Form No. HCJD/C-121

ORDER SHEET

LAHORE HIGH COURT, RAWALPINDI BENCH, RAWALPINDI. JUDICIAL DEPARTMENT

I.C.A No.85 of 2021

MUHAMMAD ABU BAKAR FAROOQ, ETC. Versus **THE LEARNED JUDGE FAMILY COURT, CHAKWAL, ETC.**

S.No.of order / Proceeding	Date of Order/ Proceeding	Order with signature of Judge, and that of parties' counsel, where necessary

30.11.2021 Ch. Amjad Ali, Advocate for the appellants.

This appeal in terms of Section 3 of the Law Reforms Ordinance, 1972 (hereinafter to be referred as "Ordinance, 1972") calls in question the order dated 1st November, 2021, whereby the learned Single Judge in Chamber proceeded to dismiss W.P.No.2946 of 2021 filed by the appellants challenging the order dated 17th July, 2021 passed by the learned Judge Family Court, Chakwal.

2. Facts in brief necessary for adjudication of instant appeal are that a suit for recovery of dowry articles etc. was instituted by respondents No.2 to 4 (hereinafter to be referred as "respondents") before the learned Judge Family Court, Chakwal. The petitioners being the defendants in the suit, moved an application seeking rejection of the plaint on the ground that the "respondents" have no cause of action. The application was resisted by the "respondents" and the learned Trial Court resultantly dismissed the same by way of order dated 17th July, 2021. Feeling aggrieved, the petitioners filed constitutional petition i.e. W.P.No.2946 of 2021, which was dismissed on 1st November, 2021, hence this appeal.

3. At the very outset, we when confronted the learned counsel for the appellants as to how this appeal is maintainable in presence of remedy of appeal provided under Section 14 of the Family Courts Act, 1964, he contended that order dated 17th July, 2021 passed by the learned Judge Family Court is without jurisdiction. He further submitted that order resulting into dismissal of application is not appealable under the Family Courts Act, 1964.

4. Heard. Record perused.

5. In order to examine the competency of this intra court appeal, it would be thus advantageous to first ponder upon the language of Section 14 of The Family Courts Act, 1964 which deals with the right of appeal. The same is reproduced below: -

> ***"S. 14. Appeal.__****[(1) Notwithstanding anything provided in any other law for the time being in force, a decision given or a decree passed by a Family Court shall be appealable___*
>
> (a) to the High Court, where the Family Court is presided over by a District Judge, an Additional District Judge, or a person notified by Government to be of the rank and status of a District Judge or an Additional District Judge.
>
> (b) To the District Court, in any other case.
>
> (2). No appeal shall lie from a decree by a Family Court___
>
> (a) for dissolution of marriage, except in the case of dissolution for reasons specified in clause (d) of item (viii) of Section 2 of the Dissolution of Muslim Marriages Act, 1939,
>
> (b) for dower [or dowry] not exceeding rupees [thirty thousand];
>
> (c) for maintenance of rupees [One thousand] or less per month
>
> Subsection (2) in clause (b), for the word "thirty thousand" the words "one hundred thousand" substituted, and (b) "one thousands" the words "five thousand" substituted by Family Courts (Amendment) Act 2015 (XI of 2015).
>
> [(3) No appeal or revision shall lie against an interim order passed by a Family Court.
>
> (4) The appellate Court referred to in sub-section (1) shall dispose of the appeal within a period of four months.]
>
> **(Underlining supplied for emphasis)**

Bare reading of above referred provision of law postulates that appeal is permissible under the said provision with certain restrictions as

enunciated in subsection (2), against a decision given or a decree passed by the learned Family Court.

6. The word “decision” used in Section 14 of the Family Courts Act, 1964 is quite similar and akin to the term “case decided” used in Section 115 of the Code of Civil Procedure (V of 1908) (hereinafter to be referred as “CPC”). It is well settled principle of law that revision under Section 115 of “CPC” is only maintainable against an order which comes within the purview of “case decided”. The controversy with regard to interpretation of “case decided” has arisen in the case of *“Haji SAKHI DOST JAN v. PAKISTAN NARCOTICS CONTROL BOARD and another”* **(1998 SMCR 1798)** wherein the Hon’ble Supreme Court of Pakistan held as under: -

> *“14. It is well-settled that the term, "case decided" can be construed as a decision given in respect of any state of facts after judicially considering the same, which need not necessarily dispose of the whole matter in a cause pending before a Court subordinate to the High Court. Reference may be made to Umar Dad Khan v. Tila Muhammad Khan (PLD 1970 SC 288), wherein this Court approved the statement of law in Bibi Gurdevi v. Muhammad Bakhsh (AIR 1943 Lah. 65), wherein the word "case" was explained as follows:--*
>
> > *"I am inclined to think that the true test for deciding whether a particular interlocutory order should or should not be looked upon as a 'case' for the purpose of section 115, C.P.C., is to be deduced not from the meaning of the word 'case', but from the proper scope and limits of the revisional jurisdiction conferred upon the High Court by that section. From the standpoint of language, pure and simple, there seems to be no good reason why one branch of a suit should be held to be a 'case' but not another and the word may include any interlocutory order. This does not, of course, mean that purely formal orders such as those relating to an adjournment or the summoning of a witness, etc. could be looked upon as 'cases'. But when a decision relates to some matter in controversy affecting the rights of the parties, I do not see why it should not be looked upon as a 'case'. This wide interpretation of the word 'case' is not, I think, likely to lead to inconvenience in practice as the field of interlocutory orders subject to revision will be extremely narrow in view of the express and implied conditions necessary for the exercise of the revisional jurisdiction. Theoretically the extraordinary jurisdiction is unlimited, but in practice it is held to be subject to important and well-recognized limits."*
>
> *The same view was taken by the Federal Shariat Court in the case of The State v. Anayatullah (PLD 1983 FSC 244), refer also Bashir Ahmad Khan v. Qaiser Ali Khan (PLD 1973 SC 507), Messrs National Security Insurance Company Limited v. Messrs Hoechst Pakistan Limited (1992 SCMR 718) and Pakistan Fisheries Ltd., Karachi v. United Bank Ltd. (PLD 1993 SC 109).*

We also quote with approval the case of Jaffar Khan v. The State (1985 PCr.LJ 2611), wherein a Division Bench of the High Court of Balochistan held that revision petition against the order of Additional Sessions Judge deciding question whether a direct challan could have been entertained by him, would lie before the Federal Shariat Court in view of Article 203-DD read with Articles 203-DD and 203-F of the Constitution. Ajmal Mian, Acting C.J., as he then was, observed:--

> *"In this regard, it may be pertinent to observe that Article 203-DD of the Constitution of the Islamic Republic of Pakistan, 1973 provides that the Federal Shariat Court may call for and examine the record of any case decided by any criminal Court under any law relating to the enforcement of Hudood for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed by, and as to the regularity of any proceedings of, such Court and may, - when calling for such record direct that the execution of any sentence by suspended and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record. The above Article is to be read with Article 203-G, which provides that save as provided in Article 203-F, no Court or Tribunal, including the Supreme Court and a High Court, shall entertain any proceedings or exercise any power or jurisdiction in respect of any matter within the power or jurisdiction of the Court i.e. Federal Shariat Court. It is evident that the proper remedy for the petitioner is to file revision before the Federal Shariat Court. In this behalf reference may be made to the case of Muhammad Ilayas v. The State reported in 1986 PCr.LJ 344, in which a learned Single Judge of the Sindh High Court declined to entertain a revision in view of the above Articles 203-DD and 203-G of the Constitution of Islamic Republic of Pakistan, 1973."*

Reference in this regard can also be made to *"Messrs NAITIONAL SECURITY INSURANCE COMPANY LIMITED and others v. Messrs HOECHST PAKISTAN LIMITED and others"* **(1992 SCMR 718)** and *"NESTLE MILKPAK LIMITED v. CLASSIC NEEDS PAKISTAN (PVT.) LTD. and 3 others"* **(2006 SCMR 21).**

7. This Court, in the case of *"MST. NAUREEN vs. FAMILY JUDGE, FAISALABAD (MR. EHSAN SABIR), ETC"* **(NLR 2009 Civil 481)**, while interpreting the term "decision" held as under: -

> *"12. The petitioner has been non-suited by the learned Appellate Court on the grounds that the appeal against the interim order passed by the learned Judge Family Court was not maintainable in view of the provisions of Section 14 of the Family Courts Act, 1964. The legislature has provided appeal through the aforesaid section against a decision or a decree given by a Family Court. The Dictionary meaning as given in Wharton's Law Lexicon of "decision" means a judgment, and as per Stroud's Judicial Dictionary, "decision" is a popular and not technical word and means "little more than a concluding*

> *opinions. The word "decision" has been defined in Webster Encyclopedic Dictionary means "the act of deciding, determination, final judgment or opinion in a case which has been under deliberation or discussion, whereas the decree has been defined in Section 2(2), CPC. Even otherwise, the word "decision" used in Section 14 has to be read as ejusdem generis with decree and not only final decision of a Family Court. The word "decision" not only covers the final judgment but also interlocutory order, therefore, in such like situation, the appeal would be maintainable. While having a look of a different meaning and definition is broad enough to cover both final judgments and interlocutory orders and although, it is some times limited to the sense of judgment and some times understood as meaning simply the first step leading to a judgment. Lastly, the word "decision" may also include various rulings as well as orders."*

The same view was reiterated in the cases of *"Mst. MAHAM SHABBIR vs. SALMAN HAIDER and others"* **(2014 CLC 330)** and *"MUHAMMAD ZAMAN vs. UZMA BIBI and 4 others"* **(2012 CLC 24)**.

8. In somewhat similar circumstances, in the case of *"IMTIAZ AHMAD KHAN vs. Mst. AQSA MANZOOR and others"* **(PLD 2013 Lahore 241),** it was held as under: -

> *"4. The basic question to be resolved is, whether the order dated 12-11-2009 dismissing the petitioner's application seeking the dismissal of respondent's suit is a decision given or an interlocutory order, the two terms used in section 14 of the West Pakistan Family Courts Act, 1964.*
>
> *The order dated 12-11-2009 impugned in the writ petition was passed on the application made by the applicant. The question whether the court could try the subsequent suit when the earlier one had already dismissed for want of evidence was finally decided vide the above referred order. No further order was to be passed on the said application. The order passed falls with the term of "a decision given". Reliance is placed on* ***Rao Muhammad Owais Qarni V. Mst. Tauheed Aisha and others*** *1991 MLD 1097. In view of the ratio of the referred judgment the order assailed in writ petition finally decides the application made by the appellant cannot be termed to be an interlocutory order. It is a decision given and is appealable. The instant Intra Court Appeal arising out of the proceedings whereby the law provides a remedy by way of an appeal or revision is not competent. This appeal is dismissed."*

Reliance in this regard can also be placed on Dr. KIRAN QADIR v. Maj. Dr. MUHAMMAD ALI YOUSAF KHAN and 2 others ***(PLD 2014 Lahore 17)***.

9. From the above survey of law, there remained no ambiguity that the order dated 17th July, 2021 whereby application of the appellants seeking rejection of plaint was dismissed, was a decision for all intents and purposes as per contemplation of Section 14 of the Family Courts Act, 1964.

10. Proviso to Section 3 of the "Ordinance, 1972" places an embargo that an Intra Court Appeal under Section 3 shall not be available or competent if the application brought before High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 arises out of any proceedings in which the law applicable provided for at least one appeal or one revision or one review to any Court, Tribunal or Authority against the original order. Guidance in this respect can be sought from *"Mst. KARIM BIBI AND OTHERS v. HUSSAIN BAKHSH AND ANOTHER"* **(PLD 1984 Supreme Court 344)**.

11. We are thus of the unanimous view that instant appeal is clearly hit by proviso to Section 3 of the Law Reforms Ordinance, 1972 and as such it is not maintainable, which is accordingly ***dismissed in limine***.

(Raheel Kamran)
JUDGE

(Mirza Viqas Rauf)
JUDGE

Approved for Reporting

JUDGE ***JUDGE***

Zeeshan**.**