

**2023 C L C 994**  
**[Balochistan (Turbat Bench)]**  
**Before Muhammad Ejaz Swati and Muhammad Aamir Nawaz Rana, JJ**  
**REHMDIL ----Petitioner**  
**Versus**  
**Mst. BIBI and 3 others ----Respondents**  
**C.P. No.(T) 22 of 2022, decided on 8th November, 2022.**

**JUDGMENT**

MUHAMMAD AAMIR NAWAZ RANA, J.---The petitioner being dissatisfied and aggrieved from the judgements and decrees passed against him by the fora below have called in question the same through this constitution petition. The facts necessary for consideration are, that the respondents who are wife and children of petitioner had filed a suit for recovery of dower and maintenance allowance. The suit was decreed on 02.02.2021 through ex- parte judgment and appeal so filed by the petitioner remained unsuccessful.

2. Learned counsel for the petitioner contended that without affording adequate opportunities, the petitioner was proceeded against ex- parte and without considering the actual facts merely on the basis of highly interested witnesses produced by respondents, the suit was decreed and further contended that the respondents were not entitled for the relief claimed and requested for remand of the matter whereas learned counsel appearing on behalf of respondents strongly contested the contention so raised by learned counsel for petitioner and submitted that deliberately the petitioner despite appearing before the trial Court and engaging a counsel subsequently vanished from the scene just to prolong the proceedings. Further contended that already reasonable judgment has been passed by the trial Court on merits, therefore, the impugned judgments and decrees do not suffer from any infirmity or perversity.

3. The submissions so made by learned counsel for the parties were considered and relevant record was perused. The suit so filed by respondents was decreed on 02.02.2021.

The detail of decree obtained by respondents is reproduced as follow:

"i. It is declared that the dower of plaintiff No.1 was fixed 250 mitcal of gold at the time of Nikah which are still payable by the defendant and the plaintiff is entitled to

receive her dower 250 mitcal of gold from the defendant. Therefore, the defendant is directed to pay 250 mitcal of gold to plaintiff No. 1 forthwith.

ii. It is further declared that the defendant has not provided maintenance to plaintiff No.1 for last six months till the institution of the suit plus interregnum period between institution of suit and its disposal. Therefore, the plaintiff No.1 is entitled to receive her past maintenance allowance from the defendant @ Rs. 10,000 per month (collectively Rs. 80, 000 -). Therefore, the defendant is directed to pay past maintenance allowance to plaintiff No.1 at the rate of Rs.10, 000/ - (Rupees ten thousand) per month (collectively Rs.80, 000/ -) and at same rate in future until she is entitled under law and Sharia.

iii. It is further declared that the defendant has not provided maintenance to plaintiffs Nos.2 and 4 for last six months till the institution of the suit. Therefore, the plaintiffs Nos.2 and 4 are entitled to receive their past maintenance allowance from the defendant. Therefore, the defendant is directed to pay past maintenance allowance including last six months before filing the suit and interregnum period between institution and disposal of suit to plaintiffs Nos.2 and 4 at the rate of Rs.10000/ - (ten thousand rupees) per month (collectively Rs.80,000) and at Rs.5000/ - each per month maintenance to plaintiffs Nos.2 to 3/male children till they attain the age of puberty while plaintiff No.4/female child till her marriage with 10% per annum."

4. The record further transpires that the petitioner appeared before the trial Court on 16.11.2020 and received the copy of suit along with annexures. On 26.11.2020, the petitioner again appeared before the trial Court and had engaged a counsel i.e. Mr. Tanveer Ahmed, Advocate who filed his Vakalamat -Nama before the trial Court, thereafter, the petitioner appeared on 10.12.2020 and sought some time to file power and subsequently when petitioner did not appear he was proceeded against ex- parte and thereafter the judgment and decree in the above mentioned terms was passed. The petitioner filed appeal under Section 14 of the West Pakistan Family Courts Act, 1964 which appeal was held to be time -barred and same was rejected on the ground of limitation. The perusal of the application in which the petitioner sought condonation of delay

transpires that no plausible justification was provided which could be considered by the Appellate Court in order to condone delay, therefore, the appeal so filed by petitioner was rightly dismissed. The petitioner has annexed different receipts to prove his bona fide that he is paying the monthly installment allowance in accordance with the terms of the decree and the only question petitioner intends to raise before this Court is with regard to decree regarding 250 Misqal gold. The perusal of grounds taken by the petitioner before this Court further clarifies that the petitioner even before this Court has not disputed the dower agreed between the parties i.e. 250 Misqal gold. The petitioner has not taken a plea that dower stipulated is deferred. In such view of the matter even on merits we could not find any justification to interfere in the judgment passed by the trial Court as far as the contention of petitioner's counsel that the ex-parte judgment and decree is not sustainable in the eyes of law and matter should have been decided on merits, despite conduct of the petitioner, we find no substance in this argument, the matter was decided by the trial Court on the basis of available record. The petitioner's attitude is strongly disapproved that despite attending the Court and engaging a counsel he chose to remain absent before the trial Court.

5. It is settled principle of law that Family Courts, which are creation of Family Courts Act, 1964, have to formulate their own procedure. The provisions of C.P.C. are not applied in this context. The legislature has intentionally kept the provisions of C.P.C. not applicable in the proceedings before the Family Courts in order to expedite the proceedings and for early disposal of cases so that the litigants before the Family Courts e.g. family members, husband or spouses should not suffer the agony of prolonged litigation. Reliance in this regard is being placed on judgment passed by Hon'ble Supreme Court titled as Farzana

Rasool v. Dr. Muhammad Bashir

1, relevant portion whereof reads as under:

"In presence of the Code, need was felt to have a forum for resolution of family disputes, wherein instead of cumbersome procedure, a short and simple methodology shall be provided for settlement and disposal of disputes relating to family matters. It was, therefore, that the Act was promulgated, which is a special Act for special cases in respect of special disputes between a special class of people i.e. husband and wife and children in case of their maintenance and custody.

The object was to have expeditious disposal of such matters in

shortest possible time. The provisions of the Code and the Evidence Act were made inapplicable on the strength of section 17 of the Act. It is well known that under the Code, there is lengthy procedure for trial with so many bottlenecks, where civil disputes linger on between the parties for decades at the trial stage. Similarly, strict adherence to the rules of the Evidence Act, if followed, would also create so many hindrances in recording of the evidence and technical bars as to the admissibility and relevance of the evidence. It is, therefore, that even the provisions of the Evidence Act were made inapplicable to avoid technicalities. So, if the provisions of the Code and the Evidence Act were made applicable, it would have frustrated the very object of the Act, which requires the Special Court shall be constituted and such Court shall have exclusive jurisdiction in respect of the matrimonial disputes. The object of the Act is to shorten the agony of litigant parties and to provide them justice as early as could be possible. Matters pertaining to the Family Court be of dissolution of marriage, restitution of conjugal rights, entitlement of a child or children or of wife to the maintenance, payment of dower, all such issues are required to be decided in speedy manner, because no such issue can be left undecided for decades; because a minor, seeking maintenance, may become major by the time his case is decided by the Family Court or a wife, seeking dissolution of marriage, may go out of marriageable age by the time she gets decided her suit for dissolution of marriage".

Furthermore, while considering the conduct of the party in the same judgment, the Hon'ble Supreme Court has observed as follows:  
"34. Conduct of a party before a Court of law is always taken as relevant. The Court has to take exception to the conduct of a party like' in the case in hand. The respondent -husband voluntarily opted for the settlement of his family dispute through his nominated panel of Advocates being Arbitrators but latter objected to it. Such conduct of the respondent -husband has to be condemned".

(Emphasis Provided)

In another case titled as Muhammad Tabish Naeem Khan v. Additional District Judge  
Lahore

2, the Hon'ble Supreme Court has held as follows:

----- . We are not persuaded to hold, that the ex parte decree dated 4 -7-2008

was void, for the reason that there is no provision in the West

Pakistan Family Courts

Act, 1964 to strike off the defence of the petitioner, when he failed to file the written statement, thus it (decree) should be ignored; suffice it to say that the Family Court is the quasi judicial forum, which can draw and follow its own procedure provided such procedure should not be against the principles of fair hearing and trial, thus if a defendant of a family matter, who is duly served; and especially the one who appears and disappears and also does not file his written statement within the time allowed to

him by the Court, the Court shall have the inherent power and ample power to proceed ex parte against him, to strike off the defence and to pass an ex parte decree in line with the principles as are enunciated by the Civil Procedure Code."

(Emphasis Provided)

For the forgoing reasons and after due deliberations, the petition is dismissed.

SA/29/Bal. Petition dismissed.