

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD,
(JUDICIAL DEPARTMENT).

Writ Petition No. 4186 of 2021

Rizwan Ullah Khalidi

Versus

Learned Additional District Judge, Islamabad (West) and others.

Writ Petition No. 457 of 2022

Salma Shahid and others

Versus

Rizwan Ullah Khalidi and others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
	21.09.2022	Mr. Mudassar Hussain Malik and Syed Zulfiqar Abbas Naqvi, Advocates for the petitioner in W.P. No. 4186/2021. Mr. Akseer Ahmad Abbasi, Advocate for the respondents Nos. 3 to 6 in W.P. No. 4186/2021 and petitioners Nos. 1 to 4 in W.P. 457/2022. Mr. Gul Hussain Jadoon, Advocate for the respondent No.1 in W.P. No. 457/2022.

By way of this single order, I intend
to decide the above captioned two (02)
writ petitions, arising out of the same
judgments and decrees dated 13.10.2021
& 28.05.2021, passed by learned Additional
District Judge, West-Islamabad and learned

Senior Civil Judge-III (Judge Family Court),
West-Islamabad.

02. Writ petition No. 4186 of 2021, has been filed by the petitioner / Rizwan Ullah Khalidi, whereby he has impugned judgments and decrees dated 13.10.2021 & 28.05.2021, passed by learned Additional District Judge, West-Islamabad and learned Senior Civil Judge-III (Judge Family Court), West-Islamabad, whereby the suit for recovery of maintenance (*for ex-wife and minors*) and dower (*for ex-wife*) and recovery of delivery expenses, filed by respondents No. 3 to 6 was decreed by the Court of learned Senior Civil Judge-III (Judge Family Court), West-Islamabad and the quantum of maintenance was enhanced by the learned Additional District Judge, West-Islamabad vide impugned judgment and decree dated 13.10.2021.

03. Writ Petition No. 457/2022, has been filed by the petitioners against Rizwan Ullah Khalidi, (*petitioner in W.P. No. 4186/2021*), wherein the petitioners

have impugned judgments and decrees dated 13.10.2021 & 28.05.2021, passed by learned Courts below, whereby the petitioners are claiming the enhancement of past and future maintenance and rent of accommodation.

04. Succinctly stated, facts of the case are that the petitioner / Rizwan Ullah Khalidi entered into marriage contract with Salma Shahid, as per Muslim rites ceremony against the dower of Rs. 1,00,000/- on 26.12.1996. From the wedlock, respondent No. 4 to 6 / Aisha Rizwan, Arisha Rizwan and Anoosha Rizwan were born, who are in custody of their mother, Salma Shahid. During the subsistence of marriage, matrimonial relations between the spouses remained cordial but subsequently, became strained.

05. Salma Shahid (ex-wife) along with her three minor daughters filed a suit for recovery of maintenance, dower and delivery expenses against Rizwan Ullah Khalidi, whereas the petitioner Rizwan

Ullah Khalidi filed a suit for custody of his minor daughters.

06. Issues were framed, suits were contested, evidence was recorded and learned Senior Civil Judge-III (Judge Family Court), West-Islamabad dismissed the suit for custody of minors filed by the petitioner / Rizwan Ullah Khalidi, whereas decreed the suit filed by the Salma Shahid (ex-wife) of the petitioner along with her daughters and held the minor daughters entitled for recovery of past maintenance allowance @ Rs. 20,000/- per month w.e.f. November, 2015 till date of judgment; future maintenance @ Rs. 10,000/- each, the father, Rizwan Ullah Khalidi was also bound down to pay for school / college fee of the minors directly in the Institution in addition to maintenance allowance. In case of failure, the amount was liable to be recovered from him; future maintenance allowance of the minors was liable to increase @ 10% annually. As the marriage of the parties was intact, therefore, Salma

Shahid / ex-wife was also held entitled to the maintenance allowance @ 20,000/- w.e.f. November-2015 till subsistence of her marriage. The husband was also bound down to arrange for separate accommodation for the spouse and children, in case of failure, father was liable to pay Rs. 60,000/- as rent of the accommodation of his minor daughters and wife.

07. Salma Shahid, ex-wife was also held entitled for recovery of Rs. 1,00,000/- as dower, whereas the suit to the extent of delivery charges was dismissed.

08. Being aggrieved, both the above mentioned petitioners in their respective suits, filed appeals which were decided vide consolidated judgment and decree dated 13.10.2021, passed by learned Additional District Judge, West-Islamabad, whereby the maintenance of minor daughters was enhanced @ 40,000/- each (ex-wife and her three daughters) since November, 2015 till date of judgment and

Rs. 50,000/- with 10% annual increase since legal entitlement. The father, Rizwan Ullah Khalidi was also held liable to pay the institution college / school fee of minor daughters directly in the institution, failing thereof, the same is liable to be recovered from him.

09. Mother, Salma Shahid, (ex-wife) was allowed delivery charges as well as dower and the decree to the extent of provision of separate accommodation was modified.

10. Rizwan Ullah Khalidi, is aggrieved by the enhancement of monthly maintenance allowance, whereas Salma Shahid along with her daughters is also aggrieved and have prayed that the maintenance of all the petitioners be enhanced @ Rs. 1,00,000/- per month each with 20% enhancement, per year and has also prayed for the award of house rent @ Rs. 60,000/- per month.

11. Learned counsel for the petitioner, Rizwan Ullah Khalidi, *inter alia* contends

that learned appellant Court has enhanced the maintenance of the minors without any legal and cogent evidence / justification; order of enchantment is not in accordance with financial status of petitioner / Rizwan Ullah Khalidi; order for payment of college / school fee of the minors is also not in accordance with law; the impugned judgments and decrees are contrary to the mandatory provision of law and settled principle enunciated by this Court as well as apex Court for determination of the maintenance allowance, as such the same are liable to be set-aside.

12. Learned Counsel for the petitioners in writ petition No. 457/2022, has stated that the petitioners are entitled for the monthly maintenance @ 1,00,000/- for each petitioner; as the respondent, Rizwan Ullah Khalidi is earning handsome money, so the amount of maintenance be enhanced; the modification of decree passed by the appellant Court, whereby the respondent, Rizwan Ullah Khalidi has

been exonerated from paying the monthly house rent is not justified; the impugned judgments and decrees are erroneous, not tenable under the law, hence the petitioners are entitled for the past and future maintenance, house rent according to the prayer, made in the writ petition.

13. Arguments heard, record perused.

14. At the time of filing of suits by the parties before learned Senior Civil Judge (Judge Family Court), West-Islamabad as well as appeals before the learned Additional District Judge, West-Islamabad, the marriage between Rizwan Ullah Khalidi and Salma Shahid was intact, now learned counsel for Salma Shahid (ex-wife) has informed that petitioner, Rizwan Ullah Khalidi has pronounced divorce on 06.03.2022 and the arbitration counsel has issued divorce certificate on 07.03.2022.

15. It is evident that Salma Shahid, being mother of three daughters did not file a suit for dissolution of marriage, even

the learned Judge Family Court made efforts for reconciliation but the same were not done and just in order to avoid the payment of monthly maintenance, Rizwan Ullah Khalidi has pronounced divorce upon her wife.

16. Learned trial Court has recorded sufficient evidence that the petitioner Rizwan Ullah Khalidi is earning handsome amount, as he purchased and sold many properties in Pakistan, owner of expensive cars and expensive properties in Pakistan. He has also admitted that he owns apartments in Dubai for investment purposes.

17. The first daughter, Aisha Rizwan is studying in medical college, the second daughter is about to get admission in medical college and the third daughter is also showing good educational results.

18. The petitioner has contracted second marriage, even the learned counsel for

Salma Shahid has stated that he has also contracted third marriage.

19. Learned Additional District Judge, West-Islamabad has rightly fixed maintenance of the petitioners in writ petition No. 457/2022 along with institution college / school fee. The father is legally, morally and ethically bound to pay the maintenance and educational charges to his minors children.

20. As the petitioner, Rizwan Ullah Khalidi has pronounced divorce, so he cannot be held responsible for paying the house rent to his ex-wife, as monthly maintenance of the minors along with payment of monthly educational charges of the minors is handsome amount and is also justified in all respects.

21. Learned counsel for the petitioners in their respective writ petitions have failed to point out any illegality in the impugned judgments and decrees. It is well settled that certiorari is only available to quash a

decision for an error of law. It will also be issued for correcting errors of jurisdiction when an inferior Court or a tribunal acts without jurisdiction or in excess of its jurisdiction, or fails to exercise its jurisdiction or where the Court or a tribunal acts illegally in exercise of its undoubted jurisdiction and it decides a matter in violation of the principle of natural justice. The High Court while issuing a writ of certiorari acts in exercise of supervisory and not appellate jurisdiction. The High Court in exercise of its writ jurisdiction will not review the findings of facts reached by the inferior Court or a tribunal.

22. In this regard, reliance is placed upon the following dictums / laws laid down by the Hon'ble Supreme Court of Pakistan:

- i. **Amjad Khan Vs. Muhammad Irshad (Deceased) through LRs, (2020 SCMR 2155).**
- ii. **President All Pakistan Women Association, Peshawar**

**Cantt Vs. Muhammad Akbar Awan
and others (2020 SCMR 260).**

iii. **Chief Executive MEPCO and
others Vs. Muhammad Fazil and
others (2019 SCMR 919).**

iv. **Chairman, NAB Vs.
Muhammad Usman and others
(PLD 2018 SC 28).**

v. **Shajar Islam Vs. Muhammad
Siddique and 2 others (PLD 2007
SC 45).**

23. For what has been discussed above, judgments and decrees dated 13.10.2021 & 28.05.2021, passed by learned Additional District Judge, West-Islamabad and learned Senior Civil Judge-III (Judge Family Court), West-Islamabad are in accordance with law and facts of the matter, hence do not require any interference by this Court.

24. In view of above prospective, both the above mentioned writ petitions are **dismissed** with no order as to costs.

**(TARIQ MEHMOOD JAHANGIRI)
JUDGE**

Bilal /-