IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Irfan Saadat Khan

Civil Petition No.263-K of 2024
Against the Order dated 28.2.2024 passed by High Court of Sindh, Karachi in Const. Petition No.S-395/2023

Muhammad Shamim Ali ...Petitioner(s)

Versus

Mst. Asma Begum & others ...Respondent(s)

For the Petitioner(s): Dr. Raana Khan, AOR/ASC a/w Petitioner

For the Respondent(s): N.R

Date of Hearing: 15.7.2024

JUDGMENT

Irfan Saadat Khan, J.- Brief facts of the *lis* before us are that the Respondent filed Family Suit No. 2163/2021 for dissolution of marriage by way of *khula* before the Family Judge-XXVIII Karachi East. In the aforenoted suit the Respondent (who was the Plaintiff before the Family Court) prayed for the dissolution of the marriage, recovery of dowry articles amounting to PKR 1,025,000/-, and monthly maintenance amounting to PKR 25,000/-. The suit proceeded in a regular manner: written statement filed, pro and contra evidence recorded, final arguments heard. After which, the Family court decreed the suit, vide judgment and decree, dated 16.08.2022, in favour of the Respondent, in the following terms:

> "a) The Defendant is directed to pay maintenance to Plaintiff at the rate of Rs. 10,000/- per month for iddat period.
>
> b) The Defendant is directed to return all the dowry articles mentioned in the list except gold ornaments and/or in lieu of those articles, to pay equal amount as per market rate."

2. Aggrieved by the aforenoted judgment and decree the Petitioner (who was the Defendant before the Family Court), filed a family appeal under section 14 of the West Pakistan Family Courts Act, 1964, ("**Family Act**"), vide Family Appeal No. 243/2022, before the Court of the Additional District Judge, Karachi (East), wherein the Petitioner argued that the impugned judgement and decree was passed without considering the recorded evidence. The Appellate Court, however after hearing the matter, dismissed the family appeal of the Petitioner, vide judgement dated 21.03.2023, and upheld the judgement and decree of the Family Court.

3. With no other recourse left, the Petitioner knocked the doors of the High Court of Sindh, Karachi, by filing a Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**the Constitution**"). The Petitioner argued before the High Court that the recorded evidence was not appreciated by the *fora* below and therefore prayed for the judgement and decree, passed in Family Suit No. 2163/2021 and the judgement, dated 21.03.20203, passed in Family Appeal No. 243/2022, to be set aside, and the matter be conducted afresh. The High Court, vide judgement, dated 28.02.2024, ("**impugned judgment**"), dismissed the Writ Petition, by observing:

> "5. Section 5 of the West Pakistan Family Court Act 1964, provides that Family courts have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in Part-I of the Schedule to the said Act. 'Personal property and belongings of a wife' is one of the subjects/items in the Schedule of the said Act over which the Family court has been given exclusive jurisdiction...
>
> 7. The conjoint reading of the said Sections [sections 2(a) and 5 of the Dowry and Bridal Gifts (Restriction) Act, 1976] show that presents and gifts given the bride at or after marriage by the bridegroom or his parents vest absolutely in bride...
>
> 8. Since there are plenty of case law in support of the proposition that the gifts or benefits given to a wife at the time of the marriage or during the subsistence of the marriage become her personal

property and belongings and that the learned trial Court had rightly allowed the prayer of the respondent No. 1 and decreed the suit filed by the respondent No. 1.

9. Apart from this, it is settled law that the ambit of a writ petition is not that of a forum of appeal nor does it automatically become such a forum in instances where no further appeal is provided, and is restricted inter alia to appreciate whether any manifest illegality is apparent from the order impugned..."

4. Dr. Raana Khan, ASC/AOR appeared on behalf of the Petitioner, and stated that the impugned judgment is not sustainable in the eyes of the law as the High Court, like the *fora* below, has failed to consider the entirety of the recorded evidence. She argued that all three *fora* have failed to consider the actual cost receipts of the dowry articles and have incorrectly relied upon the fabricated list of dowry articles furnished by the Respondent. Learned Counsel further argued that the evidence on record was not considered and had that been done so, the outcome would have been different. She finally prayed that Leave to Appeal may be granted against the impugned judgment.

5. The Respondent was not represented.

6. We have heard the learned Counsel for the Petitioner at considerable length and have also perused the record with her assistance.

7. At the outset, it is stated that firstly this Court is not a fact-finding Court and secondly in its jurisdiction under Article 185 (3) of the Constitution, this Court cannot not go behind concurrent findings of fact unless it can be shown that the findings on the face of it were against the evidence or so patently improbable, or perverse that to accept it would amount to perpetuating a grave miscarriage of justice or if there has been any misapplication of the principle relating to appreciation of evidence or the finding could be demonstrated to be physically impossible.[1] Moreover,

[1] Sardar Ali Khan v. State Bank of Pakistan (2022 SCMR 1454)

this Court, vis-à-vis its jurisdiction under Article 185 (3) of the Constitution, in *Abdul Baqi*[2] has observed:

> "It would also be pertinent to observe here that the ultimate jurisdiction of this Court under Article 185(3) of the Constitution to grant leave to appeal against any judgment, decree, order or sentence of a High Court is not circumscribed by any limitation by the Constitution. The principles governing the exercise of this jurisdiction are of self-restraint, settled by the Court itself, keeping in view the considerations of propriety and practice. This Court thus ordinarily exercises its jurisdiction under Article 185(3) of the Constitution, and grants the leave to appeal, as held by a six-member larger bench of this Court in Noora v. State, in cases where some serious question of law is prima facie made out or some case of grave miscarriage of justice is established either by reason of the fact that the findings sought to be impugned could not have been arrived at by any reasonable person or that the findings are so ridiculous, shocking or improbable that to uphold such a finding would amount to a travesty of justice. Therefore, only when the finding of a High Court refusing to initiate proceedings for civil contempt is arbitrary, perverse, ridiculous or improbable, can the same be interfered with by this Court in exercise of its jurisdiction under Article 185(3) of the Constitution."

8. Having said, we do not wish to delve upon the factual controversies involved in the present matter and therefore confine ourselves to the exclusive jurisdiction vested in the Family Courts, as identified in the impugned judgment. It is clear from the preamble of the Family Act that the law was enforced with a vivid object to take out the matters falling within the ambit thereof from the ordinary regime qua dispensation of justice, and for the expeditious disposal of such matters, a special forum was created in which the rigors of procedural implications and the requirements of the Evidence Law (Qanoon-e-Shahadat Order, 1984) were either dispensed with or were simplified; with an addition of a statutory mechanism, enabling the parties for an amicable settlement of their

---

[2] Abdul Baqi v. Haji Khan Muhammad (PLD 2022 SC 546)

disputes.[3] In this backdrop, this Court in *Major Muhammad Khalid Karim*[4] observed:

> "...section 5 of the Act, 1964 conferred exclusive jurisdiction to the Family Court to entertain, hear and adjudicate upon matters specified in Part-I of the schedule to the Act. It may be pertinent to refer here, that if the original Act, 1964 is examined there were six entries/items to the schedule, relating to the matters about dissolution of marriage, dower, maintenance, restitution of conjugal rights, custody of the children and guardianship. However, these items have been increased from time to time e.g. khula' is added to the dissolution cases; the custody issues also involve visitation rights of the parents to meet the minors; jactitation of marriage, dowery, personal property and personal belongings of the wife have also been made part thereof and subjected to the jurisdiction of the Family Court."

9. Since the legislature has conferred exclusive jurisdiction upon the Family Courts, by virtue of section 5[5] of the Family Act, to expedite family cases and tried to cordon off family litigation to the extent of a single family appeal, it would not reflect well on a Constitutional Court to interfere with the exclusive jurisdiction of the Family Courts under the Writ Jurisdiction as provided under Article 199 of the Constitution, unless the jurisdiction exercised by the Family Courts was contrary to law and/or findings reached in exercise of said jurisdiction are perverse and without proper appreciation of evidence that non-interference would lead to a grave miscarriage of justice or for that matter injustice. It is pertinent to state here, at the expense of reiteration, that the learned Counsel for the

---

[3] Major Muhammad Khalid Karim v. Mst. Saadia Yaqub (PLD 2012 SC 66)
[4] ibid.
[5] **5. Jurisdiction.**– [1] Subject to the provisions of the Muslim Family Laws Ordinance, 1961, and the Conciliation Courts Ordinance, 1961, the Family Courts shall have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in the 5 Part I of the Schedule.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the Family Court shall have jurisdiction to try the offences specified in Part II of the Schedule, where one of the spouses is victim of an offence committed by the other.

(3) The Government may amend the Schedule through addition, deletion or substitution of any entry in the Schedule.

Petitioner's assertions about supposedly fake and fabricated receipts of dowry articles is a factual inquiry, which was undertaken by the Family Court and the Appellate Court and could not have been done by the High Court in its jurisdiction under Article 199 of the Constitution, or this Court under its jurisdiction under Article 185 (3) of the Constitution. Therefore, the High Court, in the impugned judgment, dated 28.02.2024, rightly declined to interfere in the findings of the two *fora* below.

10. Moreover, the High Court, whilst relying on previous dicta[6] of this Court has rightly held that the ambit of a Writ Petition is not that of a forum of appeal nor does it automatically become such a forum in instances where no further appeal is provided, and is restricted inter alia to appreciate whether any manifest illegality is apparent from the order impugned. This Court in *M. Hamad Hassan*[7] has held:

> "The right to appeal is a statutory creation, either provided or not provided by the legislature; if the law intended to provide for two opportunities of appeal, it would have explicitly done so. In the absence of a second appeal, the decision of the appellate court is considered final on the facts and it is not for High Court to offer another opportunity of hearing, especially in family cases where the legislature's intent to not prolong the dispute is clear. The purpose of this approach is to ensure efficient and expeditious resolution of legal disputes. However, if the High Court continues to entertain constitutional petitions against appellate court orders, under Article 199 of the Constitution, it opens floodgates to appellate litigation. Closure of litigation is essential for a fair and efficient legal system, and the courts should not unwarrantedly make room for litigants to abuse the process of law. Once a matter has been adjudicated upon on fact by the trial and the appellate courts, constitutional courts should not exceed their powers by re-evaluating the facts or substituting the appellate court's opinion with their own - the acceptance of finality of the appellate court's findings is essential for achieving closure in legal proceedings conclusively resolving disputes, preventing unnecessary litigation,

---

[6] Gul Taiz Khan Marwat v. Registrar Peshawar High Court (PLD 2021 SC 391)
[7] M. Hammad Hassan v. Mst. Isma Bukhari (2023 SCMR 1434)

and upholding the legislature's intent to provide a definitive resolution through existing appeal mechanisms."

Furthermore, this Court, in *Arif Fareed*[8] observed:

"...We reiterate that as per the Preamble of the Act, the Family Court is the forum for disposal and settlement of family disputes and matter connected there with. This disposal and settlement of dispute should not take the form and contents of adjudication. Wherever, there is a procedural convenience, subject to the command of the statute, it must be resolved in favour of the women and children.

...

Before parting with this judgment, we may reiterate that the right of appeal is the creation of the statute. It is so settled that it hardly needs any authority. The Family Courts Act, 1964 does not provide the right of second appeal to any party to the proceedings. The legislature intended to place a full stop on the family litigation after it was decided by the appellate court. However, we regretfully observe that the High Courts routinely exercise their extraordinary jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as a substitute of appeal or revision and more often the purpose of the statute i.e., expeditious disposal of the cases is compromised and defied. No doubt, there may be certain cases where the intervention could be justified but a great number falls outside this exception."

11. The upshot of the aforenoted discussion is that Leave to Appeal is refused and the present Petition is dismissed.

Karachi
15.7.2024
Arshed/AJK, L.C.

"Approved for Reporting"

[8] Arif Fareed v. Bibi Sara (2023 SCMR 413)