

**JUDGMENT SHEET  
IN THE LAHORE HIGH COURT LAHORE  
JUDICIAL DEPARTMENT**

**Writ Petition No.13531/2022**

**Raja Ibadat Sajjad Khan Vs. Mst. Shehnaz Kousar etc.**

Date of hearing	<b>21-11-2022</b>
Petitioner by	M/s Ali Rana and Khawaja Haseeb Ahmad, Advocates.
Respondents No.1 to 3 by	Ch. Zaheer Abbas, Advocate.

**ABID AZIZ SHEIKH, J.** This Constitutional Petition is directed against the judgments and decrees dated 22.02.2021 and 26.01.2022 (**impugned judgments and decrees**), passed by the learned Judge Family Court, Lahore and learned Appellate Court, respectively.

2. Relevant facts are that plaintiffs/respondents No.1 to 3 (**respondents**) filed a suit for recovery of maintenance allowance against the defendant/petitioner (**petitioner**) on 06.09.2018. In said suit, petitioner's right to file written statement was closed on 17.04.2019. The said order was upheld by this Court vide order dated 19.06.2019 in Writ Petition No.37030/2019. The learned Judge Family Court, after framing of issues, recorded respondents' evidence and the respondents/plaintiffs' witnesses (**PWs**) were also cross-examined by the petitioner. However, vide orders dated

13.11.2020 and 30.01.2021, the petitioner was not allowed to produce his evidence as his right of defence was already closed. Finally, the suit was decreed vide judgment and decree dated 22.02.2021 for maintenance allowance of respondents No.2 &3 (minors) @ Rs.35,000/- per month each and @ Rs.25,000/- for respondent No.1 (wife). The said judgment was upheld by the learned Appellate Court on 26.01.2022, hence, this Constitutional Petition.

3. Learned counsel for the petitioner submits that there is no provision in the Family Courts Act, 1964 (**Act**) to close defendant's right to file his written statement, therefore, the order dated 17.04.2019 was not sustainable. He further submits that merely because petitioner failed to file his written statement does not mean that he could not produce his own evidence in rebuttal. He place reliance on "Qamar Shahzad Versus Judge Family Court, Ferozewala and 4 others" (**2021 MLD 1859**). He adds that even on merit, the respondents could not prove the financial status of the petitioner who was jobless at the relevant time, therefore, the maintenance allowance fixed by the learned Courts below is beyond the financial capacity of the petitioner.

4. Learned counsel for the respondents, on the other hand, supported the impugned judgments and decrees.

5. Arguments heard. The **first question** requires determination is *whether under the Act, the Family Court is vested with the power to close the right of written statement of the defendant*. In order to answer this question, it is expedient to reproduce Section 8(2) & Section 9(1) (Punjab Amendment) of the Act hereunder:

*“8(2) Every summons issued under clause (b) of sub-section (1) shall be accompanied by a copy of the plaint, a copy of the schedule referred to in sub-section (2) of section 7, and copies of the documents and list of documents referred to in sub-section (3) of the said section.”*

**“Punjab Amendment:**

*9(1) On the date fixed under section 8, the defendant shall appear before the Family Court and file the written statement, a list of witnesses and gist of evidence, and in case the written statement is not filed on that date, the Family Court may, for any sufficient reasons which prevented the defendant from submitting the written statement, allow the defendant to submit the written statement and other documents on the next date which shall not exceed fifteen days from that date.”*

Plain reading of the aforesaid provisions manifests that every summons, issued under Section 8 of the Act, shall be accompanied by a copy of the plaint, a copy of schedule referred to and copies of the documents and list of documents. Whereas under Section 9(1) of the Act, on the date fixed under

Section 8 of the Act, the defendant shall appear before the Family Court and file the written statement, a list of witnesses and gist of evidence. In case the written statement is not filed on that date, the Family Court may, for any sufficient reason, allow the defendant to file written statement on the next date which shall not exceed 15 days.

6. No doubt, there is no specific provision under the Act to strike off the right of defence of defendant for failure to file written statement. However, this Court in “Khalil-ur-Rehman Bhutta v. Razia Naz and another” (1984 CLC 890), held that for the orderly dispensation of justice under the Act, in the case of a contumacious default of a defendant to file written statement, the Family Court will be well within its authority to make an order in the nature of Order VIII Rule 10 of the Code of Civil Procedure, 1908 (CPC). The relevant part of the judgment is reproduced hereunder:

*“(6) As regards the contention that the petitioner's defence could not have been struck off, it is to be seen that despite having been given opportunities, he did not file the written statement. It is true, that except sections 10 and 11, C.P.C., which have been made applicable to a Family Court, under section 17 of the Act the rest of the C.P.C. on its own force, does not apply to the proceedings before it. It is, however, to be kept in mind that the Family Courts Act, does not provide*

*for every conceivable eventuality and unforeseen circumstance. Though it is a forum of limited jurisdiction yet it has to regulate its own proceedings. A situation may crop up, before a Family Court that a defendant persistently defaults in submitting his written statement and acts contumaciously, as happened in the instant case. Will the Family Court be powerless to proceed against such a litigant? If the Court is held to be denuded of authority, to pass a punitive order against such a defaulter that would result in paralysing its function. It must be remembered that the Family Courts Act has been enacted with the object of expeditious disposal of the disputes relating to the family affairs. Thus, for the orderly dispensation of justice under the Act, in the case of a contumacious default of a defendant, to file the written statement, the Family Court will be well within its authority to make an order, in the nature of one envisaged by Order VIII, rule 10, C.P.C. and deprive him of his right to file the written statement. I think that the learned trial Court proceeded against the petitioner on a similar line and by using the expression as to the striking of his defence, it simple meant to take away his right of filing written statement. Anyhow, even if there is some betrayal of over-stepping by the trial Court in view of the conduct of the petitioner I do not feel persuaded in this behalf, to strike down the order dated 28<sup>th</sup> February, 1983.”*

The same view was also expressed by this Court in “Fakhar Abbas Versus Additional District Judge Tandlianwala District

Faisalabad and 3 others” (2017 CLC Note 22), where it was held as under:

*“12. So far the contention of the learned counsel that the Family Court is not vested with any such authority to either strike off the defence of the petitioner or to close his right of defence. It is held that there is no cavil that though no such express provision exists in the Family Courts Act 1964, which gives authority to the court to close the evidence of a party or to strike off his right of written statement but on the same account there is even no provision to this effect that in case of failure by a party to file the written statement or to lead evidence his right of filing of written statement or evidence could not be closed in any circumstance. As already observed that the petitioner has availed sufficient opportunities to file the written statement but he has failed to submit the same. The Family Court cannot be made helpless in such a situation because it would not be in the interest of justice. Family Courts are established under the Family Courts Act, 1964, which is a special law thus the court can adopt any mode which is not inconsistent to the Family Courts Act 1964 or the Rules framed there under, for advancement and meeting the ends of justice.”*

7. The Hon’ble Supreme Court of Pakistan in “Muhammad Tabish Naeem Khan Versus Additional District Judge, Lahore and others” (2014 SCMR 1365), on this issue held that Family Court is a quasi-judicial forum, which can draw and follow its

own fair procedure and thus if defendant does not file written statement within time allowed by the Court, the Court shall have the inherent power to proceed ex-parte against him, to strike off defence and to pass an ex-parte decree in line with the principles enunciated by the CPC. The relevant observation by the Hon'ble Supreme Court is reproduced hereunder:

*“We are not persuaded to hold, that the ex parte decree dated 4-7-2008 was void, for the reason that there is no provision in the West Pakistan Family Courts Act, 1964 to strike off the defence of the petitioner, when he failed to file the written statement, thus it (decree) should be ignored; suffice it to say that the Family Court is the quasi judicial forum, which can draw and follow its own procedure provided such procedure should not be against the principles of fair hearing and trial, thus if a defendant of a family matter, who is duly served; and especially the one who appears and disappears and also does not file his written statement within the time allowed to him by the Court, the Court shall have the inherent power and ample power to proceed ex parte against him, to strike off the defence and to pass an ex parte decree in line with the principles as are enunciated by the Civil Procedure Code. In any case, such order (striking off defence) cannot be said, treated or deemed to be void, which should be ignored as nullity in the eyes of the law as argued by the learned counsel for the petitioner. If the petitioner was aggrieved of the order, he should have either got it set aside by filing an application before the Family Court or*

*by challenging the same in appeal which admittedly was not so done.”*

8. The case of ‘*Qamar Shahzad*’ supra, relied upon by the learned counsel for the petitioner, does not support his claim rather follow the dictum laid down in aforementioned judgments and therein it is concluded that Family Court has authority to make an order in the nature of Order VIII Rule 10 CPC and deprive the defendant to file written statement. Notwithstanding the above legal position, even otherwise when the order dated 17.04.2019 was upheld by this Court on 19.06.2019 in Writ Petition No.37030/2019 and was not further challenged by the petitioner, he cannot claim that Family Court had no jurisdiction to close the right of written statement of the petitioner.

9. The law is settled that failure of a defendant to file written statement within stipulated time period entails striking off his defence in terms of Order VIII Rule 10 CPC. However, the **moot question** is that *whether defendant can cross-examine the PWs, take part in the arguments and can also lead evidence to disprove the facts stated in the plaint, even though his right to file written statement was already struck off.* In this regard, the Hon’ble Supreme Court in “NATIONAL LOGISTIC CELL (N.L.C.) Versus HAZRAT ALI and others” (2010 SCMR 970)



did not interfere in the impugned judgment on the ground that defendant not only cross-examined the PWs but also led his own evidence. The learned Sindh High Court in “MEHAR and others Versus PROVINCE OF SINDH through DISTRICT GOVERNMENT PLEADER, KHAIRPUR and 4 others” (2020 MLD 371) held that it is settled law that failure of a defendant to file written statement will result in striking off his defence under Order VIII Rule 10 CPC, however, the defendant can cross-examine the PWs and lead his evidence to disprove the facts stated in the plaint. In “Mrs. RUBINA ALI through Special Attorney Versus AYESHA KAMAL through Legal heir and 4 others” (2014 MLD 750), the learned Sindh High Court upheld the judgment of the forums below on the ground that despite issuance of summons, the defendant did not bother to file written statement and/or adduce any evidence in order to rebut the assertions made by the plaintiffs on oath. Regarding the right of cross-examination, this Court in “MUHAMMAD NADEEM Versus JUDGE FAMILY COURT and 2 others” (2012 CLC 1361) and “Messrs RAVI ENTERPRISES through Proprietor and another Versus ALLIED BANK OF PAKISTAN through Provincial Chief and 3 others” (2005 CLD 1425) held that defendant will have right to cross-examine the PWs even his right to file written statement was struck off. In “Mst. BUSHRA BANG SHIRANI and another Versus MUHAMMAD

HASSAN and another” (1992 MLD 1116), the learned Sindh High Court held that even when right to file written statement was closed, the defendant can still cross-examine the PWs and take part in the arguments.

10. From the above case law, it is not difficult to deduce that in absence of written statement, the defendant can still cross-examine the PWs, lead evidence to disprove the facts averred in the plaint and also take part in the arguments. Now we will examine if petitioner was fairly allowed opportunity to exercise aforesaid rights in the proceedings.

11. In the present case, though petitioner’s right to file written statement was closed on 17.04.2019 but he was given ample opportunity not only to cross-examine the PWs but also to argue the suit at the time of final arguments. How the Family Court, vide order dated 30.01.2021, specifically not allowed the petitioner to produce his evidence on the ground that his defence was closed on 17.04.2019. The petitioner neither challenged the said order before the learned Family Court nor before any higher forum. It is also relevant to note that even earlier when the evidence of plaintiffs/ respondents was concluded, the learned Trial Court fixed the case for final arguments vide order dated 06.10.2020, however, the petitioner agitated before the learned Trial Court (*as per Para No.9 of this*

*petition*) that his right to defence was still intact, resultantly, the learned Trial Court, vide order dated 13.11.2020, allowed the petitioner only to cross-examine the PWs but not allowed him to produce his evidence. The petitioner did not challenge the order dated 13.11.2020, whereby he was only allowed to cross-examine the witnesses, rather accepted the said order and cross-examined the PWs. This proves that petitioner had no intention to lead his evidence to disprove the facts stated in plaint. The petitioner is now estopped by his own conduct and cannot agitate this ground for the first time in this Constitutional Petition.

**12.** Now coming to the merits of the case, the respondents No.2 & 3 are admittedly minor daughters of the petitioner, whereas respondent No.1 is his legally wedded wife. The petitioner is not only legally but also morally bound to maintain them till their legal entitlement. Admittedly, the respondents No.2 & 3 are grown up and studying in university, therefore, amount of Rs.35,000/- per month each for their livelihood, including education etc., is neither exorbitant nor irrational considering the prevailing inflation. The amount of Rs.25,000/- for respondent No.1 is also not excessive to meet financial needs for her livelihood. Regarding the financial status of the petitioner, the record, including oral and documentary evidence

produced by respondents, shows that petitioner is a Civil Engineer and doing his construction business in the name and style “*Beams Construction*” and his monthly income is more than three hundred thousand. There is nothing in rebuttal to the evidence of respondents/plaintiffs, as petitioner’s right to file written statement was closed and further during the cross-examination, respondents/ plaintiffs’ claim/evidence remained un-rebutted/unshaken.

**13.** In view of above discussion, no illegality and infirmity is found in the concurrent findings of the learned two Courts below, hence, this petition being meritless is **dismissed**.

**(ABID AZIZ SHEIKH)**  
**JUDGE**

*Approved For Reporting*

**JUDGE**

*Arsalan*