Muhammad Ejaz Swati, J

MUHAMMAD KALEEMULLAH---Petitioner

Versus

Mst. REHANA NASEER and 2 others---Respondents

C.P. No.438 of 2014, decided on 25th August, 2016.

(a) Family Courts Act (XXXV of 1964)---

---S. 5, Sched.---Suit for recovery of dower, dowry articles and maintenance allowance---Receipts / documentary evidence were received by the Trial Court in the statement of plaintiff---Appellate Court had not considered as to whether said receipts could have been allowed to be produced by the plaintiff in her statement and were admissible under the law---Impugned judgment and decree passed by the Appellate Court were set aside and case was remanded to the Appellate Court for decision on merits after providing an opportunity of hearing to the parties within a specified time---Constitutional petition was allowed in circumstances.

Province of Punjab through Collector and others v. Muhammad Farooq and others PLD 2010 SC 582 and Mst.Yasmeen Bibi v. Muhammad Ghazanfar Khan and others PLD 2016 SC 613 rel.

(b) Family Courts Act (XXXV of 1964)---

---Ss. 14 & 5, Sched---Family Courts Rules, 1965, R. 22---Limitation Act (IX of 1908), S.12---Decree of family court---Appeal--- Limitation--- Calculation of---Procedure---Appeal against the judgment and decree passed by the Family Court could be filed within 30 days after passing of the same---Said limitation would run from the date of passing of decree and the day on which judgment and decree had been passed would be excluded.

Ahsan Rafique Rana for Petitioner.

Shahid Javed Nagi for Respondent No.1.

Date of hearing: 27th July, 2016.

JUDGMENT

MUHAMMAD EJAZ SWATI, J.---The respondent No.1 filed a suit for Recovery of Dower, Dowry and Maintenance Allowance of Rs.650,600/- with the averments that the marriage

between spouses had been solemnized on 8th July 2012 and Haq Mehr was fixed as Rs.100,000/- . Besides, family of the respondent No.1 (plaintiff) had given dowry articles amounting to Rs.550,600/-, which are in the custody of the petitioner (defendant), however, the marriage row between the spouses could not survive, as such resulted in Talaq given by the petitioner through written instrument.

2. The suit was contested, however, the Additional Family Judge, Quetta (hereinafter the "trial Court") vide judgment and decree dated 9th December 2013 (hereinafter the "impugned judgment and decree") decreed the suit on the following terms:

1. The plaintiff is entitled to recovery of the out standing dower Rs.97,000/-
2. The plaintiff is entitled to recover the dowry articles according to her claim or (sic) equilent amount thereof Rs.550600/-.
3. The plaintiff is entitled to get the monthly maintenance at the rate of Rs.5000/- from the date of (sic) Talaq during her iddat period."

3. The petitioner assailed the impugned judgment by way of filing appeal, which after notice and hearing was dismissed by the learned Additional District Judge-IV, Quetta (hereinafter the "appellate Court") vide judgment and decree dated 14th May, 2014 (hereinafter the "impugned judgment and decree") on the ground of limitation. The relevant portion thereof is reproduced herein below:--

"I perused the record of case it reveals that the appeal of the appellant is time-barred and appeal preferred after unexplained delay of 04 (four) days, no application for condonation of delay filed by the appellant. The time-period for preferring of appeal is 30 days and it was to be preferred 11-01-2014, after exclusion of days for obtaining (sic) copes of judgment/ decree (copies received on 13-12-2013). Appeal preferred on 15-01-2014. Period of 30 days has been prescribed by R.22, West Pakistan Family Courts Rules, 1965 for filing appeal against judgment of Family Court, such period runs from the date of passing of decree (decree passed on 09-12-2013)."

4. The learned counsel for the petitioner contended that the trial Court passed the decree for dowry articles without having any authentic and admissible detail on record, therefore, the impugned judgment and decree passed by the trial Court was based on inadmissible evidence; that on merit, the petitioner has a good prima-facie case on the ground that all the receipts pertaining to purchase of articles were tendered in the statement of the respondent No.1, and despite objection of the counsel for the petitioner, the said receipts were admitted in evidence and thus, the findings of the trial Court were based on inadmissible evidence, as the respondent No.1 was neither author of the said receipts nor those were issued by her; that the appellate Court non-suited the petitioner merely on the ground that the appeal filed by the petitioner was barred by time and without considering the aforesaid aspect of the matter.

The learned counsel for the respondent No.1 contended that the petitioner had failed to explain the delay of each day of filing the appeal. Moreover, no application for condonation of delay was filed to explain the condonation thereof; that the limitation is a substantial question of

law, therefore, in absence of any explanation, the appellate Court had rightly dismissed the same on the point of limitation.

5. We have heard the learned counsel for the parties and perused the record. Before dilating upon merit of the case related to judgment and decree passed by the trial Court, it is necessary to consider the question or limitation on the basis whereof the appellate Court has dismissed the appeal on the ground of limitation. Admittedly, the appeal against the judgment and decree passed by the trial Court lies under section 14 of the Family Courts Act, 1964, which is to be filed within 30 days after passing of the judgment and decree. In the instant case, the trial Court passed the impugned judgment and decree on 9th December, 2013 and the petitioner filed application for obtaining certified copy of the impugned judgment and decree on 10th December, 2013, which was prepared on 13th December 2013 and delivered to the petitioner on 16th December, 2013 and filed the appeal on 15th January, 2014. Though, the period of 30 days for filing of an appeal has been prescribed by Rule 22 of the West Pakistan Family Courts Rules, 1965 and the limitation will run from the date of passing of the decree. The day, on which, the judgment and decree has been passed is to be excluded and the limitation would run from 10th December, 2013 instead of 9th December, 2013. Since the petitioner had filed application for certified copy on 10th December 2013, which was prepared on 13th December 2013 and thus, the appeal was barred by three days and no application for condonation of delay was filed.

6. We have considered this aspect of the matter in view of the material aspect of the case which reveals that all the receipts/documentary evidence were received by the trial Court in the statement of the respondent No.1 and this aspect of the matter was essential for the appellate Court to have considered as to whether the said receipts could have been allowed to be produced by the respondent No.1 in her statement and were admissible under the law or otherwise, therefore, considering this aspect of the matter and in the interest of justice, we are inclined to accept the contention of the petitioner and warrant interference in the impugned judgment and decree passed by the appellate Court. Reference in this respect is to be made to the case of Province of Punjab through Collector and others v. Muhammad Farooq and others, PLD 2010 SC 582, wherein the Hon'ble Supreme Court of Pakistan observed that "Court could assume jurisdiction related to matter filed with delay, provided the merit of the case so demanded".

In Mst. Yasmeen Bibi v. Muhammad Ghazanfar Khan and others, PLD 2016 SC 613, the Hon'ble Supreme Court observed as under:--

"Before parting with this judgment, it is essential to state that these petitions are barred by 2 and 4 days respectively, however, keeping in view the important law points of public importance, involved and because right to dower, dowry articles and maintenance is involved, which cannot be lightly ignored, therefore, the delay of 2 and 4 days respectively, in filing these petitions is condoned."

In view of the above, Constitutional Petition No.438 of 2014 is partly allowed, the impugned judgment and decree dated 14th May 2014 passed by the learned Additional District Judge-IV, Quetta is set aside and the case is remanded to the appellate Court to decide the family appeal on merit after providing opportunity of hearing to the parties in accordance with law within a period of four months.

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Case remanded.