

2022 C L C 574

[Balochistan]

Before Muhammad Kamran Khan Mulakhail and Rozi Khan Barrech, JJ

SHAKARULLAH----Petitioner

Versus

BIBI SHAKEELA and another----Respondents

Constitution Petition No.1339 of 2019, decided on 7th December, 2020.

Family Courts Act (XXXV of 1964)---

---S.17---Civil Procedure Code (V of 1908), Preamble---Qanun-e-Shahadat (10 of 1984), Preamble---Family Court Act, 1964---Object---Provisions of Civil Procedure Code, 1908 and Qanun-e-Shahadat, 1984---Applicability---Dismissal of suit on technicalities---Effect---Family Court dismissed the suit of lady/respondent on the ground that she did not fulfil the requirements of the Qanun-e-Shahadat, 1984, while producing her documentary as well as oral evidence---Appellate Court remanded the matter to the Family Court---Held, that purpose of enacting the special law regarding family disputes was to advance justice and to avoid technicalities which were hindrance in providing ultimate justice to the parties---Family Courts Act, 1964, was promulgated for the expeditious settlement and disposal of disputes relating to the marriages and other family affairs and special procedure was provided to achieve the object---Purpose of enacting the Family Courts Act, 1964, was to frustrate the technicalities for the purpose of justice between the parties in the shortest possible time---Provisions of the Civil Procedure Code, 1908, as well as Qanun-e-Shahadat, 1984, were not applicable in stricto sensu to the proceedings before the Family Court---By virtue of S.17 of the Family Courts Act, 1964, the applicability of Civil Procedure Code, 1908 and Qanun-e-Shahadat, 1984, had been excluded---Appellate Court had rightly remanded the matter to the Family Court---No illegality or infirmity had been noticed in the impugned order passed by the Appellate Court---Constitutional petition was dismissed, in circumstances.

Farzana Rasool v. Dr. Muhammad Bashir 2011 SCMR 1361 ref.

Khalid Ahmed Kubdani for Petitioner.

Habib-ur-Rehman for Respondent No.1 (Absent).

Date of hearing: 25th June, 2020.

JUDGMENT

ROZI KHAN BARRECH, J.----The instant constitutional petition filed under Article 199 of the Constitution of Islamic Republic Pakistan, 1973 ("Constitution") carries the following prayer:

"it is most respectfully submits that keeping in view submissions made hereinabove, this Honourable court may kindly be pleased to allowed the constitution petition in hand, and set aside the decree/judgment dated 24/10/2019 passed by the learned appellate court i.e. District Judge Kharan. Further pleased upheld the decree and judgment dated 15/04/2019 passed by the learned Additional Qazi Kharan cum family Judge Kharan, with the costs of petitioner, in the interest of justice, equity and fair play; with the prayer of any other relief as seems or deemed and properly fit by this Honourable court, may graciously be pleased awarded in petitioner favour"

2. Brief facts of the case are that respondent No.1 (plaintiff) filed a suit for recovery. of dower amount, gold ornaments, maintenance for Iddat period and dowry articles before learned Additional Qazi/Family Judge Kharan (hereinafter "the trial court"). In pursuance of notice issued to the petitioner (defendant), the petitioner put his appearance and filed his written statement and flatly denied the claim of respondent No.1.

Out of divergent pleadings of the parties, the trial court framed the following issues:-

3. After framing of issues, parties led their respective evidence. The trial court, dismissed the suit of respondent No.1 vide judgment dated 15.4.2019 (hereinafter "the impugned judgment"). Feeling aggrieved, respondent No.1 filed appeal under section 14 of the West Pakistan Family Courts Act, 1964 (hereinafter "the Act, 1964") before Additional District Judge, Kharan (hereinafter "the appellate court"), and the same was partly accepted and the case was remanded back to the trial court vide judgment and decree dated 24.10.2019 (hereinafter "the impugned judgment"), whereafter the petitioner filed the instant petition.

4. We have heard learned counsel for the petitioner and have minutely gone through the available record with his valuable assistance.

5. The trial court dismissed the suit of respondent No.1 on the ground that respondent No.1 did not fulfil the requirements of Qanun-e-Shahadat Order, 1984 (hereinafter "the Order"), while producing the documentary evidence as well as oral evidence and dismissed the suit of respondent No.1 on the basis of technicalities.

6. It is a settled principle of law that purpose of enacting the special law regarding family disputes is to advance justice and to avoid technicalities, which are hindrance in providing ultimate justice to the parties. The Act, 1964 was promulgated for the expeditious settlement and disposal of disputes relating to the marriages and other family affairs and special procedure was provided to achieve this object. The purpose of enacting the Act, 1964 is to frustrate the technicalities for the purpose of justice between the parties in the shortest possible time. The provisions of Civil Procedure Code, 1908 (hereinafter "the C.P.C.") as well as the Order, 1984 are not applicable in stricto sensu to the proceedings before the Family Court by virtue of the Act, 1964. In section 17 of Act, 1964 that applicability of CPC and Qanun-e-Shahadat to proceedings before Family Court has been excluded. The august Supreme Court in the case of Farzana Rasool v. Dr. Muhammad Bashir 2011 SCMR 1361 has held that, "objection of exclusion of C.P.C. and Qanun-e-Shahadat Order, 1984 was to avoid technicalities by providing a short, simple and speedy methodology for settlement and disposal of disputes relating to family matters".

The appellate court after going to the relevant law rightly remanded the case to the trial court and no illegality and irregularity whatsoever has been committed, as such, the petition filed by the petitioner is hereby dismissed.

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Petition dismissed.