

# JUDGMENT SHEET

## ISLAMABAD HIGH COURT, ISLAMABAD, JUDICIAL DEPARTMENT

W.P. No. 1972-2024

Sumaira Shaheen and others

*versus*

Judge Family Court-East, Islamabad and another.

**Petitioners by:** M/s Saira Khalid Rajput, Saiqa Azam, Shazia Saleem and Saima Yasmin Awan, Advocates.

**Respondents by:** Ms. Raheema Khan & Mr. Abdul Ahad Khokhar, Advocates for respondent No.2.

**Date of Decision:** 12.07.2024.

**MOHSIN AKHTAR KAYANI, J:** Through this writ petition the petitioner No.1 / Sumaira Shaheen has prayed for issuance of direction to the Judge Family Court, Islamabad to pass appropriate orders to respondent No.2 / Ziad Iqbal for submission of written statement forthwith with absolute last opportunity and further direction to dispose of the entire matter at the earliest as per mandatory provision of section 12-A of the West Pakistan Family Court Act, 1964.

2. Learned counsel for the petitioners contends that the suit for dissolution of marriage on the basis of *Khullah*, recovery of maintenance, gold ornaments and dowry articles was filed on 31.10.2022 against Ziad Iqbal / respondent No.2, but despite best efforts the same could not be resolved till date after the elapse of 20 months. Learned counsel for the petitioners has further drawn attention of this Court towards the order sheet in which the Judge Family Court has proceeded with the matter in a casual manner which is not in line with the timeline provided in West Pakistan Family Court Act, 1964. While going through the record it is

reflected that on the first date of hearing this Court on 24.06.2024 has passed the directions to learned MIT of this Court to call the Judge Family Court for counseling session, consequently, learned MIT in the light of directions passed by this Court submitted detailed compliance report through which multiple directions were transmitted to the Judges Family Courts by highlighting the fault lines in terms of different proceedings in which noticeable delay has been recorded including but not limited to fixation of maintenance, filing of written statement as well as the amendment in the plaint or in other ancillary matters.

3. Learned counsel for the respondent on instructions of respondent No.2 acknowledged prayer of the petitioner and claims that they have no objection on allowing instant writ petition. They further highlighted multiple issues in which the families in litigation are suffering due to delay in the family court proceedings.

4. I have gone through the record of this case with the able assistance of both the counsels of the parties which reflects that unnecessary delay has been caused due to various factors in this case and one lady / the petitioner suffered due to procedural aspects recorded in different orders of the proceedings including but not limited to issuance of notice, filing of written statement, setting aside of ex-parte proceedings application and the most glaring and shocking is the time spent in deciding the application for amendment in the pleadings which was filed by the petitioner in order to bring on record her newly born baby who was born during the pendency of the matter alongwith her claim of maintenance. The petitioner also complains that the interim maintenance was fixed on 27.06.2024 even without her presence before the court in a mechanical manner by the trial

court without extending any right of hearing, however, at this stage it is settled proposition of law that interim maintenance could not be challenged in the constitutional jurisdiction as held in PLD 2016 [Lahore] 73 (Ali Adnan Dar Vs. Judge Family Court), PLJ 2022 744 (Muhammad Naveed Akhtar Vs. Mst. Ghazala Batool), PLD 2011 [Lahore] 610 (Ghafoor Ahmed Butt Vs. Mst. Iram Butt), 2021 CLC 561 (Shah Maqsood Vs. Khair-un-Nisa), 2021 YLR 2166 (Aamir Munir Puri Vs. Mst.Saima Naeem and others), 2015 YLR 2364 (Tahir Ayub Vs. Miss Atia Anwar) and PLD 2013 [Lahore] 64 (Muhammad Shahbaz Khalid Vs. Judge Family Court), but it is the most sacred duty of the Judge Family Court to resolve the family issues in line with the mandate of West Pakistan Family Court Act, 1964, as well as to strictly adhere the legislative intent in terms of section 12-A which is as under:

*“The Family Court shall dispose of a case, including a suit for dissolution of marriage, within a period of six months from the date of institution”*

However, this Court has noticed in multiple cases that Family Courts’ proceedings are lingering on either due to the conduct of the parties or due to some other factors including but not limited to sluggish approach adopted by the Judges of Family Courts as well as by the lawyers in family cases without realizing the concept enshrined in Chapter-2 ‘Principles of Policy’ in terms of Article-33 of the Constitution of Islamic Republic of Pakistan, 1973, where ‘*parochial and other similar prejudices to be discouraged*’ as well as the spirit of Article-35 which echoes that ‘*State shall protect the marriage, the family, the mother and the child*’.

5. This court has also noticed huge pendency of the family cases in District Courts (East and West Divisions), Islamabad, as well as the case to

judge ratio which spells out difficult position for the family judges to decide the cases by adopting mediation approach between the parents, or the husband and wife, as the case may be, however, it is responsibility of State to protect social justice and eradicate social evils in terms of Article-37 of the Constitution of Islamic Republic of Pakistan, 1973, which states that '*State shall ensure inexpensive and expeditious justice*'. Similarly the mandate of Article-4 of the Constitution of Islamic Republic of Pakistan, 1973, gives '*right to every individual to enjoy protection of law and to be treated in accordance with the law which is inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan and no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with the law*'. After going through all these concepts read with right to life under Article-9 of the Constitution of Islamic Republic of Pakistan, 1973, this Court is of the view that following directions are required to resolve all such practices in which women of Pakistan stand negated or deprived from their right to life or to be treated with biases in which they could not get their legal relief within the time frame provided in statute. Therefore, it is responsibility of the State as well as of this Court to draw such mechanism and procedure to eliminate the delays and to provide speedy mechanism of dispensation of justice in the family cases to every woman and child. No doubt the men will also be beneficiary of such directions, hence, this Court directs that:

- i. While reaping benefits of modern era, digitalization and rapid development in IT sector, Special E-Courts be established in which pleadings centric approach may not be the part of the process rather claim based concept be considered more appropriate and any

- party in a family dispute can record their video statement and transmit the same to the trial court to prove his / her claim and relief claimed in detail, thereafter, on the basis of such statement the Judge Family Court shall confront to the other party and decide the matter while considering his / her recorded message in place of the written pleadings.
- ii. Islamabad High Court shall provide E-kiosk which shall transform and transmit the pleadings into E-Filing system which should be recorded in a separate E-System software and in this manner the case be presented to Judge Family Court in the IT System on multiple media screens.
  - iii. The Judge Family Court after issuing notice in terms of the West Pakistan Family Court Act, 1964, may direct the opponent party to record their statement through video link facility and in the same session of video link hearing of both the parties in presence of their counsel or otherwise, subject to satisfaction that the parties have verified their identity may proceed accordingly and decide the case forthwith.
  - iv. The Family Court issues a summons to the defendant under Section 8 (1) of the Family Court Act, it must notify the fact that the defendant is bound to submit his written statement on the date fixed for appearance, as per Section 9 (1) of the Act. The family court has to curtail unnecessary time consumption on filing of *wakalatnama* and multiple adjournments for submitting the written statement, thereby reducing delays in the proceedings.
  - v. To curtail unnecessary delays, and to strictly comply with Sections 8 (1) and 9 (1) of the Act if the defendant seeks adjournment, it should be on a daily basis, subject to cost, and the reasons for the adjournment should be reflected in the order sheet. The adjournments sought by the defendant for filing

- the written statement should not stretch more than fifteen days in any eventuality.
- vi. Any application if filed before the family judge in presence of other party the same should be confronted to the other side and approach should be to decide such an application preferably within three days and unnecessary adjournments may not be granted for submission of replies or amendments in pleadings as it is already settled proposition of law that technicalities of civil procedure code are not applicable in family cases.
  - vii. Additionally, Family Court judges must comply with Section 10 (1 & 2) of the Act, which requires examining the plaint, written statement, evidence, and documents to understand controversies and address jurisdictional or ancillary matters. If a defendant challenges the court's jurisdiction instead of filing a written statement, the Family Court must first require the written statement with the jurisdictional plea included, and decide on it during the pre-trial hearing.
  - viii. Before proceeding with any family suit, the Judge Family Court must provide both parties, the opportunity to settle the issue through a one-on-one session, without interference of a third person as expressed under section 10 (3) of The West Pakistan Family Court Act, 1964. Additionally, the opportunity for mediation shall also be provided at the first instance.
  - ix. The Judge Family Court has already been exempted from technical procedural aspects of conducting the proceedings in terms of Qanun-e-Shahadat Order, 1984, or under Civil Procedure Code, 1908, therefore, Judge Family Court can adopt any procedure instead of lengthy concept of trial within Family Court Act, 1964.

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- x. Any of the Judge of the family Court who has not concluded the family suit within the time line provided under section 12-A of West Pakistan Family Court Act, 1964, shall be considered liable for misconduct by the concerned District Judges as to why the family cases were not proceeded in a manner referred in the West Pakistan Family Court Act, 1964, by adopting the time line in a strict sense.
  - xi. Every District Judge of the concerned Division shall himself / herself verify and inspect on different intervals case files of each family court and pass necessary directions for decision of the family suits within the prescribed period as well as direct the judges to follow the different time lines provided under the law, violation if any be reported in writing.
  - xii. By adopting the modern devices, IT concept and processes, institution branch shall direct each counsel as well as party to provide their telephone numbers, mobile phone numbers and e-mails for the purposes of services of summons so that the service should not be restricted to the residential or official address as the case may be and any other mode of service on the basis of text message, e-mail, whatsapp, facebook or twitter shall be treated valid subject to its proof.
  - xiii. The parties should be encouraged, especially, women, to record their statement through video link facility on the date of hearing and the Family Court Judges shall encourage litigants to use modern technologies of video link and the facilities of E-Courts.
  - xiv. The Family Judge not adhering to the spirit of law shall be given fair chance of counseling by the concerned District Judge and if after at least two sessions, any of the Judge Family Court fails to adopt the procedure provided under the law, he / she shall

- be treated under the efficiency and discipline mechanism accordingly in a fair manner.
- xv. Only those cases are exception to clause (x) above, in which disputed question of facts require deeper appreciation.
- xvi. The Judge Family Court shall enquire the financial and social status of husband / father as the case may be in any family suit while fixing the maintenance of minor or the wife or ex-wife for her *iddat* period as the case may be in accordance with the yardsticks settled in PLD 2009 [Lahore] 18 (Mst. Sitwat Chughtai Vs. Judge Family Court, Lahore), 2015 YLR 2364 (Tahir Ayub Khan Vs. Miss Aliya Anwar), PLD 2018 [SC] 819 (Muhammad Asim Vs. Mst. Samro Begum), 2020 CLC 131 (Dr. Aqeel Waris Vs. Ibrahim Aqeel) and PLD 2009 [SC] 760 (Tauqeer Ahmad Qureshi Vs. Additional District Judge Lahore) and shall decide the fate of interim maintenance in terms of section 17-A of the West Pakistan Family Court Act, 1964, preferably within period of three to six days.
- xvii. The Registrar of this Court shall also arrange services of clinical psychologist as well as child psychologist in the Family Courts for counseling sessions of the Family Judges as well as to the husband and wife, including parties in family suits so that a family unit may be saved from rigors of trial, delay and cost which are ordinarily faced by the parties in the judicial process, subject to availability of these experts as family counselors to provide services.
- xviii. In order to achieve the directions, the High Court may call any expert, INGO, NGO or University for provision of any dedicated system, supportive mechanism or program which could effectively resolve the longstanding issues of family disputes including training of Judges and lawyers, etc.

xix. The Registrar as well as MIT of this Court shall ensure that all such directions be notified after due approval by the AC Committee of this Court and implement the directions by arranging all such required facilities.

6. In light of above discussion, instant writ petition stands **DISPOSED** **OF** with above directions. Copy of this order may also be transmitted to the Registrar as well as MIT of this Court and to both the District Judges (East & West) Divisions of Islamabad, to do the needful in letter and spirit. The learned Judge Family Court seized with the matter is directed to decide the family suit forthwith by proceeding on day to day basis under intimation to this Court.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Approved for reporting.

A.Waheed/-