

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No. 4397/2019

Dr. Aqueel Waris

Versus

Ibrahim Aqueel Waris, etc.

Petitioner by: Mr. Muhammad Farhan, Advocate.

Respondents by: Mr. Saqib Hanif Janjua, Advocate.

Date of Decision: 13.12.2021.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner has assailed the judgment & decree dated 17.07.2019, passed by learned Judge Family Court, Islamabad and judgment & decree dated 12.10.2019, passed by learned Additional District Judge, Islamabad, whereby appeal has been dismissed.

2. Brief facts referred in the instant writ petition are that respondent No.1 Ibrahim Aqueel Waris alongwith her mother Dr. Maryam Khan filed suit for maintenance against the petitioner before learned Judge Family Court (East), Islamabad on the basis of nikkah-nama executed between petitioner and respondent No.2 on 07.12.2012, which was dissolved vide judgment & decree dated 20.02.2018, passed by Judge Family Court. During the subsistence of marriage, respondent No.1 was born on 01.01.2014 whose maintenance has been claimed from the petitioner. The suit was contested by the petitioner with the ground that he is not working as Registrar in Ireland and is getting the salary of 2496.92 euro and his net

salary is 1555.90 euro, which is equal to PKR.2,11,480/- out of which he has to bear the cost of living and is also sending money to family and parents though he has not denied the maintenance. Learned Judge Family Court after considering the evidence of the parties has passed the judgment & decree which has been maintained by the appellate court. Hence, instant writ petition.

3. Learned counsel for the petitioner contends that both the courts below have not appreciated the hardships faced by the petitioner as he has also entered into second marriage after the dissolution of first marriage and he has placed his pay slip on record; that court has fixed the high rate of maintenance for the minor which is required to be reduced in the circumstances.

4. Conversely, learned counsel for respondents contends that petitioner has not pointed out any illegality in the concurrent findings except he is praying for reduction in maintenance though he is living in Ireland and working as doctor with salary of 66,193/- euro per year as reflected from his pay slip Ex.D-1, dated 14.06.2018, which is three years old and as such at present the rate of pay has been changed which is not available on record; that petitioner has not yet cleared previous maintenance accumulated against him and as such he is not entitled for discretionary relief at this stage.

5. Arguments heard, record perused.

6. Perusal of record reveals that petitioner was married to respondent No.2 Dr. Maryam Khan vide nikkah-nama dated 07.12.2012 and later on marriage was dissolved by the Judge Family Court on the basis of suit for dissolution of marriage filed by respondent No.2 vide judgment & decree

dated 20.02.2018. However, respondent No.2 has claimed the maintenance of her minor son born on 01.01.2014, which is presently in custody of respondent No.2. Both the courts below have passed the concurrent judgments by considering the status of petitioner, who is living in Ireland and working as Surgeon in the hospital as reflected from his pay slip Ex.D1, dated 14.06.2018, issued by Health Services Executive in which he is getting salary of 66193.17 euro per year and as such his average income per month is 500/- euro, which factum has not been denied by the petitioner. As such it is the responsibility of petitioner being father to look-after the affairs of his real son though the petitioner is still working in Ireland and has family to look-after but respondent No.1 is his real son who is required to be look-after by him under the law. Even otherwise, pay slip Ex.D1 brought by the petitioner himself is for the year 2018 and after the elapse of three years his salary structure and other benefits may also have been raised though no formal proof is available on record, nor his counsel is able to prove contrary to this aspect.

7. I have gone through the concurrent findings of the courts below qua the issue No.1, as such both the courts below have rightly appreciated the rate of maintenance while considering the inflation and needs of minor. In such scenario, factual aspect of determination of rate of maintenance on the basis of financial status of petitioner/father could not be reviewed under judicial review in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as the constitutional jurisdiction could only be exercised, if any fundamental right of petitioner has been violated or any judgment or order passed without jurisdiction which is not the case in hand.

8. Learned counsel for the petitioner has not pointed out any illegality in the concurrent findings, even both the judgments are considered to be within four corners of law where factual aspect has reasonably and fairly been considered by the trial court as well as by the appellate court. Even it is not the case of petitioner that his own evidence has not been appreciated on the touch stone of law especially when he himself has taken a fair stance through Ex.D1 and acknowledges that he is earning handsome amount though he has other family responsibilities but he could not deny the responsibility of respondent No.1, his real son, who is taken care by respondent No.2 single handedly.

9. In view of above, instant writ petition is misconceived and the same is hereby *dismissed*.

(MOHSIN AKHTAR KAYANI)
JUDGE