

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3862/2018

Asad Nawaz

Versus

Additional District Judge-VII, Islamabad (West) and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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24.01.2019

Mr. Khalil-ur-Rehman Abbasi, Advocate for petitioner.

M/s Saira Khalid Rajput and Dur-e-Najaf, Advocates for respondent No.3.

Through the instant writ petition, the petitioner, Asad Nawaz, impugns the judgment dated 03.10.2018, passed by the Court of the learned Additional District Judge, Islamabad, whereby his appeal against the order dated 22.05.2018, passed by the learned Judge, Family Court, Islamabad, was dismissed. Vide the said order dated 22.05.2018, the learned Family Court dismissed the petitioner's application for setting-aside the *ex-parte* judgment and decree dated 05.01.2018, whereby the suit for recovery of dower, maintenance and dowry articles instituted by respondent No.3 (Ms. Ayesha Aadil), was decreed.

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2. Learned counsel for the petitioner submitted that the learned Courts below did not appreciate that the petitioner had come-up with sufficient cause for the setting-aside of the *ex-parte* judgment and decree dated 05.01.2018; that the Reader of the learned Family Court had mislead the petitioner as to the whereabouts of the case file and as to the correct date of hearing; that the petitioner was informed that the next date of hearing in the proceedings before the learned Trial Court was 15.01.2018; that when the

petitioner attended the Court on 15.01.2018, he was informed that the suit against him had already been decreed; that soon thereafter, the petitioner filed an application for the recall of the *ex-parte* judgment and decree dated 05.01.2018; and that the learned Trial Court did not appreciate that the petitioner had come-up with sufficient cause for not attending the Court on 20.12.2017. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the concurrent orders/judgments passed by the learned Courts below to be set-aside.

3. On the other hand, learned counsel for respondent No.3 submitted that respondent No.3 had filed a suit for recovery of dower, etc. on 30.09.2014; that vide order dated 27.02.2015, the petitioner was proceeded against *ex-parte*; that on 29.09.2015, an *ex-parte* judgment and decree was passed in respondent No.3's favour; that subsequently, on the petitioner's application, the said *ex-parte* judgment and decree was set-aside subject to the payment of costs to the tune of Rs.5,000/-; that the petitioner deliberately absented himself from the learned Trial Court on 20.12.2017; that the order sheet of the learned Trial Court clearly shows that on 13.12.2017, the matter had been adjourned to 20.12.2017; that even prior to that the petitioner had protracted the proceedings before the learned Trial Court by not filing a written statement; that the petitioner had not come-up with any sufficient cause for the recall of the *ex-parte* judgment and decree dated 05.01.2018; and that the concurrent orders/judgments passed by the learned Courts below do not suffer from any jurisdictional



infirmity so as to warrant interference in the Constitutional jurisdiction of this Court.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. The record shows that on 25.10.2008, the petitioner and respondent No.3 got married. Subsequently, the relations between the couples turned sour. The marriage between the said parties came to an end after respondent No.3 exercised her right of divorce delegated to her in terms of column No.18 of the *Nikahnama*. The divorce between the parties was finalized on 05.09.2012.

6. On 30.09.2014, respondent No.3 filed a suit for recovery of dower, maintenance and dowry articles. Since the petitioner did not appear before the learned Family Court despite the publication of summons in the newspaper, he was proceeded against *ex-parte* on 27.02.2015. After recording *ex-parte* evidence, the learned Family Court, on 29.09.2015, passed an *ex-parte* judgment and decree in respondent No.3's favour.

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7. Vide order dated 24.10.2017, the petitioner's application for setting-aside the said *ex-parte* judgment and decree was allowed by the learned Family Court subject to payment of costs to the tune of Rs.5,000/-. Since the petitioner again failed to appear before the learned Family Court, he was proceeded against *ex-parte* on 20.12.2017. Respondent No.3's evidence recorded earlier (i.e. prior to the *ex-parte* judgment and decree dated 29.09.2015) was treated as her evidence and the proceedings culminated in another *ex-parte*

judgment and decree dated 05.01.2018 in respondent No.3's favour.

8. On 19.01.2018, the petitioner filed an application under Section 9(6) of the West Pakistan Family Courts Act, 1964 ("the 1964 Act") praying for the order dated 20.12.2017 and the *ex-parte* judgment and decree dated 05.01.2018, to be set-aside. The ground taken in the said application was that the petitioner had been misinformed by the Reader of the learned Family Court as to the correct date of hearing. Vide order dated 22.05.2018, the learned Family Court dismissed the said application.

9. The said order dated 22.05.2018 as well as the *ex-parte* judgment and decree dated 05.01.2018 were assailed by the petitioner in an appeal before the Court of the learned Additional District Judge, Islamabad. Vide judgment dated 03.10.2018, the learned Appellate Court dismissed the said appeal.

10. The vital question that needs to be answered is whether the learned Family Court lawfully exercised its discretion while dismissing the petitioner's application for the setting aside of the order dated 22.05.2018, whereby the petitioner's application for setting aside the *ex-parte* judgment and decree, was dismissed.

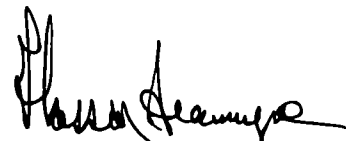
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11. Now every litigant is presumed to be aware of the contents of the order sheet of the suit maintained by the Trial Court. Perusal of the order dated 13.12.2017, passed by the learned Trial Court shows that the matter had been adjourned to 20.12.2017. In this view of the matter, there was no reason for the petitioner to have absented

himself from the learned Family Court on 20.12.2017. Even if the petitioner could not have tendered appearance on the said date, his counsel should have appeared before the learned Family Court on the said date.

12. Even prior to 20.12.2017, the order sheet reveals that the case had been adjourned on several occasions at the petitioner's instance. Since the suit instituted by respondent No.3 had earlier been decreed *ex-parte*, the petitioner should have been extra vigilant and attended the Court on every date of hearing either personally or through his counsel. The petitioner had not even bothered to deposit the costs of Rs.5,000/- subject to which the earlier *ex-parte* judgment and decree dated 29.09.2015. Given the said conduct of the petitioner, it cannot be held that the discretion by the learned Courts below in concurrently non-suiting the petitioner was exercised unlawfully or arbitrarily. Respondent No.3's case against the petitioner was supported by evidence which remained un-rebutted.

13. In view of the above, I have no reason to hold that the concurrent orders/judgments passed by the learned Courts below suffer from jurisdictional errors so as to warrant interference in the Constitutional jurisdiction of this Court. Consequently, this petition is dismissed with no order as to costs.



(MIANGUL HASSAN AURANGZEB)
JUDGE