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Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W. P. No.1350/2018

Syed Wamiq Abid Bukhari

Versus

The Additional District Judge, Islamabad & 3 others

Petitioner by : Mr Muhammad Munir Paracha, Advocate.
Mr Nauman Munir Paracha, Advocate.
Respondents by : Mr Shafqat Abbas Tarar, Advocate.
Date of Hearing : 05-10-2018

ATHAR MINALLAH, J.- Through this single judgment, I shall decide the instant petition alongwith Writ Petition No.1568/2018 titled '*Fazia Wamiq Bukhari & another v. Syed Mamiq abid Bukhari & 2 others*'.

2. The facts, in brief, are that the instant petition has been filed by Syed Wamiq Abid Bukhari son of Syed Abid Hussain Shah (*hereinafter referred to as the 'petitioner'*) while Writ Petition No.1568/2018 has been filed by Fazia Wamiq Bukhari daughter of

Akhtar Hussain (*hereinafter referred to as the 'respondent'*) and Syeda Hania Wamiq Bukhari daughter of Syed Wamiq Abid Bukhari (*hereinafter referred to as the 'minor'*). The petitioner and the respondent entered into a marriage contract on 04-10-2008. The petitioner resides in South Africa where he is engaged in business. The petitioner and the respondent lived in South Africa from 07-04-2009 to 03-08-2009, 28-09-2009 to 27-01-2010 and then from 30-06-2010 to 21-09-2010. The minor was born on 14-04-2010 in a hospital in District Rawalpindi. The respondent returned from South Africa on 23-09-2010 and thereafter she lived at her parent's house. The petitioner filed a suit on 09-02-2011 seeking restitution of conjugal rights which was later withdrawn. He also filed a petition on 09-02-2011 under sections 12 and 25 of the Guardian and Wards Act, 1890. The suit seeking restitution of conjugal rights was withdrawn on 21-02-2011. It is the case of the respondent that she did not receive a divorce notice. The petitioner filed a suit on 09-04-2011 seeking multiple prayers. The learned Judge Family Court after recording of evidence and affording an opportunity of hearing to the parties, decreed the suit vide judgment and decree, dated 31-10-2017. Both the parties preferred appeals. The appeal filed by the petitioner was dismissed while that of the respondent was partially allowed. Both the parties have assailed judgments and decrees through filing separate constitutional petitions.

3. The learned Counsel for the petitioner has argued that; the judgments and decrees are against the facts and the concurrent findings are based on misreading and non-reading; the hand writing of the jeweler who had purportedly executed the receipt i.e. Exh.D-8 and his specimen signatures were sent to the hand writing expert vide order, dated 11-04-2015; the handwriting expert had not sent any report and, therefore, it could not be concluded that the handwriting and signatures on the document tendered in evidence as Exh.D-8 were not genuine; proper opportunity of hearing was not afforded to the petitioner by the learned appellate Court; the learned appellate Court concluded the proceedings and passed the impugned judgment and decree, dated 02-03-2018 in haste; the respondent had not mentioned in her plaint the date when allegedly gold ornaments had been forcibly taken from her; no details regarding gold ornaments were mentioned in the plaint; the learned appellate Court had increased the amount of maintenance for the minor without any basis; the respondent had tendered in evidence a forged receipt relating to purchase of gold ornaments; maintenance ought to have been ordered with effect from 23-09-2010.

4. The learned Counsel for the respondent on the other hand has argued that; the latter had established through cogent evidence the income of the petitioner and that was not taken into

consideration; the maintenance determined by the learned appellate Court is not sufficient to meet the expenses of the minor; keeping in view the evidence brought on record relating to income earned by the petitioner from his business in South Africa, the maintenance amount determined by the learned appellate Court is not reasonable.

5. The learned Counsels have been heard and record perused with their able assistance.

6. The admitted facts are that the petitioner and the respondent had entered into a marriage contract on 04-10-2018. They had lived in South Africa during the period mentioned in the plaint. The parties had separated on 23-09-2010. The minor was born on 14-04-2010. Since 23-09-2010 neither the respondent nor the minor had lived with the petitioner nor the latter could establish that he had paid for their expenses. The petitioner had filed a suit on 09-02-2011 seeking restitution of conjugal rights. The said suit was withdrawn on 21-02-2011. The learned Judge Family Court had framed five issues and after affording an opportunity of hearing to the parties had decreed the suit vide judgment and decree, dated 31-10-2017. In order to establish purchase of gold ornaments the respondent had tendered in evidence a receipt duly issued by a jeweler, namely, Shahbaz. However, the petitioner on the other hand had tendered in evidence a purported receipt stated to have been issued by the same jeweler, which was placed on record as Exh.D-8.

The handwriting and specimen signatures of the jeweler, namely, Shahbaz were forwarded to a handwriting expert vide order, dated 11-04-2015. However, the said jeweler, namely, Shahbaz entered the witness box as CW-1 and unequivocally denied having issued the receipt which was tendered in evidence by the petitioner as Exh.D-8. The witness who had appeared as CW-1 had unambiguously acknowledged having issued the receipt which had been made part of the evidence by the respondent. The petitioner in his deposition had given details of his business in South Africa. The learned Counsel for the petitioner, despite his able assistance, could not show that the determination made by the learned appellate Court regarding maintenance in favour of the respondent or the minor suffers from any legal infirmity. Moreover, the learned Counsel for the petitioner could not point out any misreading or non-reading requiring interference while exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. The exercise of discretion by the learned appellate Court has not been found to be arbitrary or fanciful. There is force in the argument raised by the learned Counsel for the respondent that by tendering in evidence one of the documents i.e. Exh.D-8, the petitioner may have exposed himself to proceedings under section 193 of the Pakistan Penal Code, 1860 and section 195(1)(c) read with section 476 of the Code of Criminal Procedure, 1898. However, it would be appropriate not to

make any observation in this regard lest it may prejudice the case of either of the parties.

7. During the course of arguments it was pointed out that no decree was drawn up regarding enhancement of the amount of maintenance. This matter is to be considered by the learned Court where the execution proceedings are pending. Likewise the question regarding the date from which the judgment and decree is executable is also^{to} be decided by the learned Executing Court keeping in view the decree sought to be executed. Since this Court is satisfied that the impugned findings neither suffer from any legal infirmity nor the discretion has been exercised arbitrarily, therefore, no case is made out for interference while exercising Constitutional jurisdiction.

8. For what has been discussed above, both the petitions are without merit and, therefore, accordingly dismissed.

(ATHAR MINALLAH)
JUDGE

Announced in the open Court on 04-01-2019.

(CHIEF JUSTICE)