

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 3882 OF 2021.

SADIA SARWAR and another
Versus
THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
ISLAMABAD and others

Petitioner by : **Mr. Muhammad Aslam Chishti,**
Advocate.

Respondent by : **Ex-parte.**
(Respondent No.3)

Date of Decision : **20-02-2023.**

SAMAN RAFAT IMTIAZ, J.:- Through the instant writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 the Petitioners have assailed the Judgment and Decree dated 14-12-2020 (“**Impugned Judgment and Decree I**”) passed by the Respondent No.2 [The Family Judge, Islamabad (West), Islamabad (“**Family Court**”)] and Judgment and Decree dated 28-09-2021 (“**Impugned Judgment and Decree II**”) passed by the Respondent No.1 [The Additional District and Sessions Judge, Islamabad (West) (“**Appellate Court**”)] in appeal filed by the Petitioners against the Impugned Judgment and Decree I.

2. The brief facts as per the Memo of Petition are that the Petitioners [(i) Sadia Sarwar and (ii) Muhammad Taaeb Khan] filed Suit for the Recovery of Dower Amount, Dowry Articles and Maintenance Allowance before the learned Judge Family Court, Islamabad (West) (“**Family Court**”). The Respondent No.3 [Muhammad Nadeem Khan] contested the Suit by filing written statement. Thereafter issues were framed by the learned Family Court and after recording of evidence, the learned Family Court decreed the Suit of the Petitioners vide Impugned Judgment and Decree dated 14-12-2020, whereby *inter alia*, the Petitioner No.2 was held entitled to maintenance at the rate of Rs.6000/- per month from the date of his birth till his legal entitlement with 5% annual increase from the date of the Impugned Judgment and Decree I.

3. Aggrieved with the Impugned Judgment I only to the extent of amount of maintenance, the Petitioners filed an appeal before the learned Appellate

Court who vide Impugned Judgment II dated 28-02-2021 upheld the Impugned Judgment I passed by the learned Family Court.

4. Being aggrieved and dissatisfied by the Impugned Judgment I and II dated 14-12-2020 and 28-09-2021 to the extent of refusing enhancement of maintenance of Petitioner No.2/Minor and past maintenance of the Petitioner No.1, the Petitioners have preferred the instant writ petition for setting aside the same.

5. The learned counsel for the Petitioner did not press the instant writ to the extent of the past maintenance of the Petitioner No. 1. With regard to enhancement of maintenance of Petitioner No.2/Minor, he relied upon the affidavit-in-evidence of the Petitioner whereby she alleged that Respondent No.3 earns handsome salary and can pay maintenance at the rate of Rs.25,000/- to the Petitioner No.2/Minor and submitted that no cross-examination was conducted on behalf of Respondent No.3 in this regard and no independent evidence was submitted by him to substantiate his financial strength.

6. Mr. Muhammad Asif Khan, Advocate filed his power of attorney on behalf of Respondent No.3 and appeared before the Court on 09-12-2021. However, no one has appeared on behalf of Respondent No.3 today i.e. 20-02-2023, therefore, the Respondent No.3 was proceeded against ex-parte.

7. I have heard the learned counsel for the Petitioner and have also perused the available record.

8. According to the Impugned Judgments and Decrees, Petitioner No. 2/Minor was held entitled to Rs. 6000/- per month from the time of his birth which amount would be subject to 5% annual enhancement from the date of the Impugned Judgment and Decree I. From the contents of the plaint filed by the Petitioners in their suit, it appears that the Petitioner No. 2/Minor was born in February, 2018. Therefore, he was entitled to Rs.6,000/- from February, 2018 till December, 2020 and thereafter such amount was subject to annual increment of 5%. It is contended that this amount requires enhancement.

9. First and foremost, it has to be borne in mind that this Court in exercise of Constitutional jurisdiction does not act like a Court of appeal. As such, the Court cannot embark upon a reappraisal of evidence. It is settled law that a High Court in such jurisdiction cannot substitute the concurrent findings of the

courts below with its own findings solely on the ground that another view was possible on the same evidence. A party approaching the High Court under Article 199 of the Constitution has to demonstrate that there is a gross misreading or non-reading of evidence or jurisdictional error or such legal infirmity that has caused miscarriage of justice.

10. No misreading/non-reading of evidence or illegality or any other infirmity has been pointed out by the learned counsel for the Petitioners in the Impugned Judgments and Decrees. The Petitioner No. 2/Minor was almost three years old at the time of passage of the Impugned Judgment and Decree I and as such not of school going age. No evidence regarding the Minor Child's monthly expenditure has been highlighted which exceeds the monthly maintenance granted by the Impugned Judgments and Decrees. Even otherwise, as and when the circumstances change, an alternate, adequate remedy is available in terms of enhancement of maintenance application which may be filed before the Family Court as held by the Honorable Supreme Court in the case of *Lt. Col. Nasir Malik Vs. Additional District Judge, Lahore, 2016 SCMR 1821*. Therefore, I am not compelled to exercise the discretionary jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 to disturb the concurrent findings.

11. In view of the foregoing, no reasonable grounds have been made out for interference with the findings of the learned courts below in exercise of writ jurisdiction. As such, the instant petition is hereby **dismissed** as being devoid of merits.

(SAMAN RAFAT IMTIAZ)
JUDGE