

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P.No.3493/2021

Fasihuddin Ahmed
vs.
Nabiha Naz Ahmed and three others

Petitioner by: Kh. Ahmed Tariq Rahim, Advocate.
Mr. Muhammad Azhar Siddique, Advocate.
Mr. Hissam Tariq Rahim, Advocate.
Mr. Hashim Tariq Rahim, Advocate.
Malik M. Asif Khan, Advocate.
Ch. Muhammad Shoaib, Advocate.

Respondents by: Mr. Ijaz Akhtar Janjua, Advocate.
Mr. Muhammad Sameer, Advocate.

Date of Decision: 21.06.2022.

MOHSIN AKHTAR KAYANI, J: Through this writ petition the petitioner Fasihuddin Ahmed has assailed the Judgment and Decree dated 29.04.2019 as well as 10.07.2021 respectively, passed by learned Judge Family Court (West), Islamabad and learned Additional District Judge (West) Islamabad, whereby, the Judgment and Decree of the Family Court for maintenance has been maintained in the following manner:

- I. *The plaintiff No.1 is held entitled for recovery of maintenance allowance at the rate of Rs.200,000/- per month, total amounting to Rs.600,000/- (for her Iddat period).*
- II. *The plaintiff No.2 is held entitled for recovery of maintenance allowance as at the rate of Rs.300,000/- (Rupees Three Lacs) per month which shall be admissible to him from the date of institution of instant suit till attaining of age of majority. Since during pendency of instant suit*

interim maintenance was fixed by my learned predecessor in office, therefore, at the time of calculation of arrears of maintenance of the minor the amount paid as interim maintenance shall be deducted. The amount so fixed shall be liable to 10% annual increase from the date of decree. The plaintiff No.1 would be bound to keep proper accounts of utilization of maintenance allowance being paid by the defendant to plaintiff No.2 and the defendant if so desires may request for inspection of such accounts to the court in order to ensure that the amount of maintenance is being spent on welfare and upbringing of the minor.

III. *Beside, fixation of above maintenance allowance for plaintiff No.2 it would be responsibility of defendant to arrange a reasonable residence for the minor and a car 1300cc alongwith driver for utilization of the minor within a period of one month of pronouncement of this judgment.*

IV. *The plaintiff No.2 is held entitled for recovery of dower amount of Rs.500,000/-.*

2. Learned counsel for the petitioner at the time of filing of instant petition confined his case to the extent of maintenance of Rs.300,000/- (three hundred thousand rupees) per month awarded to the minor, alongwith vehicle of 1300cc and a house only, rest of the claims have not been challenged. Therefore, this court will give its findings to the challenged portion of the concurrent findings.

3. Brief facts referred in the instant case are that the petitioner Fasihuddin Ahmed entered into marriage with respondent No.1 / Nabiha Naz Ahmed on

07.12.2006 at Islamabad. Both the parties were blessed with the son namely Farisuddin Ahmed born on 01.12.2007. Later on due to acute disparity the petitioner divorced the respondent No.1 / Nabiha Naz Ahmed on 15.11.2016 through written divorced, which was revoked on 03.12.2016, thereafter, the respondent No.1 / Nabiha Naz Ahmed exercised her delegated right of divorce on 30.12.2016. The respondent No.1 had filed a suit for recovery of dower and maintenance during the period of *Iddat* for herself and for the maintenance of minor son respondent No.2 / Farisuddin Ahmed on 02.01.2017, which was contested by the petitioner by way of written statement. The Family Judge after recording the evidence of witnesses of both the parties, decreed the suit to extent of Rs.300,000/- (Rupees Three Lacs) per month as maintenance of the minor and also placed responsibility upon respondent to arrange a house and a vehicle of 1300cc alongwith driver for the utilization of the minor within a period of one month of the announcement of the judgment. The said Judgment and Decree has been maintained by the first appellate court in similar manner, whereby, the findings on issue No. 2 have been maintained.

4. Learned counsel for the petitioner has argued that petitioner is primarily aggrieved with the exorbitant maintenance amount of Rs.300,000/- (three hundred thousand rupees) per month fixed by the courts below to the extent of minor son with the claim that the courts below have not considered the financial status of the petitioner in correct manner and even fixed the rate of maintenance contrary to the salary record of the petitioner Ex.D4/1 to Ex.D4/4, which discloses the monthly income of Rs.359,781/-.

5. It is further contended that the courts below have failed to consider the difference between assets and monthly income of the petitioner and it is not

possible for a father to pay more than fifty percent of his income towards awarded maintenance for a single child; that the courts below have traveled beyond their sphere while allowing the provisions of separate residence and a chauffeur driven car which is not actual or realistic need of the minor, since he is living with his mother at Islamabad; that the Income Tax Return under the law are confidential but the same have been brought on record and appreciated by the court, which is not part of the income; that an application was filed by the petitioner requiring the details of expenditure of the respondent No.2 but said application was not replied nor any details have been provided, which itself is violation of the court orders but the family court has not taken into account this aspect before passing the Judgment and Decree.

6. Conversely learned counsel for the respondent highlighted the evidence brought on record, whereby, he contends that the petitioner being a father has conceded the entire claim of maintenance of the minor in cross examination, even he has not denied his financial status having multiple properties inside and outside of Pakistan including the share holdings in difference companies; that the petitioner father himself conceded and agreed in a reply of a question that he has no objection in fixation of any maintenance by the court, therefore, now he is not entitled to challenge the rate of maintenance contrary to his own answer recorded in the evidence.

7. Arguments heard, record perused.

8. Perusal of record reveals that the petitioner and respondent No.1 were divorced and they were blessed with the son namely Farisuddin Ahmed born on 01.12.2007 during the sustenance of the marriage. The minor son is presently in the custody of respondent No.1 / Nabiha Naz Ahmed the

mother, who filed a suit for recovery of dower, maintenance of *Iddat* period for herself and maintenance of minor son before the learned Judge Family Court (West) Islamabad with the claim that petitioner is a billionaire businessman who owns multiple properties inside and outside of Pakistan besides, shares in different companies. The claim submitted by the respondent No.1 has been denied by the petitioner in the written statement, whereafter, the learned Judge Family Court has framed the issues on 28.07.2017, whereas, the present case is only confined to the extent of issue No.2, which is as under:

Whether plaintiff No.2 is entitled for recovery of maintenance from the defendant, if so, at what rate and for which period? OPP.

9. The respondent No.1 / mother in order to prove her claim of maintenance for a minor submitted her evidence through affidavit Ex.PW-1. She claims the maintenance explained in the body of the plaint for the minor and acknowledged the monthly tuition fee of the minor as of Rs. 40,000/-, 17,000/- per month as stationary charges excluding other school expenses, and also paid Rs. 15,000/- for extracurricular activities in the school like football and robotics. Though no receipt has been attached with affidavit but all the answers have been brought on record in cross-examination of the petitioner. Even the amount so paid to doctor for the minor has also been acknowledged, as such it was admitted fact that the respondent No.1 / mother was working in Head Start School, which extend the benefit of concession qua fifty percent of tuition fee of the minor. The minor and respondent No.1 do not own any vehicle, though the family car of PW-2 was used for schooling of a minor.

10. Respondent No.1 has also produced her father Najam-ul-Kamal Haider as PW-2 in support of her case who has provided the detail of his expense

including the salary of driver, cleaning maid, armed guard, household expenses, charges of Gun and Country Club as well as Islamabad club, electricity bill, sanitation bill, medical expenses, and the expenditure of minor for food items, which also confirms the expenditure details of the minor.

11. On the other hand the petitioner appeared as DW-4 in support of his case by way of evidence in shape of Ex.D-4, whereby he acknowledged that his take home salary is Rs. 3,59,781/- per month after deduction of taxes and out of this income he can only provide a maintenance for his minor son for which he is willing but subject to the actual expenses of health, education inclusive of stationary and school uniform and daily/monthly expenses of diet. Petitioner also admitted the fact of paying Rs.100,000/- per month as interim-maintenance for minor son and is willing to pay the same amount as maintenance till minor attains the age of majority.

12. During the course of cross-examination DW-4 acknowledges the following:

- 1- یہ درست ہے کہ میں Newsweek Pakistan کا ایڈیٹر انچیف ہوں۔
- 2- میں درخواست Ex.D4/P1 کے پیرا نمبر 1 کے مطابق 6/7 کمپنیوں کے بورڈ آف ڈائریکٹرز کا ممبر ہوں۔
- 3- یہ درست ہے کہ میں نے عدالت ہذا میں ایک درخواست دائر کی تھی کہ میں نابالغ کولندن میں ہونے والے لاہور لٹریری فیسٹوئل جو کہ میرا بھائی منعقد کرتا ہے اس میں شرکت کے لئے جانے کی اجازت طلب کی تھی۔ مذکورہ فنکشن میرے بھائی اور LLF نے یہ پروگرام Arrange کیا تھا۔ مذکورہ فنکشن پر تقریباً 50 ہزار پاؤنڈ خرچ آیا تھا جو کہ سپانسرز نے ادا کیا تھا۔
- 4- میں بھی LLF کے بورڈ آف ڈائریکٹرز کا ممبر ہوں۔
- 5- شادی ختم ہونے سے پہلے ہم برائے سیر و تفریح سال میں 4/5 دفعہ بیرون ملک جاتے تھے۔ ہم دو بھائی، لندن، پیرس، روم اور انڈیا (دہلی) گئے تھے۔ مذکورہ Trips پر میرا خرچہ کمپنی کے ذمہ ہوتا تھا جبکہ بیوی اور بچے کا خرچہ ہم اپنی جیب سے ادا کرتے تھے۔
- 6- میری رہائشی جائیداد کے علاوہ کمرشل جائیداد بھی ہے۔ میں پاکستان اور بیرون ملک میں رہائشی جائیدادیں ہیں۔ یہ درست ہے کہ میری بیرون ملک جائیداد ہے لیکن میں اس کا پتہ Share نہیں کرنا چاہتا ہوں۔ مجھے

علم نہیں ہے کہ میسرز لب گیس کی مالیت کیا ہے۔ آج اگر JJVL کی طرز کا نیا پلانٹ لگایا جائے تو اس کا تخمینہ تقریباً 150 ملین ڈالرز ہوگا۔ ہم نے یہ پلانٹ 10 سال قبل تقریباً 80 ملین ڈالرز میں لگایا تھا۔

7۔ گواہ کا مقابل میسرز AG Architectural Engineering، AG Publications، AG Gas & Design اور AG Trading، AG Radio، AG TV، AG Gas & Design کے فارم -A اور میسرز AG Omnimedia کے فارم 29 سے کروایا گیا جو کہ گواہ نے درست تسلیم کئے، تمام دستاویزات Ex.D4/P2 تا Ex.D4/P8 ہیں۔ میں انگلینڈ میں ڈیڑھ ماہ اپنے گھر میں رہا۔ مجھے یہ معلوم نہیں ہے کہ لندن میں میرا گھر کتنا بڑا ہے۔ یہ 2 بیڈروم کا گھر ہے۔ مجھے اس گھر کی تخمینہ مالیت کا علم نہیں ہے۔ یہ گھر سنٹرل لندن میں ہے۔ یہ درست نہیں ہے کہ سنٹرل لندن کی پراپرٹی مہنگی ترین ہیں۔

8۔ میرا جہاز Beechcraft Jet ہے۔ اس جہاز میں 2 پائلٹ ہوتے ہیں۔ آپ اس جہاز کو Two Pilot Crew کہہ سکتے ہیں۔ مجھے نہیں معلوم کہ اس جہاز کی مالیت 3.5 یا 4 ملین ڈالر کے قریب ہے یا نہیں۔ میں جہاز کے پائلٹس کو ایک روپیہ بھی نہیں دیتا، کمپنی ادا کرتی ہے۔ میں اس کمپنی کا شیئر ہولڈر ہوں۔

9۔ لب گیس اور پاکستان گیس پورٹ کی سالانہ ریٹرن کمپنی جمع کرواتی ہے۔ میں ان کمپنیوں میں بھی شیئر ہولڈر ہوں۔

The above referred admissions on the part of the petitioner settled his financial status, which is on the higher side, rather a life style which has been maintained by the petitioner seems to be of a rich man who can afford a life of luxury living, especially when he owns multiple properties inside and outside of Pakistan, simultaneously having shares of multiple companies, from which he is receiving handsome income beside his take home salary.

13. During the course of cross-examination the petitioner has also admitted the financial details and record when confronted to him in unequivocal terms. Both the courts below have categorically referred the above admitted factors in findings on issue No.2, even the appellate court has gone ahead in the findings while referring the assets of declaration submitted by the petitioner for the year 2014-15 in the following manner:

The Assets Declaration of the defendant pertaining to the year 2014-15 wherein his net asset was declared as Rs.322,295,481/-. The learned counsel for the appellant during

the arguments contended that the trial court has not taken into consideration the income stated by the defendant as he is drawing the salary of Rs.3,59,781/- after deduction of taxes. But this contention is rebutted from his own assets declaration wherein it indicates that the defendant had made an investment of Rs.118,515,810/- It is worthwhile to mention that even the defendant had disclosed in the said asset declaration that he had gifted out an amount of Rs.129,900,366/-.

14. All above details left noting in favor of petitioner, however, the last question answered by the petitioner himself concluded the entire matter which prevails upon both the courts below who adjudicated the financial status of the petitioner and fixed the maintenance of Rs.300,000/- (three hundred thousand rupees) per month. The question answer in the cross-examination is as under:

سوال: آپ اپنی مرضی سے نابالغ کو کتنا ماہانہ خرچہ دے سکتے ہیں؟

جواب: جج صاحب جو فیصلہ کریں۔

This court has also confronted the similar question to the petitioner counsel, whereby they contended that at present they are depositing the monthly interim-maintenance of Rs.150,000/- (one hundred fifty thousand rupees) with effect from filing of this petition regularly and willing to pay the same to the minor, even petitioner counsel in unequivocal terms acknowledged that they are willing to arrange the chauffeur driven vehicle and a house as directed by the trial court in the impugned judgment, which would be at the disposal of petitioner's son, who can use those facilities as and when required by him.

15. While placing all the evidence in juxtaposition with the stance taken by the petitioner, this court is mindful of the fact that every father is under a social or a moral compulsion and under the obligation to maintain a minor for as long as the offspring does not attained the requisite state of physical, mental and financial capacity to survive and sustain on his own. In present case the petitioner agreed to provide everything to his minor son, even there is a history of travelling to foreign countries prior to the divorce with respondent No.1. Such aspect further goes in favor of petitioner whose conduct has to be taken into consideration, in allowing or disallowing the partial relief in constitutional Jurisdiction. No doubt the petitioner / father of the minor has come to this court with clean hands and equitable consideration also lie in his favor but the findings and the facts recorded by the both courts below have properly been appreciated. No illegality has been noted down by this court in appreciation of any evidence, which clearly justifies the high income of petitioner who can afford any amount as maintenance to be paid to the minor. Now the question arises as to whether the expenses are to be true in every case of maintenance; the answer to the question is negative. As the minor who is studying in a school in a grown up age needs a complete financial support to fulfill his social standard, maintained and observed in pre-divorce era of his parents which is requirement for his physical, mental and intellectual growth to live in his modern high tech life style, in which he needs a car , a house, with every other facility which his father was providing prior to *Khula* of his mother.

16. The petitioner in his own evidence has not placed the details of his other assets which was brought on record during the course of cross-examination, which itself shows that father intends to confine his cases on the

basis of his salary, which he acknowledged in para No.6 of affidavit in evidence. However, when other details of assets come on record which multiply the financial status of petitioner, therefore, Family Court has rightly ascertained the earnings of the father who is required to pay maintenance as per his own life style as held in PLD 2009 [SC] 760 (Tauqeer Ahmed Qureshi Vs. Additional District Judge Lahore). No doubt the unjust enrichment cannot be permitted at the cost of father nor it is the case in hand, especially when the Family Court has rightly determined the earnings of father in terms of principle laid down in PLD 2018 [SC] 819 (Muhammad Asim Vs. Mst. Samro Begum). It is the obligation of the court to determine the income of father either through proper documentary evidence or on basis of social status and earning capacity of father as held in PLD 2018 [Lahore] 916 (Nazia Bibi Vs. Additional District Judge, Ferozewala), which is evident from the details available on record. This court has also laid down different factors in judgment reported as 2020 CLC [Islamabad] 131 (Dr. Aqueel Waris Vs. Ibrahim Aqueel Waris) for determination of interim-maintenance on the basis of certain parameters, where life style of father, his living standard, including housing facilities, transport, gifts and immovable properties are the key factors to be considered as a determination scale of maintenance.

17. This court has also gone through the appreciation given by Family Court and the Appellate Court in appeal and comes to an irresistible conclusion that this court while exercising its constitutional jurisdiction in terms of Article 199 of the Constitution of Pakistan 1973 is not in a position to alter the factual aspects recorded by the courts below, especially when there is no procedural or legal defects in the findings of the Family Courts. No question of law has been raised except the factual determination of

maintenance at higher side has been argued before this court but on the other hand the petitioner agrees to the judgment given by the courts below in unequivocal terms in his evidence and even before this Court. Therefore, no interference is required, hence, instant Writ Petition is **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

A.Waheed.