

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 4215 OF 2022

SYED KHURRAM ABBAS NAQVI.

Vs.

**THE ADDITIONAL DISTRICT JUDGE, ISLAMABAD-EAST AND
OTHERS.**

Petitioner by : Ms. Asima Noreen Ch., Advocate.

Respondents by : Mr. M. Khan Nazar, Advocate.

Date of hearing : 30.03.2022.

SAMAN RAFAT IMTIAZ, J. Through the instant writ petition, the Petitioner (Syed Khurram Abbas Naqvi) has assailed the Judgment and Decree dated 11.09.2021 (**Impugned Judgment-I**) passed by the learned Additional District Judge (East), Islamabad, whereby his appeal against Judgment and Decree dated 15.04.2021 (**Impugned Judgment-II**) passed by the learned Senior Civil Judge/Judge Family-Guardian Court, Islamabad-East was dismissed and consequently the Impugned Judgment-II was upheld.

2. Brief facts as per the Memo of Petition are that the Petitioner [Syed Khurram Abbas Naqvi] was married to Respondent No.3 [Tayyaba Batool] and the couple had three daughters i.e. Respondents No. 4 to 6. As per the Petitioner, the Respondent No.3 was a disobedient wife and the Petitioner tried his level best but she did not mend her ways which left Petitioner with no other option but to divorce the Respondent No.3 on 22.03.2020.

3. The Respondent No.3 to 6 filed Suit for Maintenance for herself and the minor daughters on 10.08.2020. The record reflects that the Petitioner contested the said suit by filing his Written Statement. Issues were framed and evidence was recorded. Thereafter, the suit of the Respondents No.3 to 6 was partially decreed vide Impugned Judgment & Decree-II, whereby Petitioner was directed to pay an amount of Rs. 12,000/- per month to each minor (Respondents No. 4 to 6) with effect from 01.04.2020 with 10% annual increase till their legal entitlement whereas with respect to

Respondent No. 3's claim it was held that she may file a separate suit for maintenance after final resolution of the dispute regarding effectiveness of the divorce which the Respondent No. 3 had challenged by way of separate proceedings.

4. Being aggrieved of the Impugned Judgment & Decree-II, the Petitioner preferred an appeal under Section 14 of the West Pakistan Family Court Act, 1964 before the Respondent No.1 for setting aside the same. However, Respondent No. 1 dismissed the Petitioner's appeal vide Impugned Judgment & Decree-I. Feeling aggrieved of both the said Impugned Judgments & Decrees passed by the learned Courts below, the Petitioner has preferred the instant Writ Petition.

5. Learned counsel for the Petitioner, *inter alia*, contended that the Impugned Judgments & Decrees are the result of non-reading and misreading of the evidence produced by the parties and are totally against the law and facts of the case; that during the subsistence of marriage, the Petitioner provided all the necessities of life to Respondents No.3 to 6 within his means but the Respondent No.3 always misbehaved and finally left the house of the Petitioner without his consent or permission; that the Petitioner is a retired officer who has a minor daughter from second marriage and is also looking after his sister and nephew in his meager pension amounting to Rs.64,652/- per month; that the Petitioner is ready to pay the maintenance allowance of the Respondents No.4 to 6 according to his financial position but the learned Respondent No.2 allowed an exaggerated amount of maintenance allowance which is beyond the income of the Petitioner; that before passing the Impugned Judgment & Decree-II dated 15.04.2021 the department passed the retirement order of the Petitioner dated 09.04.2021 and the Petitioner also submitted his retirement order before the learned Trial Court but the learned Trial Court overlooked the said important fact, hence the Impugned Judgments & Decrees are not sustainable in the eyes of law; that during the pendency of appeal, the Petitioner submitted an application for production of additional documentary evidence regarding proof of his weak financial position but the learned Appellate Court did not give any weightage to the financial

status of the Petitioner. Learned counsel for the Petitioner prayed for acceptance of instant petition by setting aside the Impugned Judgments & Decrees. He further prayed that the learned Trial Court be directed to reduce the quantum of maintenance of minors according to monthly income of Petitioner/judgment debtor.

6. Conversely, learned counsel for Respondents No. 3 to 6, supported the Impugned Judgments & Decrees as being lawful and justified which have been passed after proper appreciation of facts and evidence as well as application of judicial mind. Learned counsel in support of his contentions placed reliance on *Amjad Khan versus Muhammad Irshad (deceased) through LR.s.*, 2020 SCMR 2155, *Syed Arif Ali Sabri Versus Abdul Samad through L.Rs. and others*, 2008 YLR 2309 and an unreported judgment of this Court passed in *Rehan Khalid versus Mst. Uzma Nawaz and others*, W.P.No. 550/2021.

7. I have heard the learned counsel for the parties and have also perused the Impugned Judgments & Decrees as well as available record.

8. It is trite law that factual disputes cannot be resolved in writ jurisdiction and that a High Court in exercise of constitutional jurisdiction cannot reappraise evidence as a Court of Appeal. While exercising such jurisdiction the Court must ensure that the subordinate courts have not acted without jurisdiction or in violation of law. However, in the instant case, no error of jurisdiction or violation of law has been pointed out by the Petitioner.

9. The Petitioner's only plea is that the Courts below did not consider his financial position and obligations when granting maintenance for the Respondents No. 4 to 6 and that he was not allowed to produce evidence.

10. It is noted that the Respondent No.3 who is the Plaintiff in the Suit for Maintenance before the Family Court stated in her plaint as well as the Examination-in-Chief that present Petitioner is Lt. Commander in Pakistan Navy and his earning is more than Rs.150,000/- per month as salary. In response the Petitioner admitted in his Written Statement that he is indeed serving as Lt. Commander in Pakistan Navy, however, he denied the

quantum of salary as alleged. Despite said denial he neither stated any specific amount that he is earning as per his own contention nor was original pay slip or any other original document produced in evidence to show his salary. The amount stated to be his pension in the Memo of Petition was not mentioned in the proceedings before the Courts below.

11. The learned counsel for the Petitioner was unable to identify any evidence produced by the Petitioner which was not considered by the Courts below. According to the Impugned Judgment-II, the Petitioner did not submit his Examination-in-Chief before the learned Trial Court which fact has not been controverted by the Petitioner in the instant petition. The documents produced by the learned counsel for Petitioner before the learned Trial Court have been listed as Mark D/1 to Mark D/5 in the Impugned Judgment-II. Time and time again this Court as well as the Honorable Supreme Court has held in various judgments including in the cases of *State Life Insurance Corporation of Pakistan Vs. Javaid Iqbal 2011 SCMR 1013*, *Chaudhary Wajid Ayub Vs. Malik Rizwan Ahmed PLD 2020 Islamabad 250*, *Asif Ali Hashmi Vs. Muhammad Arif Mian PLD 2015 Islamabad 191* and *Pakistan Engineering Consultants Vs. Pakistan International Airlines Corporation PLD 2006 Karachi 511* that documents not produced but only marked cannot be considered by Courts as legal evidence of fact. In such circumstances, the learned Judge, Family Court rightly observed vide the Impugned Judgment and Decree-I as under:-

*“Since no evidence in rebuttal is produced by the defendant, therefore, the documents brought on record in the statement of the learned counsel are extend no corroboration to the stance of the defendant. **Keeping in view the evidence produced by the plaintiff which remains unrebutted by the defendant,** this issue is partially resolved in favour of the plaintiffs only to the extent of payment maintenance to the minors.”[Emphasis added].*

12. Similarly, the learned Appellate Court rightfully observed in the Impugned Judgment-I that the photocopies of the documents produced by the Petitioner were marked, which have no legal value or sanctity in the eyes of the law. In view of the foregoing, the Petitioner’s plea that he was not allowed to produce evidence is against the record.

13. The application for production of additional evidence was filed by the Petitioner in appeal before the learned Appellate Court without any reason as to why they were not produced in evidence before the Family Court. In any event neither any order passed by the learned Appellate Court in respect of such application has been filed nor impugned by the Petitioner in the instant petition. It is not even clear whether the documents sought to be produced by the Petitioner through such application were original or photocopies. Therefore, the learned Appellate Court vide Impugned Judgment & Decree-II has correctly held as follows:-

“Admittedly, the appellant has not recorded his statement before the learned trial court. Only the learned counsel for appellant has tendered the above mentioned documents before the court. No original documents are tendered by the learned appellant counsel and the learned trial court has placed the same on the record as by placing on these documents the sign of mark which is neither the primary documents nor secondary evidence. As no evidence is produced by the appellant before the learned trial Court, therefore, on the basis of said documents the same could not be inferred that whether the appellant was having the capability of paying maintenance to the appellant or is concealing his actual financial position from the court.”

14. The Petitioner has failed to point out any illegality or infirmity or misreading or non-reading of evidence in the Impugned Judgments & Decrees. In view of the foregoing, interference by this Court in the concurrent findings of the Courts below is unwarranted. Hence, present petition being devoid of any merit is hereby **dismissed**.

**(SAMAN RAFAT IMTIAZ)
JUDGE**

Announced in the open Court on 07.04.2022.

JUDGE