

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, **ISLAMABAD**

WRIT PETITION NO. 3180 OF 2019

Muhammad Khawer Hasan

Vs.

The Additional District Judge, Islamabad (West), etc

Petitioner by : Syeda Azra Bibi, Advocate.

Respondent No. 3 by : In Person.

Date of hearing : 03.12.2020

LUBNA SALEEM PERVEZ, J. Through present petition, the petitioner Muhammad Khawer Hassan, has assailed judgment and decree dated 11.07.2019, passed by learned Additional District Judge, West-Islamabad (*hereinafter referred to as the ADJ*), whereby the judgment and decree dated 21.05.2019, passed by learned Judge Family Court/Guardian, West-Islamabad, was upheld.

2. Brief facts of the case are that petitioner is the ex-husband of respondent No. 3/Mst. Ruqaiya Saireen Malik. During subsistence of marriage daughter namely Khadija-tul-Kubra (the minor) was born on 09.01.2015, who at the time of filing of suit was about four years of age. The petitioner filed guardian petition under section 25 of the Guardian and Wards Act, 1925 on 28.01.2019, for custody of the minor daughter. The petition was disposed of on the basis of compromise between the parties before the learned Judge Family Court, who made the compromise as part of the impugned order and decree dated 21.05.2019. The petitioner assailed the said order and decree to the extent of maintenance fixed @ Rs. 50,000/- per month with 15% annual increase and pleads it to be unreasonable and beyond the reach of petitioner. The learned ADJ dismissed the appeal, vide judgment and decree dated 11.07.2019 and held that the impugned judgment was passed in the presence and with the concurrence of the parties. He further held that the petitioner is an employee of well reputed international organization in Dubai, is earning a

handsome amount of salary thus, can easily afford maintenance of Rs. 50,000/-per month for his daughter.

3. After being unsuccessful in appeal, he preferred present writ petition against the judgment and decree dated 21.05.2019, of learned Guardian Judge as well as judgment and decree dated 11.07.2019, passed by the learned Additional district Judge, respectively.

4. Learned counsel for the petitioner, while assailing the order/judgment impugned herein, submitted that no consent was given by the petitioner as has been recorded by the learned Judge Family Court, while passing order dated 21.05.2019, as the petitioner at that time was abroad, which can be proved from the fact that the compromise is not signed by the petitioner; that the amount of maintenance fixed for the minor at Rs.50,000/- per month is exorbitant and unreasonable as the estimated monthly expenditure of the minor is about 21,000/-; that the learned Courts below have failed to appreciate the arguments and documents submitted during the course of proceedings. She submitted that the judgment passed by both the learned courts below are not sustainable and liable to be set-aside.

5. Respondent No. 3 attended in person and supported the judgments of the learned Courts.

6. Arguments heard. Record perused.

7. The impugned order & decree dated 21.05.2019 has been perused which basically is the reproduction of the compromise between the parties to the suit. The order not only reflects the attendance of the learned Counsels appearing for the parties, but amicable and harmonious assent is also evident, as the learned Family Judge before writing down the terms and condition of the compromise has also recorded the categorical consent of the parties that are ready to settle their dispute amicably. Thus the argument of the learned Counsel for the Petitioner that he was not present in person at the time of compromise and has not signed the same is not tenable, being baseless and unfounded. Furthermore the, perusal of the contents of

the compromise clearly shows that it is a detailed and comprehensive document whereby, every aspect regarding maintenance, custody, visitation and meeting with the minor through social media application e.g. Skype or whatsapp has been appropriately taken care of. It is also worth mentioning that learned counsel for the petitioner before this Court has only assailed the consent judgment and decree to the extent of maintenance of the minor @ Rs. 50,000/- per month as well as the observation that the maintenance allowance should be deposited before 14th of each month failing which the respondent shall stop the meeting of the minor with the petitioner. He has no objection to the rest of the settlement. I am of the considered view that compromised once arrived at with due deliberation and consultation is not legally challengeable. Thus, challenging the compromise partially, after its submission before the court of law by the petitioner, has no moral and legal justification.

8. With regard to appearance of learned counsel for the petitioner before learned Judge Family Court, I am of the view that the petitioner has signed the Vakalatnama in favor of his learned counsel and on the basis of said Vakalatnama the learned counsel has appeared as a representative/attorney of the petitioner. Vakalatnama is a document which legally authorizes the lawyer / counsel to act on behalf of his/her client. Thus, once the advocate is engaged through duly signed Vakalatnama by the client for a case then all acts of the counsel in connection with such case are considered to be authorizedly taken on behalf of his client till such time the Vakalatnama is revoked or withdrawn by the client, as in terms of procedure prescribed under the law. The Civil Procedure Code, 1908, vide Order III Rule 4(1) & (2) provides for the appointment of pleader to represent the client before Court, which for reference is also reproduced as under:-

“4. Appointment of pleader.— (1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power of attorney to make such appointment.

(2) Every such appointment shall be filed in Court and shall be deemed to be in force until determined with the leave of the Court by a writing signed by the

client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

3...

4...

5... ”.

The judgment of the Hon’ble Supreme Court, reported as ***Hassan Akhtar and others v. Azhar Hameed and others (PLD 2010 SC 657)*** is also referred wherein the authority of an advocate, when engaged through duly signed vakalatnama, wherein it has held that:-

"13. It is by now well-settled that an Advocate has authority to make statement on behalf of his client, which is binding upon the client, unless there is anything contrary in the Vakalatnama putting restriction on the authority of the Advocate to compromise or abandon claim on behalf of the client. The Advocate's power in the conduct of a suit allows him to abandon the issue, which in his discretion, advisable in the general interest of his client."

9. The petitioner, therefore, after signing the Vakalatnama in favour of the learned counsel, submitted in the court for conducting the proceedings on his behalf, cannot be allowed to allege before the court that his duly engaged counsel has had acted against his will and authorization, and that too without any concrete material to prove the allegations. As noted above it is quantum of maintenance of Rs. 50,000/- per month as settled through compromise is the cause of his grievance, whereas, the rest of the settlement is acceptable to him, thus it is also admission on the part of petitioner that the dispute was settled amicably between the parties through a compromise in the light whereof the learned Judge Family Court dismissed the Guardian Petition filed by the petitioner and rightly observed that the judgment & decree has been passed with the consent and concurrence of both the parties. Compromise once agreed upon / arrived at between the parties before the trial court and consent judgment / decree passed by a competent court thereon, cannot be allowed to be retracted / challenged partly on the ground that some of its terms are acceptable and some are not acceptable. Even otherwise it is a settled law that the consent decree is not appealable. Hence, appeal filed by the petitioner agitating consent decree has been validly dismissed by the learned Appellate Court.

10. I have also perused the petition filed by the petitioner u/s 25 of the Guardian and Wards Act, 1890, for the custody of his minor daughter wherein one of the grounds for claiming the custody of the minor was:-

“That the petitioner is a foreign qualified individual, is in a much better position to look after the financial and educational needs of the minor as he has a steady source of income from his current employment with a reputed accounting firm in UAE.....”.

11. The above admission of the petitioner is enough to confirm his strong financial status, therefore, I am in agreement with the findings of learned ADJ that the petitioner can easily afford maintenance of Rs. 50,000/- per month to support his minor daughter.

12. In view of the above, no reason to interfere with the judgments and decrees dated 11.07.2019 & 21.05.2019, passed by the learned Courts below has been found, therefore, present petition, being devoid of any merit, is hereby **dismissed**.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in the open Court on this 13th day of January, 2021.

JUDGE

M. Junaid Usman

Approved for reporting