

ORDER SHEETLAHORE HIGH COURT, BAHAWALPUR BENCH, BAHAWALPUR
JUDICIAL DEPARTMENT

Writ Petition No.6858 of 2012/BWP.

Muhammad Shahzad. Versus 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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1. 10.12.2012. Ch. Muhammad Shafique Piya, Advocate for the petitioner.

Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has challenged judgment & decree dated 19.6.2012 passed by learned Judge Family Court, Khanpur, District Bahawalpur (respondent No.1).

2. Unnecessary details apart, respondent No.2 filed a suit for jactitation of marriage which was decreed by virtue of *ex-parte* judgment & decree dated 19.6.2012. Aggrieved by the said judgment & decree the petitioner has filed the instant petition.

3. Despite repeated queries, learned counsel for the petitioner has failed to satisfy this Court how this constitutional petition is directly maintainable rather he took the stance that decree for jactitation of marriage being non-appealable and non-revisable, no remedy is available with the petitioner except to invoke the constitutional jurisdiction of this Court.

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4. I do not find myself in agreement with learned counsel for the petitioner for the reason that as *ex-parte* judgment & decree has been passed against the petitioner, he can challenge the same by filing an application for setting aside thereof or by way of filing an appeal.

5. Further, Section 14 of West Pakistan Family Courts Act, 1964, deals with the subject of appeals against the decision or decree passed by a family court, which, for facility of reference is reproduced herein below:-

“Appeal. (1) Notwithstanding anything provided in any other law for the time being in force, a decision given or 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 any person notified by Government to be of the rank and status of a District Judge or an Additional Distinct Judge; and

(b) to the District Court, in any other case.”

(2) No appeal shall lie from a decree by a Family Court--

a) for dissolution of marriage, except in the case of dissolution for reasons specified in clause (d) of item (viii)

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*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 one
thousand or less per month.”*

In the afore-quoted sub section (2), there is no mention of suit for jactitation of marriage and case of the petitioner falls under section 14(b) of the Act. Further, this Court in the case reported as Mst. Musarrat Sultana v. Bashir Ahmad and another (PLD 1986 Lahore 189) has *inter alia* held as under:

“The remedy against the dismissal of the suit on the question of jactitation of marriage lay by way of an appeal to the District Judge which was adequate and quite efficacious, therefore, the writ petition challenging the finding of the learned Family Judge on jactitation of marriage is not maintainable.”

Since the petitioner has alternate remedy of filing appeal, instant writ petition is not maintainable and the same is accordingly **dismissed in limine.**

(SHUJAAT ALI KHAN)
JUDGE

Approved for Reporting.

JUDGE