

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD, **JUDICIAL DEPARTMENT**

W.P. No.4668/2018

Syed Shahid Ali

versus

Mst. Rabbia Zafar, etc.

Petitioner by: Mrs. Sarkar Abbas, Advocate.

Respondents No.1 to 3 by: Mr. Rifaqat Islam Awan, Advocate.

Date of Decision: 09.05.2019.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner has assailed the judgment and decree dated 29.09.2017, passed by learned Senior Civil Judge-III/Guardian Judge (West), Islamabad, whereby two suits filed by Mst. Rabbia Zafar/respondent No.1 were partially decreed in her favour against the petitioner. The petitioner has also assailed judgment and decree dated 22.10.2018, passed by the learned Additional District Judge (West) Islamabad, whereby appeal filed by the petitioner was dismissed.

2. Brief facts referred in the instant writ petition are that respondent No.1 filed two suits for dissolution of marriage, recovery of articles/personal belongings as well as recovery of past, present, and future maintenance allowance against the petitioner. In essence, the learned Family Court has passed the consolidated judgment dated 29.09.2017 in the following manner:

- I. *Plaintiff Mst. Rabia Zafar shall be entitled for recovery of Rs.5,20,000/- in lieu of article mention at Serial No.22 to 29, from the defendant.*
- II. *The suit of the plaintiff No.1 to 3 for maintenance is decreed to the effect that plaintiff No.1 is entitled to*

receive Rs.15,000/- per month from defendant w.e.f. 14.10.2013 to 03.10.2014.

- III. *Plaintiff No.2 & 3 are entitled to receive maintenance allowance of Rs.20,000/- per month for each minor with 10% annual increase, from the defendant w.e.f. 04.10.2013 till the age of majority of minor son and marriage of minor daughter.*

The petitioner agitated the matter before the learned Additional District Judge through an appeal, which was dismissed vide impugned judgment and decree dated 22.10.2018. Hence, the instant writ petition.

3. Learned counsel for petitioner contends that petitioner and respondent No.1 got married on 25.12.2007 under Hanfi Law, who are blessed with Shaeel Haider Syed (son) and Anaya Syed (daughter) on 06.12.2009 and 24.06.2013, respectively; that respondent No.1 has left the house of petitioner without his knowledge on 04.10.2013 to stay with her brother at Sector G-11, Islamabad, but instead of returning home, respondent No.1 filed complaint in I-8 Police Station for recovery of her son Shaeel Haider from petitioner; that respondent No.1 also filed habeas corpus petition before this Court, whereby the said minor was handed over to respondent No.1 vide order dated 21.10.2013; that respondent No.1 was Professor at HEC University of Baluchistan on deputation basis and petitioner was Professor at International Islamic University Islamabad at the time of filing of the cases; that respondent No.1 filed suit for dissolution of marriage along with other claims, which was decided by the learned Trial Court without considering the evidence available on record as the findings on Issues No.2 and 4 were not given in a proper manner despite the fact that petitioner has taken the stance that he is jobless and maintenance has been fixed on higher

side; that respondent No.1 has failed to substantiate on record regarding the financial sources of petitioner and fixation of maintenance on higher side is factually beyond the financial status of petitioner, which is harsh, excessive, exorbitant and inflated; that both the Courts below have ignored the principle of disobedience at the part of wife as she herself left the house, therefore, she is not entitled for any maintenance; that respondent No.1 was bound to prove the claim of gold ornaments in her list at Serial Nos.22 to 29, but she did not produce any evidence regarding purchase of gold ornaments from her pocket; that the learned Trial Court has not considered that personal belongings of the spouses were stolen, against which case FIR No.112, dated 10.04.2012, under Section 381/343 PPC, P.S. Ramna, Islamabad was registered, but even then by discarding all these facts the learned Trial Court has imposed an amount of Rs.520,000/- upon the petitioner; that due to financial conditions of petitioner, he is looking after his ailing father, therefore, he is unable to pay maintenance more than Rs.15,000/- for minors, hence, the claim of respondent No.1 may be modified to that extent, which is otherwise on higher side at the rate of Rs.40,000/- per month.

4. Conversely, learned counsel for respondent No.1 contends that the overwhelming evidence submitted by respondent No.1 has rightly been appreciated by both the Courts below and it is the duty of father i.e. petitioner to provide maintenance including school fee, daily expense, clothing, medical, shelter and security to the minors and he cannot wriggle out from his responsibilities; that concurrent findings of

the Courts below could not be interfered with in constitutional jurisdiction and any other view could not be taken on factual side.

5. I have heard the arguments advanced by learned counsel for the parties and perused the record.

6. The perusal of record reveals that petitioner and respondent No.1 entered into marriage under the Hanfi Law and have been blessed with two children namely Shaeel and Anaya. On 04.10.2013, respondent No.1 left the house of petitioner, lodged a complaint against him and sought custody of minor son before this Court, which was given to her vide order dated 21.10.2013, whereafter she filed separate two suits for dissolution of marriage, recovery of articles, personal belongings as well as recovery of past, present and future maintenance allowance. Accordingly, consolidated issues were framed and respondent No.1 submitted her affidavit of evidence (Exh.P1) with her complete claim of delivery charges and maintenance allowance. During the course of cross-examination of Respondent No.1, she acknowledged that petitioner is a Canadian citizen, who was employed in International Islamic University Islamabad and in the early days, he has two cars in his house and marriage was dissolved on 03.06.2014 by way of Khula, whereas she lastly denied the suggestion that petitioner was jobless.

7. Similarly, petitioner appeared as DW-1 and submitted his affidavit as Exh.D1, in which he has given a detailed account of his entire life and contends that respondent No.1 did not allow him to visit the minors and after order of visitation by the learned Guardian Court, he has withdrawn his custody petition. He also acknowledged that he

deposited maintenance of Rs.20,000/- in the account of respondent No.1, whereas he also tried to sort all things out with respondent No.1, but she remained adamant. He also acknowledged that all gold jewelries claimed by respondent No.1 were already kept by mother of respondent No.1 and not a single article of respondent No.1 was retained by him. Petitioner has taken a specific stance that he was removed from HEC on 31.01.2014 and he is regularly paying the maintenance allowance @ Rs.16,000/- per month despite the fact that he was jobless, whereas he is now unable to pay maintenance due to ailment of his father. During the course of cross-examination, petitioner has acknowledged that in November, 2015, he attended meeting on behalf of College of Applied Sciences, Ashakria University, Sultanate of Oman in Athens, Greece; he also acknowledged that he is external supervisor and working on honorary basis and he attended the University of Oman on different occasions. He also acknowledged that he remained in Bahria University, in which he was getting salary of Rs.130,000/-. He also acknowledged that from 03.06.2014 till 20.04.2015, he has not paid any maintenance and he has started paying interim maintenance w.e.f. 20.04.2015. He also acknowledged that in his affidavit (Exh.D1) he has not referred the amount of Rs.520,000/- which was stolen from the house.

8. The petitioner in his favour produced his cousins namely Syed Arif Hussain Zaidi and Munawra Begum as witnesses, who appeared as DW-2 and DW-3, while DW-2 acknowledged during the course of cross-examination that the parties were living jointly in house situated in Sector G-7, Islamabad and their household articles were stolen against

which FIR was registered, however the police recovered the gold jewelries and cash to the tune of Rs.400,000/- or Rs.450,000/-, which were then handed over to petitioner.

9. I have gone through the findings given by the learned Trial Court and in full agreement with the same as no discrepancy has been noted in the above referred evidence, even otherwise, the petitioner has taken the stance that he is jobless, but at the same time he is taking care of his old father and is presently paying the maintenance at old rate. In my humble view, it is the duty and responsibility of the father to provide all kinds of facilities to his children and he cannot wriggle out from his responsibilities being a father. From the perusal of record, it reflects that respondent No.1 is properly managing the affairs of minors and the claim submitted by respondent No.1 being mother is not denied by the petitioner, rather he has only taken the plea that he is jobless, which is unjustified plea for the reason that it is not the responsibility of a mother to manage the affairs of minors on financial side. Petitioner being father has to earn for his own livelihood as well as for the minors and he cannot take a shield behind his plea of being a jobless.

10. Besides the above referred position, the petitioner failed to demonstrate through any documentary evidence that from the filing of the suit he ever applied for any job and he was rejected by the department, company, university or any other educational institutions. When no such evidence was brought on record by petitioner, his simple plea as of being jobless could not be accepted.

11. Even otherwise, the maintenance granted by both the Courts below is on minimum side as respondent No.1 submitted detailed account through documentary evidence started from Exh.P2 to Exh.P9, therefore, the maintenance claim of respondent No.1 is upheld and no illegality has been pointed out by petitioner except of his plea that the maintenance is on higher side. The other claim has also been acknowledged by DW-2 in his cross-examination and the learned Trial Court has rightly granted the decree in favour of respondent No.1 as the petitioner has failed to point out any illegality and he remained unable to demonstrate any valid justification to avoid the maintenance as well as the claims of respondent No.1, therefore, the instant writ petition merits dismissal without having any interference by this Court as maintenance could not be reduced in constitutional jurisdiction, which has otherwise been rightly appreciated by both the Courts below on factual side.

12. In view of above discussion, the instant writ petition is hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.