

Stereo.HCJDA 38.  
**Judgment Sheet**  
**IN THE LAHORE HIGH COURT,**  
**MULTAN BENCH, MULTAN**  
**JUDICIAL DEPARTMENT**

....

**Writ Petition No.6002 of 2022.**

Mirza Muhammad Akbar Baig.

**Versus**

Add. District Judge, etc.

**J U D G M E N T.**

Date of hearing: **09.03.2023.**

Petitioner by: Mr. Mazhar Hussain Shah,  
Advocate.

Respondent No.3 by: Mr. Javed Abbas Sial, Advocate.

**AHMAD NADEEM ARSHAD, J.** Through this constitutional petition filed under Article 199 of *Constitution of Islamic Republic of Pakistan, 1973*, petitioner has challenged the vires of order dated 18.03.2022 passed by learned Appellate Court whereby while accepting the appeal of the respondent No.3 her execution petition was restored.

2. Facts in brevity are that respondent No.3 instituted a suit on 17.02.2005 for recovery of dower against the petitioner. Suit was partially decreed vide ex-parte judgment & decree dated 18.04.2006 and she was declared entitled to recover Rs.20,00,000/- as dower. Feeling dissatisfied, she preferred an appeal which was dismissed by the learned Appellate Court via judgment & decree dated 17.10.2006. Being aggrieved, respondent No.3 approached this Court through constitutional petition (*W.P. No.6327 of 2006*) titled "*Mst. Saira Zulfiqar V. Addl. District Judge, etc.*" which was allowed after contest by this Court vide judgment dated 17.06.2008

and suit of respondent No.3 was decreed as a whole in the following terms:

*“Thus this petition is accepted, the findings of the learned Judge Family Court and that of learned Addl. District Judge and impugned judgments & decrees dated 18.04.2006 and 17.10.2006 respectively are set-aside to the extent of the properties mentioned therein. The petitioner is held entitled to the properties and the gold ornaments as envisaged in the Nikahnama Mark-A read with Iqrarnama Mark-K dated 18.09.2001.”*

It is also apprised to the Court that the petitioner assailed the judgment/order of this Court before august Supreme Court of Pakistan which was dismissed via order dated 29.09.2008 and his review petition also met the same fate.

For the satisfaction of the decree, respondent No.3 filed an execution petition on 30.07.2016. While gaining knowledge quapendency of said execution petition, petitioner filed an objection petition by raising certain objections; especially that the execution petition is barred by limitation. Respondent No.3 filed its contesting written reply. Learned executing Court, vide order dated 05.04.2018 allowed the objection petition and dismissed execution petition of respondent No.3 being barred by more than 08 years. Feeling aggrieved, latter moved an application for recalling of said order on 29.01.2021 which was dismissed by the learned executing Court vide order dated 02.11.2021. Respondent No.3 assailed the order/judgment of learned Executing Court dated 05.04.2018 through preferring an appeal. Along with the appeal, she moved an application u/s 05 of the Limitation Act, 1908. Learned Appellate Court allowed the appeal of respondent No.3, set-aside the order of learned Executing Court dated 05.04.2018 and directed the Executing Court to proceed further as per law in the following terms:

*“This being so, I am of the firm opinion that plaintiff/deGREE holder was entitled to file her execution petition on 30.07.2016, on the basis of decree of dower passed by Hon’ble Lahore High Court, Multan Bench, Multan on 17.06.2008. The impugned order of the learned executing Court dated 05.04.2018, was thus, found illegal & void-ab-*

*intio. As there is no limitation to challenge void order, hence, limitation is not applicable on instant appeal. Appeal is found based on well entrenched, valuable legal rights of the decree holder/appellant which is hereby accepted. Impugned order is set-aside as the appellant/decreed-holder will appear in the executing Court on 01.04.2022. Executing Court will proceed in the execution petition as per law.”*

Being dissatisfied, petitioner approached this Court through instant constitutional petition.

3. Learned counsel appearing on behalf of the petitioner argued that execution petition was clearly hit by principle of limitation as respondent No.3 filed her execution petition for recovery of dower on 30.07.2016 for the execution of judgment of this Court dated 17.06.2008. He adds that learned executing Court rightly dismissed the execution petition being barred by time and the said order is in accordance with law; even otherwise, against a void order limitation would run and in this regard he relied upon case laws cited as “NEMATULLAH KHAN V. ADDITIONAL DISTRICT JUDGE AND OTHERS (2022 YLR NOTE 21), “KHUDADAD V. SYED GHAZANFAR ALI SHAH ALIAS S. INAAM HUSSAIN AND OTHERS (2022 SCMR 933)”, “MUHAMMAD SHARIF & OTHERS V. MCB BANK LIMITED AND OTHERS (2021 SCMR 1158), “HAJI WAJDAD V. PROVINCIAL GOVERNMENT THROUGH SECRETARY BOARD OF REVENUE GOVERNMENT OF BALOCHISTAN, QUETTA AND OTHERS (2020 SCMR 2046), “STATE BANK OF PAKISTAN THROUGH GOVERNOR AND ANOTHER V. IMTIAZ ALI KHAN AND OTHERS” (2012 SCMR 280). Further argued that the appeal of respondent No.3 is also barred by more than 03 years for which she failed to adduce any reasonable cause, but the learned Appellate Court condoned the delay and accepted the appeal. In this regard he relied upon case titled “LT. COL. NASIR MALIK V. ADDITIONAL DISTRICT JUDGE, LAHORE AND OTHERS (2016 SCMR 1821).

4. Contrariwise, learned counsel representing respondent No.3 maintains that decree of dower was passed in favour of respondent No.3, which attained finality, therefore, her execution petition is

quite within time as no limitation run against filing of an execution for recovery of dower and learned Appellate Court rightly allowed the appeal of respondent No.3 and remanded the matter for decision of execution petition in accordance with law.

5. I have heard learned counsel for the parties at length and perused the record with their able assistance.

6. In the light of submissions made by learned counsel for the parties, two moot points emerge on the surface. One, what is the limitation for filing of an execution petition for recovery of dower decree and second whether the learned Appellate Court was justified to condone the delay.

7. Section 13 of the West Pakistan Family Courts Act, 1964 relates to enforcement of decrees which reads as under:

*Enforcement of decrees.— (1) The Family Court shall pass a decree in such form and in such manner as may be prescribed, and shall enter its particulars in the prescribed register.*

*(2) If any money is paid or any property is delivered in the presence of the Family Court, in satisfaction of the decree, it shall enter the fact of payment [or] the delivery of property, as the case may be, in the aforesaid register.*

*(3) Where a decree relates to the payment of money and the decretal amount is not paid within time specified by the Court, not exceeding thirty days as the same shall, if the Court so directs be recovered as arrears of land revenue, and on recovery shall be paid to the decree-holder.*

*(4) The decree shall be executed by the Court, passing it or by such other Civil Court as the District Judge may, by special or general order, direct.*

*(5) A Family Court may, if it so deems fit, direct that any money to be paid under a decree passed by it be paid in such installments as it deems fit.*

8. Perusal of said provision it appears that no limitation is provided for filing of an execution petition in family cases.

9. A cursory glance at Family Courts Act, 1964 shows that the legislature has left many vacant areas but it does not necessarily means that embargo has been placed upon the Family Court in the

exercise of certain powers, confidence has been shown in the Court to proceed in the matter by exercising its inherent powers to avoid abuse of the process of law without any hindrance of the technicalities imposed by Civil Procedure Code, 1908. The purpose of enacting Family Courts Act is to frustrate the technicalities for the purpose of justice between the parties in the shortest possible manner. All that the Family Courts Act has done is that it has changed the forum, altered the method of trial and empowered the Court to grant better remedies. The purpose of enacting special law regarding the family disputes is for the purpose of advancement of justice and to avoid technicalities. It is settled proposition of law that Judge Family Court is competent to regulate its own proceedings as the West Pakistan Family Courts Act, 1964 does not make provisions for every conceivable eventuality for unforeseen circumstances.

10. Provisions of Limitation Act, 1908 are not applicable in family matters in *stricto-senso*. The learned Executing Court by presuming in his own wisdom that limitation for filing an execution petition is governed by residuary Article 181 of the Limitation Act, 1908 which provide a period of three years declared that execution petition of the respondent No.3 is barred by time. Article 181 of the Limitation Act, 1908 is residuary in nature which deals with the situation when someone had to move an application and not execution petition for which no period of limitation is provided in the Family Laws and even in the Limitation Act. Learned Executing Court while appreciating Article 181 of the Limitation Act, 1908, has erred in law by applying it to the execution matter of family nature. An Executing Court while executing a family decree can exercise its own powers to prevent the course of justice being deflected from its path. To regulate the proceedings it has to proceed on the premises that every procedure is permissible unless clearly prohibition is found in law, meaning thereby that Family Court can exercise its powers but is not debarred to follow the principles of other laws coupled with the facts. Proceedings of the

Family Court, whether as a Trial Court or an Executing Court are governed by the general principles of equity, justice & fair play.

11. No specific period of limitation for implementation of decree of dower can be fixed and whenever wife moves the legal forum for satisfaction of her right, husband is under legal obligation to satisfy such decree. Postponement of recovery of dower for any consideration during subsistence of marriage would not deprive the wife from execution of the decree being barred by time. August Supreme Court of Pakistan in a similar type of situation in case titled “SYED MUHAMMAD V. MST. ZEENAT & OTHERS (PLD 2001 SC 128=2001 SCJ 297)” held as under:

*“In respect of latter question, however, it was held that decree of dower cannot be refused to be executed being barred by limitation. Therefore, we would confine ourselves only to this aspect of the case. According to Article 103 of Limitation Act all suits for the decree of prompt dower can be instituted within three years from its demand whereas time prescribed for the suit of deferred dower is three years under Article 104 of the Limitation Act. In the instant case as tie of marriage exists between the parties, therefore, decree dated 24th October, 1979 for recovery of dower would be deemed to be in respect of her prompt dower which consists of both the money as well as the property. Now the question for consideration is that what should be the period of limitation for filing of execution application for satisfaction of prompt dower. As far as section 48, C.P.C. is concerned its provisions cannot be pressed into service because under section 17 of the Family Courts Act, 1964 Code of Civil Procedure, 1908 except its sections 10 and 11 is not applicable to proceedings before any Family Court. As far as Limitation Act is concerned under its Article 182 period for execution of a decree of any Civil Court has been prescribed to be three years but in our opinion as the Family Court is not a Civil Court stricto sensu, therefore, the provisions of this Article can also not be pressed into service. Thus reliance has to be placed on the residuary Article i.e. Article 181 of the Limitation Act, which provides the period of three years when the right to apply accrues. As it has been noted hereinabove that nature of the liability is of prompt dower, recognition of which has been made judicially by a Family Court in favour of respondent because the prompt dower is to be recovered during subsistence of marriage, therefore, no specific period of limitation for implementation of decree of such nature can be fixed because due to subsistence of marriage the judgment-debtor i.e. the husband acknowledges the right of his wife and he is deemed to remain under a legal obligation to satisfy the decree whenever the decree-holder/wife has moved the legal forum for satisfaction of her right. This proposition can be considered from another angle i.e. that as tie of marriage exists between parties, therefore, the wife/decreed-holder out of number of considerations may have postponed the*

*implementation of the decree including the consideration that let relations between the spouses remain cordial or the husband is looking after her as well as other family members or the husband on account of his poor financial position is not in a position to implement the decree but such postponement for any consideration during subsistence of marriage would not deprive the decree-holder (wife) from execution of the decree being barred by time and no sooner proceedings of execution are launched that date would be treated as a denial by the judgment-debtor to satisfy the liability of prompt dower and Execution proceedings shall be considered within time as per requirement of Article 181 of Limitation Act. Thus for the above reasons no interference is called for in the impugned judgment passed by learned High Court of Balochistan.”*

12. Admittedly, marriage subsists between the parties and the nature of dower is of prompt dower, which was duly recognized by the Court. The prompt dower is recoverable during subsistence of marriage on demand. Therefore, no specific period of limitation for implementation of decree of such nature can be fixed. Due to subsistence of marriage, the judgment debtor, i.e. the husband acknowledges the right of his wife and he is deemed to remain under a legal obligation to satisfy the decree whenever the decree holder/wife has moved the legal forum for satisfaction of her right.

13. Next question for determination is that whether the appellate Court was competent to entertain a time-barred appeal. Right of appeal is not merely a matter of procedure, rather it is a substantive right. There is no cavil that in terms of Rule 22 of the Family Courts Rules, 1965, an appeal under Section 14 of the Family Courts Act, 1964 shall be preferred within a period of 30 days of the passing of decree or decision but appellate Court is vested with the power to condone any delay in filing the appeal on showing sufficient cause by the appellant. This Court, while observing as above in a case titled “MAQSOOD PERVAIZ CHAUDHRY V. MST. NOSHEEN CHAUDHRY & OTHERS (PLD 2019 LAHORE 102),

held as under:

*“Even otherwise, when decree under appeal was apparently suffering illegalities and material irregularities, the learned Additional District Judge should have exercised its jurisdiction with great care and caution.”*

14. In a case titled “PROVINCE OF PUNJAB THROUGH COLLECTOR AND OTHERS V. MUHAMMD FAROOQ AND OTHERS” (PLD 2010 SC 582), the august Supreme Court of Pakistan observed as under:

*“Court could assume jurisdiction related to matter filed with delay, provided the merit of the case so demanded”.*

15. In case titled 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 of dower, dowry articles and maintained is involved, which cannot be rightly ignored, therefore, the delay of 2 and 4 days respectively, in filing these petitions is condoned”.*

16. Perusal of record it appears that respondent No.3 along with her appeal moved an application for extension of time/condonation of delay provided sufficient explanation resulting into delayed appeal. Said application was supported by an affidavit and no counter affidavit was filed by the petitioner in its rebuttal, therefore, the grounds urged in the application had gone unchallenged, hence, the contents of affidavit, having gone unchallenged, were deemed to be true. Reliance is placed on case titled “CIVIL AVIATION AUTHORITY V. PROVIDENCE AVIATION (PVT) (LTD).” (2000 CLC 1722).

17. It is a basic principle of administration of justice that cases must be decided on merits instead of technicalities and the technicalities should not be a hindrance in the way of justice. For reference, reliance is placed on “MANAGER, JAMMU & KASHMIR, STATE PROPERTY IN PAKISTAN V KHUDA YAR” (PLD 1975 SC 678). Law of limitation should be liberally construed without giving violence to intention of legislature. Law must be applied for benefit of person who succeed in litigation. The principle in our jurisprudence governing just dispensation to do justice in accordance with law shall have to be kept in view.



18. Valuable rights accrued to respondent No.3 after decree of her suit for recovery of dower, therefore, it is not fair to deprive her from the benefits of decree. One who succeeds in a litigation unjustly must not retain the benefit. After acceptance of Nikah in lieu of dower and enjoying its blessings, it does not suit to a husband/judgment debtor/petitioner to question the maintainability of the execution petition on the point of limitation.

19. For the foregoing reasons, learned Appellate Court has rightly allowed appeal of respondent No.3 and restored her execution petition by properly appreciating the peculiar facts & circumstances of the case. Learned counsel for the petitioner failed to point out any illegality, irregularity or jurisdictional defect in the impugned judgment of the Appellate Court, warranting interference by this Court in constitutional jurisdiction. So far as the case laws referred to by the learned counsel for the petitioner are concerned, it is observed that the same are distinguishable from the facts/circumstances of the case in hand, hence, are not helpful for the petitioner.

20. As an inevitable corollary of above discussion, this petition having no force/substance is **dismissed** with no order as to cost.

**(AHMAD NADEEM ARSHAD)**  
**JUDGE.**

***APPROVED FOR REPORTING.***

**JUDGE.**

***ANNOUNCED IN OPEN COURT ON***\_\_\_\_\_

**JUDGE.**