

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE QAZI FAEZ ISA  
MR. JUSTICE YAHYA AFRIDI

**CIVIL PETITION NO. 3095 OF 2017**

*(on appeal against the judgment dated  
21.07.2017 of the Peshawar High Court,  
Peshawar passed in W.P. No.1508-P/2016)*

Muhammad Asim and others

...Petitioner(s)

**VERSUS**

Mst. Samro Begum and others

...Respondent(s)

For the Petitioner(s):        Mr. Salamat Shah Mahsod, ASC.

For the Respondent(s):     Mr. Asif Hameed Qureshi, ASC.

Date of Hearing:              15.08.2018

**ORDER**

**QAZI FAEZ ISA, J.** Muhammad Asim (petitioner No.1) and Mst. Samro Begum (respondent No. 1) were married in the year 2002 and their daughter Sabiha Naz (respondent No.2) was born in the year 2004. Subsequently, the marriage broke down and Samro Begum filed a suit for dissolution of her marriage, payment of maintenance for herself and her minor daughter and recovery of her *mehr*. The learned Family Judge vide judgment dated 30<sup>th</sup> October, 2014 dissolved the marriage, awarded arrears of monthly maintenance and future maintenance to Mst. Samro Begum till expiry of her *iddat* period at the rate of two thousand rupees per month and awarded arrears of monthly maintenance and future monthly maintenance at the rate of two thousand rupees to the couple's daughter. Muhammad Asim preferred an appeal against

the judgment and decree of the learned Family Judge whilst Mst. Samro Begum filed cross-objections. The cross-objections were held not to be maintainable by the learned Additional District Judge-III, Kohat, who decided the appeal *vide* judgment dated 8<sup>th</sup> March, 2016. The learned Appellate Judge modified the judgment of the Family Judge by increasing the monthly maintenance by ten percent every year and awarded to Mst. Samro Begum five *tolas* of gold as the balance amount of *haq mehr*. Both Muhammad Asim and Mst. Samro Begum filed writ petitions before the Peshawar High Court which were dismissed by a learned Single Judge of the High Court *vide* judgment dated 21<sup>st</sup> July, 2017.

2. The learned counsel commenced his arguments by assailing the territorial jurisdiction exercised by the Family Judge Kohat, and consequently the jurisdiction exercised by the Additional District Judge, Kohat. Earlier, in another round of litigation between the parties the territorial jurisdiction of the Family Court, Kohat was assailed by Muhammad Asim. The matter came up before the Peshawar High Court and it was disposed of by consent on 8<sup>th</sup> April, 2013, but without disturbing the order of the learned Family Judge, Kohat with regard to territorial jurisdiction, which thus attained finality and cannot be re-opened.

3. The learned counsel next contended that the Appellate Court was not justified to award five *tolas* of gold as *haq mehr* and to have increased the maintenance awarded by the Family Judge by ten percent annually. In response to our query about Muhammad Asim's salary the learned counsel representing him states that he works with the Pakistan Atomic Energy Commission (PAEC) but

states that it has not come in evidence as to what he earns and that it is possible that he could be receiving a salary which is not sufficient to pay the maintenance.

4. We have heard the learned counsel for the parties and with their assistance perused the record. The learned Additional District Judge held that the cross-objections filed by Mst. Samro Begum and her daughter were not maintainable; could he not then have modified the judgment and decree in their favour? Rule 33 of Order XLI of the Code of Civil Procedure ("**CPC**") enables the Appellate Court *"to pass any decree and make any order which ought to have been passed or made ... and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal..."*. We are aware that section 17 of the Family Courts Act, 1964 excludes the applicability of the CPC, except those provisions specifically made applicable, and those of the Qanun-e-Shahdat Order, 1984. These two procedural laws have undoubtedly been excluded to avoid technicalities and to decide cases in the shortest possible time. The Preamble of the Family Courts Act, 1964 states the reason for enacting it, which is, *"for the expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected therewith."* A wife, a former wife, a child or children should not be disentitled because the Family Court failed to pass an order which ought to have been passed in their favour; and if the Appellate Court correct this mistake it can do so in exercise of the powers inherent in an appellate court. Exercise of such powers even the formal and stricter CPC states vest in a Court of appeal (Rule 33 of Order XLI of the CPC).

5. The learned Family Judge had disallowed Mst. Samro Begum's claim to her *haq mehr* which the learned Appellate Judge found had been established by evidence and therefore awarded the same. No reason has been advanced that this factual determination by the Appellate Court, which had the jurisdiction to do so was illegal or wrong. As regards increasing the maintenance amount annually by ten per cent the learned Appellate Judge did not give a reason for doing so, however, it is reasonable and logical to assume that it was done to cater for inflation. Increasing the maintenance by ten per cent annually was also within the discretion and jurisdiction of the Appellate Court and the exercise of such discretion and granting an annual increase of ten per cent is comparable to the prevailing and historical rate of inflation.

6. That as regards the learned counsel's contention that the earnings of the Muhammad Asim are not known, we deprecate this attempt at intentional non-disclosure. Muhammad Asim is employed by PAEC but elects not to disclose his position or salary; he thus seeks to take advantage of his own willful non-disclosure. Where a husband is required to maintain his wife, former wife during her *iddat* period or child and is required to pay maintenance, including the arrears of maintenance, his present and past earnings must be disclosed by him, because his financial status determines the amount of maintenance that should be awarded. In case of non-disclosure an adverse inference can be drawn against him. Family judges should try to ascertain the salary and earnings of the husband/father who is required to pay maintenance. Muhammad Asim did not disclose his salary and

earnings but considers the maintenance that has been awarded to be excessive. However, willful non-disclosure of his earnings suggest that the maintenance amount is well within his means; his conduct further betrays that he does not want to be fair and has unnecessarily embroiled his former wife and child in needless litigation. The only objective for assailing the judgment of the Appellate Court and then of the High Court has been to starve the needs of his own child and the legal dues of his former wife. This is unconscionable and inexcusable.

7. This petition for leave to appeal is bereft of any reason to grant leave, therefore, leave to appeal is declined and the petition is dismissed with costs throughout in favour of Mst. Samro Begum (respondent No. 1 herein).

Judge

Judge

ISLAMABAD.  
15<sup>th</sup> August, 2018.  
Mudassar/<sup>☆</sup>

"Approved for reporting"