

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

W.P. No.32340/2021

Qamar Shahzad Versus Judge Family Court etc.

S.No. of order/ proceeding.	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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25.05.2021	Ch. Saeed H. Nagra, Advocate.
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Through this petition the petitioner has challenged the order dated 27.04.2021 passed by the learned Judge Family Court, Ferozewala (respondent No.1), whereby right of the petitioner to submit written statement was closed.

2. Brief facts of the case are that respondents No.2 to 5, who are wife, daughter and sons, respectively, of the petitioner, filed a suit for recovery of maintenance, dower and dowry articles before respondent No.1 on 11.01.2020, which was decreed ex parte through order and decree dated 19.08.2020. The petitioner filed an application for setting aside the ex parte proceedings/order and decree, which was accepted through order dated 01.03.2021, ex parte proceedings/order and decree were set aside, subject to payment of costs of Rs.2000/- and the case was fixed for filing of written statement. However, on failure of the petitioner to submit written statement and to pay costs, his right to file written statement was closed through order impugned herein.

3. The learned counsel for the petitioner argued that the right of the petitioner to file written statement has illegally been closed by the learned Judge Family Court as there is no provision in the Family Courts Act, 1964, empowering the Family Court to pass such an order. It is further argued that when basic order is illegal and unlawful then superstructure built thereon could not sustain. The petitioner has been knocked out on the basis of technicalities. Therefore, prayed

that by allowing the instant petition the order dated 27.04.2021 passed by the learned Judge Family Court be declared illegal, void and be set aside and the petitioner be given a chance to submit written statement.

4. Heard. Record perused.

5. A perusal of the order sheet shows that through order dated 01.03.2021 ex parte proceedings were set aside while allowing the application of the petitioner subject to payment of costs of Rs.2000/- and the case was fixed for 25.03.2021 for summoning of the file, submission of written statement and payment of costs. On 25.03.2021 neither the written statement was filed nor costs was paid and the case was adjourned to 06.04.2021. On the mentioned date the petitioner did not comply with the order of the Court and the case was adjourned to 12.04.2021. According to the order sheet on 12.04.2021 lawyers were on strike but neither the costs was paid nor written statement was filed and the case was fixed for 19.04.2021 while advancing last opportunity to the petitioner to file written statement and for payment of the costs. On 19.04.2021 again neither the written statement was filed nor costs was paid and on the request of the petitioner case was adjourned for 23.04.2021. On 23.04.2021 again previous practice was revised by the petitioner and the Court passed the following specific order:-

23.04.2021”

کونسل فریقین حاضر۔

جواب دعوی ہرجانہ سابقہ داخل نہ ہوا ہے۔ کئی موقع جات دیے گئے ہیں جواب دعوی ہرجانہ داخل نہ کیا گیا ہے کونسل مدعا علیہ جواب دعوی ہرجانہ کے لئے مہلت کی استدعا کرتے ہیں جو کہ بلا جواز ہے لہذا حسب استدعا قرین انصاف ملتوی ہو کر برائے ادخال جواب دعوی و ہرجانہ سابقہ قطعی آخری موقع کے ساتھ مسل بتقرر ۲۰۲۱-۲۳-۰۳ پیس ہوئے۔ ایندہ جواب دعوی ہرجانہ داخل نہ کرنے کی صورت میں جواب دعوی کا حق ختم کر دیا جائیگا مزید مہلت نہ دی جائیگی۔

6. On 27.04.2021 the Court after keeping the case in wait for submission of written statement on behalf of the petitioner till its rising and on failure of the petitioner to file written statement and to pay costs passed the order closing his right to file written statement by discussing in detailed the conduct of the petitioner. Thereafter the case was fixed for evidence of respondent No.1.

7. The Family Courts Act, 1964, is very much clear on the point in like situation. Section 8(2) of the Act, reads under:-

“(2) While issuing the notice or summons to a defendant, the Family Court shall require the defendant to submit a written statement on the day mentioned in the notice or summons.”

8. Section 9 of the Family Courts Act, 1964 provides as under:-

“On the date fixed under section 8, the defendant shall appear before the Family Court and file the written statement, a list of witnesses and gist of evidence, and in case the written statement is not filed on that date, the Family Court may, for any sufficient reason which prevented the defendant from submitting the written statement, allow the defendant to submit the written statement and other documents on the next date which shall not exceed fifteen days from that date.”

9. Section 10 of the Family Courts Act, 1964 says that:-

“(1) When the written statement is filed, the Court shall fix an early date for a pre-trial hearing of the case.

(2) On the date so fixed, the Court shall examine the plaint, the written statement (if any) and the precis of evidence and documents filed by the parties and shall also, if it so deems fit, hear the parties and their counsel.

(3) The Family Court may, at the pre-trial stage, ascertain the precise points of controversy between the parties and attempt to effect compromise between the parties.

(4) Subject to subsection (5), if compromise is not possible between the parties, the Family Court may, if necessary, frame precise points of controversy and record evidence of the parties.”

10. From the perusal of the above mentioned clauses it is clear that the Court shall examine the plaint, written statement, if any, and evidence, meaning thereby that filing of written statement in family cases is not essential. Reliance in this regard is placed on the case reported as Manzoor Elahi vs. Zulaikhan Bibi and another (PLD 2009 Islamabad 4), wherein it is observed as under:-

“It is manifestly clear that the Court shall examine the plaint, written statement, if any and evidence, it would mean that the filing of written statement in the family case is not essential. Subsection (3) of section 10 has contemplated that the Court shall made an attempt to effect compromise or reconciliation between the parties and sub-section (4) was further provided that if no compromise or reconciliation is possible the Court shall frame the issues in the case and fix a date for recording evidence. The word, “if any”, in subsection (2) of section 10 signifies that even if there is no written statement, reconciliation proceedings must be held and evidence should be recorded because preamble of the Act 1964 tends to show that the Family Courts were established in order to achieve an expeditious disposal of the family disputes and the matters relating therewith.”

11. Spirit of Section 12A of the Family Courts Act is that the Family Court shall dispose of a case, including a suit for dissolution of marriage, within a period of six months from the date of institution. Provided that where a case is not disposed of within six months, either party shall have a right to make an

application to the High Court for necessary direction as the High Court may deem fit. Purpose of the legislation was to expedite the litigation, especially the family matters so that the social lives of the families may not disturb in pursuing the cases.

12. Keeping in view the conduct of the petitioner it is observed that the Family Court has rightly struck off his right to file written statement. Reliance is placed on the case reported as Kh. Muhammad Ahmad Qasim vs. Mst. Kaneez Fatima and another (2006 MLD 1128).

13. Further relying upon the case reported as Fakhar Abbas vs. Additional District Judge Tandlianwala, District Faisalabad and 3 others (2017 CLC Note 22), it is observed that the role of the Family Court is not merely adversely but it is also inquisitorial, therefore, it is within its power to pass any order which may promote the ends of justice, Family Court is empowered to take all steps which it deems necessary to ensure that substantial justice is done. It has been observed in the case of Khalil-ur-Rehman Bhutta vs. Razia and another (1984 CLC 890), that though the Family Court is a forum of limited jurisdiction yet it has to regulate its own proceedings. A situation may crop up, before a Family Court that a defendant persistently defaults in submitting his written statement and acts contumaciously, as happened in the instant case. Will the Family Court be powerless to proceed against such a litigant? If the Court is held to be denuded of authority, to pass a punitive order against such a defaulter that would result in paralyzing its function. It must be remembered that the Family Courts Act has been enacted with the object of expeditious disposal of the disputes relating to the family affairs. Thus, for the orderly dispensation of justice under the Act, in the case of a contumacious default of a defendant, to file the written statement, the Family Court will be well within its authority to make any order, in the nature of one envisaged

by Order VIII, rule 10, C.P.C. and deprive him of his right to file the written statement.

14. As regards the plea that counsel for the petitioner was infected with Covid-19, it is noticed that neither on any time request for adjournment was made on the ground of ailment of counsel for the petitioner nor any certificate regarding infection with Covid-19 was produced before the trial Court. Even otherwise, the petitioner had engaged two lawyers and on each date counsel for the petitioner was marked present but with a request for adjournment. It is further observed that the petitioner not only failed to file written statement in spite of getting so many opportunities but he also did not comply with the order of the Court dated 01.03.2021 regarding payment of costs of Rs.2000/-, which was imposed while setting aside the ex parte proceedings.

15. Under the circumstances, no case for interference in the constitutional jurisdiction of this Court is made out. The petition is accordingly dismissed *in limine*.

(SAFDAR SALEEM SHAHID)
JUDGE

Approved for reporting.

JUDGE