

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2076 of 2021

Asim Qayyum

Versus

Shaista Parveen and others

| S. No. of order / proceedings | Date of order/ Proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
|-------------------------------|----------------------------|---|
| | 15.06.2021 | Mr. Safdar Ali Bhatti, Advocate for the petitioner. |

Through the instant writ petition, the petitioner, Asim Qayyum, impugns the judgment and decree dated 18.03.2021 passed by the Court of the learned Additional District Judge, Islamabad whereby his appeal against the judgment and decree dated 20.09.2020 passed by the learned Judge Family Court, Islamabad, was partly allowed and the said judgment and decree, was modified. Vide the said judgment and decree dated 20.09.2020, the suit for recovery of maintenance filed by respondents No.1 to 3 was decreed by the learned Judge Family Court.

2. Respondent No.1 is the petitioner's wife whereas respondent No.2 is his son and respondent No.3 is his daughter. Learned Family Court had fixed maintenance amounting to Rs.12,000/- per month for respondent No.1 from the date of the institution of the suit with an annual increase of 6%. Furthermore, maintenance amounting to Rs.12,000/- per month was also fixed for each of the petitioner's children from the date of the institution of the suit with an annual increase of 10%. The learned Appellate Court modified the said judgment and decree by reducing maintenance of respondent No.1 and for each of the petitioner's children to Rs.8,000/- per month with an annual increase of 6%. The past maintenance to which the learned Family Court

had held respondents No.1 to 3 entitled to was also reduced.

3. The only argument advanced by the learned counsel for the petitioner was that since the petitioner had divorced respondent No.1, on 17.11.2020, he could not have been burdened with paying maintenance to respondent No.1 beyond the expiry of the *iddat* period. Learned counsel further submitted that the reason why the factum of the divorce was not pleaded in his appeal was because the divorce had taken place after the appeal was filed. There is nothing on the record to show that the petitioner had brought to the notice of the learned Appellate Court the fact that he had divorced respondent No.1 on 17.11.2020.

4. The petitioner cannot escape his obligation to pay maintenance to respondent No.1 by simply producing a copy of the *talaqnama* dated 17.11.2020. How a *talaq* becomes effective has been explained in the judgment reported as 1986 SCMR 1350. A person having pronounced *talaq* was required to give the Chairman, Arbitration Council a written notice of him having done so and would supply a copy thereof to his wife. Such notice of *talaq* to a wife is a mandatory requirement of the law. A divorce becomes effective after the expiry of 90 days from the receipt of notice by the Chairman, Arbitration Council in terms of Section 7(3) and (5) of the Muslim Family Laws Ordinance, 1961. There is nothing on the record to show that the petitioner had sent any notice to the Chairman, Arbitration Council. Therefore, the petitioner remains under a continuing obligation to pay maintenance to his wife.

5. As regards the quantum of maintenance fixed by the learned Appellate Court for

respondents No.1 to 3, given the inflation at this day and age, I am of the view that it is too low. However, since respondents No.1 to 3 have not challenged the appellate judgment and decree, interference with the same would not be warranted.

6. In view of the above, I do not find any merit in this petition which is accordingly dismissed in limine.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sultan*