

PLJ 2022 Lahore 359

Present: ABID AZIZ SHEIKH, J.

Mst. RUKHSANA KAUSAR--Petitioner

versus

MUHAMMAD NADEEM and 2 others--Respondents

W.P. No. 10342 of 2021, decided on 18.3.2021.

Muslim Family Laws Ordinance, 1961 (VIII of 1961)--

---Ss. 9 & 10--Constitution of Pakistan, 1973, Art. 199--Suits for recovery of maintenance allowance and recovery of dowry articles--Consolidated judgment--Appeal for enhancement of maintenance allowance was dismissed--Barred by time--Challenge to--Consolidated judgment and decree one appeal of petitioner to extent of increase of alternative price of dowry articles was within time and same has been duly entertained by appellate Court, whereas other appeal against same consolidated judgment has been dismissed being barred by time--It is settled law that if against same consolidated judgment one appeal is within time then delay in filing of other appeal against same judgment is condonable--Appellate Court has erred in law and fact while dismissing appeal of petitioner being barred by time--Petition allowed. [P. 360] A & B

2019 SCMR 524 and PLD 2008 SC 591 *ref.*

Mr. Shafique Ahmad Bhutta, Advocate for Petitioner.

Mr. Azam Jan Muhammad, Advocate for Respondent Nos. 1 and 2.

Date of hearing: 18.3.2021.

ORDER

Through this writ petition the petitioner has challenged the order dated 30.1.2021 whereby petitioner's appeal was dismissed being barred by time.

2. The relevant facts are that the petitioner filed two separate family suits *i.e.* one for recovery of maintenance allowance and the other for recovery of dowry articles. Both these suits were decided by learned family Court through consolidated judgment dated 21.12.2020. The petitioner being aggrieved filed two separate appeals, however, one appeal (for enhancement of the maintenance allowance) was dismissed being barred by time through impugned order dated 30.1.2021, hence this Constitutional petition.

3. The learned counsel for the petitioner submits that after consolidated judgment dated 21.12.2020, the petitioner applied for the certified copy of the judgment and decree on 26.12.2020 which was received on 15.1.2021 and a single appeal was filed against the consolidated judgment. However, the concerned office did not entertain the appeal and directed the petitioner to file two separate appeals as two separate suits were filed by the petitioner. Submits that petitioner again applied for another certified copy on 15.1.2021; which was received on the same day. However, as father of the counsel for the petitioner was hospitalized, therefore, the appeal was filed on 28.1.2021. Submits that appeal to the extent of maintenance allowance was dismissed being barred by time though the delay was duly explained in the application for condonation of delay.

4. Learned counsel for the respondents, on the other hand, submits that each and every day of delay was not explained hence appeal was lawfully dismissed.

5. Arguments heard. It is admitted position on record that against the consolidated judgment and decree dated 21.12.2020 one appeal of the petitioner to the extent of increase of alternative price of dowry articles was within time and same has been duly entertained by the learned appellate Court, whereas the other appeal against the same consolidated judgment has been dismissed being barred by time. It is settled law that if against the same consolidated judgment one appeal is within time then the delay in filing of the other appeal against the same judgment is condonable. In this regard reliance is placed on “*Sheikh Akhtar Aziz vs. Mst. Shabnam Begum and others* (2019 SCMR 524), “*Subedar Sardar Khan through Legal Heirs and others vs. Muhammad Idrees through General Attorney and another* (PLD 2008 S.C. 591). Further in the application of condonation of delay the petitioner has explained that delay was caused as father of the learned counsel for the petitioner was hospitalized. In the circumstances the learned appellate Court has erred in law and fact while dismissing the appeal of the petitioner being barred by time.

6. In view of above discussion, the petition is allowed and the impugned order dated 30.1.2021 is set aside. Consequently the delay in filing of the appeal is condoned and matter is remitted back to the learned appellate Court to decide the appeal on merits.

(Y.A.) Petition allowed