IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Aqeel Ahmed Abbasi

Civil Petition No.473-K of 2024

[Against the Order dated 03.04.2024 passed by High Court of Sindh, Karachi in C.P.No.S-378 of 2024]

Syed Raheel Ahmed *…Petitioner(s)*

Versus
Mst. Syeda Zona Naqvi and others *…Respondent(s)*

For the Petitioner(s) : Mr. Naveed Ali, ASC
Abida Parveen Channar, AOR

For Respondent No.1 : Mrs. Razia Danish, ASC

Research Conducted by : Ms. Paras Zafar, Judicial Law Clerk

Date of Hearing : 26.07.2024.

JUDGMENT

Syed Hasan Azhar Rizvi, J.- Through this petition, the petitioner has assailed the Order dated 03.04.2024 **("the impugned Order")**, passed by the High Court of Sindh **("High Court")** in C.P.No.S-378 of 2024, whereby the constitutional petition filed by him was dismissed.

2. Facts in brief are that petitioner contracted a marriage with respondent No.1 *(Mst. Syeda Zona Naqvi)* on 27.12.2019. On account of estranged relationship, respondent No.1 instituted a suit*(Suit No.726/2022)* for dissolution of marriage, maintenance, and recovery of dowry articles and gold ornaments, before learned XIIth Family Judge, Karachi, Central **("Trial Court")**, which was decreed *vide* judgment dated 10.04.2023. Against this decision, the

petitioner filed Appeal (*Family Appeal No.65 of 2023)* before the Additional District Judge- IV, Karachi Central **("Appellate court")** which was dismissed *vide* judgment dated 09.03.2024. The petitioner challenged the said decision by filing a constitutional petition *(C.P.No.S-378 of 2024)* in the High Court, which too met the fate of dismissal *vide* impugned order, hence this petition.

3. Learned counsel for the petitioner contends that impugned order suffers from misreading and non-reading of the evidence; that original receipt of gold ornaments had not been submitted by the respondent No.1 before the trial court, rather only receipt of polishing of the gold ornaments had been adduced in evidence which does not carry any evidentiary value; that respondent No.1 herself carried the gold ornaments while leaving house, thus, decisions rendered by lower *fora* may be set aside.

4. On the contrary, learned counsel for respondent No.1 while defending the impugned order contends that impugned order is well reasoned and has considered all factual and legal aspects of the matter.

5. We have heard the arguments advanced by learned counsel for the parties and gone through the material available on record with their able assistance.

6. All the contentions raised by the learned counsel for the petitioner pertain to the factual controversies which have been discussed by the learned trial court as well as appellate court, being the fact-finding *fora,* therefore, learned High Court has rightly refrained from delving into the factual disputes. The High Court is not vested with the jurisdiction to act as a court of appeal against Family Court decisions in the absence of specific statutory provisions conferring such a right of appeal in family cases.

7. In the Family Law, the right of appeal has been provided under section 14 of the Family Courts Act, 1964, which is reproduced herein-below:-

> **14. Appeals**.—(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; and
> (b) **to the District Court, in any other case.**
> (2) No appeal shall lie from a decree passed by Family Court—
> (a) for dissolution of marriage, except in the case of dissolution for reasons specified in clause (a) 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 2 one thousand or less per month.
> (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."
>
> [**Emphasis added]**

Bare perusal of the above section reveals that decision of Family Court can be challenged only once before the District Court as the only appellate forum and no further right of appeal has been provided against the decision of such appellate court. In the case at hand, neither the Family Court was presided over by a District Judge or Additional District Judge nor any person notified by Government to be of the rank and status of a District Judge or Additional District Judge, therefore, the appeal against a decision or decree of Family Court was competent before the District Court or District Judge, which was conclusive and final. The perusal of section 14 *ibid* does not in any manner, whatsoever, envisage any right to appeal against the decision of appellate court in the High Court indirectly by filing a constitutional petition.

8. Under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 **("Constitution"),** the High Court cannot

sit as a court of appeal for the purpose of addressing factual controversies. In the case of *Ibrahim v. Muhammad Hussain*,[1] this Court has ruled that:-

> "It is well settled principle that right of appeal is a creature of the statute and it is not to be assumed that there is right of appeal in every matter brought before a Court for its consideration. The right is expressly given by a statute or some authority equivalent to a statute such as a rule taking the force of a statute. Therefore, existence of right of appeal cannot be assumed on any a *priori* ground. This is in sharp contrast with the right to sue..."
>
> **[Emphasis supplied]**

9. It is a trite law that when a statute does not grant the right to appeal against certain orders; those orders cannot be contested by invoking the constitutional jurisdiction of the High Court. This court in the case of *President, All Pakistan Women Association, Peshawar Cantt.v.Muhammad Akbar Awan And others,*[2] has discussed this aspect and ruled that:-

> "It is settled law that when the Statute does not provide the right of appeal against certain orders, the same cannot be challenged by invoking the constitutional jurisdiction of the High Court In order to gain a similar objective. Where a Statute Has expressly barred a remedy which is not available to a party under the Statute, it cannot be sought indirectly by resort to the constitutional jurisdiction of the High Court."
>
> **[Emphasis supplied]**

10. This court has time and again delved into the question of invocation of jurisdiction of High Court under Article 199 of the constitution against appellate decisions and observed that in such circumstances the jurisdiction of High Court is limited and concerned only with whether or not the courts below acted within the jurisdiction. If such a court has the jurisdiction to decide a matter, it is considered competent to make a decision, regardless of whether the decision is right or wrong and even if the said decision is considered to be incorrect, it would not automatically

---

1 [PLD 1975 SC 457]
2 [2020 SCMR 260]

render it as being without lawful authority so as to invoke constitutional jurisdiction.

11. This court in the case of *Mst. Tayyeba Ambareen and another v. Shafqat Ali Kiyani and another*,[3] has elucidated the intent behind exercising jurisdiction pursuant to Article 199 of the Constitution and held as under:

> "8. The object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") is to foster justice, preserve rights and to right the wrong. The appraisal of evidence is primarily the function of the Trial Court and, in this case, the Family Court which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, mis-reading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken."

Moreover, in the case of *Shajar Islam v. Muhammad Siddique*,[4] this Court has clarified that the High Court should avoid interference in factual findings based on evidence, even if those findings are incorrect. The High Court should not disturb factual determinations through a reassessment of evidence within its constitutional jurisdiction or use this jurisdiction as a substitute for appeals or revisions. Moreover, any interference with the findings of fact by the lower *fora* was beyond the scope of the High Court's jurisdiction under Article 199 of the Constitution. Recently, this legal position was reaffirmed by this court in the

---

[3] [2023 SCMR 246]
[4] [PLD 2007 SC 45]

case of *Hamad Hassan v. Mst. Isma Bukhari & others*[5], wherein it has been held that:-

> "3. Heard and the relevant record perused. The issue before us pertains to the findings of the High Court in a petition whereby the constitutional jurisdiction of the High Court was invoked. Constitutional jurisdiction of the High Court, as provided in Article 199 of the Constitution, is well-defined and its invocation is limited in scope against appellate decisions. The extent to which it can be invoked has been assessed by this Court over the course of several decades. In Muhammad Hussain Munir v. Sikandar (PLD 1974 SC 139), this Court held that High Court in such cases is only concerned with whether or not the courts below acted within its jurisdiction. If such a court has the jurisdiction to decide a matter, it is considered competent to make a decision, regardless of whether the decision is right or wrong and even if the said decision is considered to be incorrect, it would not automatically render it as being without lawful authority so as to invoke High Court's constitutional jurisdiction. However, in 1987, this Court deviated from its view in the case of Utility Stores Corporation of Pakistan Limited v. Punjab Labour Appellate Tribunal (PLD 1987 SC 447) where it expressed that where the lower fora makes an error of law in deciding a matter, it becomes a jurisdictional issue since the same is only vested with the jurisdiction to decide a particular matter rightly, therefore, such decision can be quashed under constitutional jurisdiction as being in excess of aw as in terms of Article 4 of the Constitution, it is a right of every individual to be dealt with in accordance with law and when law has not been correctly or properly observed below, it becomes a case proper for interference by a High Court in exercise of its constitutional jurisdiction."
>
> **[Emphasis Added]**

12. In the realm of family law, the Legislature has intentionally refrained from granting the right of appeal to the High Court from decisions rendered by appellate courts. This deliberate omission indicates a purposeful legislative strategy to bring family litigation to a definitive conclusion. By precluding the possibility of further appeal to the High Court, the Legislature is effectively aiming to prevent prolonged family disputes, ensuring that appellate court rulings are conclusive and that family law matters are resolved with definitive closure.

---

[5] [2023 SCMR 1434]

13. This Court in the case of *Arif Fareed v. Bibi Sara and others*,[6] has held that:

> "7. … 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. Therefore, it would be high time that the High Courts prioritise the disposal of family cases by constituting special family benches for this purpose."
>
> **[Emphasis supplied]**

Therefore, in absence of any express right to appeal, the decisions of appellate court pertaining to family matters are considered to be final and conclusive. This has been held by this court in the case of *Hamad Hassan v. Mst. Isma Bukhari & others,*[7] wherein it has been held that:-

> 7. 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, and upholding the legislature's intent to provide a definitive resolution through existing appeal mechanisms."
>
> **[Emphasis supplied]**

14. In the present case, the learned Trial Court while discussing the issue of disputed gold ornaments has elaborately

---

[6] [2023 SCMR 413]
[7] [2023 SCMR 1434]

taken into consideration the evidence of parties and observed that:-

> "10. The plaintiff further claims recovery of dowry articles and gold ornaments. Even before framing of the issues, bailiff of the Court was appointed and almost all the dowry articles were recovered and the same were restored to the plaintiff now what left are only gold ornaments? In this regard, the plaintiff examined herself and then she also produced her witness in support of her contentions. She and her brother in their affidavit in evidence have deposed that plaintiff was given traditional family gold ornaments which belong to her deceased mother. Hence, the plaintiff has somehow established her claim.
> 11. Whereas, the defendant on one hand, in his written statement has denied receiving gold ornaments and on the other hand, during cross examination has admitted that gold set was given to her after marriage. His admission has further strengthened the version of plaintiff hence; there is no denial that the plaintiff did not receive gold ornaments. Now the only question is whether the plaintiff took her gold ornaments with her at the time of leaving her husband's house or not? To establish this aspect, the plaintiff has deposed that she left defendant's house to see her sister's newly born baby. And in normal course of events this was not the situation when any woman may take or use her gold ornaments. On the other hand, the defendant himself admitted this aspect by saying that she left his house in his absence. This means that he did not see plaintiff taking away gold ornaments. The defendant even did not produce any single witness to prove his contention to the extent of gold ornaments. He could have produced his mother who might have been available at home at the time when plaintiff left his house but he did not. Therefore, the issue under discussion is also answered in affirmative."

Thus, record reveals that all factual controversies were evaluated by the learned Trial Court and Appellate court and the said findings were rightly upheld by the learned High Court.

15. Three *fora* below have examined and discussed the evidence adduced by the parties and we do not find any misreading or non-reading of the evidence.

16. In view thereof, we find that impugned order is well-reasoned and the High Court has considered all the legal and factual aspects of the matter. The petitioner has failed to make out a case warranting any interference.

17. Consequently, this petition, being devoid of merit, is dismissed and leave refused.

18. Above are the reasons of our short order pronounced on even date.

Judge

Judge

Karachi,
26th July, 2024
APPROVED FOR REPORTING
*Paras Zafar, LC**