

**JUDGMENT SHEET**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT**

**W.P.No.3460/2019**

Syed Adnan Amir

*vs.*

Mst. Mubina Shah & 04 others

*and*

**W.P. No.3424/2019**

Syed Adnan Amir

*vs.*

Mst. Mubina Shah & 04 others

Petitioner by: Mr. Muhammad Islam Sandhu and Malik Najma Khan, Advocates along with petitioner.

Respondent No.1 by: Mr. Shakir Javed, Advocate along with respondent No.1 and her son (Rayyan)

Date of Decision: 19.01.2022

**MOHSIN AKHTAR KAYANI, J:** By way of this common order, this Court intends to decide the captioned writ petitions having involved similar facts and questions of law.

2. Through the captioned W.P. No.3460/2019, the petitioner (father of respondents No.2 & 3) has called in question the concurrent findings of the Courts below, whereby petitioner's application filed under Section 25 of the Guardians & Wards Act, 1890 has been dismissed.

3. Similarly, through the captioned W.P. No.3424/2019, the petitioner (father / husband) has assailed the concurrent findings of the Courts below, whereby suit filed by respondents No.1 to 3 for recovery of maintenance allowance and dowry articles has been decreed.

4. Brief and consolidated facts are that Syed Adnan Amir (*petitioner*) and Mst. Mubina Shah (*respondent No.1*) tied the knot on 26.01.2005, from this wedlock they have been blessed with two children namely Rayyan Shah and Izma Bukhari, born on 22.04.2006 and 09.07.2009, respectively, however the

matrimonial relationship became strained with the passage of time, as a result the petitioner divorced respondent No.1. Later on, the petitioner filed a petition for custody of the minors, which was dismissed vide judgment and decree dated 02.05.2018, as a result whereof, an appeal was filed, which was partially accepted vide impugned judgment and decree dated 22.07.2019 with visitation rights only. On the other hand, respondent No.1 filed a suit for maintenance, which was partially decreed, feeling aggrieved thereof, both the parties preferred their respective appeals, as such, the appeal filed by the petitioner was dismissed, while the appeal of respondent No.1 was modified to the extent of maintenance of minors, which was enhanced, vide impugned judgment and decree dated 02.05.2018. Hence, instant writ petition.

5. Learned counsel for petitioner contends that it is well settled law of the superior Courts that visitation right may also be awarded to father for two full days in every month, while in summer and winter vacation of minors, one month period be given to minors to spend with their father, but both the Courts below have ignored this settled law and passed the impugned judgments and decrees in a slipshod manner, causing miscarriage of justice to the petitioner; that father being natural guardian was not only required to participate in the upbringing of the minor but should also develop love, bondage and affinity with them; that the learned first Appellate Court has not merely increased the maintenance allowance, but also awarded past maintenance in favour of respondent No.1 without considering the law on subject as well as the status of petitioner.

6. Conversely, learned counsel for respondent No.1 opposed the filing of instant writ petitions and maintained in the support of the impugned judgments and decrees that after the divorce, the petitioner contracted second marriage, therefore, he parted himself from the minors; that the learned first Appellate Court has rightly appreciated the facts of the case and increased the

maintenance allowance in accordance with law, even otherwise, petitioner has been granted proper visitation rights to meet with the minors on special occasions.

7. Arguments heard, record perused.

8. Perusal of record reveals that the petitioner Syed Adnan Ameer and respondent No.1 Mst. Mubina Shah were married to each other according to Muslim Family Laws and Muslim family rites on 26.01.2005, who were blessed with two children namely Rayyan Shah, born on 22.04.2006 (presently approximately 16 years of age and student of 1<sup>st</sup> year pre-medical) and Izma Bukhari, born on 09.07.2009 (aged about 12 years approximately and student of Class 7), who are in custody of respondent mother. The petitioner has orally divorced respondent No.1 due to acute disparity on 24.02.2014 and in writing on 27.02.2014, whereafter the petitioner has filed a petition under Section 25 of the Guardian & Wards Act, 1890 for custody of minors, but later on he confined his case of custody to the extent of visitation of minors and did not press for the custody, as a result whereof the Guardian Court vide judgment and decree dated 02.05.2018 extended the right of visitation to the petitioner (father) while considering the needs and requirement as well as the conduct of both the parties with reference to their children, but petitioner was not satisfied with this judgment and filed an appeal, in which the visitation rights have been extended with certain modifications, but the petitioner is still claiming that the minors should have been handed over to him for overnight stay as well as for half of the summer and winter vacations. However, when this aspect was confronted to the respondent mother, she categorically stated that she has no objection on any kind of visitation of minors with their father subject to their own choice and will as both the minors have now grown up, who fully understand the relations and are capable of dealing with issues of visitation and dispute amongst their parents. At this juncture, the elder son of the petitioner, who is student of 1<sup>st</sup>

Year Pre Medical, while present in the Court has not shown any willingness to meet his father, even otherwise, the connected writ petition No.3424/2019 having been filed by the petitioner against the enhancement of maintenance as well as grant of certain dowry articles, is also co-related in this case, whereby the admitted position which emerges on record is shocking, as the petitioner being the father has not paid a single penny to both the minors since 2017 only on one pretext that no visitation was taken place, such an answer from petitioner father is considered to be a negative gesture and denial of his responsibility in unequivocal terms, who at one end is claiming the visitation of the minors to establish a bond with them, but on the other hand he is not taking care of the day-to-day needs of the minors, even he challenges the maintenance of Rs.10,000/- per month for each minor, which was enhanced by the learned first Appellate Court in appeal through the impugned judgment and decree from Rs.5,000/- and Rs.6,000/-, respectively.

9. I have gone through the relevant extract of the evidence brought on record by both the parties and observed that petitioner is presently serving as Computer Engineer (BPS-18) in Associated Press of Pakistan, though the petitioner contends that his monthly salary is much less as reflected in Exh.P19/1, which shows a salary of Rs.50,284/- per month, but on minute scanning of said admitted document it reveals that the said salary slip is for the month of February, 2015, yet we are deciding the fate of his status in January, 2022, as such, the salary slip being an old one could not be considered for the purposes of the petitioner's claim, whose salary has been enhanced at this juncture.

10. Now reverting to the issue of certain dowry articles as contended by the petitioner, it appears that the respondent mother submitted the list of dowry articles before the learned Trial Court and it is also admitted fact on record that she is a working woman and lecturer in OPF Girls College, who purchased

different household articles, as admitted in the evidence, even she has produced the receipts of different household articles, including the furniture, which were confirmed through testimony of PW-4 and PW-5, per se, such aspect could not be denied at this stage as all these factual details were duly appreciated by both the Courts below, therefore, at this stage when the petitioner being father is not performing his legal obligation towards the minors in terms of maintenance, rather engaging the respondent (mother) in these proceedings without any just cause, especially when he admittedly entered into second marriage having a daughter, hence he should have paid the entire due maintenance to the minors immediately without any delay.

11. The petitioner was also confronted qua the dowry articles, whereby he acknowledged that he is in custody of those dowry articles, which could be received by the respondent mother any time. This aspect also shows his conduct, who has not put any serious effort to settle those issues in the past four years, therefore, no interference is required in this case as the claims of petitioner are contrary to record, hence both the writ petitions are hereby DISMISSED.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Khalid Z.