JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, BANNU BENCH
(*Judicial Department*)

W.P No.534-B of 2017.

Aslam khan
Vs
Atia Gul etc.

JUDGMENT
Date of hearing _____25.9.2017_____

Appellant-Petitioner: **By Mr. Haji Mir Zali Khan Advocate.**

Respondent: **By Mr. Younis Ali Khan Marwat, Advocate.**

ABDUL SHAKOOR, J.--- Through instant constitutional petition, the petitioner seeks an appropriate writ against the respondents with the following prayer:-

> *"On acceptance of the instant writ petition, impugned orders dated 09.02.2017 and dated 20.3.2017, passed by the learned trial Court, as well as the impugned order dated 18.5.2017, passed by the lerned District Judge, Lakki Marwat may kindly be set asdie and application of the petitioner/ defendant for recording additional evidence may be allowed."*

2. Brief facts forming the background for the institution of instant writ petition are that on 08.11.2014 respondent/ plaintiff Atia Gul instituted a family suit before the learned Judge Family Court, Lakki Marwat for:-

(a) Recovery of dower (Seven Tola gold ornaments) or in alternative its price.

(b) Recovery of maintenance allowance worth Rs.1,40,000/- for the last 14 months, at the rate of Rs.10,000/- per month and at the same rate in future till the existence of Nikah.

(c) Recovery of dowry articles, as per list annexed with the plaint or in alternative its price viz Rs.2,00,000/-, and

(d) Recovery of Rs.35,000/- as medical expenses, incurred upon the treatment of minor daughter of respondent/plaintiff namely Manahil.

3. Petitioner/defendant contested the same by filing written statement. From the divergent pleadings of the parties many issues were framed for the determination of the

rights of the parties. After recording of the evidence of the parties the present defendant/petitioner submitted an application for summoning one Dr. Ghulam Bibi and secretary Union Council Maryali, Dera Ismail Khan for the just disposal of the suit referred to in the instant petition. The same application was contested by the respondent/plaintiff by filing reply thereof. The learned Judge Family Court, Lakki Marwat, after hearing the arguments of the parties vide order dated 20.3.2017 dismissed the application of the petitioner/ defendant. Being aggrieved from the order of learned Judge Family Court, he filed appeal before the learned District Judge, Lakki Marwat who vide its judgment dated 18.5.2017, dismissed the appeal of petitioner/defendant, hence the instant writ petition.

4. Learned counsel for the petitioner vehemently argued that both the Courts below have unjustly, unfairly and illegally dismissed the application which he filed for the summoning of one Dr. Ghulam Bibi and secretary Union Council Maryali, D.I.Khan, in respect of birth certificate of

the minor and marriage registration certificate. In this regard he has only referred to section 7(ii) of the Family Court Act, 1964 and stated that the Family Court under the same section is possessed with the powers to allow any document to be produced which was expedient and just for the fair administration of justice. Thus, both the Courts below by not allowing the petitioner/defendant to produce the documents referred to hereinabove have committed illegality which needs interference of this Court by exercising its jurisdiction under Article 199 of the constitution.

5. As against that the learned counsel appearing for the respondent/plaintiff has vehemently opposed the arguments advanced by learned counsel for the petitioner and supported the judgments of lower Courts. He argued that record clearly shows that the instant case since long after the closure of evidence of the respondent/plaintiff is being adjourned on account of frivolous applications which have been filed on one pretext or another by the petitioner/ defendant. He next submitted that the record of the case in

hand clearly reveals that petitioner/defendant instead of producing the witnesses listed in the list (schedule) of witnesses has been using delaying tactics to prolong the case and due to that very reason the learned Judge Family Court has struck off his defence. He further argued that the application, which he filed for the production of record, was nothing but to prolong the case in order to cause mental torture and agony to the respondent/plaintiff. He further argued that both the Courts below have rightly dismissed his application. To support his contention he referred to 2003 CLC 1787, 2005 CLC 667 and 2013 CLC 32 wherein it has been held as under:-

2003 CLC 1787.

> *"6. The second point raised by learned counsel for the petitioner that the learned Court below had refused to add the names of the witnesses in the schedule of the witnesses produced by the parties. Learned Judge Family Court being special Tribunal is governed by provision of Family Courts Act. Section 7 of the West Pakistan Family Courts Act, 1964, as reproduced as below:--*

"In paragraph 2 (the plaint shall contain all material facts relating to the dispute and shall contain a schedule giving the number of witnesses intended to be produced in support of the plaint, the names and addresses of the witnesses and brief summary of the facts to which they would depose:"

Provided further that:--

"the parties may with the permission of the Court call any witness at any later stage, if the Court considers such evidence expedient in the interest of justice".

7. The bare reading of this section shows that the learned Judge Family Court is restrained by law not to allow additional evidence or add names of witnesses in the schedule. The provisions are mandatory. The schedule cannot be amended and the names of the witnesses cannot be added under section 7(2) of the Family Courts Act. The provisions of this section empowers the learned Judge Family Court that the parties with the permission of the Court call any witness at any later stage if Court considers such evidence expedient in the interest of justice does not mean that the Family Court will reopen the schedule and allow the parties to produce additional witnesses, therefore, the learned Judge Family Court rightly rejected the application as there was no provision to allow

a Family Court to reopen the schedule submitted by the parties.

2005 CLC 667.

"----S. 7(3)(ii)---Constitution of Pakistan (1973), Art. 199---Suit for dissolution of marriage---Word relies occurring in S. 7(3)(ii), West Pakistan Family Courts Act, 1964---Impact---One could rely on a document, a paper or thing which existed---Document in question certainly did not exist even not conceived at the time of filing of suit for dissolution of marriage by wife---Provision of S.7(3)(ii), West Pakistan Family Courts Act, 1964 was not attracted in circumstances."

2013 CLC 32.

"----S. 5, Sched., Ss.11 & 12-A---Suit for dissolution of marriage---Closing of evidence---Summoning the proposed witnesses through court---Hearing of the case was adjourned on three or four occasions, for recording evidence of the defendant, but each and every time the hearing of the case was adjourned at the instance of the defendant on one pretext or the other---Way and manner adopted by the defendant, had clearly exposed his conduct that he wanted to delay the proceedings unnecessarily by taking adjournments on one excuse or the other---Trial Court, in circumstances was left with no alternative, but to close the right of his producing evidence---

Under provisions of S.12-A of West Pakistan Family Courts Act, 1964, it was mandatory for the court to decide the suit positively within six months from the date of institution of the case---No legal or jurisdictional defect in the impugned order/judgment was found being strictly in compliance with provisions of law---Impugned order/judgment being an interim in nature, ordinarily writ could not be issued---Petition was dismissed."

6. Arguments heard and record perused.

7. The crux of the aforesaid judgments referred to by the learned counsel for the respondent/plaintiff is that the provision of proviso (ii) section 7 of the West Pakistan Family Court Act, 1964 does not bound down the Family Courts to allow the male side to produce additional evidence at later stage and thereby enhance the agony of womenfolk and minors. It is also clear from the record that the suit was instituted on 08.11.2014 and it has not been decided as yet. Whereas under the provision of section 12 of the Family Court Act, 1964, it is mandatory for the Court to decide the suit positively within six months from the date of institution of the case, thus, in view of this provision, both the Courts

below have rightly declined the petitioner/defendant's prayer for the production of documents at such a late stage, which has never been referred to either in the memo of written statement or schedule appended thereto. Since the mentioning of the same in terms of section 7 of the West Pakistan Family Court Act, 1964 was mandatory. The Family Court is not permitted to allow additional evidence or names of witnesses in schedule since schedule cannot be amended.

8. In the light of above, the instant petition being bereft of any merit is dismissed.

Announced.
25.9.2017

(ABDUL SHAKOOR)
J U D G E.

Ihsan.*-