

ORDER SHEET
IN THE LAHORE HIGH COURT, MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

Diary No. 945 of 2024

Mst. Kiran Saba

vs

Judge Family Court etc.

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary
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05.11.2024. Mr. Safdar Hussain Sarsana, Advocate for petitioner.
M/s. Kashif Nadeem Malik, Assistant Attorney General,
Malik Muhammad Bukhsh Khakhi, Samina Mehmood
Rana AAGs, Hammad Ajmal Qureshi, Muhammad
Aurangzaib Khan, Muhammad Khalid Farooq, Nisar
Akbar Bhatti, Mateen-ul-Haq Chaudhry, Dr. Muhammad
Azeem Raja, Mirza Shehriyar Baig, Ch. Muhammad
Naseer, Farrukh Rehan Gull, Mudassar Altaf Qureshi,
Muhammad Zubair Janjua and Faisal Anwar Minhas,
Advocates.

Objection case

The office has raised the objection at Serial No. 26
of the objection sheet to file this petition before
appropriate forum (i.e. Directorate of District Judiciary of
Lahore High Court, Lahore).

2. As the afore-mentioned office objection relates to
the maintainability of this petition before this Court,
therefore, the same is required to be decided at the
judicial side, hence the office is directed to number this
petition and fix it for hearing on the judicial side for
today, where the said objection shall be considered on its
own merits.

Main case (Writ Petition No.14846 of 2024)

3. The petitioner namely Mst. Kiran Saba daughter of
Muhammad Zafar Iqbal, through this petition has prayed
as under:

“Under the above submissions, it is therefore, most respectfully prayed that this writ petition may very kindly be accepted and an appropriate writ, order or direction may very graciously be issued to the Learned respondent No.1 to conclude the family suit of the petitioner expeditiously in the light of period specified in West Pakistan Family Court Act, 1964, so that the justice may be done.

Any other relief, which this Hon'ble Court deems fit, just and proper, may also be awarded to the petitioner.”

4. The claim of the petitioner is that she was married to the respondent No.2, Faisal Hayat son of Khizer Hayat on 28.10.2023 but no child was born from the said wedlock. On being expelled from the house of the respondent No.2 she filed suit for dissolution of marriage, recovery of maintenance allowance, dowry articles, gold ornaments, residential house in terms of agreement and dower on 01.04.2024 against respondent No.2 and his father (Khizar Hayat/respondent No.3), which is pending till today in the Family Court, Darya Khan, District Bhakkar despite the fact that the Family Court was required to decide the same within six months in terms of Section 12-A of the Family Court Act, 1964 (“Act”) whereas much more time has passed. Seeks early disposal of the same.

5. Section 12-A of the Act is reproduced below for reference:

*“12-A. **Cases to be disposed of within a specified period.** A Family Court shall dispose of a case, including a suit for dissolution marriage, within a period of six months from the date of institution:*

Provided that where a case is not disposed of within six months either party shall have a right to make an application to the High Court for necessary direction as the High Court may deem fit.”

6. The Family Court in terms of the Section 12-A of the Act is required to decide a case within six months

from the date of institution which mandate is controlled by the proviso to the afore referred Section that if the case is not disposed of within six months, either party has a right to make an application to the High Court for necessary direction as the High Court may deem fit. It is settled by now that the proviso controls the meaning and scope of the main section. Generally a proviso was an exception to or qualified the main provision of law to which it was attached. Proviso was to be strictly construed and it applied only to the particular provision to which it was appended. Proviso was limited to the provision which immediately precedes it. Purpose of a proviso was to qualify or modify the scope or ambit of the matter dealt with in the main provision and its effect was restricted to the particular situation specified in the proviso itself. Before a proviso could have any application, the section or provision itself must apply. Reliance is placed on 2017 SCMR 339 (*Collector of Customs Appraisement, Collectorate, Customs House, Karachi versus Messrs Gul Rehman, Proprietor Messrs G. Kin enterprises, Ghazali street, Nasir Road, Sialkot*).

7. In terms of Section 12-A of the Act, Family Court is required to decide the matter within six months and the afore-mentioned proviso provides right to either of the parties to approach the High Court for seeking necessary directions, if the family court does not decide the matter within the prescribed period. Law does not provide specific procedure for approaching this Court through writ petition or on its administrative side, hence any process or procedure could be adopted by the petitioner. Needless, to mention that every procedure which is not

expressly prohibited is permitted unless the same specifically violates any provision of law or rules in view of principles laid down in judgment reported as 2003 SCMR 1026 (*Additional Collector-II Sales Tax, Lahore versus Messrs Abdullah Sugar Mills Ltd. and others*). Hence the office objection at Serial No. 26 of the objection sheet to file this petition before appropriate forum (i.e. Directorate of District Judiciary, Lahore High Court, Lahore) was not justified being in conflict with the express provision of law providing the petitioner remedy to approach this Court on its judicial or administrative side and the petitioner without resort to remedy before the said authority could directly approach this Court to seek direction for redress of the afore-mentioned grievance, hence the said objection is *over ruled* and this petition is held to be maintainable.

8. As regards the grievance raised through this petition, in order to avoid further delay in the matter and while dispensing with notice to the other side, as only a discretionary order is required to be passed with which prejudice shall not be caused to any party, this Court deems it appropriate to issue a direction to the concerned family court/respondent No. 1 to expeditiously conclude the trial without granting unnecessary adjournments to either of the parties while also ensuring that prejudice is not caused to rights of any of the parties by keeping in view both the time tested principles of law that '*justice delayed is justice denied*' and '*justice hurried is justice buried*' so balance is to be struck between the two principles, which legal position has also been reiterated by the Supreme Court of Pakistan with approval in the

Judgment reported as 1993 SCMR 550 (*Syed SAEED MUHAMMAD SHAH and another versus THE STATE*). Order accordingly.

9. This petition stands *disposed of*.

(MUZAMIL AKHTAR SHABIR)
JUDGE

Naveed *

Approved for reporting: