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Before Muhammad Kamran Khan Mulakhail and Rozi Khan Barrech, JJ

REHMATULLAH---Petitioner

Versus

Mst. BIBI ZENORA and 2 others---Respondents

C. P. No. 335 of 2020, decided on 8th March, 2021.

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

----Ss. 5, Sched. & 14---Family Courts Rules, 1965, R. 3---Dastoor-ul-Amal Diwani State Kalat, 1952, S. 24---Suit for dissolution of marriage---Appeal---Scope---Respondent/wife filed suit for dissolution of marriage on the ground of cruelty, recovery of dower amount, custody of minors and return of educational certificates---Family Court partly decreed the suit---Petitioner filed appeal before the Member, Majlis-e-Shoora, who returned the appeal by holding that the court had no jurisdiction to entertain the appeal---Petitioner filed appeal before the District and Sessions Judge, who dismissed the same being barred by time---Validity---Section 14 of the Family Courts Act, 1964, provided that a decision given or decree passed by a Family Court shall be appealable to High Court, where the Family Court was presided over by a District Judge and to the District Court in any other case---To define the words "District Judge", an Explanation was given in R. 3 of the Family Courts Rules, 1965, wherein it was laid down that "for the purpose of this rule and R. 7, the expression 'District Judge' shall be deemed to include the President of Majlis-e-Shoora, Kalat"---Section 24 of the Dastoor-ul-Amal Diwani State Kalat, 1952, envisaged that there shall be a Majlis-e-Shoora comprising of two or more members to decide appeals arising out of the judgments and decrees of the Qazis working under the hierarchy of Dastoor, thus, for all intents and purposes, reference to word 'Majlis-e-Shoora' meant a Court constituted with two members and a President, whereas the reference to words 'President of Majlis-e-Shoora' was limited only to President of Majlis-e-Shoora---Provincial Government while defining the territorial limits of the various courts of Majlis-e-Shoora had simultaneously declared the respective District and Sessions Judges as President of different Courts of Majlis-e-Shoora---Intention of legislature was clear that in family matters either decided by a Civil Judge or Qazi, the appeal would solely lie before the District Judge---Constitutional petition was dismissed accordingly.

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

----S. 14---Family Courts Rules, 1965, R. 22---Appeal---Limitation---Condonation of delay---Scope---Respondent filed a suit for dissolution of marriage on the ground of cruelty, recovery of dower amount, custody of minors and return of educational certificates---Family

Court partly decreed the suit---Petitioner filed an appeal before the Member, Majlis-e-Shoora, who returned the appeal by holding that the court had no jurisdiction to entertain the appeal---Petitioner filed an appeal before the District and Sessions Judge, who dismissed the same being barred by time---Validity---Even the appeal filed before the court of Member, Majlis-e-Shoora, was barred by time---Rule 22 of Family Courts Rules, 1965, provided that an appeal under S.14 of the Family Courts Act, 1964, shall be preferred within 30 days of the passing of the decree or a decision excluding the time required for obtaining the certified copies---Although it was provided in the proviso to R. 22 of Family Courts Rules, 1965, that the Appellate Court might for sufficient cause extend the period---Nothing was available on record to suggest that any application was filed for extension of time, nor any such ground was taken in the memorandum of appeal---Constitutional petition was dismissed accordingly.

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

----S. 5, Sched.---Dissolution of Muslim Marriages Act (VIII of 1939), S. 2---Suit for dissolution of marriage---Ground for dissolution of marriage---Cruelty---Scope---Respondent filed a suit for dissolution of marriage on the ground of cruelty, recovery of dower amount, custody of minors and return of educational certificates---Family Court partly decreed the suit---Petitioner filed appeal before the District and Sessions Judge, who dismissed the same being barred by time---Validity---Statement of respondent/wife and her witnesses showed that there was maltreatment both physically and mentally from the side of petitioner, that was why the petitioner had to give surety that next time there would be no beatings---Petitioner, on the other hand, had failed to give substantiating evidence to prove that the respondent willingly left him and refused to rejoin him---Petitioner had also failed to maintain the respondent for several years during her stay with her parents---Cruelty was not limited to physical bearing rather it could either be mental or even by conduct---Respondent had taken shelter in her parent's house for several years and in such a situation the respondent had sustained acute mental anguish and suffering by the reckless and careless attitude of the petitioner, which compelled her to approach the trial court for dissolution of marriage---Constitutional petition was dismissed accordingly.

(d) Interpretation of statutes---

----Proviso to section---Construction---Proviso is to be restrictively construed.

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

---S. 14---Appeal---Dissolution of marriage---Scope---Logic behind non-provision of appeal in the dissolution of marriage case is to protect the underprivileged and generally oppressed section of society i.e. wife, from costly and prolonged litigation---Lawmakers have put a clog on the right of a husband to file appeal in case of dissolution of marriage, keeping in view the peculiar circumstances prevailing in the society.

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

----S. 14---Dissolution of Muslim Marriages Act (VIII of 1939), S.2(viii)(d)---Appeal---

Dissolution of marriage---Scope---Section 14 of the Family Courts Act, 1964, contemplates appeal from the decision of the Judge Family Court to be competent before the District Judge but with a bar that no appeal shall lie from a decree passed by a Family Court dissolving the marriage on any other ground or grounds specified therein except on the ground mentioned in S.2(viii)(d) of Dissolution of Muslim Marriages Act, 1939, which relates to the disposal of property of wife preventing her from exercising her legal right over it.

(g) Administration of justice---

----No one can claim benefit of his own wrong.

(h) Limitation Act (IX of 1908)---

----S. 14---Exclusion of time of proceeding bona fide in Court without jurisdiction---Scope---Where a litigant has not acted in a bona fide manner or he has acted without due diligence in prosecuting remedies before a wrong forum, he cannot be benefitted under S.14 of the Limitation Act, 1908.

Muhammad Ishaq v. Province of the Punjab 1998 SCMR 9; Abdul Ghani v. Ghulam Sarwar PLD 1977 SC 102 and Chaudhry Muhammad Sharif v. Muhammad Ali Khan and others 1975 SCMR 259 rel.

(i) Constitution of Pakistan---

----Art. 199---Constitutional jurisdiction---Laches---Scope---No period of limitation is prescribed for filing a constitutional petition under Art.199 of the Constitution, but it has to be filed within a reasonable time---Reasonable time means time requisite for filing of appeal/ revision, which is normally three months.

Khali Khan v. Haji Nazir and 4 others PLD 1997 SC 304 ref.

Abdul Ahad Kakar for Petitioner.

Miss Sarwat Hina for Respondent No.1.

Date of hearing: 24th February, 2020.

JUDGMENT

ROZI KHAN BARRECH, J.---Facts necessary for adjudication of this case are, that the respondent No.1 Mst. Zenora, daughter of Sheikh Hussain Khan, filed a suit for dissolution of marriage on the ground of cruelty, recovery of dower amount, custody of minors and return of educational certificates against the petitioner in the Court of Family Judge Muslim Bagh (hereinafter "the trial Court") with the prayer that the suit may be decreed with the relief of dissolution of marriage, provision of Haq Maher, custody of children and delivery of educational certificates.

2. The petitioner being the defendant in the suit, contested the suit by way of filing a written statement before the trial court wherein he raised certain legal objections and denied

the claim of respondent No.1 on the facts. In light of divergent pleadings of the parties, the trial court framed four issues, including relief. Thereafter parties adduced their respective evidence in support of their respective claims. On conclusion of the trial, the trial court vide impugned judgment dated 20.12.2018 partly decreed the suit of the respondent.

3. The petitioner feeling aggrieved and discontented with the impugned judgment and decree passed by the trial court, filed an appeal before the Member Majlis-e-Shoora Killa Saifullah on 02.02.2019 bearing No.03/2019, which remained subjuclice before till 21.10.2019. On 21.10.2019, the learned Member Majlis-e-Shoora returned the aforesaid appeal by holding that the said court has no jurisdiction to entertain the appeal rather, the jurisdiction lies with the District and Sessions Judge in the matter. Hence, the appeal was returned to the petitioner for the presentation of the same before the court of competent jurisdiction. Accordingly, the petitioner filed a Civil Appeal bearing No. 01 of 2019 under Section 14 of the West Pakistan Family Courts Act 1964 ("the Act") against the impugned judgment and decree dated 20.12.2018 passed by the trial court before the learned Additional District Judge Muslim Bagh ("appellate court"). After hearing arguments of learned counsel for the parties, the appeal was dismissed on 12.03.2020 by the appellate court being barred by time. Thereafter the instant constitutional petition has been filed.

4. We have heard the learned counsel for the parties and have gone through the available record with their able assistance.

5. The suit for dissolution of marriage filed by respondent No.1 was decreed by the trial court against the petitioner, and the marriage between the parties was dissolved on the basis of cruelty. The petitioner/husband preferred an appeal under section 14 of the Act before the appellate court, and the same was dismissed being barred by time. Now the question arises here that whether, in the case of dissolution of Marriage on the basis of cruelty, an appeal is entertainable by the husband in spite of the bar contained in Section 14 of the Family Courts Act, 1964?

It will be useful to reproduce section 14 of the Act ibid which reads:--

"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) to the High Court, where the Family Court is presided over by District Judge, an Additional District Judge or a person notified by Government to be of the rank and status of a District Judge or an Additional District Judge; and

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

(2) No appeal shall lie from a decree passed by a Family Court--

(a) for dissolution of marriage, except in the case of dissolution for reasons specified in clause (d) of item (viii) of section 2 of the Dissolution of Muslim Marriages Act, 1939;

(b) for dower or dowry not exceeding rupees thirty thousand;

(c) for maintenance of rupees one thousand or less per month.

(3) No appeal or revision shall lie against an interim order passed by a Family Court.

(4) The appellate Court referred to in subsection (1) shall dispose of the appeal within a period of four months."

Clause 'd' of section 2 of the Dissolution of Muslim Marriages Act, 1939 is reproduced herein under:

"disposes of her property or prevents her from exercising her legal rights over it; or"

6. A bare reading of section 14(1) reveals that decision is given or decree passed by a Family Court shall be appealable. So far, sub-section (2), which put embargo coming in the way of appeal in the circumstances (a) to (c) that is in the nature of the proviso to sub-section (1). It is settled law that the provision of proviso is to be restrictively construed. The logic behind non-provision of appeal in the dissolution case is to protect underprivileged and generally oppressed section of our society, i.e. wife, from costly and prolonged litigation. Rather in clear words, the lawmakers put a clog on the right of a husband to file an appeal in case of dissolution of marriage, keeping in view the peculiar circumstances prevailing in our society.

7. Section 14 of the Family Courts Act, 1964 contemplates appeal from the decision of the Judge, Family Court to be competent before the District Judge but with a bar that no appeal shall lie from a decree passed by a family court dissolving the marriage on any other grounds or grounds specified therein except on the round mentioned in section 2(viii)(d) of Dissolution of Muslim Marriages Act, 1939, which relates to the disposal of property of wife preventing her from exercising her legal right over it. From the above, it is manifest that except on the ground mentioned above, if marriage is dissolved by the family court on any other ground, the appeal would not be competent.

8. In the case in hand, the appellate court was not vested jurisdiction to entertain the appeal with respect to dissolution of the marriage on the basis of cruelty by the husband. The appeal was not competent before the Additional District Judge, who erroneously entertained the same. However, the remaining portion pertaining to the impugned judgment, i.e. recovery of dower amount etc, the appellate Court (District and Sessions Judge) is vested with the jurisdiction.

9. In view of the contention raised by the learned counsel for the petitioner about the maintainability of the appeal before the Member Majlis-e-Shoora Killa Saifullah, a query was posed to learned counsel for the petitioner that how the appeal was competent before the learned Meinber Majlis-e-Shoora Killa Saifullah to the extent of recovery of dower amount. He responded that the impugned judgment was passed by the court of Qazi Killa Saifullah, therefore, the appeal was competent before the Majlis-e-Shoora. For the sake of argument if the contention of learned counsel for the petitioner is accepted, it will diminish the whole scheme of West Pakistan Family Courts Act, 1964.

10. In the instant matter, a crucial point arose; as to which would be an appellate Court in family matters, where the case has been tried and adjudicated by the Court of Civil Judge

established and Civil Courts Ordinance, 1962 (in short "Ordinance" and the Courts of Qazis, established under Dstoorul-Aural Diwani Kalat (in short "Dastoor") and Balochistan Civil Dispute (Shariat Application) Regulation, 1976 (in short "Regulation").

11. Before proceeding to dilate upon this question, it may be seen that in view of omission of Article 247 and amendment in Article 246 of the Constitution of Islamic Republic of Pakistan, 1973 and applicability of the Balochistan Civil Courts Ordinance, 1962 in tribally administered areas of the Province of Balochistan, the Regulation is no more on statute books; thus appropriate remedy of appeal in a family matter decided by a Court of Qazi, established by Regulation need not to be discussed and determined.

Section 4 of the Family Courts Act, 1964, qualifies a Civil Judge or a Qazi to act as Family Court under the Act. For the sake of convenience the relevant section is reproduced herein-below:

> 4. Qualifications of Judge: No person shall be appointed as a Judge of a Family Court unless he is or has been [10][or is qualified to be appointed as] a District Judge, an Additional District Judge, [11] [a Civil Judge or a Qazi appointed under the Dastur-ul-Amal Diwani, Riasat Kalat]

12. Section 14 of the Act deals with the subject of the Appeal, and it says that a decision is given or decree passed by a Family Court shall be appealable to the High Court, where the Family Court is presided over by a District Judge or an Additional District Judge and to the District Court in any other case.

13. To define the words "District Judge", an explanation has been given in Rule 3 of the West Pakistan Family Courts Rules, 1965, framed in exercise of power conferred by section 26 of the Family Courts Act, 1964, wherein it has been laid down that "for the purpose of this rule and rule 7, the expression 'District Judge' shall be deemed to include the President of Majlis-e-Shoora, Kalat". Here the critical line which needs to be drawn is the understanding of the distinction between the Majis-e-Shoora constituted under Dastoor-and "President of the Majlis-e-Shoora- defined under Dastoor. On this behalf, section 24 of the Dastoor may be examined, which envisages that there shall be a Majlis-e-Shoora comprising of two or more members, to decide appeals arising out of the judgments and decrees of the Qazis working under the hierarchy of Dastoor. It further states that if there will be difference of opinion between the Member and the President of Majlis-e-Shoora, the decision of the President would prevail, and if there is a difference of opinion ,between the two members of Majlis-e-Shoora, the opinion of the President or third member would be taken, and the decision would be that of the Majority.

14. A bare perusal of these provisions of Dastoor makes it crystal clear that for all intent and purposes, a reference to word 'Majlis-e-Shoora' would mean a Court constituted with two members and a president, whereas the reference to words President of Majlis-e-Shoora' would be limited only to the President of Majlis-e-Shoora, as given in Explanation to Rule 3 of the West Pakistan Family Courts Rules.

15. It may be seen that the Government of Balochistan, while defining the territorial

limits of the various court of Majlis-e-Shoora in Balochistan, had simultaneously declared the respective District and Sessions Judges as President of the different Courts of Majlis-e-Shoora. For the sake of reference, two of the said Notifications of the Government of Balochistan dated 3rd July, 1988 and 20th September, 1994 are reproduced herein-below:

"Notification No. Legis. 6-63/Law/80-IV(1).

In supersession of this Department's Notification of even number, dated 7th October, 1986, the Government of Balochistan is pleased to determine the territorial limits of the Civil Districts of Kalat, Khuzdar, Turbat, Jaffarabad and Sibi and constitute Majlis-e-Shoora under section 24 of the Dastur-ul-Amal Diwani, Kalat, 1952, at Kalat, Khuzdar, Turbot, Jaffarabd and Sibi, to exercise civil revisional/appellate jurisdiction within the territorial limits of the above noted District as follows:

Name of Civil District	Name of Majlis-e-Shoora Exercising Civil Revisional/ Appellate Powers	Territorial Limits
…….	…….	…….
…….	…….	…….
…….	…….	…….
…….	…….	…….
…….	…….	…….

2. The Government of Balochistan is further pleased to appoint the District and Sessions Judge of Kalat, Turbat, Khuzdar, Jaffarabad and Sibi to be Presidents of Court of Kalat, Turbat, Khuzdar, Jaffarabad and Sibi respectively.

BY ORDER OF

GOVERNOR BALOCHISTAN

Notification No.Legis. 6-63/Law/80-IV/1994.

In supersession of this Department's Notification No. Legis.6-63/ Law/80-IV/715, dated 8th March 1994 the Government of Balochistan is pleased to determine the territorial, limits of the Civil Districts of Kalat, Khuzdar, Turbat, Jaffarabad and Sibi and constitute Majlis-e-Shoora at Kalat, Turbat, Khuzdar, Jaffarabad and Sibi for the purpose of section 24 of Dastoor-ul-Amal Diwani Kalat 1952, to exercise civil revisional/appellate jurisdiction within the territorial limits as indicated below:

Name of Civil District	Name of Majlis-e-Shoora Exercising Civil Revisional/ Appellate Powers	Territorial Limits
…….	…….	…….
…….	…….	…….
…….	…….	…….
…….	…….	…….
…….	…….	…….

2. The Government of Balochistan is further pleased to appoint the District and Sessions Judges of Kalat, Turbat, Khuzdar, Jaffarabad and Sibi to be Presidents of Courts of Majlis-e-Shura, Kalat, Turbat, Khuzdar, Jaffarabad and Sibi respectively.

BY ORDER OF

GOVERNOR BALOCHISTAN

16. On reading together, the above provisions of law, it explicitly transpires that while giving an explanation in rule 3 of the ibid Rules, the intention of the legislature was clear that in family matters either decided by a Civil Judge or a Qazi, the appeal would solely lie before the District Judge, either he is a District Judge defined by the Ordinance or President of Majlis-e-Shoora, defined by Dastoor and declared by the Government. In a nutshell, it would solely be the respective District Judge of the Sessions Division to decide an appeal arising out of the judgments passed in family matters by the Civil Judge or a Qazi.

17. The petitioner filed an appeal before the Additional District and Sessions Judge Killa Saifullah after returning the appeal by the member Majlis-e-Shoora wherein he impugned the judgment of the court of Qazi to the extent of dissolution of marriage and recovery of dower amount. The appeal to the extent of recovery of dower amount was competent to the court of Additional District and Sessions Judge Killa Saifullah, however the same was barred by time.

In the instant case, the time was consumed by the petitioner in approaching the wrong forum, i.e. first filing appeal before the learned Member Majlis-e-Shoora Killa Saifullah, which was returned on 21.10.2019 on the request of learned counsel for the petitioner that due to his mistake he filed the appeal before the learned Member Majlis-e-Shoora, the signature of learned counsel for the petitioner was also obtained by the learned Member Majlis-e-Shoora on order sheet dated 21.10.2019. Even otherwise, the decree was passed by the trial court on 20.12.2018 the petitioner applied for the certified copy of the judgment and decree on 21.12.2018; and the copy was ready and received by the petitioner on 26.12.2018. The appeal was filed before the learned Member Majlis-e-Shoora on 02.02.2019. In the above circumstances, it can safely be concluded that even the appeal filed before the court of learned Member Majlis-e-Shoora was barred by time.

18. Rule 22 of West Pakistan Family Courts Rules, 1965, provides that an appeal under section 14 of the Act, 1964 shall be preferred within 30 days of the passing of the decree or a decision excluding the time required for obtaining the certified copies. Although it is provided in the proviso to Rule 22 of West Pakistan Family Courts Rules, 1965 that the Appellate court may for sufficient cause extend the period. But there is nothing on record to suggest that any application was filed along with an appeal for an extension of time, nor any such ground has been taken in the memo. of appeal as well as in the grounds of the instant petition.

19. It is stated earlier that the appeal against the judgment and decree of a court of Qazi/Family Judge was not competent before the learned Member Majlis-e-Shoora. When the appeal was returned on the request of learned counsel for the petitioner on 21.10.2019, according to the record available, it transpires that the petitioner, instead of presenting the said returned appeal before the Additional District Judge Killa Saifullah filed another appeal on 14.11.2019 with a considerable delay of ten months and 26 days after passing of the impugned judgment by the trial court.

The moot question for the determination of this court is whether the filing of appeal before a wrong forum and the time consumed in pursuit of the appeal can be excluded/condoned from the prescribed period of limitation for filing appeal, in terms of section 14 of the Limitation Act, 1908.

20. As far as the limitation is concerned, it is settled that a litigant should be vigilant in this respect. It is the mistake of the petitioner that he had filed an appeal before the learned Member Majlis-e-Shoora, where it was not maintainable. There is no question about it that no one can claim benefit on account of his own wrong. For choosing the wrong forum, no proper explanation was given by the petitioner except that it was a technical mistake. As the appeal before the wrong forum was filed by a counsel; therefore, it was not simply a technical mistake. The choosing of a wrong forum with the bona fide intention, no doubt, can be a ground to get the benefit of section 14 of the Limitation Act, but a technical mistake cannot be termed as a mistake with the bona fide intention, as such it is no ground to press under section 14 of the Limitation Act, 1908.

21. This has been a consistent view of the Hon'ble Supreme Court that if a litigant has not acted in a bona fide manner or he has acted without due diligence in prosecuting remedies before a wrong forum, he cannot be benefited under Section 14 of the Limitation Act. In a case reported as Muhammad Ishaq v. Province of the Punjab (1998 SCMR 9), it was held that prosecuting remedies before the wrong forum hardly amounted to a bona fide mistake and did not constitute due diligence, the essential requirement of section 14 of the Limitation Act. Similarly, in the case reported as Abdul Ghani v. Ghulam Sarwar (PLD 1977 SC 102), it was held that defence given by a lawyer that remedy in a wrong Court was prosecuted is not a good ground for exclusion of time for limitation either under section 5 or section 14 of the Limitation Act. In the case of Chaudhry Muhammad Sharif v. Muhammad Ali Khan and others (1975 SCMR 259), it was held by the Apex Court that failure to acquaint himself with relevant provisions of law relating to the jurisdiction of the Court, amounting to negligence on the part of counsel and hence the delay was not condoned.

22. Now, let us dilate upon the merit of the case to the extent of dissolution of the marriage between the parties on the basis of cruelty. Although the re-appreciation of evidence is not the function of this Court under its constitutional jurisdiction, however, for our own satisfaction, we have perused the record minutely. The arguments agitated by the counsel for the petitioner that factor of cruelty is not proved by the respondent No.1/plaintiff as she herself abandoned her conjugal domicile and deserted the house of the petitioner is unpersuasive and run contrary to the record. The respondent/plaintiff has urged that the attitude of the petitioner has remained toward her, and she has always been kept in stress and she was forcibly shunted out from his house, and she took shelter to her parent house and did not maintain her.

23. She has also urged that for the last many years, she has been shunted out by the petitioner from her house in her one way she is residing with her parents. During this period, the petitioner has never bothered to abide about her. She also urged that she was turned out from the house of the petitioner. In such circumstances, she was compelled to take shelter at her parent's house. Upon the intervention of some elders, the arbitrator was appointed who gave their decision on 02.06.2015 and took assurance from the petitioner for keeping the good behavior with respondent No.1/plaintiff in future and also undertook to abide by all

mental obligations, but the defendant/petitioner did not mend his ways and again started and continued torture and inhuman behavior towards the plaintiff without any justification and reason. Once the area notables resolved out the matter through reconciliation and prohibited the petitioner through surety of not extending any type of misbehavior. In spite of the settlement, the petitioner once again initiated oppression and misbehavior against the respondent, yet the respondent, despite all this, had been bearing the petitioner's oppression owing to her children's future because she never wanted to destroy her house and put the children at the mercy of the others. However, under compelling circumstances, she took shelter in her parent's house. Respondent No.1/plaintiff further urged that she filed a complaint against the petitioner before the learned Judicial Magistrate on 09.11.2016. In support of her claim, she produced Muhammad Hussain PW1 and Zainuddin PW-2, who fully supported the statement of the respondent.

From the above statement of the respondent/plaintiff and her witnesses, it can be easily stated that there was maltreatment both physically and mentally from the side of the defendant/petitioner; that is why the petitioner gave surety that next time there will be no beatings. On the other hand, the defendant/petitioner failed to give substantiating evidence to prove that the plaintiff willingly left him and refused to rejoin him.

24. From the above, it is manifest that the petitioner has failed to maintain the plaintiff/respondent for many years who is residing with her parents. Dissolution of Muslim Marriages Act, 1939 provides recognized grounds for dissolution of marriage, according to which neglecting or non-maintaining the wife for a period of two years will entitle the wife for seeking dissolution of marriage on the ground of cruelty.

25. As discussed above, in the instant case, it is proved on record that the respondent/plaintiff has taken abode and inhabited in her parents' house for many years, and the petitioner has neglected her. The cruelty is not limited to physical bearing rather that can be either mental or even by conduct. In the case in hand, the petitioner has taken shelter in her parents' house for the last many years, and in such a situation the plaintiff/ respondent has sustained acute mental anguish and suffering by the reckless and careless attitude and conduct of the petitioner, which compelled her to approach the trial Court for dissolution of her marriage.

26. The trial court has evaluated the evidence to conclude that the wife/respondent No.1 was entitled for the dissolution of marriage on the ground of cruelty. Normally this court does not appraise the evidence to come to its own conclusion; nonetheless, after going through the evidence, we are satisfied that the ground of cruelty has been established.

27. The petitioner had challenged the judgment and decree dated 20.12.2018 passed by the trial court at first before the learned Member Majlis-e-Shoora Killa Saifullah, and thereafter when the appeal was returned for want of jurisdiction, the same was again filed before the appellate court despite that the appeals filed by the petitioner before the learned Member Majlis-e-Shoora Killa Saifullah as well as appellate court were not competent. The petitioner challenged the impugned judgment of the trial court before this court on 15.04.2020 through the instant constitution petition after a lapse of one year, three months

and sixteen days.

28. Apparently, the petition is also suffering from laches. There is no period of limitation prescribed for filing a constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, but it has to be filed within a reasonable time. What is the reasonable time has been interpreted by the superior judiciary of the country as time requisite for filing of appeal/revision before this court, which is normally three months. The petition is also hit by the principle of laches because the petitioner did not file any application for condonation of laches by giving reasons; hence, inordinate and unexplained delay in approaching this court could not have been condoned. Reference in this behalf can be made to the judgment of Hon'ble Supreme Court in the case of Khali Khan v. Haji Nazir and 4 others (PLD 1997 SC 304).

In view of the above, this petition has no merits, which is accordingly dismissed.

SA/86/Bal. Petition dismissed.